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THE DEVELOPMENT
OF
EUROPEAN POLITY



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TORONTO

THE DEVELOPMENT

OF

EUROPEAN POLITY

BY

HENRY SIDGWICK

AUTHOR OF 'THE METHOD OF ETHICS,' 'THE PRINCIPLES OF POLITICAL ECONOMY,' AND 'THE ELEMENTS OF POLITICS'

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EDITOR'S PREFACE

THE book here offered to the public consists of lectures delivered in the University of Cambridge to students of history and of moral sciences. In arranging it for publication I have retained the lecture form, so as to avoid unnecessary changes of phraseology.

It had of late years been more and more decidedly the author's view—as he has left on record—that a threefold treatment of politics is desirable for completeness:—first, an exposition analytical and deductive, such as he attempted in his work on the *Elements of Politics;* secondly, an evolutionary study of the development of polity within the historic period in Europe, beginning with the earliest known Græco-Roman and Teutonic polity, and carried down to the modern state of Europe and its colonies as the last result of political evolution; thirdly, a comparative study of the constitutions of Europe and its colonies in connexion with the history of what may be called the constitution-making century which has just ended. The present book is an attempt at a treatment of political science from the second point of view. A description of its plan and scope will be found in the first lecture. In reading the book it should be borne in mind that it does not deal with theoretical politics as such. The theory of politics is treated in *Elements of Politics*, where the work and structure of the modern state are examined, and though the present book is complete in itself, it is intended that, for a full view of the subject, both books should be read. As a matter of fact, Mr. Sidgwick often gave a course of lectures on Political Theory along with the lectures contained in this book—some of his pupils attending both courses.

With regard to the third point of view, the comparative study of present constitutions would, as Mr. Sidgwick himself said, to some extent overlap with this book, but only in its later part. It was a favourite idea of his, when he was making plans for the future, that he might reside abroad

for some time in different countries successively in order to learn on the spot, not only what their constitutions were on paper, but what they were in fact—how they actually worked, and what tendencies to development were operating. The scheme was perhaps too ambitious to have had, at Mr. Sidgwick's age, much chance of being carried out by him, but it is a scheme which, if adequately performed, ought to afford much interest and instruction.

To return to the present work, it should be observed that in lecturing it was Mr. Sidgwick's practice to write his lectures pretty completely—though occasionally parts were at first only in the form of full notes—and generally to discuss the subject of them afterwards with the members of his class by means of papers and essays and conversation classes. When the next occasion arrived for lecturing on the same subject, he went through the lectures again before delivering them, added the results of further study, endeavoured to remove difficulties or obscurities, and made any other improvements that occurred to him—often changing somewhat the order of treatment. To facilitate this process, he used during the latter part of his life to write, as a rule, on loose sheets of paper, which could be shuffled about, and when too much obscured by erasures and marginal additions, be rewritten—a plan which also made it easy to interpolate additional sheets. When he felt that the matter had become sufficiently mature to be worked up into a book, he would determine its general arrangement and adapt the lectures to it. Finally, in preparing the work for publication he would revise what was written, add new matter, and fill up gaps. It is thus that his *Elements of Politics* and, I believe, his *Methods of Ethics* were composed. The present work has not, of course, undergone the later finishing process, and indeed the author was himself doubtful whether it was sufficiently finished for publication. He had been led to give up the idea of publishing so long as he held his professorship, feeling that the time and labour required to make it what he considered an adequately scholarly book could not—owing to arrangements in connexion with the teaching and examinations at Cambridge—be given consistently with his duty as Professor of Moral Philosophy. He intended to resign his chair in a year or two, and hoped then to return to this work; but his illness and death in 1900 cut short his plans. With regard to the publication of the book, he directed me to seek advice from friends competent to judge. I have received much kind advice and assistance from Mr. James Bryce, Mr. A. V. Dicey,

Mr. O. Browning, Mr. T. Thornely, and others, and all whom I have consulted, including my brother, Mr. A. J. Balfour, who read the first half of the book, have recommended publication. The reader will doubtless notice, however, that the treatment is unequal—that some points are more fully dealt with, and in a more finished manner than others. In particular, I have little doubt that the last three lectures would have received further development in the hands of the author had he lived. It is perhaps fortunate, however, that in *Elements of Politics* there is a good deal said incidentally about present polities, which may be regarded as supplementary to Lectures XXVIII. and XXIX. This is, partly at least, referred to in footnotes in the appropriate places.

With regard to my responsibility as editor, I have throughout, in accordance with the author's expressed desire concerning any work of his to be published after his death, made such verbal alterations and corrections of inadvertencies as seemed to be needed, and I have of course added connecting words when the sentences were not fully written out in the manuscript. But in every case where the slightest doubt seemed possible as to what was the sense of the words intended to be read in, I have enclosed those I have added in square brackets. I think it has only happened two or three times in the course of the book. The substance and expression are therefore entirely the author's.

As regards arrangement my responsibility is greater, owing partly to the way in which the lectures had been given. Mr. Sidgwick first lectured on the subject, I think, in 1885–86, and from that date he seems to have lectured on it in every year till 1898–99. But the last course—given in the Easter term of 1899—was a short one of eight lectures, and the previous course had also not been a full course. To adapt the lectures to these short courses the manuscript had been much disarranged, and it was not put into order afterwards; and the author's habit of altering the sequence of the sheets and constantly renumbering them renders the numbering practically useless in most cases. I have therefore had to use my own judgment as to order, and in this part of the work I have received very material assistance from students' note-books. I had note-books of different years, and was thus able not only to see approximately what the order of treatment had been, but also that in different years it was not the same. Under these circumstances a certain amount of patching together was needed. In doing this I have used entirely the author's manu-

script; but in order to make transitions as smooth as possible I have sometimes allowed myself, when there were different versions of the same thing, to choose one sentence from one and another from another version. I have also occasionally interpolated passages from portions of the author's manuscript other than what was tied together as the material for this book. In such rearrangement there was, of course, a certain danger of misrepresenting the author's meaning, and of using material intended to be superseded, but I have endeavoured to avoid both dangers.

It will be seen from what I have said that I am to a considerable extent responsible for the details of arrangement; and I hope that if the reader should think there are defects of order, or too much iteration of particular points, or other similar defects, he will attribute the fault to the editor, and not to the author. It should be mentioned that the first three lectures and Lecture x. (on Rome) had been put into print by the author for the use of his class. These are arranged as he left them, except that I have interpolated § 6 in Lecture i., this appearing to be the most appropriate place for it.

As regards footnotes and Appendix, I am largely responsible for the selection. A good many of the footnotes were, it is true, indicated as such by the author, and some parts of the manuscript tied together as the material of the book, which did not seem to fit in well into the text, have also been introduced as notes; but other footnotes and most of the notes in the Appendix have been introduced by me from other portions of the manuscript left by the author, because they seemed to me useful in throwing light on the text, or to be in themselves interesting. The distinction between footnotes and Appendix is only that the notes in the latter are either too long to be conveniently introduced as footnotes, or their connexion with the text is somewhat indirect. I have in the course of the book inserted one or two editorial footnotes, but these are, I think, clearly indicated as such, and explain themselves.

I should like to be able to give, as the author would have done, a list of the books to which he was most indebted in the composition of this work. But this is unfortunately impossible. I could give a long list of books used and annotated in the course of preparing it, but it would probably be incomplete, and in any case would not represent the degree in which he had made use of them respectively. All I have been able to do is to give, so far as possible, the references to actual quotations or what are very nearly quotations.

It remains to thank those who have helped in various ways in the course of the work. I have first to thank Mr. Bryce, Mr. Dicey, Mr. Browning, and Mr. Thornely, and Miss Alice Gardner, Lecturer on History at Newnham College—not only, as already mentioned, for advice, but also for reading the proofs and making criticisms, which, though they could not—as they might in the author's lifetime—modify the substance of what was said, have yet enabled me to remove clerical errors, and, with the help of other parts of the manuscript, to improve some passages and to make some points clearer. And here I should like to mention that the author had shown some of the lectures, in an earlier form, to the late Sir John Seeley, to Mr. P. F. Willert, and to Mr. Stanley Leathes—perhaps to others—and had received criticisms and suggestions from them which he doubtless made use of. Mr. H. G. Dakyns, who had also read some of the lectures before, has greatly helped me, not only by reading the proofs, but by going through some of the manuscript with me. I have to thank Miss E. M. Colman and Mrs. Percy Godber for lending me their notes of the lectures which they attended in 1894–95 and 1895–96 respectively. Miss Gardner, already mentioned, and Miss E. M. Sharpley, Lecturer in Classics at Newnham College, have, besides helping me to correct the proofs, taken much trouble in looking out and verifying references; and in this Mr. Thornely and Mr. Dakyns have also helped. To Miss Gardner I am further indebted for the Index, and for help with the Table of Contents.

ELEANOR MILDRED SIDGWICK.

NEWNHAM COLLEGE, CAMBRIDGE,
August 1903.

THE Second Edition of this book (1913) is a verbatim reprint of the First Edition.

CONTENTS

LECTURE I

INTRODUCTORY SURVEY OF THE SUBJECT

	PAGES
§ 1. The purpose of this book is to treat the history of Political Societies or States from the point of view of inductive Political Science.	1–3
§ 2. It is concerned with the development as well as the classification of forms of polity.	3–6
§ 3. Analogies between past history and present politics must be used with caution, but the development of the "modern state" of Western Europe and its colonies is connected with ancient Greece and Rome, not only in the way of resemblance and analogy, but by direct influence; and to the study of this group, which has developed not only political institutions but constitutions, this book is limited; though not of course to the exclusion of absolute monarchy. .	6–12
§ 4. Differences of race and effects of climate and geographical conditions on political development are important. . .	12–15
§ 5. Outline of the plan of the book.	15–20
§ 6. Imitation must be noted as a disturbing cause in the development of polity, but it only operates where there is a previous tendency towards the form of polity imitated. . .	20–25
§ 7. Meaning of "Political Society," "State" and "Nation." .	25–28

LECTURE II

THE BEGINNINGS OF HISTORIC POLITY

§ 1. The earliest known polities in Greece, Rome, and Germany have important resemblances, but of the three the stage of the Germans when we first hear of them is earliest and of the Romans latest.	29–32

PAGES

§ 2. In the primitive German polity we find an assembly of freemen in arms, a council of chiefs, and sometimes a king; and a movement is traceable towards kingship. . . 32–34

§ 3. The polity of Homeric Greece is more monarchical, though both here and in Rome we find the three elements—king, council, and assembly. 34–42

LECTURE III

The Patriarchal Theory

§ 1. In this lecture we look backward from the primitive polity to guess how political society originated. This question, so much debated in earlier stages of modern political thought as of practical importance, has now only historic interest. . 43–44

§ 2. In historic times new states have been formed by aggregation and by division. But political societies cannot have been formed by division out of non-political. They may have been formed by aggregation—especially voluntary coalescence. 44–46

§ 3. Were they then formed by voluntary aggregation of heads of natural families, or by the extension of single families into larger bodies of kindred? Maine, arguing from ancient law and what is known of primitive societies, holds the latter view, conjecturing that the independent group thus formed out of the patriarchal family was normally governed by the eldest male ascendant representing the common ancestor. . 46–50

§ 4. In considering this we answer three questions as follows:—(1) kinship real or supposed may be assumed to have been the bond in the primitive group; 50–51

§ 5. but (2) this kinship was not necessarily of the patriarchal type; 51–54

§ 6. and (3) even when the patriarchal family was established within the clan, there is no reason to regard the father's power as the original type of political power. Hereditary kingship may, however, have arisen through a combination of the principle of choosing the strongest and wisest, with a tendency to regard a son as the natural successor to the father. 54–56

LECTURE IV

Summary of the Theory of Origin—Transition from Primitive Kingship

§ 1. The theory of origin arrived at in the last lecture is summed up and further explained. 57–60

PAGES

§ 2. Before tracing the development from the primitive polity in Greece, we may note that we have here many instances to generalise from, but the advantage of this is neutralised by our fragmentary knowledge of most of the Greek states and colonies. In early history, however, Athens and Sparta may be taken as types of states formed by integration and conquest respectively. 60–62

§ 3. Unlike Rome, in Greece the transition from kingship to early oligarchy seems generally to have been peaceful. Monarchical despotism—"tyrannis"—comes in Greece *after* oligarchy. 62–66

§ 4. The difference between the movement towards kingship in early German history and from it in Greece, is connected with the tendency towards the formation of country-states in the former and city-states in the latter. Concentration in towns arises from (1), economic causes; (2), the more rapid development of civilisation in towns; (3) and in Greece from the geographical conditions leading to small independent states, and the protection against aggression afforded in small states by the walled town. The concentration of life in the town develops the sentiment of the state, while the development of this sentiment fixes the notion of a city community as the highest political development. 66–70

§ 5. The transition from villages to towns was often semi-compulsory, and may have been promoted by the ambition of primitive kings. But the development of civilised life in small separate communities deprives kingship of its value as a bond of national unity, and, speaking broadly, political society in Greece passed from primitive kingship to primitive oligarchy, the council becoming the ruling organ. 71–74

LECTURE V

Early Oligarchy in the Greek City-State

§ 1. The assembly of the freemen in arms also tends to acquire an oligarchical character from various causes. There are two kinds of oligarchy—that where a minority of rich govern a majority of poor citizens, and that where the whole body of citizens is a minority compared with free non-citizens. It is in this latter sense that Sparta is an oligarchy. . . 75–80

§ 2. This kind of oligarchy resulting, as in Sparta, from conquest is found elsewhere in Greece; but it may also arise from the citizens by inheritance becoming a minority compared with free immigrants. On the other hand, "integration"—coalescence of small towns as in Athens—would tend to throw power into the hands of a minority inhabiting the central town and able to attend the assembly. . . 80–82

PAGES

§ 3. Growing inequality of property is an important cause of oligarchy. The landless freeman relieved from fighting at his own charge would lose his place in the assembly. The importance of cavalry in war would also throw power into the hands of the rich. Early oligarchies of this sort were probably "natural oligarchies." . . . 82–85

LECTURE VI

Tyrannis

§ 1. "Tyrannis"—unlawful despotism—tends to prevail in Greece at two periods. In the first the tyrannus is usually a demagogue who profits by the movement against early oligarchy. In the second he is more often a leader of mercenaries. 86–89

§ 2. The movement against early oligarchy is due to oppression by the rich; to the growth of new wealth outside old families; to growing luxury and insolence; to distrust of unwritten law. The codifier and the "aesymnete," or lawful dictator, sometimes avert the crisis. 89–90

§ 3. There is great inequality of development in Greece, and the early democratic movement occurs in the more advanced parts. 90–93

§ 4. Accordingly we find the earlier Tyrannis in commercial and maritime states and in colonies. It is sometimes averted by broadening the basis of oligarchy. . . . 93–95

§ 5. Tyrannis pressed more hardly on the rich than the poor, and it often raised the power and prestige of the State, but being always irregular and lawless it was generally condemned. . 95–99

LECTURE VII

Greek Democracy

§ 1. After the period of the earlier Tyrannis we have a very general drift towards democracy, with lapses to oligarchy. . 100–101

§ 2. We know little of the oligarchies of this period. . . 102–103

§ 3. Of democracy we know more from Athens, where the general assembly of the people governed; the magistrates and council were subordinate and were appointed by lot; attendance at the assembly was paid; administration of justice was popular; the assembly did not itself legislate. . . 103–107

§ 4. Aristotle's classification of governments implies a general condemnation of the actual governments in Greek States. . 107–111

§ 5. And his condemnation of fully developed democracy is confirmed by Plato and Isocrates, but they all agree that a bad oligarchy is worse. 111–113

PAGES

§ 6. Democracy seems to have tended to personal liberty; and the corrupt administration of justice at Athens, and the overburdening of the rich by taxation, is perhaps exaggerated. Democracy was often violent, but some forms of oppression were probably more often talked of than realised. . . 113–119

LECTURE VIII

Ideal States of Aristotle and Plato

§ 1. The Athens of Plato and Aristotle — the fully developed democracy of the fourth century, not the developing democracy of the fifth—must be taken as typical. . . 120–121

§ 2. Regarding this as bad, and the ordinary oligarchy as worse, Plato and Aristotle design ideal states not larger than a single city in which the citizens are to be landowners living at leisure, carefully educated and trained for war—husbandmen, artisans, and retail traders to be excluded from citizenship. Plato would have an elected magistracy and council —Aristotle would give deliberative and judicial functions to the landowning class after they have passed the military age. 121–126

§ 3. Sparta has evidently served as model for this aristocratic ideal; but as a practical policy Aristotle recommends a fusion between aristocracy and democracy—constitutional democracy—"politeia." 126–129

§ 4. He does not introduce monarchy of any kind into his balanced constitution. 129–130

LECTURE IX

Greek Federalism

§ 1. Recapitulation of Greek political development. The transitions are largely due to economic and other internal causes, but also to war; and the need of resisting larger states produces federalism. 131–134

§ 2. In fact, the time has come for the transition to country-states —by federation as in the Achæan League, or by expansion and absorption as in Rome. It is marked by the word "ethnos" taking the place of "polis." . . . 134–135

§ 3. There had been federation earlier, but as the importance of cities grew it became more difficult. . . . 135–137

§ 4. In the revived Achæan League the isolation of the city-state is overcome. The national government is democratic and non-representative, but inevitably tends to a practically representative and aristocratic character. . . . 137–140

LECTURE X

ROME

PAGES

§ 1. Aristotle would have classed republican Rome as a "politeia," though a strange one with its duality of governing assemblies, its tribunes, and the legislative power of the plebeian assembly—results of the struggle between patricians and plebeians. 141–145

§ 2. Though the plebeians triumph the administration remains aristocratic. This is due to the pressure of external struggles; and to the preponderantly rural character of the assembly; the plebs want to be secured from misgovernment, not to govern. 145–148

§ 3. The struggle had been between rich and poor, and between old families and new; when the leading plebeians are admitted to office they coalesce with patricians into a new nobility; it is this which governs while Rome is conquering. 148–151

§ 4. The conflict between rich and poor is kept in abeyance by distribution of conquered land and establishment of *coloniæ*; these form centres from which the language and civilisation spread; thus by expansion and absorption the city-state grows. But there is no more public land to divide when the century of revolution begins. 151–154

§ 5. In this revolution what is breaking down is the government of an aristocracy that has always recognised the sovereignty of a popular assembly; we see not only the degeneration of an oligarchy, but the demoralisation of an undeveloped democracy. 154–156

LECTURE XI

ROME (*continued*)

§ 1. Polybius finds in the Roman constitution monarchical besides aristocratic and democratic elements. But the powers of the consuls were far from what Aristotle means by monarchical, though the proconsuls in the provinces ruled monarchically. 157–159

§ 2. The early consuls after the transition from monarchy to republic were more like kings, possessing the judicial functions of the praetors and the functions of the censors, and not being limited by the tribunate. The splitting up of executive authority increased the power of the senate. . 159–163

§ 3. The transition from republic back to monarchy follows from the unwieldy size of the city-state rendering the form of government inadequate, while yet this size was necessary

PAGES

for physical strength; and the corresponding change of the army from a citizen-militia to the legions of particular generals. Order could only be maintained by concentrating the command of the legions in one hand. The primary element of the Imperial authority is proconsular, and republican forms are at first maintained. . . . 163–167

LECTURE XII

FUNCTIONS OF GOVERNMENT AND RELATION OF LAW TO GOVERNMENT IN GREECE AND ROME

§ 1. The ancient governments have been said to regulate the lives of individuals more than modern ones; but apart from Sparta the evidence is against this in Greece, except interference due to the fusion of Church and State and the predominance of war. 168–171

§ 2. Legislation is, on the other hand, more important in the modern view of the functions of government than in the ancient. In the Greek view law was not simply a product of the popular will. 171–176

§ 3. In Rome we can trace the process by which the idea of government as normally legislative was reached. There was some new legislation in the XII. Tables, . . . 176–178

§ 4. but for several centuries after this, legislation was not the chief means of altering the law. It was modified by interpretation in "answers of the learned" and by the overriding of law by equity through the praetors' edict. By this *jus gentium* was reached 178–179

§ 5. through the practical needs arising from dealings with foreigners. The more universal character of *jus gentium* led to its ultimate fusion with the philosophical idea of *jus naturale*, but they were not completely convertible, particularly as to slavery. . . . 179–183

LECTURE XIII

TRANSITION TO MEDIEVAL HISTORY

§ 1. Legislation increases under the Empire, and becomes more and more Imperial. Justinian's work symbolises the concentration of legislative power in the emperor. . . . 184–186

§ 2. In the slow development of the country-state, to which we now turn, a vague analogy can be traced to the more rapid development of the Greek city-state. . . . 186–190

§ 3. But this comparison brings out the much stronger tendency to monarchy in the former. The main cause is the need of a bond of unity; but the pre-existence of the Roman Empire

PAGES

is another cause, acting by example and tradition and through the lawyers and the Church. . . . 190–194

§ 4. The country-state is complex compared with the city-state. We have to consider in its development the relation between political power and landownership, the growth of towns within the state, the separate organisation of the clergy. . 194–196

§ 5. Another element of complexity is the Holy Roman Empire. . 196–198

§ 6. Broadly speaking, the diverse courses of development come to absolute monarchy in the seventeenth century, and begin from the old Teutonic community. Though as the barbarians gradually prevail over the Roman Empire, the Teutonic kingship grows to meet its task, it does not become strong enough; in the struggles against disorder and chaos society knits itself together by the feudal system. . . 198–201

LECTURE XIV

Feudal and Semi-Feudal Polity

§ 1. The tendencies for the relation of lordship and service to prevail over that of citizen to citizen, and for the relation of the individual to land to determine his political position, coalesce into the fusion of personal service and land tenure characteristic of feudalism. But it is the fusion of land-holdership with governmental power that constitutes its prominent political character. 202–204

§ 2. The result is a scale of ranks in relation to land. The allegiance of the vassal to his immediate superior not directly to the king, and the possibility of having feudal relations in two countries, were disruptive forces. At the bottom of the scale the serf had mostly no legal appeal against the justice of his lord. Though feudalism provided a temporary framework for national life, kingship, outside it, represented the undivided power of the state and the source of more equal justice. 204–209

§ 3. The Frankish monarchy was the home of feudalism proper, . 209–211

§ 4. but its main tendencies are found elsewhere, as may be illustrated by the case of England. 212–214

LECTURE XV

Medieval Theocracy

§ 1. Re-capitulation. In feudal society, King, Church, and Towns in a sense represented civilisation, but did not always hold together. 215–217

§ 2. Theocracy defined. In ancient historic Greece and Rome it did not exist. A separate organisation of the Church is favourable to it. 217–221

PAGES

§ 3. Its inheritance of the Jewish law kept the early Christian Church separate from the State; an attitude only partially changed when Christianity became the established religion of the Empire. 221–223

§ 4. The seed of Theocracy thus sown is developed when, in the chaos following the fall of the Western Empire, the Church holds together and becomes the one intellectual influence. Ecclesiastics take part in secular administration and later hold important positions in the feudal hierarchy. When Hildebrand by the celibacy of the clergy has secured their separation from the laity, both political facts and the state of thought and feeling tended to the realisation of his dream of a pope forming, instead of king or emperor, the coping-stone of the feudal organisation. . . . 223–227

§ 5. The main movement to theocracy begun by Hildebrand culminates under Innocent III. and ends with Boniface VIII. 227–229

§ 6. The quasi-legal arguments urged in support of theocratic claims are not the real grounds on which their force rests. . 229–231

LECTURE XVI

Medieval Cities—General Type

§ 1. Medieval cities are both parts of the nation and partially independent communities. Their organisation and development is similar throughout Western Europe. They differ from the ancient city-state in the freedom and ultimate power and dignity of mechanic labour, and in the governing class of the nation remaining outside them. They acquire most power where the central government is weakest. . 232–237

§ 2. But England with its strong central government exhibits equally the general type—ultimately a kind of federation of crafts. The town works itself free from the political system of the surrounding country; the merchants take the lead; then the crafts rise to equality; as a last stage an oligarchy of master artisans develops within the crafts. . 237–241

§ 3. Towns obtained independence at different times and in varying degrees in Spain, France, etc. 241–243

LECTURE XVII

Medieval Cities—German

§ 1. Germany having no old Roman civilisation is civilised entirely under early medieval conditions. The Church and the towns are instruments of this, and the towns are a colonising type. 244–247

PAGES

§ 2. In development, towns under bishops lead. The towns gradually acquire self-government under councils—at first a "natural oligarchy," but increasingly exclusive. The mercantile oligarchy when developed is confronted by a demos of artisans organised in "crafts." . . . 247–251

§ 3. The medieval "crafts" must be directly or indirectly derived from the later Roman artisan corporations. . . 251–253

§ 4. The long struggle of the crafts with the mercantile oligarchy is like the Roman struggle between patricians and plebeians. The cities with extensive foreign trade form the bulwark of oligarchy. We have in German as in Greek towns a movement from natural to more exclusive oligarchy through inequality of wealth and then to a more popular constitution; but the German towns do not fall under Tyrannis. . 253–256

§ 5. Many cities remain "Free Imperial Cities" till the end of the eighteenth century, but the democratic movement practically ceases after the fifteenth, and the drift is towards narrowing oligarchy—partly owing to the contagion of monarchical ideas, partly to oligarchic tendencies within the crafts, as in England. 256–258

LECTURE XVIII

MEDIEVAL CITIES—ITALIAN: LOMBARDY

§ 1. The industrial character of the cities is less pure in Italy than elsewhere owing to their predominance over feudality. . 259–261

§ 2. The peculiar history of Italy leading to its division into two parts separated by the Papal States, accounts for the diverse conditions of different cities and groups of cities. The cities of Southern Italy and Venice develop early—nominally under the Eastern Empire. . . . 261–264

§ 3. Venice would probably in any case have developed early like the other maritime cities—Genoa and Pisa. The inland towns of Tuscany develop late, probably owing to its outlying position. 264–266

§ 4. The Lombard cities are first organised to protect themselves against Huns and Saracens. The industrial element grows, as in Germany, under the shield of the Church, but gradually shakes itself free and in the twelfth century the towns are governed by "consuls." . . . 266–268

§ 5. The independence of the towns is shown by their wars with each other and confirmed by their successful struggle with Frederick Barbarossa. 268–270

§ 6. In the meanwhile they struggle with the neighbouring feudal nobles, compel them to submit to their jurisdiction and partly reside in the towns. 270–273

§ 7. The resulting disorderliness leads to the institution of "Podestas" and ultimately to Tyrannis. The full industrial development is thus cut short in the thirteenth century. 273–276

LECTURE XIX

MEDIEVAL CITIES—COMPARISON OF ITALIAN CITY-COMMUNITIES WITH ANCIENT GREECE

PAGES

§ 1. In North Italy, where the greater part of a continuous territory is divided among cities, these show striking resemblances to Greek city-states. . . . 277–280
§ 2. But the resemblances are qualified by important dissimilarities; the independence differs in degree; the factions—Guelf and Ghibelin—in kind; 280–283
§ 3. in Greece we have not the double antithesis between nobles and *popolani grassi* and between the latter and artisans; . 283–284
§ 4. and the Tyrannis of Greece and Italy differ. . . 284–285

LECTURE XX

MEDIEVAL CITIES—FLORENCE

§ 1. The independence of Florence develops late—after the death of the Countess Matilda in 1015, and we soon find it under consuls. 286–287
§ 2. To give strength in the struggle with nobles the consuls are superseded—as in Lombardy—by a Podestà, with later a *Capitano del Popolo*, each having special and general councils. 287–290
§ 3. The constitution is further complicated by the organisation of the Guelf party with a share in the government. . . 290
§ 4. And similarly of the greater *Arti* (crafts). . . . 290–293
§ 5. The preponderance of the *Arti* is increased in 1282, and again in 1293, when the "ordinances of justice" are instituted against the nobles with a "gonfalonier of justice" to carry them out. 293–295
§ 6. The lot is partially introduced into the election to offices. . 295–298
§ 7. Constitutional struggles lead to the lesser *Arti* obtaining a share in the government. 298–300
§ 8. But oligarchy is renewed by means of the Guelf organisation and the persecution of real or pretended Ghibelins. Hence discontent leading to the revolution of the *Ciompi*—workers below the organised *arti*—the high-water mark of the democratic movement. Oligarchy regains power and ultimately the transition to practical monarchy under the Medici has popular support. 300–301

LECTURE XXI

Medieval Representative Institutions

PAGES

§ 1. The difference between ancient and modern ideas on taxation may be traced to the way modern polity grew out of feudal conditions. From the monarch's point of view Assemblies of Estates were a means of overcoming difficulties in raising money. 302–303

§ 2. The democratic element in the assemblies is due to the development of the towns. The impulse to the formation of assemblies is sometimes from above, sometimes from below—as in Germany, where we see a strong tendency to spontaneous association, which does not however lead to permanent constitutional government. . . . 303–307

§ 3. In France the movement is from above,—in its antifeudal policy it is an advantage to the crown to have direct relations with the cities. The want of union between the estates, chiefly concerning taxation, prevented permanent results from efforts at popular control. And the effect is similar in Spain and Scandinavia. . . . 307–310

§ 4. In England the effects of insularity, of strong central government, of nobility not descending to younger sons, produce greater union of classes and exceptional strength of parliamentary government. 310–315

LECTURE XXII

Movement to Absolute Monarchy

§ 1. In the eighteenth century, absolute monarchy might well have been regarded as the final outcome of the long development of country states. The movements first to and then from it, are from one point of view two stages in one process towards the modern conception of political society. . 316–320

§ 2. Modern history may be said to begin in the middle of the seventeenth century, when monarchy finally predominates over other elements in the state, and the coherence of the modern state is substituted for the imperfect order of medieval institutions. 320–323

§ 3. In the medieval state every one has rights, but there is no central power strong enough to secure them to him. The triumph of monarchy represents the first approximation to it; hence patriotic sentiment supports the monarch against anarchical forces. 324–326

§ 4. The failure of the medieval assemblies is another aspect of the same thing; the representatives of classes could not unite to represent the nation. But apart from this the rule of one seemed, both in fact and theory, the simplest mode of attaining unity. 326–329

LECTURE XXIII

MOVEMENT TO ABSOLUTE MONARCHY (*continued*)

PAGES

§ 1. To influences on the side of monarchy we must add Theology and Roman Law; though the former was mixed and varying. The ideal of medieval theology was a monarchical organisation under one universal headship, but when this broke down conflicts with secular powers led ecclesiastical writers to lay stress on the doctrine that secular government rests on consent of the people. Both Catholic and Protestant influences vary with circumstances during the Reformation; but its consequences, on the whole, favour monarchy, as is seen in Spain and France. . . 330–335

§ 2. Roman law, framed in the Imperial period, is more steadily on the side of monarchy. 335–336

§ 3. There are qualifications to monarchical absoluteness in survivals of abortive medieval parliaments, and in privileges of nobles and lawyers. 336–339

§ 4. Also exceptions due to geographical and other causes. . 339–341

§ 5. In the most important exception — England — Parliament finally triumphs in 1688. . . . 341–344

LECTURE XXIV

POLITICAL THOUGHT—HOBBES AND LOCKE

§ 1. Political ideas, ideas of government as it ought to be, are largely derived from experience of governments as they are and have been. They are also causes of political change; and more markedly as civilisation advances. Thus political theories are partly fashioned as instruments for attaining immediate practical results: and this affects their development. 345–349

§ 2. The establishment, in fact, of political order on a monarchical basis has for its counterpart in thought the doctrines of Hobbes:—that absolute governmental power is necessary for orderly political society. He thinks it had better be monarchical, but this is not necessary to his theory. . 349–352

§ 3. Hobbes assumes an original compact by which individuals in a "state of nature" bind themselves to obey a government. This they do because the state of nature is miserable through anarchy. Only a compact binding all to unquestioning obedience to a sovereign with unlimited power can be effective. 352–356

§ 4. Locke's theory justifies the act which sealed the failure of monarchical absolutism in England. He held that by the original compact power is entrusted to government for certain ends: if the trust is violated the duty of obedience ceases. 356–359

PAGES

§ 5. He diverged from the traditional view in holding that no man has a right to consent to be a slave; a legitimate government must be such as men living in natural freedom would reasonably combine to form. If government has recourse to illegal coercion and taxation unconsented to, it violates the ends for which government was instituted. . . 359–363

LECTURE XXV

POLITICAL THOUGHT: LOCKE TO MONTESQUIEU

§ 1. Locke's theory, like Hobbes', admits all forms of government. But as Hobbes prefers monarchy, so Locke prefers a government in which the legislative power is separated from the executive. 364–367

§ 2. The political thought of the eighteenth century has its focus in France. English thought is languid in the first half of the century; there is some disappointment at the results of the Glorious Revolution, till Montesquieu sets the English Constitution on a pedestal for the admiration of Europe. . 367–371

§ 3. Montesquieu and Rousseau prepared the way for the French Revolution: Montesquieu through the admiration he inspired for the ancient republics as examples of a form of government demanding a high strain of political virtue. . . 371–375

§ 4. Also through his admiration for the English constitution as maintaining political liberty—especially by separation of powers legislative, executive and judicial, preventing tyrannic preponderance of any. 375–377

LECTURE XXVI

POLITICAL THOUGHT: THE INFLUENCE OF ROUSSEAU

§ 1. To turn admiration of the Law of Nature as an ideal into a practical ardour for its realisation and to extend it from civil to constitutional relations was in France the work of Rousseau. 378–380

§ 2. The manner in which absolute monarchy had grown out of feudalism, and the resulting abuses and inequalities, prepared the way for his doctrine. 380–384

§ 3. He preached nature in contrast with the artificiality and frivolity of society, and he preached the inalienable sovereignty of the people; but he did not dream of restoring the state of nature in reconstructing society in accordance with the law of nature. . . . 384–390

PAGES

§ 4. Of Rousseau's three main points—that (1) men are by nature free and equal, (2) the rights of government depend on a compact, (3) which must be one in which each gives up his will to the will of the whole—(1) belongs to the law of nature of Roman jurists; (2), connected with this, was generally accepted, (3) is Rousseau's, arrived at by combining the lines of thought of Hobbes and Locke. . . 390–392

§ 5. Rousseau's view is contrasted with that of the Physiocrates, who desired not to reconstruct government but to limit its functions. 392–394

LECTURE XXVII

DEVELOPMENT OF ENGLISH POLITY SINCE 1688

§ 1. Though French thought had an important share in bringing about the change to constitutional monarchy—or republic, which is not essentially different — in West European polity, the influence of the English constitution is more indisputable. 395–397

§ 2. But its imitators have not always known how different it has been at different stages. 397–402

§ 3. Cabinet government, in which the prime minister is the leader of the party that has the majority in the House of Commons —existed only in germ in the eighteenth century, when the established view was that the ministers were chosen by the monarch. 402–407

§ 4. After the Reform Bill his power of appointing the minister is found to have gone. The eighteenth-century constitution is very like the German constitution. . . . 407–410

LECTURE XXVIII

CONSTITUTION-MAKING OF THE NINETEENTH CENTURY

§ 1. In Montesquieu's ideal—a representative assembly controlling legislation and taxation and exercising a check on the executive by the necessity of their obtaining supplies, with the reign of law secured by the independence of the judicature and the strict limitation of the power to imprison before trial—we have, summarily stated, the last result of political development in Western Europe; the type varying between the new English and the German or old English. . . . 411–415

§ 2. The English constitution as conceived by Montesquieu, which the founders of the American constitution had before them, differs in important respects from the new English—cabinet government—which has in most cases been adopted in West European states. 415–419

PAGES

§ 3. In saying the English type has been adopted, minor differences are ignored—*e.g.* in the construction of the second chamber and in the extent of the franchise. . . . 420-422

§ 4. But the English judicial system has been largely imitated—notwithstanding differences as to the relation of the executive to the ordinary tribunals. 422-425

LECTURE XXIX

Modern Federalism

§ 1. Recapitulation. Federality of Germany, Austria and Hungary, Sweden and Norway. 426–428

§ 2. The development of Swiss polity. 428–430

§ 3. This was uniquely continuous among other less enduring confederations. 430–432

§ 4. A federal state — a whole made up of parts politically approximately equal, with a constitutional division of functions between the governments of the whole and of the parts—ordinarily requires an "extraordinary legislature" for any alteration of the constitution. Hence, though it breaks up more easily than a unitary state, its constitution tends to be unusually stable—as is illustrated by the United States. 432–436

§ 5. The most important cause of federalism is need of strength in external relations. Commercial considerations are another cause. 436–437

§ 6. It may also arise by the establishment of secured local liberties in states previously unitary. 437–438

§ 7. Partly from this democratic tendency, partly from the tendency to "integration" seen throughout history, the extension of federalism seems the most probable of the political prophecies relating to the form of government . 439

APPENDIX 441

INDEX 449

DEVELOPMENT OF EUROPEAN POLITY

LECTURE I

INTRODUCTORY SURVEY OF THE SUBJECT

§ 1. I PURPOSE, in the Lectures that follow, to treat summarily an important part of the history of Political Societies, from the point of view of Inductive Political Science, as I conceive it. The full meaning of the term "Political Society" will be unfolded as we proceed: provisionally I mean by it a group of human beings united among themselves, and separated from other human beings, by the fact that they habitually obey the same government, and thus form a corporate whole, whose life may be distinguished from that of the individuals composing it. Such a society, when it has reached a certain stage of civilisation, is also called a "State," and I shall use this as an alternative term. I regard Government as the essential characteristic of States or Political Societies as such; and it is as possessing Government that I shall be concerned with these bodies from first to last. With other characteristics of social man, as we find him in different ages and countries, his languages, his customs, his religions, his science and art, even his economic condition, I shall only be concerned indirectly; *i.e.* so far as these other characteristics have an important connection in the way of cause and effect, with what I shall call, for brevity, his "polity"—meaning by "polity" the structure of the government under which he lives, and its relations to the governed.

In saying that I treat of Political Societies from the

point of view of "Political Science," I mean, on the one hand, that I am concerned primarily with polities as they are and have been, and not with polity as it ought to be; and, on the other hand, that I study them primarily with the view of ascertaining (1) the classes to which they belong, or the general types which they exemplify, and (2) the causes which have led to the prevalence of this or that general type in different regions at different times. I thus distinguish the point of view of Political Science on the one hand from that of the wider and more comprehensive subject which we call Political Philosophy, and on the other hand from that of ordinary political history. On the one hand, Political Science (so treated) does not—as Political Philosophy does—concern itself directly with the right or best form of government, or the form which we should aim at introducing at the particular stage which we have reached in the development of society. We may, indeed, hope to derive from Political Science results of practical utility—I shall presently consider in what way and to what extent—but still its primary business is not political construction, but generalisation from political facts, whether furnished by history or by contemporary observation. So far as our study deals with types of polity, they are types obtained by mere abstraction from the world of reality, not ideal types which it sets before us as models to be aimed at.

On the other hand, the distinction between Political Science and ordinary political history lies in the *generality* of the object of science. What as students of Political Science we are primarily concerned to ascertain, is not the structure or functions of government in any particular historical community, but the distinctive characteristics of different forms of government in respect of their structure or their functions; not the particular process of political change in (*e.g.*) Athens or England, but the general laws or tendencies of change exemplified by such particular processes.

Hence it often happens that the same political facts are studied in very different relations by the historian and by the student of Political Science respectively. The historian

aims primarily at presenting facts in their chronological order; but in comparing the political development of different parts of the human race, we find—throughout the past as well as at the present time—that they are contemporaneously at very different stages of development, and may consequently be approximately in the same stage at very wide intervals of time. Political Science, accordingly, aims at bringing together for comparison societies similar in their political characteristics, however widely separated in time. Thus, when, at the outset of our study, we endeavour to form a general conception of the "primitive Indo-Germanic polity," [1] we have to compare what Tacitus tells us of the Germans of his time, not with the contemporaneous political organisation of Rome, but with the very earliest form of Roman polity that antiquarian study enables us to discern.

§ 2. Political Science, then, aims like other sciences at ascertaining relations of resemblance among the objects that it studies; it seeks to arrange them in classes, or to exhibit them as examples of types. But though classification is an important part of its task, it is not the whole of it; nor is it, I may say, the most interesting part. What specially interests us in comparing different forms of polity is to ascertain their causes and effects, and especially the order of development according to which one form tends to succeed another. This is, no doubt, a difficult undertaking; and I could not attempt to perform it, even in a summary and tentative way, in regard to the whole range of political societies historically known to us. But in fact I shall confine myself in the main to a limited portion of the subject, which I select as having a special interest for my readers, both on scientific and on political grounds. What I shall mainly attempt is to exhibit with their distinctive characteristics, to classify according to their most important resemblances, and to link together by the conception of continuous development, the principal forms of political society which the history of European civilisation

[1] The phrase is Freeman's.

manifests; regarding them as stages in the historic process through which political society has passed, and of which the modern state, as we know it, is the outcome.

European History, thus treated, acquires what may be called a morphological unity. This is not, of course, the only point of view from which the unity of history might be regarded. The development of civilised society is a very complex fact, which has many elements or aspects; and there are other elements—*e.g.* the development of thought or knowledge—which might fairly claim to be taken as the central and primary fact, round which other developments are to be grouped. Still, the development of organised political society does afford us a central element or strand of social change, in tracing which we are naturally led to conceive as a continuous whole the processes that we are accustomed to separate as "ancient," "medieval," and "modern" history.

Now in order to conceive the unity of this process vividly and fully, it is important to link the past with the present —to keep before our minds that "history is past politics, politics present history." And when we thus connect the past with the present, our thoughts are inevitably carried through the present to the future,—especially to the future of the group or system of states of which our own is a member, and which is now manifestly dominant over the greater part of the globe. And thus though, as I have said, the aim of Political Science is not directly practical, we are naturally led to study the past development of political society with more than purely speculative curiosity; we are concerned to ascertain the kind and amount of guidance, in reference to the practical problems of our own age, which we may hope to obtain from this study. As I have elsewhere explained,[1] I do not think that the historical method is the one to be primarily used in attempting to find reasoned solutions of the problems of practical politics. In the first place, History cannot, I conceive, determine the ultimate end and standard of good and bad, right and

[1] *Elements of Politics*, chap. i.

wrong, in political institutions; whether we take this to be general happiness, or as others hold, human well-being interpreted somehow so as to distinguish it from happiness. This ultimate end we cannot get from history; we bring it with us to history when we judge of the goodness or badness of the past laws and political institutions which history shows us. Secondly, supposing that we are agreed as to the ultimate end at which a statesman should aim, historical inquiry appears to me only useful in a limited and secondary way in determining our choice of means for the attainment of the end; in consequence of the continual process of change and development through which political societies move, which renders the experience of the past—unless it be a comparatively recent past—largely inapplicable to the present needs of the most advanced communities.

But, though the history of the past cannot, in my view, be the primary source of our data for deciding the political questions of our own age and country, it is still very important that we should obtain from it such guidance as it can furnish. Firstly, so far as from the study of what has been we can ascertain the laws of political evolution, and thus forecast—even dimly—what is to be, though such forecast cannot determine positively our political ideal, it may determine it negatively by indicating what is *not* to be aimed at as out of our reach; we may obtain from it some notion of the limits within which any practicable ideal is confined, the kind of society and circumstances for which the political institutions of the future will have to be adapted. We may also learn, if not with certainty still with considerable probability, which of the elements and characteristics of our own political society are likely to increase and become more important as the years go on, and which are likely to decrease and become less important. How far any such forecast is scientifically attainable, I do not yet determine; but it must always be the aim and aspiration of Political Science to attain it as far as possible.

Secondly, history may render us a different kind of service in dealing with other societies than our own—whether

foreign nations or dependencies. For the history of political institutions shows us a variety of forms of political and social organisation, the study of which may enable us to understand better the nature and probable behaviour of organisms of the same kind existing contemporaneously; since human societies, as I have already observed, are co-existing in all different stages of development, and we have actually to deal with communities for whose present political and social condition instructive analogies are to be found in the past condition of societies better known to us. Thus competent judges hold that it might have prevented serious mistakes in our government of India, if the governing statesmen had had before their minds the historical development of land-tenure, as we now conceive it to have taken place in European countries.

In this way history, in the ordinary sense,—the study of the past,—furnishes *one* element of what may be called "Comparative Politics," the other element being supplied by contemporary observation. The two mutually assist and supplement each other, though the task of combining the different sets of data is often difficult.

§ 3. This leads us to the question that has the greatest practical interest—viz. how far we can find in the past history of polity instructive analogies for our own political condition?

Now, *primâ facie*, if we West Europeans are right in regarding ourselves as in the van of progress, we can only find close analogies of this kind in the *recent* history of states that form with us a group moving together; *e.g.* the United States and our own colonies may teach us valuable lessons of experience as to the working of that representative democracy which appears to be our destiny, but which is more completely established there than here.

But it is not only in recent history that such analogies have been sought during the long and active political discussion that has taken place, since aspirations after republican liberty and virtue found stirring expression in Europe in the middle of the eighteenth century. From the time of Montesquieu

and Rousseau, down to the time of Sir Henry Maine, a leading place has been given in such discussions to the consideration of democracy as known to us from Greek and Roman history. It has been held that a careful study of this previous experience is likely to throw important light on the process of change now going on in the type of political society to which our own State belongs—what we may call the normal State of Western Europe and America. It is commonly agreed that the West European states are at present moving toward democracy; and in considering whether this movement is good or bad, and how we ought to meet the dangers and difficulties involved in it, analogical arguments are continually based on what is known to us from history as to the behaviour of the Demos of Greek city-states, and of Roman popular assemblies in the latest phase of the Republic. I hold that such analogies have to be used with great caution, owing to the important differences between Græco-Roman political conditions and those of modern Europe: especially (1) the difference between the direct democracy of a small state where all can meet in one assembly, and the representative democracy of the larger states which are the normal kind in our modern world: (2) the difference introduced by slavery, which, in the most democratic of ancient communities, excluded absolutely from political rights a large portion of the manual labour class: (3) the separation of Church and State, which our modern societies inherit from medieval Europe: and (4) the changed conditions and position of industry in the modern State. Still, making all allowances for these differences, I think that it is interesting and instructive to compare the successive stages in the more rapid development of the city-states of ancient Greece and Italy with the successive stages in the slower development of the "country-state" or "nation-state" of modern Europe.[1] For—whatever be the degree of resemblance between the developments—at any rate the careful and systematic performance of this comparison gives the right point of view

[1] The comparison was suggested many years ago by the German historian Gervinus in his Introduction to the *History of the Nineteenth Century.*

for estimating the value of the lessons that will in any case continue to be drawn from ancient history for modern politicians.

It need hardly be added that the earlier process is connected with the later not merely in the way of resemblance and analogy. The "modern state"—the last result of political civilisation—is a type exemplified almost exclusively by the states of Western Europe, and the colonies that have sprung from them; and the states of Western Europe are either (1) portions of the Roman Empire, broken up by the irruption of the Germans, and reconstituted under the blended influences of Roman civilisation and the primitive political habits of the German tribes; or (2) nations originally akin to these conquering tribes, and subsequently drawn within the influences of their political and social development. France, Spain, Italy, are examples of the former; Germany and Scandinavia of the latter class; England lies historically between the two, but in tracing the conditions of political development must be classed with the latter.[1] Again, the political thought of this whole group of states has been to an important extent influenced by the study of Greek history and the political conceptions and doctrines of Greek thinkers derived from reflection on the phenomena of the Greek city-states.

I propose accordingly to confine my attention mainly to the political institutions of the ancient Greeks and Romans, and of Western Europe and its colonies in post-Roman times. And this limitation is less narrow than it seems, if the special aim of Political Science, as above explained, be kept in view. Of course, in the widest sense of the term, political institutions are not peculiar to any one part of the globe, or any one of the different races of men. Though there are societies—groups of gregarious men—in which the "differentiation" into governors and governed is barely per-

[1] Although England was long a province of the Roman Empire, which Germany—in the main—was not, still, for reasons that will hereafter appear, the political development of Germany was more influenced by ideas derived from Rome than that of England.

ceptible, such societies constitute a very insignificant portion of humanity: it is almost universally true that a man is a "political animal" in the sense of being either ruler or ruled, either obeying or constituting a government of some kind. But there is a sense in which *higher* political development has originated almost exclusively in, and is still mainly confined to certain portions of the white, or—as some still call it—Caucasian race. They alone have developed, along with the development of their civilisation,[1] governing organs of which the members are accustomed "to rule and obey alternately"[2]—whether (1) the supreme ruler is merely elected by the citizens for a limited time, and then gives up power and may be formally called to account for his exercise of it, or (2) the supreme rule is in whole or in part exercised collectively by a body of citizens meeting from time to time.

In the history of political institutions these forms interest us most, not only as citizens of a modern West-European State, but as students of Political Science: just as the highest forms of life have a special interest for the biologist. I shall accordingly confine my attention mainly to the nations who have shown a power of developing them. And among them the most important and conspicuous of those whose history is known to us are certainly the Greeks, Romans, and West-Europeans. They stand pre-eminent among the civilised portions of humanity as having developed, up to the highest point that their civilisation has yet reached, not only political *in*stitutions, but *con*stitutions and constitutional ideas and theories.

We cannot indeed confine our attention to constitutional governments: since we shall continually have presented to us, from almost the beginning to almost the end of the process that we shall be studying, the form of government which is commonly distinguished as "absolute" monarchy.

[1] This qualification is required, because we find the rudiments of such an organ, in the form of the "assembly of the nation in arms," in that primitive polity which is not confined to any one race.

[2] ἄρχειν καὶ ἄρχεσθαι.

Indeed it is noteworthy, that if we take a summary survey of the actual experience of civilised societies in matters of government—extending it as far as we can through time and space—the one which in extent of human beings ruled by it surpasses all the rest is so-called Absolute Monarchy. By the word Absolute it is not, of course, meant that the power of the ruler over the ruled is practically unlimited—that he can deal with his subjects as if they were a troop of cattle. Such a ruler has always been more or less controlled by his fear of the disapprobation of his subjects and his desire of their esteem; by his fear of the *ultima ratio* of revolution, which has never been unknown in any political society; by the influence of religion on his own mind, and his knowledge of its influence on the minds of others. He has been restrained in earlier stages of civilisation by the general recognition which he shares of law or custom as something fixed and unalterable, having a source higher than ordinary human volition; in later stages by the complexity of the system of law and the machinery of administration in a civilised state, rendering it increasingly difficult for the monarch to effect any change that he desires without causing other grave consequences that he does not desire. What is meant by calling him "absolute" is that there is no established constitutional authority—no human authority that his subjects habitually obey as much as they obey him—which can legitimately resist him or call him to account.

It is not difficult to understand why this kind of monarchy should be common. If any government—however complex its structure—were in an ideally good condition, the resolutions and actions of its various parts and organs would be as harmonious and consistent as if they emanated from one rational will: and obviously, the simplest method of producing unity and order in the effects of government is by giving the ultimate control in all matters to the will of one man. The effectiveness of such a government, when power is concentrated in the hands of an able man, is shown by many examples of even

irregular despotism both in ancient and in modern times. No doubt in the great monarchies founded by conquest, the habit of obedience in the conquered is not supported by a sense of the advantages of government, but by a fear of the consequences of resisting. But in the conquering nation the habit of obedience to a single man's will is doubtless strengthened by the perception of its advantage in securing vigour and consistency of action in struggles with other nations. Doubtless many warriors besides the warrior in the Iliad have said in primitive ages, "Many ruling is not good, let there be one ruler." As I have just hinted, we must not suppose that where this form of government has been permanently established the governed have submitted with uniform patience to the evils resulting from this concentration of power in the hands of an unfit irresponsible individual; but where they have successfully rebelled against it they have not endeavoured to modify the form of government: they have merely got rid of one man and put another in his place.

In the general history, then, of political institutions it is a peculiar characteristic of certain portions of the white race or races of men, that they have maintained, in advanced stages of civilisation, a different method—at once more artificial and more orderly—of avoiding the evils of arbitrary rule; while at the same time endeavouring to maintain the unity of resolution and action which is necessary for the efficient performance of governmental functions. This is what we call the constitutional method.

Considering the greater complexity which this method, when fully developed, involves, in the current conception of government and the habit of political obedience, we should expect to find its complete development limited to societies which have made some progress in civilisation; but history further shows that the progress of civilisation, at any rate in its earlier stages, has no general tendency to bring it into use. It has in fact been confined, as I have said, to the white race—until very recently—and mainly,

though not entirely,[1] to the Indo-Germanic family of nations: and even within these limits it seems to have required special external conditions for its development.

§ 4. Some explanation is required of these notions of "race" and "family of nations." Firstly, in speaking of the "white race," I do not mean to imply that there are four or five original stocks of human beings, distinguishable by colour and other marks, as "white," "brown," "yellow," and "black" races. In the present state of anthropology there is no ground for assuming any such original differences of stocks, and the physical differences actually existing are more numerous and complicated, and shade off into each other more gradually, than the popular nomenclature suggests. And since all varieties of human beings are zoologically of one species—inter-marriage between any two generally producing fertile offspring—the physical differences of race historically presented may be to an indefinite extent referable to crossing of breeds. A special instance of this is perhaps presented by the marked differences we find between the fair whites, prevalent in Northern Europe, and the dark whites prevalent in Southern Europe and parts of Asia;—as the latter are considered by leading anthropologists to be probably due to a crossing of the fair whites with a darker race. It is to be observed that this distinction cuts across that which Comparative Philology would lead us to draw between Aryan or Indo-Germanic and Semitic nations; and this illustrates another uncertainty in which the application of the notion of "race" is involved, from the difficulty of separating, among the mental characteristics that distinguish average members of different societies, what comes from physical heredity and what from social influence. In consequence of this affinities of language are a very imperfect guide to affinities of race. Hence, in speaking of the "Indo-Germanic family of nations," I must not be understood to imply that the nations thus grouped together are all physically derived from one stock; but only that they are

[1] The constitution of Semitic Carthage appears to have borne a high reputation in Greece in the time of Aristotle, and later.

connected with one ancient social group by a continuous social life, evidenced by continuity of language and at least partly due to continuity of race.

At the same time there are certain broad distinctions of physical race which have remained nearly permanent during the range of history. As Mr. Tylor [1] says, on the wall-paintings at Thebes we can distinguish red-brown Egyptians, Ethiopians like those of the present day, captives from Palestine with the well-known Semitic profile, thick-lipped negroes, and fair-skinned Libyans. And these examples may remind us that civilisation is not a monopoly of the white race, in the widest sense of that term. "At the dawn of history, the leaders of culture were the brown Egyptians, and the Babylonians," whose language is not connected with any known language of white nations; while the yellow Mongoloid Chinese have been "for four thousand years or more a civilised and literary nation." The civilisation that spread round the Mediterranean was not originated by the dark whites—Phoenicians, Greeks, Romans—but only carried on by them. Still we may perhaps say that higher *political* civilisation, the capacity for developing constitutional government in a *civilised state*, belongs primarily to the white race; and mainly to branches of the white race which speak an Indo-Germanic language, and therefore show a partial continuity of descent from one single original group.

The consideration of race leads us naturally to the consideration of climate and external conditions: since the view that the diversity of the races of men results from a number of separate origins is now antiquated; this diversity is now generally held to be due to the gradual summation of the effects, direct or indirect, of the action of external conditions on the primitive human organism. It is interesting therefore to consider briefly how far climate and external conditions have operated to render certain portions of the white race, or its Indo-Germanic branch, more adapted for higher political development than others. It would certainly seem that temperate climate is favourable to this develop-

[1] *Anthropology*, chap. i.

ment; since in arctic regions the special difficulties of the struggle for existence, and the consequent sparseness of the population, impede the development of civilisation; while it is an old remark that the inhabitants of hot climates tend to be at once passionate and (except under pressure of physical need) indolent. Thus the sober intelligence, self-control, and sustained energy required for constitutional government has a better chance of being developed in temperate climes; though, having been developed there, this kind of polity may spread to other regions in which it would not have originated,—like other inventions for the improvement of man's estate, originally produced under specially favouring conditions.

But climate is not the only external condition that is important in tracing the history of polity. Indeed throughout this history we continually meet striking instances in which the exceptional political development of parts of the human race is clearly due to the exceptional nature or relations of the land which they inhabit. Thus in medieval and modern history I need only mention the names of Venice, Switzerland, Holland, England, to recall undoubted examples of this. A no less important case is Greece. Even a study of Greek history alone suggests strongly that the peculiar configuration of Greece — with mountains that separate tribes and favour independence, and water-ways favouring trade and communication — is specially adapted for the growth of the earlier forms of civilised constitutional government: and this suggestion is supported by the fact that in other cases, where nature, by large rivers running through fertile plains, has favoured conveyance and communication without favouring independence, and has thus facilitated a transition from barbarism to civilisation,—the civilisation has been developed on a purely monarchical basis. Indeed the very predominance of simple monarchy that we have already noticed in the greater part of the history of civilisation, seems to justify us in attributing the peculiar development of Greece partly to its special physical conditions. In the great States of Egypt, Babylonia, Assyria, Persia,

whose history is antecedent to, or contemporaneous with, that of Greece, monarchy is absolute, in the sense above explained: from the time that we have any knowledge of them, the mass of the people have "nothing to do with the government of their country except to obey it," and the subordinate governors have no constitutional right to oppose the will of the monarch. Whenever such opposition takes place, it means revolt and partial disorder.

We have, however, now to observe that so far as the evidence of history goes, this is not the primitive political condition: and I shall hereafter try to show that we have no valid reason for regarding it as the condition that naturally arises first when the state develops out of the family. At any rate the earliest polity known to us in the history of the peoples with whom we are to be mainly concerned, appears to be—commonly if not universally—one not merely of greater equality of conditions, and greater individual independence, but also of greater collective control on the part of the fighting-men of the primitive tribe.

§ 5. It is accordingly with the form of polity which Mr. Freeman calls the "primitive Aryan or Indo-Germanic polity," [1] that I shall commence my sketch of the development of political institutions in Europe. It is not to be regarded as in any way peculiar to the Aryan or Indo-Germanic race: still I shall only examine it in the forms in which we find it at the outset of the historically known development of the branches of the Indo-Germanic race with which we are specially concerned—Greeks, Romans, and Germans. I shall trace the resemblance amid differences which we find in comparing the earliest known political institutions of the Germans, with the earliest known political institutions of Greece and Rome. Then, taking my stand on these beginnings of the history of the peoples that most interest us, I shall look backward and endeavour to trace briefly what can be dimly and conjecturally discerned of their

[1] I shall try to show later that the word "primitive" is liable to be misleading.

political development in still earlier times, combining antiquarian speculation with inferences from what we know of these earlier stages of development as exhibited by other portions of society. In this way we shall get as near as—in my opinion—a sober-minded inquirer ought to go to the consideration of the old question of the origin of political society.

Then, turning our faces towards the down-flowing stream of time, we shall follow the comparatively rapid evolution of the different forms of government in the city-state which is the leading type of a civilised political community in the most brilliant period of ancient Greece—in contrast to the country-state which is the leading type in modern European history. I shall trace, as far as our imperfect knowledge allows, the movement from the primitive polity—in which we can distinguish a certain division of powers in varying proportions among three elements, a king, a council of subordinate chiefs, and the whole body of free fighting men—to an oligarchical form of government; and shall show briefly how this oligarchy tends to assume various forms in different states, and to pass through various phases. I shall then pass to examine the Tyrannis or unconstitutional despotism which, in the seventh and sixth centuries B.C., tends to prevail for a time in many of the leading states of Greece—partly in consequence of popular movements against the established oligarchy—and the prevalence of which is a special and important feature in the evolution of the city-state, in ancient Greece and medieval Italy alike. I shall then pass to the period best known to us: in which a movement towards fully developed democracy is, on the whole, unmistakable; though this form of government is often temporarily overcome by oligarchy, and towards the close of the period—as the old citizen militia give place to mercenary armies—is increasingly liable to lapse again into unconstitutional despotism. With the aid of Aristotle I shall briefly analyse the general causes that tended to bring into being and preserve one or other of these different forms of government in the Greek city-state: and shall note

how rare in Aristotle's own view is even an approximation to his ideal government by those best qualified to govern—aristocracy in the true sense; and how difficult it was even to maintain that moderate constitutional democracy which he recommended as the best practical form of government for the Greek city-states of the latter half of the fourth century B.C. Then I shall note the failure of the Greek towns, in the most brilliant period of their history, to realise a stable federal union; and shall finally call attention to the remarkable degree of success achieved by federation even under the unfavourable conditions of Macedonian predominance.

Then, turning to Rome, I shall note the early characteristics and changes of Roman political institutions in the light thrown on them by Greek analogies; and shall analyse the nature and causes of the strangely but successfully compacted constitution that emerged from the long conflicts of the fifth and fourth centuries B.C. I shall try to explain how a popular assembly constitutionally supreme, and tending in each of its two later forms—as assembly in tribes and assembly in hundreds—to be continually more democratically organised, yet leaves contentedly the practical control of affairs in the hands of an aristocratic senate, while Rome is conquering first Italy and then the world round the Mediterranean. I shall further point out how, while the process of conquest went on, a continual extension of Roman citizenship, by an elaborate process of expansion and absorption combined, swelled the great city-state into what Aristotle would have regarded as a monstrous overgrowth; until, under the shock of the war with the Italian allies at the beginning of the first century B.C., it became finally transformed, by the absorption of the Italians *en masse*, into a country-state misrepresented by a metropolitan mob, and quite inadequately organised for its task of imperial rule. I shall then explain briefly the nature of the transition—painful and sanguinary, but rendered inevitable by expansion and conquest—from republic to monarchy, at first partly hidden under republican forms and working through republican institutions; until the distinction between Roman citizen and Roman subject

has vanished under Caracalla, and, in the hands of Diocletian, the Empire stands forth an unveiled and untempered despotism.

Then, surveying from this point the whole antecedent history of Greco-Italian civilisation, I shall examine the development of the general notion of governmental functions —and especially of the relation of Law to Government— both as conceived by ancient thinkers, and as realised in the actual facts of Greco-Roman polity.

Then, gliding across the collapse of the Western Empire, I shall note the changes undergone by the political structure of the old Teutonic community, in its efforts to meet the severe demands made on it by the complex and disorderly conditions of the new semi-barbaric kingdoms formed in the fifth century A.D. I shall show how Teutonic, Imperial, and Christian institutions combined and mingled; until, in the part of Western Europe where disorder seemed almost tending to dissolution, society gradually reconstructed itself on the scaffolding of partial order which we call the feudal system. I shall show how the Church, strong in its intellectual predominance, and gaining an intenser corporate life from its successful struggle with disintegrating forces within and without, made its great attempt to bring Western Europe under ecclesiastical domination; and I shall point out how the theocratic type of government — of which Aristotle knows nothing — is thus manifested, for the first time in the historically known part of the process of development that we are studying. I shall further show how, in the secular sphere, the political importance of the distinction between "city" and "country" grows within the medieval nation as it advances in civilisation; and I shall compare with the city-state of old Greece, based on slavery, the industrial town community of the Middle Ages which reached practical independence in Germany and Italy; in which mechanic labour rose first to freedom and then to dignity and power.

Then I shall show how the growth of the modern nation into completer unity from the imperfect cohesion of the

feudal system, while it added power and prestige to monarchy as the source and bond of national unity and order, also produced those assemblies of estates which for a time seem destined to develop into stable organs of constitutional government; then we shall have to observe how almost everywhere this fair promise was blighted—chiefly through the insuperable disunion of the different "estates" represented in these assemblies; until, over the greater part of Western Europe, pure monarchy comes to be established and accepted as the form of government best adapted to an orderly and civilised country-state. We shall also note the exceptional conditions which caused federal and republican institutions to come into being and flourish in the small but important communities of Holland and Switzerland.

I purpose at this point to pass, in a brief and summary way, from the region of political fact to that of political thought, and trace down from the Roman jurists the movement of ideas which led toward the close of the eighteenth century to the passionate demand for universal political liberty and equality; and which—in spite of the reaction which followed the first attempt to realise this demand in France—is yet one essential factor of the great process of change, belonging mainly to the nineteenth century, which has established the modern constitutional state throughout Western Europe. And along with this I shall ask you to contemplate the other essential factor of this great change, —the example of prosperous continuity of constitutional development which England alone among the greater West-European states has been privileged to exhibit. I shall also examine the origin, in the eighteenth century, of the individualistic theory of the functions of government; which, in combination with an analysis of the natural processes of production, distribution, and exchange of wealth, has formed the characteristically modern body of doctrine commonly known as Political Economy.

Then, turning to the Western Continent, I shall briefly characterise the type of polity—varying importantly from the European type — which colonial independence has

brought into existence there; and shall examine the nature and working of the Federal system by which the great English colony in North America has maintained republican order for a century of independent life over a territory larger than Western Europe. Finally, surveying the whole history of European civilisation, I shall consider what forecast may be reasonably made as to its probable future development.

It may perhaps be thought that this is a great deal of history to pack into so small a space. But it must be remembered that we shall not be concerned with the particulars of history as such, but only with the general facts that these exemplify. I do not merely mean that we are not concerned with the personal and dramatic element of history—the careers of statesmen and generals, royal marriages and battles—but that for the most part we are not primarily concerned with the political development of any particular community, except as illustrating general causes and tendencies. What we are concerned with is the general type of political society exemplified by a number of particular societies at a certain stage of development, the chief characteristics of the form and structure of this type, the changes that take place in it, and their causes.

§ 6. At this point it may be well to consider a disturbing cause which it is important to take into account in making any such generalisations as to development, namely, imitation.

For example, in modern Europe we cannot say that modern Parliamentary government, in the form of constitutional monarchy, is an independent result of similar tendencies of development in Italy, Belgium, Spain, and the Scandinavian kingdoms, where it is now established; it is obvious to the most superficial student of history that the similarity now existing among the forms of government in these different countries is largely due to imitation, direct or indirect, of England; and the present English form of government is itself the result of a continuous development of Parliamentary institutions from medieval to modern times which is nearly if not quite unique in European

history. When with this in our mind we study more ancient periods of history, we cannot but feel that a large allowance must be made for direct imitation in considering the probable causes of the prevalence of a particular type of polity at a particular stage of development among states in active mutual communication, as (*e.g.*) Greek city-states mostly were.[1]

We must allow a large place for such imitation, even when we have no direct proof of it. At the same time the effect of imitation does not deprive the generalisations, which we obtain by comparing the political institutions of different states, of all substantial value. For from the very fact that a certain form of government spreads by imitation, we may infer that there was a strong tendency in the states adopting it towards a governmental form of this kind: that similar needs or desires of change had come to be predominantly felt, owing to certain general causes, in these different countries, even though the precise form adopted may be due to its having been previously realised in the single state that gives the model for imitation. Thus it is reasonable to suppose that the West-European states generally would have moved in the direction of popular government in the nineteenth century, even if the history of England had not had the unique gradual development of representative institutions which has actually distinguished it; and it is a probable supposition that they would have had a legislature constructed, in whole or in part, on the representative principle, considering the obvious material difficulties of arranging government directly by the people at large in states of the size of France or Spain; considering also that all the West-European countries except Italy had had—from causes which we shall hereafter investigate—medieval representative assemblies of estates more or less similar to the English Parliament in the Middle Ages. But it would be rash to affirm that had there been no British constitution to imitate, the West-

[1] Freeman has noticed this disturbing effect of imitation in his *Comparative Politics.*

European states generally would have had two-chambered legislatures. For example, in such a country as France, if the constitution-makers had been influenced by modern ideas, they might easily have thought that a sufficient complexity was introduced into the supreme government, by the due separation and balance of legislative executive and judicial powers, without complicating matters further by a two-chambered legislature. Or again, in countries where there had been no such sweeping away of old institutions as occurred in France, there might have been a revival of the medieval division of estates, leading to a threefold or even fourfold division of parliament: as in fact occurred in Sweden where the four estates—nobles, clergy, burghers, and peasants—dellberated for most purposes separately from A.D. 1810 to 1866.

Nor again, apart from the influence of the English model, is there any reason to suppose that we should have found, as we do find in several—though not in all—West-European states, the peculiar form of government which Bagehot has called Cabinet government, *i.e.* government in which the supreme executive functions are entrusted to what is really a committee of the legislature, practically dismissable at any time by a majority of the representative assembly, if supported by a majority of the electorate.

I may illustrate this view—that imitation, in the development of political institutions, may be taken to imply a tendency, apart from imitation, to produce something like the type imitated, or at least conditions favourable to its maintenance—by comparing the two leading cases of city-states in Greek history, which afford, one a positive, one a negative example.

We all know that in the best known and most brilliant century and a half of Greek history—from the repulse of Persia 480 B.C. to the submission to Macedonia 326 B.C.—Athens and Sparta are the two leading states; and that, in the struggle between the principles of oligarchy and democracy that was going on during this period in other city-states of Greece, Athens was, speaking broadly, on the side

of democracy, and Sparta on the side of oligarchy. In fact, Aristotle complains that both these states used their predominant position to establish oligarchies and democracies respectively in other states under their influence, "not out of any consideration for the interests of the states in question, but simply for their own imperial interest." [1] We shall therefore be disposed, in tracing the development of democracy in the Greek city-states generally, to regard imitation of Athens as a probably important factor, though we do not know enough details to say with any precision how far it operated. But — and this is my negative example — it is clear that there was almost no attempt to imitate Sparta; for, as we shall see,[2] though Sparta was in policy on the side of oligarchy elsewhere, her government was not, in the view of ancient thinkers, one that should be classified as an oligarchy, though it had oligarchical elements. And this is all the more remarkable, because the ideal polity, which the most eminent political thinkers were led to construct by their view of the conditions of human well-being, bore a much closer resemblance to the actual polity of Sparta than to the actual polity of Athens. That is, in the ideal polity of Plato (in his latest work) and of Aristotle the citizens in a strict sense would be a class from which industrial elements were carefully excluded, living on the produce of lands tilled by serfs, and carefully trained for the military function, as was the case in Sparta. But in spite of the prestige of Sparta in the world of fact, and the influence of Plato and Aristotle in the world of thought, almost no tendency is discernible either to imitate the actual Spartan polity, or to realise the ideal state of the philosophers. This is a striking evidence that imitation only takes place when the type imitated is one in harmony with the general tendencies of political development in the states imitating.

Still, generally speaking, it remains true that when imitation has been a factor in a general change in the form of polity of a number of states, it is very difficult, if not

[1] *Pol.* VI. (iv.) ii. 18. [2] Lecture v. pp. 76-80.

impossible, to say how much of the detail of the change has been due to the result of the peculiar development of the polity that serves as the model.

Imitation, in short, will not explain everything, but it will explain a good deal. This being so, it is important, in endeavouring to ascertain the laws of political development, that we should get all the instruction we can from a comparison of analogous cases, in which the similarities that we are able to trace cannot reasonably be attributed to imitation. It is the desire to bring this comparison into due prominence which has in fact determined the ground plan of my book. For the unique course of European history contains within itself several different series of developments of polity, having, as I have already indicated, a certain analogy with each other, and thus affording material for mutual comparison, while to a great extent independent. There is first that between the development of the ancient city-states and the country-states of Western Europe. But the development of Roman polity is so different in detail from Greek, that a large place cannot be given to direct imitation of Greece in explaining its causes, though this must not be overlooked. We may, therefore, treat the development of the Greek city-state and the Roman city-state as almost independent. The development of the modern country-state thus affords a third series; and we find a fourth, to which I have already referred, in the development of the medieval cities.

It may be observed that of these four different series of changing types of polity, three are so closely connected that they form one history in which the later stages are causally connected with the earlier. From the beginnings of Rome to the Roman Empire, from this to the partially incoherent medieval kingdoms in which the partially independent medieval cities develop, and from these to modern European states, we have a continuous process, in which we cannot find a break except arbitrarily. So far I agree with Freeman as to "ancient" and "modern" history. This is not indeed the case with the history of Greece; still, the

history of Greece has had an important influence both on Roman and on modern history, though its influence, here as in other departments, has been primarily in the region of thought; it has been exercised by supplying political ideas, and not by handing on actual political institutions and habits.

At the same time, it is not for this reason only that the development of the Greek city-state has an indispensable place among the different series of developments of which I have just spoken. It is an essential part of my plan to study the phases through which the type of state I have called "city-state" has shown a tendency to pass. This is the type which, when we concentrate attention on the highest forms of civilised polity, is not only first in order of time, but for reasons which I shall afterwards explain, prior in order of political development. Now if this type is studied at all, it is indispensable to study it in Greece. The development of Rome is for special reasons unique—it is the one case of a city-state expanding into an imperial country-state; and the medieval cities are not perfectly independent, even in Italy, where they are most nearly independent.

§ 7. I have spoken in the summary survey above given, sometimes of "political society" or "state," and sometimes of "nation." Before we proceed further, it will be well to examine more carefully the meaning and relations of these terms. As I have already explained, I generally use "state" and "political society" as convertible terms, except that I confine the term "state" to societies that have made a certain advance in political civilisation. But we should observe that the word "state" is sometimes used in a narrower sense, to denote a political society considered as being what jurists call an "artificial person," and as such, having rights and duties distinct from the rights and duties of the individuals comprising it. I shall allow myself, where there is no danger of ambiguity, to use the word in this narrower sense without further explanation: and I think we may define the degree of civilisation which a political society must have reached in order to be properly called a "state,"

partly by this characteristic:—that it must have arrived at a clear consciousness of this fundamental distinction between the rights and obligations of the community in its corporate capacity, and those of the individuals comprising it. In the primitive "tribal" condition of our Germanic ancestors and other uncivilised and semi-civilised peoples, this distinction is still obscure.

Further, it belongs to our ordinary [1] conception of a State that the political society so called should be attached to a particular part of the earth's surface: and should have a generally admitted claim to determine the legal rights and obligations of the persons inhabiting this portion, whether they are members of the society or not. This is so much the case that we sometimes use the word "state" to designate the portion of the earth's surface thus claimed.

I have so far treated the "unity" of a state as depending solely on the fact that its members obey a common government. And I do not think that any other bond is essentially implied in the conception of a state. Still, it should be recognised that a political society, whose members have no consciousness of any ties uniting them independently of their obedience to government, can hardly have the cohesive force necessary to resist the disorganising shocks and jars which external wars and internal discontents are likely to cause from time to time. If a political society is to be in a stable and satisfactory condition, its members must have—what members of the same state sometimes lack—a consciousness of belonging to one another, of being members of one body, over and above what they derive from the mere fact of being under one government; and it is only when I conceive them as having this consciousness that I regard the state as being also a "nation." According to the generally accepted ideal of modern political thought a state ought certainly to be also a nation; still we cannot say that the characteristic of being a nation is com-

[1] If a political society were to leave its territory and establish itself in new lands, it might be held to have remained the same State during and after the transition; but the point would, I think, be doubtful.

monly implied in the current use of the term "state" or "political society." What is commonly implied is merely (1) that the aggregate of human beings thus denoted is united—if in no other way—by the fact of acknowledging permanent obedience to a common government, and having, through the permanence of the relations between government and governed, a corporate life distinguishable from the lives of its members; (2) that the government exercises control over a certain portion of the earth's surface; and (3) that the society has a not inconsiderable number of members, though the number cannot be definitely stated.[1]

These characteristics are found by analysing our present conception of a state. But if by the aid of the comparative method we retrace the history of political society up the stream of development—assuming that the less developed precedes the more developed—these characteristics seem to become gradually dim and evanescent. Number dwindles: we get back to a clan not easily distinguishable from an enlarged family; relation to land becomes loose, the clan being a wandering horde of gregarious shepherds or hunters; the relation of government and governed becomes only faintly discernible. The recognised chief does not make laws; the horde follows inherited customs, but there is no magistrate who punishes disobedience; if the chief were to issue commands—at least in time of peace—there is little probability that they would be generally obeyed. Ultimately, we come back to gregarious groups in which nothing that we can call definite headship is to be discerned. Hence arises a certain difficulty in commencing the investigation of the development of political society: since if we try to begin at the beginning, as seems natural, we have to begin in almost utter darkness. If we are right to infer that our own political society has descended by direct filiation from a group of the most

[1] Usually the government of a "state" is understood to be independent of external control; but we also apply the term to governed societies that lack this characteristic, being members of a federal union, or dependencies of a dominant state.

politically undeveloped type—a question which I do not now consider—a long part of the process of development must have taken place in prehistoric times. When the light of history first falls upon the societies to which the modern European State can be definitely traced, they have all a distinct and complex political organisation; any inquiry into the first origin of political society carries us beyond history proper into speculation, conjecture, inference from analogy. It seems to me, therefore, best to begin with the first polity historically known, without assuming it to be original; then, taking our stand on this, to conjecture what preceded; and then, by the light of history, to trace the course of subsequent development.

LECTURE II

THE BEGINNINGS OF HISTORIC POLITY

§ 1. In the preceding Lecture I have explained the method and objects of this course. What we are to study is the process of development leading up to the modern state. The modern state is a constitutional state; and accordingly, in viewing European history as a process leading up to it, we are concerned primarily with the history of constitutions; and, having this limited object in view, we may, in the main, keep within the history of three branches of the Indo-Germanic group of nations. We may concentrate attention upon (1) Greece, (2) Rome with her empire—especially the western part,—and (3) the Germanic tribes that broke up and transformed the Western Empire, and whose political development was in its turn reacted upon and largely modified by the new conditions that their conquest brought about in this transformed empire.

At the outset it is important to observe that, divergent as are the lines of development of Greco-Italian and Teutonic civilisation, they yet are not so far apart in their beginnings. When we compare the earliest forms of political society in Greece, Rome, and Germany, as the best attainable evidence shows them, we find—among important differences — a certain agreement in general features. Indeed, according to Freeman, "there is one form of government which, under various modifications, is set before us in the earliest glimpses which we get of the political life of at least all the European members of the Aryan family. This is that of the single king or chief, first ruler in peace, first captain in war, but ruling

not by his own arbitrary will, but with the advice of a council of chiefs eminent for age or birth or personal exploits, and further bringing all matters of special moment for the final approval of the general Assembly of the whole people. . . . It is the form of government which we see painted in our first picture of European life in the songs of Homer. . . . It is the form of government which tradition sets before us as the earliest form of that ancient Latin constitution out of which grew, first the Commonwealth, and then the Empire of Rome. It is no less the form of government which we see in the first picture of our race drawn for us by the hand of Tacitus, and in the glimpses given us by our own native annals of the first days of our own branch of that race when they made their way into this island in which we dwell." [1]

I think that this view contains an important element of truth somewhat overstated; accordingly, in the present lecture I propose to examine in order the three leading cases on which Freeman's generalisation is based, observing differences as well as resemblances.

But in what order shall we examine them? This question leads me to the first qualification of Freeman's statement that I have to offer: viz. that the different early nations whose political condition we have to compare cannot be assumed to be—when we take the earliest condition historically ascertainable in each case—at corresponding stages of development. I observe that at the close of the sketch of the original Roman constitution, in Mommsen's 5th chapter, that historian expressly says that this earliest recognisable political order of the Roman community—the constitution, as he conceives it to have existed before the reforms of Servius Tullius—is later by an indefinitely long course of political development than the stage which is shown us in the Homeric poems, or in Tacitus's account of the Germans. Accepting this view, we have a striking illustration of that divergence which I before noted between the chronological order of political facts, which ordinary

[1] *Comparative Politics*, Lect. II. pp. 65, 66.

history follows, and the order of development which political science aims at tracing. From the point of view of political science the Germans of Tacitus (*i.e.* of the first century A.D.) are to be considered as *earlier* than the Romans some six centuries before: nearer the point of departure of the process of development that we are trying to trace.

Can we similarly decide between the two remaining cases? Can we say which is earliest in development, the political institutions of the Greeks as Homer shows them to us, or of the Germans as Tacitus shows them? Here the preliminary objection may occur that the whole comparison is on too uncertain ground. It may be said that such poetic narratives as Homer's cannot furnish evidence of the historic existence of a form of political society or a state of civilisation: for (1) they are not evidence of the characteristics of the age in which the poems were written, since the poet is describing a heroic past; and (2) they are not trustworthy evidence of the characteristics of that past, since we cannot attribute to the poet antiquarian knowledge. There is some force in the dilemma, especially where the powers, glories, and rewards of heroic personages are concerned. Still I think it would be carrying scepticism too far to doubt that the indications incidentally given of political institutions, social customs, and industrial arts—when they are clearly not introduced to heighten the impressiveness of the story—on the whole [1] show us Greek civilisation as the poet or poets knew it by experience. And if so we may conclude that the Greeks for whom the Homeric poems were composed were on a decidedly higher level of general civilisation than the Germans of Tacitus; [2] as possessing walled towns, vineyards, and olive-grounds carefully cultivated, and luxurious palaces for their chiefs; importing if not producing works of art similar in *technique*

[1] In one or two cases the poet's language suggests that he is consciously describing a practice outgrown, and offensive to the sentiments of his own age;—*e.g.* when he describes the sacrifice of twelve Trojan youths on the funeral pyre of Patroclus.

[2] The Germans, according to Tacitus, sacrificed prisoners of war, *Annals*, i. 61.

to the shield of Achilles; and, last but not least, producing the poems themselves. Hence we shall not be surprised to find them at a more advanced stage of political development.

§ 2. Let us begin, then, with the department of facts chronologically latest, the primitive German constitution, on which Tacitus is our chief authority. In the political institutions of German tribes, as described by Tacitus, we can certainly find the three elements of Freeman's Indo-Germanic polity. There is the assembly of freemen in arms, meeting periodically; there are the *principes* or chiefs of the smaller districts that make up the territory of the tribe, who administer justice in these districts, usually lead their fighting men in war, and act as a council to prepare the business for the national assembly. And there is, in *some* tribes, the superior chief or king; not strictly hereditary, but always chosen from a noble family;—and we may infer from other evidence that often only members of one family are eligible.

But when we compare the accounts of Tacitus with the description of the Germans given by Cæsar in his book on Gaul, we are struck with a curious fact, which the ordinary account of this primitive polity as "patriarchal kingship"[1] ignores. In the brief glimpses of German institutions which Cæsar shows, we can see no kingship at all in the tribe or *civitas*. In peace, he tells us, there is no common magistracy: the chiefs of the districts into which the tribe is divided administer justice among their people: a common magistracy is only formed when the tribe is at war. And even in the time of Tacitus, a century and a half later, kingship—permanent headship of the whole tribe—would seem to have been only developed in a certain number of cases. As Dr. Stubbs says, "a very large proportion of the tribes dispensed altogether with royalty: the state or *civitas* was a sufficient centre, and the tie of nationality a sufficient bond of cohesion."[2]

[1] See for instance Bluntschli, *Theory of the State*, Book VI. chaps. vii. viii.

[2] *Constitutional History*, chap. ii. § 15.

Thus the earliest movement of change traceable in the development of the German polity seems to be a movement *towards* kingship—meaning by "kingship" permanent headship of the tribe, hereditary generally in a family. And subsequent history confirms this: kingship spreads more and more: we see it deliberately introduced where it did not previously exist: we find it normal in the larger bodies that effected the conquest of the Roman Empire; at length the Saxons and Frisians in their native Germany seem to be the only Germanic nations without it, and the Saxon invaders of England, though they appear on the scene without it, soon adopt it.[1]

This being so, it seems rash to follow Freeman in regarding a definite threefold distribution of powers as a primitive Indo-Germanic institution and an "inheritance from the time when Greeks, Romans, and Teutons lived together": since, as regards the *tribe*, the earliest evidence shows us an absence of kingship among the Germans in Germany: and there seems to be no ground for assuming a definite triplicity of governmental organs in each of the smaller groups into which the kingless tribe is distributed. In the tribes that have kings there are, no doubt, the three elements clearly distinguishable. But in any case the supreme authority in the Germanic tribe appears from the account of Tacitus to reside in the assembly of free warriors. I may conveniently show this by a quotation[2] from Dr. Stubbs's summary of this account, as Dr. Stubbs has certainly no undue bias in favour of a democratic interpretation of the institutions of our ancestors: "Under both systems the central power was wielded by the national assemblies. These were held at fixed times, generally at the new or full moon. There was no distinction of place: all were free, all appeared in arms. Silence was proclaimed by the priests, who had for the time the power of enforcing it. Then the debate was opened by some one who had a personal claim to be heard, the king, or a *princeps* (local chieftain), or

[1] Cf. Otto Gierke, *Das Deutsche Genossenschaftsrecht*, pt. i. § 6.

[2] *Constitutional History*, chap. ii. § 16.

one whose age, nobility, military glory or eloquence entitled him to rise. He took the tone of persuasion, never that of command. Opposition was expressed by loud shouts; assent by the shaking of spears; enthusiastic applause by the clash of spear and shield."

"Of matters of deliberation the more important were transacted in the full assembly at which all the free men were entitled to be present. But the business was canvassed and arranged by the *principes* before it was presented for national determination; and matters of less import and ordinary routine were dispatched in the limited gatherings of the magistrates." The assembly also "acted as a high court of justice, heard complaints and issued capital sentences"; and in the time of Tacitus "the magistrates for the administration of justice" in the districts and villages seem to have been elected in it.

§ 3. When we turn to Homeric Greece, we find that the polity wears a decidedly more monarchical aspect: every tribe appears to have a single head-chief, though, in the Odyssey at least, the same title that is applied to him ("Basileus") is also used to denote the subordinate chiefs, whom Tacitus calls *principes* to distinguish them from the *rex*.[1] Still, among the various chiefs that a Homeric tribe (in the Odyssey) may have, there is normally one highest chief or king, whose office descends ordinarily though not necessarily by inheritance to one of his children. When a suitor says to Telemachus that it belongs to him as heir of his father to be king of Ithaca, Telemachus answers modestly that there are "many other Achæan chiefs" in Ithaca, and that some one of these may hold sway if Odysseus is dead. It seems clear from the tone of this discussion that Telemachus is considered to have a certain claim; but that the claim *may* be overruled.[2] Similarly, in the primitive Germanic constitution, the right of the

[1] Tac. *Germ.* 11. In the Iliad the title βασιλεύς is never, I believe, expressly applied to any one who is not either head of a δῆμος or son of such a head. This is one of the points in which the political conceptions of the Iliad—or the older portions of it—appear to differ from those of the Odyssey.

[2] *Od.* i. 394.

people to elect their king is ordinarily combined with a hereditary claim to be elected, belonging to members of one family.

There is, then, in the Homeric tribe a central king normally hereditary, who, like the German king, in time of peace has the function of deciding disputes of right among the tribesmen, and protecting them from violent wrong; who represents the community in its external relations, receives ambassadors and entertains strangers; and who in time of war is the normal leader of the host. Along with him the subordinate chiefs or elders form a council like the German *principes*:—and we may observe that, like the German chiefs, they are in the habit of settling their affairs at a banquet.[1]

Further, there is no doubt that general assemblies of the people are customarily summoned for the discussion of matters of public importance; but there is a serious difference of opinion, among authorities of repute, as to the political function of such assemblies.

According to Grote[2] the Homeric assembly of freemen, and the Homeric council of chiefs, are "exhibited . . . as opportunities for advising the king, and media for promulgating his intentions to the people, rather than as restraints upon his authority . . . the king promulgates his intentions. . . . But in the Homeric agora no division of affirmative or negative voices ever takes place, nor is any formal resolution ever adopted. . . . It is an assembly for talk, communication, and discussion to a certain extent by the chiefs . . . but here its ostensible purposes end. . . . The multitude who compose it are listening and acquiescent, not often hesitating, and never refractory."

In answer to this it is urged, with undeniable force, by Freeman and by Gladstone, that formal resolutions and divisions are refinements that belong to a later stage of political civilisation; that we do not even

[1] Political dinners are very primitive institutions. "De pace ac bello plerumque in conviviis consultant," says Tacitus. "Give the chiefs a dinner"—suggests Nestor to Agamemnon at the crisis caused by Achilles' wrath.

[2] *History of Greece*, Part I. chap. xx. (vol. ii. pp. 90, 92, 97, 1st ed.).

find them in the Germanic assembly of armed freemen, with which the real decision of peace and war, and other important matters clearly rested. "If they disapprove of a proposal," says Tacitus, "they indicate their rejection by murmurs and groans (*fremitus*); if they approve, they clash spears." [1] Now the Homeric Greeks certainly appear to refrain from noisy dissent; but in the Iliad (ix. 29, 50) disapprobation of Agamemnon's proposal finds effective expression in silence, followed by loud applause of a speaker on the opposite side. It is evident that the speakers in the Homeric assembly have the business of persuading, and that persuasive eloquence is most important to them. The assembly, no less than the battlefield, is a place where heroes win glory: [2] and even a man poor in presence, if he has the gift of oratory, "shines in the gathering of his people, and as he passes through the town men gaze on him as a god." [3] The assembly therefore is much more than a mere means of announcement; and where public speaking is an instrument of public policy, there, as Gladstone and Freeman say, is the real essence of liberty.

It is evident, again, that the Trojan assembly (*Il.* xviii. 311) is held by the poet to be gravely responsible for applauding the bad advice of Hector, instead of the good counsel of Polydamas; and the Ithacan assembly (*Od.* xvi. 375) is credited with the power of driving the suitors of Penelope from Ithaca, as a punishment of their plot to slay Telemachus. And, though it is difficult to say how far the king could, in accordance with custom, decide without or even against the advice of council or assembly—since doubtless the distribution of functions among the three organs was uncertain and fluctuating—it is clear that some public acts were not within the limits of his authority. Thus we hear several times [4] of a domain (τέμενος) cut out of public land to be held in severalty by some hero as a reward for conspicuous public service, but it is never said to be assigned by the authority of the king:—for instance,

[1] Tac. *Germ.* 11.
[2] Compare (*e.g.*) *Il.* i. 490, and iv. 225.
[3] *Od.* viii. 172.
[4] See *Il.* vi. 194, ix. 578, xx. 184.

after Bellerophon's exploits in Lycia, the *king* gives him "half of all the royal honour"; but it is the *Lycians* who "mete him a domain fair with vineyards and tilth." [1]

I think, therefore, that we might infer from Homer alone that in the earliest discernible form of Greek political society the assembly of freemen held a position bearing some analogy to that of the German Assembly;—though certainly, in the society that Homer describes, the chief appears to be politically more and the common people less than in the Germanic society described by Tacitus.

And this general conclusion may be further supported by evidence drawn from post-Homeric Greece; which illustrates again how, in tracing by means of induction and comparison the general course of political development, we have to neglect chronology. I mean we have to put together as parallel, political conditions of different states, separated by long intervals of time; and on the other hand consider the simultaneous conditions of different countries as separated by long intervals of development. We must not indeed carry this neglect of chronology too far; for a people in low development, living in communication with a more civilised one, is likely to catch by the contact some elements of civilisation, and thus become socially more advanced in some ways than a people at a generally similar stage of development who lived long before them in time. So far, however, as this influence on contemporary civilisation affects the balance of political forces in a primitive society like the one we are considering, it is hardly likely to favour the power of the general assembly of freemen; since the chiefs, from their

[1] *Il.* vi. 195. In the story of Meleager (*Il.* ix. 578), the offer of a τέμενος is made by "the elders," not by the king; probably the offer would have required ratification by the assembly.

It may be observed that the Homeric king's revenue appears to be regarded as public revenue, which he is customarily bound to employ largely for public purposes: thus the chieftains entertained by Agamemnon are said to "drink at the public cost."—*Il.* xvii. 249. On the other hand, he has a right to exact from the tribesmen contributions towards any exceptional expense,—such as that entailed by hospitality towards strangers.

wealth and position, are likely to anticipate the masses in civilisation, and thereby to increase their predominance. This seems to be the case with the kings of Macedonia when it becomes prominent in Greek history:—here, indeed, the royal family claims to belong by race to the more civilised neighbours. When, therefore, in spite of this source of superiority, we learn from the historians of Alexander that the powers of the Macedonian king were constitutionally limited; that, in particular, capital punishment could not be inflicted except with the assent of the army in war, the assembly in peace; when we find that, even under so towering and triumphant a monarch as Alexander, the Macedonian army in Asia retains this right, and actually acquits Macedonians accused before it by Alexander himself, we certainly obtain some confirmation for Freeman's parallel between the primitive political positions of the Teutonic and Greek assemblies of freemen in arms.

But the Macedonian constitution is only known to us by vague general statements and inferences from isolated events. More important evidence is furnished by one of the most interesting of the historic constitutions of Greece —the so-called Lycurgean constitution of Sparta. I think we may assume (1) that the Dorian tribes who conquered Peloponnesus were in a more primitive condition, socially and politically, than the people whom they subdued; and (2) that in the so-called Lycurgean constitution we have, to a great extent, this original condition artificially preserved and rendered uniquely stable. Through a process of change now undiscoverable—which tradition has concentrated and attached to the name of Lycurgus,—the natural primitiveness of life and warlike habits of an invading horde were somehow petrified into the artificial simplicity and hardiness and traditional martial art of an elaborately trained caste of soldiers. Now if we take the old Spartan constitution (leaving out the Board of five "ephors" or supervisors, which, as the best authorities agree, was a later addition), we find its main features those of Freeman's primi-

tive Indo-Germanic polity; and, in particular, in respect of the powers of the assembly, it has a more striking resemblance to the German polity described by Tacitus than anything we find in Homer. It was the duty of the kings (I abstract from the peculiarity of the dual kingship of Sparta, which need not now detain us) to call the citizens together once a month at least, on the day of the full moon, in a fixed place in the valley of the Eurotas. This assembly, like the Germanic one, is a martial muster of the freemen in arms: decisions of peace and war, treaties, and other important matters of state are laid before it for decision, just as before the Germanic assembly of Tacitus. In neither case does the ordinary freeman take part in debate; but the assembly has to accept or reject the proposals laid before it; and even down to the time of Thucydides, as that historian tells us, the decision of a Spartan, as of a Germanic, assembly was expressed by the shout, and not by a formal vote.

Putting all the evidence together, I think we may reasonably suppose that the customary distribution of power between chiefs and common freemen varied considerably in different parts of Greece; and that where more primitive social conditions survived—as in the mountainous region from which the conquering Dorians came—the independence of the common freeman, and the collective power of the assembly of freemen, was greater than in the more civilised parts. In connection with this it is important to notice the military equipment and mode of fighting of the chiefs; for during almost the whole period of development comprised in ancient history differences in military equipment and organisation have an important correspondence to political differences. Thus we may assume that wherever Greek chiefs and nobles fought like Homer's heroes from war-chariots, their political superiority to the loosely arranged common herd was decidedly greater than that of the Teutonic chiefs, who marched to battle on foot with their fellow-tribesmen. I do not, however, think it certain that this manner of fighting ever prevailed widely

among the Greeks in Europe;[1] since war-chariots are altogether unsuited to the mountainous country that occupied so large a part of Greece proper. In any case, we may assume that the Dorians won their victories in Peloponnesus mainly by means of the infantry which constituted their principal arm of warfare in historic times: and the military importance thus attaching to the common Dorian freeman would tend to sustain his political position. On the other hand, we may fairly regard the huge walls of great stone blocks, the magnificent graves with gold treasures, and the remains of palaces at Mycenae and Tiryns as evidence that the Greek chieftains in Peloponnesus, before the Dorian invasions, surpassed in dignity and power their counterparts either in the Germany of Tacitus's time, or in the ruder parts of Greece.

As regards judicial functions especially, there seems to be a decided divergence between the primitive Germanic polity and the earliest known Greek polity. In the Germanic constitution the function of declaring justice—so far as controversies of right are not settled by private conflict and compromise, or by arbitration—seems to belong essentially to the freemen, assembled either nationally or locally; the function of the king or local chief being to preside at the trial and enforce the decision. But, though in Homeric Greece the judicial decision was given in the Agora among the citizens at large, there is no evidence to show that the freemen generally took any part in the decision in ordinary cases. We may, however, infer from what has been said above of Macedonia, that the assembled freemen had the ultimate decision in capital cases, as seems to have been the case in Rome when the condemned persons appealed: it is on general grounds probable that—in Greece as elsewhere—the primitive gathering of armed men which formed the political assembly was at first the judicial body also, for important matters of criminal justice.

Turning to consider briefly the primitive Roman con-

[1] There are traces of its ancient use in Boeotia and Euboea.

stitution as delineated by Mommsen, we find again the three elements of Freeman's primitive polity definitely and vigorously marked. There is, firstly, the king ;[1] secondly, there is the council of "fathers," which has the customary right of giving counsel to the king, and is the ultimate depositary of royal power when the king dies ; thirdly, there is the assembly, having at least three fundamental resemblances with the primitive Teutonic or Spartan assembly. It (1) meets (at least) on fixed days ; (2) its consent has to be obtained for measures of great national importance, *e.g.* for an offensive war, or for a change in the "common law" or customary rule of civic relations ; (3) the assembly has only to say "yes" or "no"; no speaking on proposals laid before it is allowed to private citizens. It is to be noted further, that an appeal seems to be customarily granted to the Roman assembly in cases of infliction of capital punishment.

I have already observed that the polity thus broadly characterised is not to be regarded as peculiarly Indo-Germanic. Indeed, according to Mr. Spencer,[2] we find a similar "form of ruling agency" among "sundry Malayo-Polynesians, among the red men of North America, the Dravidian tribes of the Indian hills, the aborigines of Australia." We are not, however, here concerned with this wider comparison. Mr. Spencer somewhat characteristically adds that "governmental organisation could not possibly begin in any other way," for "no controlling force at first exists save that of the aggregate will as manifested in the assembled horde." But before we affirm this necessity it seems desirable to examine a widely accepted theory of the origin of political society which appears to supply us with the controlling force required. I mean the patriarchal theory,

[1] There are some striking differences between Roman and Greek kings. The Roman king has no claim to divine descent ; he is nominated either by his predecessor or by an "interrex" appointed by the senate ; but his administrative power seems to go beyond that of the heroic king of Greece—in accordance with the greater sternness and orderliness of the Roman character which we find also exhibited in the intensity in private law of the paternal authority.

[2] *Political Institutions*, ch. v. § 464.

which gives, as the original force of cohesion in primitive political society, the habit of obedience of children to parents continuing as a habit of obedience to the chief who is regarded as father of the clan. This theory I propose to examine in the following lecture.

LECTURE III

THE PATRIARCHAL THEORY

§ 1. LET me briefly sum up the results of the preceding lecture. In the primitive nation as exhibited to us by its earliest records in Greece and Rome, and in the German tribes so far as they have a common permanent head, we find political functions distributed among three differently constituted organs—the king or supreme chief, a council of subordinate chiefs or elders, and the assembly of fully qualified citizens, which is, as I said, a martial muster of the freemen in arms. These three organs are found approximately similar in the different cases which we have compared; and the distribution of functions among them in any one case has a broad resemblance to its distribution in any other:—though we note important divergences in detail, and of course must not attribute to societies in this early stage any such precision and definiteness in division of functions as belongs to the constitutions of more civilised peoples.

The main business of this course of lectures is to trace the subsequent process of development, through which this polity passes—a process growing clearer as civilisation progresses and our records of past social and political conditions become more precise and trustworthy. But in the present lecture I want to look backward, instead of forward, into an obscurer region, and to see how far we can construct by the aid of conjecture a probable account of the process by which the primitive polity was reached.

The question of the origin of society was much debated in earlier stages of modern political thought, being supposed to have a practical importance which no one now

attributes to it. Men, finding themselves in an organised society, paying habitual obedience to a certain government, asked why this obedience was due, and expected to find the answer in some theory as to how it originated: holding that knowledge of the origin of governmental authority would determine the legitimacy of the present claims of rulers to obedience from particular portions of mankind. But this supposition of a connection between the original source of government and the present duty of obeying it, is now generally discarded; in considering why we obey the established government, we commonly examine the probable effects of obedience and resistance,—comparing the evils of oppression against the evils of breaking up a settled order. So that the controversy between Locke and Filmer as to whether the authority of government was originally derived from the free consent of individuals previously independent, as Locke maintained, or from the natural authority of a father over his children and children's children, as Filmer maintained, has ceased to have any more than a historic interest for us; it is therefore easy for us to examine the probability of the alternative conjectures with scientific impartiality.

§ 2. But before launching ourselves into this dim region of conjecture, it is well to have clearly before our minds such knowledge, bearing on this question of origin, as is attainable from a study of less obscure parts of history. We want to guess how political society originated in prehistoric ages; to give ourselves the best chance of guessing right, it will be well to have before us the actually known modes of forming new political societies in historic times.

Now we find that new states have been formed in historic times sometimes by aggregation and sometimes by division, and in either case sometimes by free consent and sometimes by force. Division has been in historic times a not infrequent cause;—especially in earlier stages of development, in which the process that later becomes colonisation goes on in the rude form of sending off roving swarms to seek new settlements. But when a new political

society is formed by division, it is obviously derived from a pre-existing society of the same kind; division therefore clearly cannot be the mode in which political societies were originally formed out of non-political.

The case is otherwise with aggregation, which therefore requires closer attention. Aggregation by force, or conquest, is a most important cause of new political communities, after a certain stage of civilisation has been reached either by the conquering or the conquered community. But savage tribes at the lowest stages of development, though continually at war, do not coalesce through conquest pure and simple; the vanquished are exterminated or driven away, not absorbed—at least the captured males are exterminated, the women being perhaps saved for concubinage or domestic work. Thus we have no ground for regarding conquest as a factor in the very earliest formation of political societies:—and indeed it would be difficult to conceive the formation of political societies out of non-political elements taking place in this way.

On the other hand, we find in historic times several cases in which a mainly voluntary aggregation has formed a new political whole out of elements that have already a political organisation of a certain kind, though often one less developed. We find this process taking place at the earliest stage of history as well as at the latest. Most frequently, in early stages of development such combination takes place with a view to war, and lasts at first only as long as the war lasts. Thus—as I have mentioned—Cæsar tells us that in his time the German tribes (*civitates*) had only common chiefs in war time; in peace, the smaller divisions (which he calls *regiones* or *pagi*) had separate chiefs who administered justice and composed differences. And for this condition of things analogies are easily found in all parts of the world.[1]

But wars in this stage are often so recurrent and serious that the advantage of union leads to its permanence. The German tribes of which Tacitus speaks appear to have all

[1] Cf. Spencer, *Political Institutions*, § 451, p. 298.

obtained this completer degree of internal cohesion: and, as we saw, have national assemblies at which the chiefs of the smaller districts are elected. Then, when we pass from the Germans whom Cæsar and Tacitus knew to the Germans who overran the decaying empire four centuries later, we find a further progress in the same direction of change.

It is not, however, only with a view to war and defence against foreign forces that this "integration," as Spencer calls it, takes place. If communities are similar in language and customs, then, as civilisation brings an increasing consciousness of community of nature and sentiment, the mere desire to establish a more perfect order in the internal relations of the aggregating communities may suffice. This appears when we consider exceptional cases in which circumstances rendered foreign war a comparatively rare incident. Thus we find that in Iceland the transition to one community from a group of "Things" with separate chieftains in local proximity was due to disputes between neighbouring chiefs and their clients and uncertainty as to the law, which brought about the "Constitution of Ulfliot," A.D. 930, establishing a central "Thing" or assembly for the whole island—the "Althing"—and a law speaker to speak a single law.

§ 3. Voluntary coalescence, then, seems of all the historic modes of formation of new states to be the only one applicable in the case of the original formation of a political society out of something that is not already such a society. Accordingly, the most important historical question at issue between Locke's school and their opponents may be stated thus: Were political societies originally formed by voluntary aggregation of heads of natural families, recognising no right of government in any one more than any other prior to the aggregation? or were they formed by the extension of single families into larger bodies of kindred, accompanied by a recognition of superiority in individuals or families specially representing the original parents?

We may obtain some light on this question by examining

the internal structure of the earliest political society that history shows us in Greece, Rome, and Germany. I turn, therefore, to the account that Maine gives of this structure, on the basis of the evidence derived from comparative jurisprudence, and especially from a study of Roman law. According to Maine, society in primitive times was "in fact, and in the view of the men who composed it . . . an *aggregation of families*," not "a collection of *individuals*." Ancient law, accordingly, "is so framed as to be adjusted to a system of . . . corporations." It "considers the entities with which it deals, *i.e.* the patriarchal or family groups, as perpetual and inextinguishable." [1] It is to be noted that these entities, so far as their patriarchal character is recognised in the earliest Roman law historically known to us, are families in the strictest sense: the "Patria Potestas" of the head of a household extends only to his wife, children, and their descendants. Over them indeed he appears exercising a despotism so absolute that no member of the family besides himself can be said to have had a separate jural existence at all. He was not only absolute owner of the property, including even the acquisitions of his children: but he could chastise and even kill, could sell or transfer by adoption, could marry and divorce any of his children at will. This complete control within the family carried with it a correspondingly extensive responsibility; the paterfamilias was answerable for any damage done by a son; but he could relieve himself by tendering the person of the offender as a satisfaction for the damage. And while the Roman father's power during life was thus in its remarkable extent more analogous to that of an independent ruler than to that of a modern parent, we may find a similar analogy in the no less striking limitation of his power over his estate after death. He could not originally leave any of his property by will away from his children; he could no more decide what was to be done with it after his death than a monarch of a modern state can dispose of the country he governs.

When, however, we ask what happened after the father's

[1] *Ancient Law*, chap. v. p. 126.

death, we find that the evidence suggests two different answers to the question. When we are considering the consequences of the father's death contemplated in the earliest Roman Law known to us, we must consider the family to break up at the father's death; those of the children, or fatherless grandchildren, who are physically capable of founding families—*i.e.* males who have attained puberty—becoming independent units; while the women, if not under the control of husbands, as lacking this capacity, remain subject to the nearest male relative.[1]

But an examination of the earliest Roman law of inheritance leads us to infer an earlier stage of development, at which the family held together instead of breaking up at the father's death. According to Maine[2] the primitive Roman conception of inheritance was "succession to the entire legal position of the deceased man." All the archaic phrases in Roman Law relating to inheritance "indicate that what passed from the testator to the heir was the *family*, that is, the aggregate of rights and duties combined in the Patria Potestas and growing out of it"; hence Maine conceives the original will or testament as "a mode of declaring who was to have the chieftainship in succession to the testator." Again the only claims of consanguinity recognised in the primitive law of intestate inheritance (in default of direct heirs) are the claims of "agnates"—kinsmen who trace their connection exclusively through males: and this carries us back to a time at which a man after his father's death still belonged, in some important sense, to the same family group as his brothers and even remoter kinsmen. For the exclusion from inheritance of all collaterals who could only trace their connection through females would be inexplicable unless we suppose that women—even when they married after the father's death—left the family by marriage in a sense in which men did not leave it.

[1] Later, when wills overruled the original rights of kinsmen, unmarried women after their father's death were placed in the protection of guardians appointed by will.

[2] *Ancient Law*, chap. vi. pp. 181, 190, 191.

Further, we have to observe that in the Roman Law of the "Twelve Tables," rights of inheritance extended beyond the limits of traceable kinship to the members of the "Gens," or clan, to which the deceased belonged. This leads us to a very important modification of Maine's conception of primitive society as an aggregation of families. We find that in Rome, Athens, Sparta alike,—in short wherever we have an accurate knowledge of an ancient community—the families of the original citizens are grouped in larger bodies, which so far resemble families that they are held together by at least the supposition of a common kinship. We may conveniently distinguish these by the Roman name "Gentes."

Such a Gens is called by Maine a fictitious extension of the family.[1] Its members, as such, could not definitely trace blood relationship; but they bore a common name, and regarded each other as descendants or quasi-descendants of a common ancestor; and they were united by the religious tie of performing sacrificial rites of a quasi-domestic kind, and in early times by a complex bond of mutual rights and obligations, resembling those arising out of distinct kinship. Thus we find the members of an Athenian Gens bound together by mutual rights of succession to property; reciprocal obligations of help, defence, and redress of injuries; mutual rights and obligations to intermarry in certain determinate cases, especially where there was an orphan daughter or heiress; and the possession, in some cases, of common property.[2]

These bonds of union are so strong, that in conceiving the structure of the primitive society in which they were in full force, we are led to regard it as more markedly an aggregation of Gentes than an aggregation of natural families. And it is a not improbable conjecture that this division into gentes was represented in the original political constitution of Rome; the "patres" who composed the Senate being originally the chiefs of the old patrician Gentes.

[1] Similarly Grote (Part II. chap. x.) speaks of it as an "enlarged and partly factitious brotherhood." [2] See Grote, *l.c.*

The gentes again were grouped both at Rome and Athens into larger unions—"curiæ," φράτριαι (brotherhoods)—connected by similar though less close bonds; and these larger groups were grouped again into tribes.

If, then, we contemplate the primitive nation as composed in the manner described, of an ascending series of groups—the bond of union within the group being the belief or fiction of common descent, represented in and confirmed by the performance of sacred rites in worship of a common ancestor—the Patriarchal Theory emerges, if I may so say, spontaneously. As Maine says,[1] "we can scarcely help conceiving" these groups "as a system of concentric circles which have gradually expanded from the same point." That is, the patriarchal family prospering and holding together, would become the gens; and similarly the gens prospering would develop into the larger union of the tribe. And though it is only a conjecture, it is, Maine thinks, "no presumptuous conjecture," that the independent group thus formed by development out of the patriarchal family was normally governed by the "eldest male of the oldest line," representing the "common ancestor of all the free kinsmen."[2]

§ 4. In examining this view, it will be well to distinguish three questions:—1. Was the tie that bound members of a primitive community together primarily an extension of the family tie, a consciousness of kinship and common descent? 2. Did the group of supposed kinsmen which constitutes the most elementary political society known to us, grow out of a family formed by the children of a single male parent? 3. Did the chief of such a group normally exercise authority as representative of the parent in this original family?

The first question, I think, may be confidently answered in the affirmative. There can be no doubt that man, in the earliest stage in which history leads us to form a conception of him, existed in groups, of which at least the ideal bond was kinship. We have seen, indeed, that in the case of

[1] *Ancient Law*, ch. v. p. 128, and ch. vii. p. 234.
[2] *Early History of Institutions*, Lect. III. p. 94.

the Greeks and Romans, kinship is not generally traceable, even by traditionally preserved genealogies, among all the members of any of the groups within groups of which the community—or at least the old stock of citizens—appears to be composed; it may even be known that foreign elements have been admitted into the union of kinsmen, with or without a ceremony of adoption; still, this does not prevent the group, as a whole, from being conceived as descended from a common ancestor. Even where the members of the community were known not to be all kinsmen, it was only by feigning themselves to be kinsmen that they could regard it as natural and rational to hold together in political union,—the effect of the fiction being doubtless powerfully aided by the admission of the fictitious kinsmen to the domestic worship of the group. We have no evidence of any similar fictitious extension of kinship among the primitive Germans; but when we catch our first glimpse of them in Cæsar's narrative, we find them associated in consanguineous groups for war, and for the appropriation and cultivation of land. And though in all these cases the constitutional importance of these quasi-consanguineous divisions appears to be diminishing when the light of history falls on them, there is sufficient evidence to show clearly that the internal union of a primitive political society was conceived after the pattern of a family union; that its earliest elements are groups similarly framed; and that each of these communities, when we know them first, appears to be conscious of a wider legendary kinship linking it to neighbouring communities. Though we cannot say that the belief in descent from a common ancestor is required as a "*condition precedent*" for primitive tribes combining; still here too the idea of kinship as a basis of combination seems so far predominant, that the belief in a common ancestor is apt to grow up *after* combination.

§ 5. We may assume, then, that the earliest form of political society was a comparatively small group of persons regarding themselves as kinsmen: and it is possible that in some cases such a society may have been produced by the

expansion of a single family. But after the evidence which M'Lennan and others have brought forward as to the widespread existence among uncivilised men of kinship traced through females only, and marriage customs very different from the patriarchal, I cannot regard it as even decidedly most probable that any political society which we know historically was actually thus developed. It is at least not improbable that the gregarious group or groups from which it has been derived, with whatever intervening processes of aggregation and division, went through a stage in which kinship through females was alone recognised; and if so, it is at least not improbable that as it emerged into the stage in which the paternal kinship had prevailed as the bond of family union, it was composed of *several* families which could not definitely trace themselves to a common male ancestor, though under the influence of the newly-predominant idea of kinship through males, they came to believe that they had had such an ancestor. Evidence of this process of change, in the Arabian clans, is given by Robertson Smith in his book on *Kinship and Marriage in Early Arabia.*

Here I ought to observe that Maine, in a later treatise,[1] admitted the importance of a good deal of M'Lennan's evidence, and restated his theory in view of this evidence. He admitted it "to be more than probable that, since the appearance of mankind on the earth, an indefinite portion of the race has suffered at different times from a serious inferiority in numbers of women to men." He acknowledged that men would be led "to establish institutions in conformity with this proportion between the sexes"; and that "the tendency of such institutions would be to arrange men and women in groups very unlike those in which, according to . . . the Patriarchal Theory, they were originally combined." And he admitted that it may be "impossible to say what portion of the human race has suffered from this disproportion between the sexes." He still, however, insists "on the

[1] *Early Law and Custom*, ch. viii. pp. 214, 215. This chapter—with which Spencer, in criticising Maine, does not seem to be acquainted—should be read by all who give any attention to the present inquiry.

Patriarchal Theory as expressing the primitive grouping of mankind," considering the phenomena to which M'Lennan drew attention to be a temporary aberration interposed between the original grouping and that later patriarchal family which archaic law shows us. And he skilfully turns the flank—if I may so say—of M'Lennan, by calling in the authority of Darwin, who approaches the matter from the zoological side.[1] Darwin argues from what we know of the habits of monkeys, that primitive man—when nearest the monkeys—must be supposed to have lived in marriage relations certainly more resembling the patriarchal family than those to which M'Lennan has drawn attention: "each with a single wife, or if powerful with several, whom he jealously guarded against all other men," and under the influence of "one of the strongest of all instincts, common to all the lower animals, namely, the love of their young offspring." There is even some reason for attributing to him, in some cases, permanent monogamic unions in this earliest *post-simian* condition. Without denying the force of Darwin's reasoning, I think we may observe that, under the influence of the studies of savage life to which M'Lennan and Darwin led him, Maine's Patriarchal Theory, in its final form, has undergone a material change. As you will remember, an essential characteristic of the patriarchal family in *Ancient Law* is that the patriarch—the oldest living male ascendant—is supposed to bear despotic sway over his grown-up sons, as well as the women and young children of his household, and the "implicit obedience of rude men to their parent," which this conception involves, is spoken of as a "primary fact."[2] But it is difficult to suppose this a primary fact in the patriarchal family that Maine shows us in *Early Law and Custom*. Of this family he says (p. 198) that it is "more than barbarous, it is extremely savage," (p. 209) that "sexual jealousy, indulged through power, might serve as a definition of" it, "the power of the strong man" is "the principal formative cause" of it (p. 215).

[1] See *Descent of Man*, Part III. ch. xx.

[2] *Ancient Law*, ch. v. p. 136.

But in such a group based on sexual jealousy and physical force, what motive is there to make the grown son, in full youthful vigour, submit to the despotic authority of the father? Maine suggests that it is respect for the paternal wisdom (p. 198), "the strongest and wisest male rules." But though barbarous people often show a more marked respect for the wisdom that normally comes with age than men in a more advanced stage of civilisation, it is attributing more to this sentiment than any evidence will support, if we suppose that it would make men submit to despotic control in the teeth of strong animal passions. And nothing that I can learn of monkeys or other animals at all supports this. I learn (*e.g.*) that among gorillas "but one adult is seen in a band; when the young male grows up a contest takes place for mastery, and the strongest, by killing and driving out the others, establishes himself as the head of the community." [1] All this seems highly unpatriarchal. In short, granting the "Cyclopean" family, with a single male head ruling despotically over wives and children of tender years, to be as primitive a condition of human society as we can conjecturally get back to, I see no ground for regarding the Patriarchal family of *Ancient Law* as similarly primitive, or for assuming it to have developed immediately out of the Cyclopean family. The two are dissimilar in respect of the very characteristic which is most important for our present inquiry into the development of the state—the submission paid by a number of grown men to one.

§ 6. The controversy thus seems to concentrate itself on the third of the questions above distinguished,—the relation of political to paternal power. According to Maine, the power of the father—or his representative—is a fact so essential to the structure of primitive society, that "kinship, as the tie binding communities together, tends to be regarded as the same thing with subjection to a common authority. The notions of power and consanguinity blend," [2] though "they in nowise supersede one

[1] Dr. Savage, as quoted by Darwin, *Descent of Man*, Part III. ch. xx.

[2] *Early History of Institutions*, pp. 68, 69.

another." Thus in the case of "the smallest group, the family," it is "difficult to say whether the persons comprised in it are most distinctly regarded as kinsmen, or as servile or semi-servile dependants of the person who was the source of their kinship"; and this confusion of "kinship with subjection to patriarchal power is observable also in the larger groups into which the family expands. In some cases the tribe can hardly be otherwise described than as the group of men subject to some one chieftain." Now it is probable that wherever primitive chieftainship was strong, this fusion of ideas tended to result. But we have no reason to regard this extent of the chiefly power as a normal condition of the earliest political societies: and even if we suppose a clan developed out of a really patriarchal—not Cyclopean—family, it would not follow that its chief had his power simply because he was conceived, as the eldest ascendant, to "represent" the father of the family which had expanded into the clan. This idea of "representation" seems to me too artificial and refined to have so decisive a force at so early a stage of development. And certainly in the historically known cases in later times, to which Maine refers, where groups of kinsmen, developed out of more or less patriarchal families, hold property in common,—though not as independent groups, but as part of a larger state,—we find no such transmission of paternal power. It is true that in most of these cases—*e.g.* in the Hindoo joint undivided family—the eldest male of the eldest line, if of full mental capacity, is generally placed at the head of affairs. But as Maine[1] admits, he is merely manager, not patriarch; and "if he is not deemed fit for his duties, a 'worthier' kinsman is substituted for him by election"; just as the principle of election, at least within the royal family, seems to have been generally accepted in the appointment of the Teutonic king or supreme chief, where such a supreme chief existed.

Thus, even where the institution of the family as we conceive it, under the rule of the male parent, is firmly established within the society, we still find the principle of

[1] *Early History of Institutions*, p. 117.

election on the ground of personal efficiency combining with the principle of inheritance in the male line to determine chieftainship. Similarly there is much evidence to show that in such societies personal superiority, physical or mental, or both, is a powerful factor in determining the retention of the chief's office. Thus, in Homeric Greece, Laertes and Peleus have to give up their chieftainship when old age comes on. And we may reasonably suppose that such personal superiority, especially military capacity, was in an indefinite number of cases the origin of new chieftainship. Tacitus tells us that among the Germans the leader in war was chosen for his valour; and we cannot doubt that this was frequently the case in primitive communities, or that a successful war chief would frequently retain his chieftainship after the war was over. Other superiorities, besides martial valour or skill, have also to be taken into account; *e.g.* the supposed possession of peculiar divine favour, or means of influencing the gods—the "medicine-man" of a tribe, as Spencer says, is in a favourable position for rising to chieftainship. The story of Numa, in early Roman history, suggests a rise of this kind.

On the whole, then, I think we must suppose the process of development by which permanent hereditary kingship came to be established, to have been one in which this principle of selecting the strongest or wisest—wherever vigorous or skilful leadership was felt to be specially necessary—combined and conflicted, in various ways, with the tendency to recognise the son as the natural successor to the father, which is likely to have been strong where male descent definitely determined succession to private property. There is no reason to regard the father's power, in the patriarchal family, as the original type of political power; but doubtless the firm establishment of the patriarchal type of family contributed importantly to the stability and strength of tribal headship.

LECTURE IV

SUMMARY OF THEORY OF ORIGIN
TRANSITION FROM PRIMITIVE KINGSHIP

§ 1. In my last Lecture I laid before you the results at which I have arrived, after studying the evidence for and against the Patriarchal Theory of the origin of political society. Briefly summed up they are these :—

1. It is an undeniable and important truth that the political communities of those Indo-Germanic nations with whom we are specially concerned are, in the first stage in which history leads us to conceive them, found to be organised in groups based on real or assumed kinship; at least the *core* or nucleus of the community is so organised, though round this nucleus there may be a large accretion of other elements.[1]

2. I think, however, that such a community is rather to be regarded as an aggregation of houses or "clans," each including several families, than an aggregation of families under the despotic control of the eldest male ascendant, as Maine suggests. That is, the divisions between the Gentes, in the earliest state of things that ancient law leads us to conceive, are more marked than the divisions between the families within each Gens. In Germany, and probably in Italy and Greece also, we have to suppose the tribe distributed primi-

[1] It must always be recognised that though kinship is the *ideal* bond, the need or convenience of union, especially for war, is, to an extent not now traceable, the actual bond. And though doubtless in early times the groups that thus become welded into one are mostly kin *before* the amalgamation—as Rome and Latins—still we must admit an indefinite number of cases in which *alien* groups were absorbed. This Maine notices, but does not perhaps emphasise enough.

tively in groups of kinsmen, holding and cultivating land largely in common: both in Rome and Athens we see such groups—*gentes* or γένη—based at least on the idea of kinship, and internally united by a common worship, a certain degree of obedience to a common chieftain, mutual rights of succession to property, and reciprocal obligations of help in distress, defence and redress in quarrel. These latter ties no doubt were stronger among members of the same family, or near kinsmen within the larger group; but still they effectively bound together the whole Gens and made the most marked line of division that which separated Gentes.

3. I do not however think that we can regard the chieftainship of the gens as normally derived from the domestic control of the Patriarch of the patriarchal family, transmitted to the eldest son of the eldest line as the family expands into the clan. For I do not think we can assume this patriarchal form of the family to have continuously existed through primitive ages: since M'Lennan and others have shown the widespread existence—in very different races and regions, not excluding Indo-Germans—of either polyandry or the uncertain and transient marriage relations implied in the customary tracing of kinship through females only. And the kind of family which zoological analogies suggest as primeval,—based on sexual jealousy and physical force, with the strongest male ruling and guarding his females and their young—does not help us to explain what specially requires explanation in the organisation of the clan, namely, the obedience of many grown men to one man not physically stronger than they. Even in the cases in which the patriarchal family may have been established, and have then expanded into the clan, it does not seem that the rather artificial and refined idea of "son representing father," is sufficient to explain how hereditary chieftainship becomes established in a group into which this family expands. Especially as in the groups of this kind which we know as parts of States more advanced in civilisation, there is certainly no transmission of quasi-paternal authority

to the man placed at the head of affairs; he is manager, not patriarch.

I admit that the establishment of the patriarchal family within the clan—as I conceive it—was doubtless an important factor in rendering chieftainship hereditary. The chief would aim at handing down his position like his property, and it would seem natural to others that he should do this; if he had a likely son they would acquiesce; and the chieftainship would become elective within the family—somewhat as we find it in the Irish clans. But it does not in any way follow that the power of the chieftain was a complete continuation of the "patria potestas": and though we may reasonably conceive the chief of the Gens as manager of whatever property was held in common, we have no reason to conceive him as having absolute control over it, or over the other members of the Gens.

This view will I think be confirmed, if we consider more closely what the functions of the chief or king must have been at the earliest stage in the social development of the peoples that we are considering. Apart from the management of common property, and putting any supposed relation to the Divinity out of account, these functions must have been mainly strategic and judicial. The chief has not to legislate: since, in this stage of development, law exists only in the state of custom which no individual or combination of individuals has any definite authority to alter: and what in later times are distinguished as internal executive functions must be supposed to have been very rudimentary in the beginnings of political development. The tribe or clan requires a leader in war, and a judge in peace:—but, as Maine[1] holds, the preserved traces of earliest law and legal ceremony show the judge's ordinary work to have been a kind of arbitration: he has to decide the disputes between families that are voluntarily brought before him, and especially to bring blood-feuds to a peaceful termination. Now it is obvious that very different qualities are required for strategic and judicial functions respectively.

[1] *Ancient Law*, ch. x.

The best judge would ordinarily be an old man, skilled in the customs of the tribe, but he would not be most fit for leader in war. So far, therefore, as chieftainship was determined by efficiency, we should expect the two functions often to fall apart. And in fact, as Mr. Tylor[1] says, "in barbarous countries the tribe-chief and the war-chief may be found side by side": though doubtless, "when the power of the bow and spear once asserts itself, it is apt to grow further."

§ 2. Leaving these speculations, let us return to the "primitive polity," which, with the qualifications I have given, I think we may accept as giving a general type of government allowing for large variations in different times and districts—which belongs to the "tribal condition" of Greeks, Romans, and Germans in the earliest stage in which history throws any light on it. The streams of political development are thus, as I said, tolerably close together at the point to which we trace each back. We have now to follow their divergent courses.

But before beginning the development of Greek polity, with which we shall be mainly concerned in this and the five following lectures, I should like to point out a hypothetical advantage and an actual disadvantage of studying the phenomena of political development in Greece, as compared with studying them in the history of modern states. The advantage is that there are so many more instances to generalise from, if we only knew them. Here I may remind you that we have to think not only of Greece proper; for Greek immigrants, at an early stage of Greek civilisation, filled the isles of the Aegean including the large island of Crete, and the west coast of Asia Minor, with small independent communities, which became city-states as civilisation went on; then later Greek colonisation still further extended this type of polity, carrying it up the coasts of the Adriatic and making Southern Italy a "Magna Graecia," spreading over the greater part of Sicily, extending northward to the Crimea, eastward along the coast of the Euxine, southward to Libya, westward even to far Marseilles.

[1] See Tylor, *Anthropology*, ch. xvi. p. 431.

It is easy to see that there were thus brought into being independent city-states in hundreds, a comparison of whose polities would have afforded a rich field for induction. But, unfortunately, our knowledge of most instances is extremely meagre and fragmentary. The only constitutions that we know with anything like fulness are those of Sparta and Athens. In other cases, I think the best that we can say is that we probably know the general character of the most important constitutional changes; but in many cases we cannot say even this.

Owing to this, I think only a few broad generalisations can be confidently made with regard to the changes in the forms of government of Greek city-states generally. And an important question then arises how far we can generalise from Sparta and Athens taken as types. I think that, as regards early history, we may do this to some extent, taking Sparta as a type of a community formed by superimposing a conquering tribe on a conquered community, the conquerors becoming a ruling class monopolising political rights; and Attica as a type of a community "integrated" as it passes out of the tribal condition into that of a city-state, without any such traceable effect of conquest.

Again, I think we may regard Athens as a representative type to an important extent of Greek democracy in the fifth and fourth centuries B.C.; partly through the influence of natural imitation, in consequence of the leading position rapidly taken by Athens after the expulsion of the tyrants at the end of the sixth century (510 B.C.), and especially after the successful resistance of Athens to the Persian invasions in the first quarter of the fifth century. On the other hand, we have to bear in mind the quasi-metropolitan position of Athens, derived from her maritime empire, which makes her, so far, unlike other cities. The splendour of Athens was largely due to her imperial position; and the fulness of her political life was at once stimulated by the task of ruling her empire, and financially sustained by the contributions of the subject cities. But, allowing for this, it is, as I remarked before, at any rate probable that the

Greek states that moved towards democracy in the fifth and fourth centuries were powerfully influenced by the example of Athens, and had a tendency to copy her institutions. It would, however, be a fundamental mistake to assume similarly that Sparta was a type of Greek oligarchies. The Spartan constitution must be regarded as almost *sui generis*, and though the Spartans support oligarchies elsewhere against the drift to democracy, they do not support constitutions of which their own is a type.

§ 3. Let us now observe the movement as regards the head chieftainship or kingship of the tribe in the early stage of the races we are examining.

As the "primitive polity" has a threefold division of functions among king or head chief, subordinate chiefs, and assembly of freemen, it is natural to conceive that the three kinds of government, popularly distinguished in Greek thought of the fifth and fourth centuries B.C. as monarchy, oligarchy or aristocracy, democracy, come from the preponderance at different times of one or other of these elements, and it is natural to suppose that they preponderated successively —one, few, and many; kingship becoming oppressive and causing a movement against it which threw power into the hands of subordinate chiefs or nobles; and this government of the few becoming oppressive in its turn, and thus causing a change to more democratic conditions.

And this is, in fact, the view of the natural order of constitutions taken by Polybius, the historian of the second century B.C., who saw the establishment of Roman dominion over Greece, and thus is, among the Greek writers personally interested in free Greece, the one who had his attention specially directed to Rome. He saw the first subjection of Greece by Rome (146 B.C.); and previously to this had lived in exile seventeen years in Italy. Thus—unlike Aristotle, of whose view I shall speak later—his generalisations as to the development of polity are naturally formed on the basis of the experience of Rome, now dominant, as well as of Greece. According to the generalisations of Polybius, polity is to be conceived as passing naturally

through the following stages:—Monarchy, through the vices to which it tempts, degenerates into tyranny. Then, the luxury and insolent immorality of the tyrant leading to scandal and hatred, there follows aristocracy. This in its turn degenerates into oligarchy as the ruling class takes partly to money-getting, partly to insolent debauchery, and becomes in both ways oppressive. Then, the masses being stirred by this oppression to resistance and retaliation, there follows democracy; which, when Demos in his turn becomes insolent and lawless, turns to ochlocracy till the people again find their master in a monarch, and the round begins again.

Now, as regards the earlier stages, especially the position of the tyrant between the legitimate king and aristocracy, this scheme certainly seems—as Polybius expressly says—to suit the history of Rome. Through all the uncertainties of tradition we seem to discern clearly that the later kingship in Rome was more masterful and oppressive than the earlier; and after kings are got rid of they do not come back. The popular memory of hate and aversion that the violent end of the monarchy leaves behind is successfully kept alive by the patricians who succeed to rule; the word "king," as Mommsen says, seems to have acted on a Roman populace like the word "popery" on an English populace. So long as the Roman state remains really a city-state, there is no more monarchy; it is not till Rome has expanded into a country-state, with an empire subject to it, that monarchy comes in again, as an apparently indispensable organ for maintaining the coherence of this great structure.

And we hear of one or two instances of similarly violent transitions in Greece, one of which, no doubt, specially influenced Polybius and probably, taken together with Rome, led him to the generalisation above given. This is the tradition in Achaea—the strip of country in the north of the Peloponnese, which is so obscure in the brilliant period of Greek city-states and becomes so important later, in the third century, as the nucleus of the Achaean League. We find Achaeans at the beginning of Greek history, in Homer, as the common name for Greeks, and Achaeans at the end

(Achaia in the New Testament), but hardly hear of them in the middle! Well, Polybius[1] tells us that kingship ended in Achaea, because the people were displeased with the sons of the last king "for ruling not according to law, but despotically," and so changed the government to a democracy (εἰς δημοκρατίαν). What importance is to be attached to this statement as an apparent exception to the general rule that when monarchy was put down oligarchical governments follow, I will consider presently. I now only mention it as an instance of violent transition on account of the tyrannical aggravation of kingly rule.

We hear of one or two other instances of similar violent transition.[2] But on the whole, though the imperfections of our knowledge render it difficult to speak confidently, we must, I think, regard them as exceptions. Certainly in Athens, Thebes,[3] and Argos[4] the reduction of royal power is represented as peaceful; and I think we may infer it as having been normally peaceful, or, at any rate, not due to violent reaction against despotism where the government remains in the royal house after the transition to oligarchy. Of this there are several instances known to us. Compare the famous oligarchy of the Bacchiads at Corinth, the Basilids at Ephesus and Erythrae in Asia Minor, the Penthilids at Mitylene in Lesbos, the Aleuads at Larissa in Thessaly; in all these cases, when life-long monarchy has come to an end, the chief offices of government appear to be still confined to the royal house.[5] Contrast with this the expulsion of the Tarquins at Rome. The difference obviously means a comparatively peaceful transition to oligarchy.

I think, then, that we may infer from our evidence that the transition to oligarchy in Greece was more often

[1] Polyb. *Hist.* ii. 41.

[2] Samos, Plut. *Qu. Gr.* ch. 57; perhaps Megara, Paus. I. ch. xliii. 3; and Arcadia, Paus. VIII. ch. v. 13, though the extent and nature of the power of these "Kings of Arcadia" is very dubious.

[3] Paus. IX. ch. v. 16.

[4] Paus. II. ch. xix. 2.

[5] Using the term royal house in an enlarged sense. The Bacchiads were a large clan of over 200.

gradual, and without any great shock of revolutionary violence. And, in fact, from the time that we first hear of Greek polity, the old-fashioned monarchy—the monarchy of the primitive polity, with functions limited by law or custom, and customarily shared with council and assembly —this monarchy appears to be gradually declining in relative prestige. We see this decline in Homer, as we pass from the Iliad to the Odyssey; where, as I have said, it is even marked by the use of the title "Basileus," which in the Iliad is, I think, always appropriated to the head of a *demos* or his sons;[1] but when we come to the Odyssey, "basileus" is "chief" rather than king. This is shown early in the poem, in the passage already referred to, where Telemachus says there are many chiefs (βασιλῆες) of the Achaeans in Ithaca, though, as afterwards appears, the island has only one city, and its inhabitants form one "demos" with one assembly. And again, when Odysseus in his travels is thrown on the shore of pleasant Scheria, where the noble Phaeacians dwell in what is manifestly represented as an ideal and happy condition, we find, from the statement of the head-chief Alcinous, that there are "twelve glorious chiefs (βασιλῆες) who rule among the people, and he is the thirteenth."[2] It is evident that monarchy is moving downwards towards oligarchy.[3]

Still, though there is comparatively little evidence anywhere in Greece that the transition to oligarchy was due to a movement against an oppressive extension of monarchical power, monarchical despotism has an important place in the development of Greek polity; but it comes after oligarchy, not before it, and is, in all the cases

[1] Lecture II. p. 34.

[2] Od. viii. 391. The βασιλῆες in Phaeacia are clearly under-kings ruling separate districts, a certain amount of integration having taken place: κατὰ δῆμον implies this.

[3] The transition seems to have been (*a*) sometimes to a single βασιλεύς generally elective for a year with reduced—chiefly sacrificial—functions (cf. Ar. *Pol.* iii. 9, 8), and (*b*) sometimes to boards of βασιλεῖς. Compare Kyme (Plut. *Qu. Gr.* 2, p. 360), Elis (Cauer[2] 253), Mitylene (Cauer[2] 428). I do not think the βασιλᾶες at Elis were limited, as Gilbert says (*Griech. Staatsalt.* § 19, p. 100), to priestly functions.

actually known to us, irregular, unconstitutional despotism. It will be convenient to call this by the Greek name "Tyrannis." Its nature, causes, and development I shall consider more fully in a later lecture. At present I have only referred to it to make clear the very important difference between the evolution of Greek and Roman polity respectively; that, speaking broadly, the place of despotic monarchy is in the Greek order of development, not between the old monarchy restrained by custom and oligarchy, but between oligarchy and democracy. The Tyrannus is not, as at Rome, a primitive monarch using his power oppressively beyond the limits of old law and custom, but an ambitious leader who wrests monarchical power from oppressive oligarchs by the aid of popular support.

§ 4. We may complete our general view of the manner in which the three lines of development—Greek, Roman, German—diverge by noticing the striking difference between Greece and Germany.

In early German history the movement is, as we have seen, towards kingship. The German tribes appear on the scene, in Caesar, largely without the institution, but it appears to be gradually adopted everywhere; and when once adopted it has remarkable stability, as it lasts on through medieval and modern history. In Greece, on the other hand, almost the only traceable movement is the other way: between the age of Homer and the earliest period really historical, kingship in Greece proper has in most States changed into a form of oligarchy;—one of the few exceptions being Sparta, where, as I have said, primitive institutions were artificially preserved; but even here kings are reduced to little more than hereditary commanders-in-chief. What is the explanation of this?

Partly, no doubt, the Germans are in an earlier stage of development; partly, however, we have to refer it to the fact that the process of civilisation that was going on in Greece tended towards the development of small compact states; which ultimately, in the most advanced communities, have a definitely *urban* character, the ideas of "city" and

"state" coming to be blended in a single notion. Whereas, when the Germans began gradually to grow more civilised through contact with the Roman Empire, the idea of a civilised polity with which they thus became familiar was that of a State extending over a large area of territory, including municipalities as a subordinate element of a coherent political order; and during the centuries of dissolution and reconstruction, in which the conquered and semi-barbarised fragments of the empire were growing into orderly and coherent nations, this idea of a "country-state" governed their development.

The important effects of the distinction between town and country, as elements of the modern state, are familiar to us all; but we do not always reflect on the profound historical significance of the distinction. While the history of civilisation in ancient Europe is the history of a social life that had its focus always in the town, from which "civility" dimly radiated into the country, the history of modern Europe through the Middle Ages and the Renaissance shows us this civilisation modified by the habits of a conquering race, who were distinguished by their fondness for country life, and who retained this characteristic long after they had become civilised.

Hence it is one of the most essential differences between Greek politics and modern European politics—a difference from which many others flow—that, in the most civilised period of Greek history, at any rate up to the time of the Macedonian predominance, the political ideal of the most highly civilised Greeks was essentially a city-state. A Greek of this period was of course familiar with barbarian communities, notably the huge Persian monarchy, in which one government ruled over large countries; but yet he could hardly conceive of a high degree of political organisation being attained by a community whose political life did not centre in a single town.[1] He had, indeed, a sentiment

[1] Though Sparta was in a certain sense not a town, but an "agglutination of five adjacent villages," it had the political characteristics of a town—common assembly and close intercourse—in a peculiarly high degree.

of nationality extending beyond the limits of his city: he recognised ties that bound him as a Dorian, say, to other Dorians, as a Hellene to other Hellenes; but these sentiments were usually feeble in comparison with the patriotism that glowed in a good citizen for his own city. They prompted him to combine with other Hellenes in religious ceremonials and celebrations, and to aid them in war against foreign foes, —perhaps to form leagues, designed to be permanent, for military defence;—but they did not usually dispose him to form such a political union as would involve the sacrifice of the autonomy of his own city. The apparent exceptions to this general statement, though very extensive, are mostly either found among Greeks who are behind the leading states in political and social development, or they are cases of hard fact conflicting with an ideal still cherished. On the one hand, as Freeman says,[1] "the robbers of Aetolia, the respectable but obscure townships of the Achaian shore, and some other of the less advanced and less important members of the Hellenic body"—Acarnanians, Phokians, and others, "possessed, as far back as we can trace their history, some germs of a polity which may fairly entitle them to rank among Federal commonwealths." On the other hand, Greek history shows us many cities, sharing the full stream of Greek civilisation, that submit to the rule of other cities; but the submission is mostly reluctant, and involves a sense of inferiority. Of civilised Greeks, in the palmy days of Greece, it is generally true that, however conscious an individual may be of wider circles of nationality, his city is the one political whole of which he permanently and strongly feels himself a part; and though this city may be in fact dependent on Athens or Sparta, its independence is the ideal condition after which he aspires.

This view of the political ideal of Greece finds emphatic expression in the writings of the philosophers Plato and Aristotle. However much these two great thinkers may disagree, they agree in taking as an ideal political com-

[1] *History of Federal Government*, chap. ii. p. 16 (2nd edition).

munity a single city, together with the country required to supply the material needs of its inhabitants; they cannot conceive a free civilised community, if really well governed, to be organised on a larger scale.

We may distinguish different causes that combined to produce this effect.

1. The primary cause of the growth of the town, as distinct from the village, is of course economic; it consists in the extension of exchange rendering convenient a larger aggregation of persons engaged in trade or manufactures in adjacent buildings. But

2. The opportunities that the town affords for more habitual and varied communication of experience and thought, and for gratification of common sentiments by art, social expansion, and organised ceremonial, tend to make urban civilisation far outstrip rural, especially before the discovery of printing. Thus civilised life seemed to the Greek to be necessarily connected with cities, where there was a market-place for daily meeting, ornamental temples and porticoes, theatres for music or recitation, gymnasia for athletic exercises, etc.

But all this is only part of the required explanation. Civilisation has all over the world developed in towns; the peculiarity of Greece is that they were independent towns with vigorous and intense national life. I have, however, already drawn attention to the physical conditions which had at least an important share in causing this independence; namely the configuration of Greece, which at once separates by land and affords easy means of communication by sea: so that the more advanced Greek tribes acquired a blending of those habits of independence as regards outsiders, of mutual dependence and *esprit de corps* within the community, that we find among mountaineers, with the awakened intellect and varied experiences of a seafaring people.

3. Assuming this independence, we may note, as a third important reason for the Greek tendency to associate high political development with urban life, the large amount of protection which the walled town gave against hostile attack.

This made city life not only more delightful and elevated than village life, but safer. Villagers, if they could not hold their own against an invading enemy in the field, had to fly to trackless mountain coverts, or huddle wretchedly into little strongholds where their normal life could not be carried on; but city life could go on at Athens during the Peloponnesian war with full and vigorous pulsation—however disagreeable it might be to see the Lacedaemonians cutting down one's barley and fruit trees, and to have to turn out on cold nights to do garrison duty.[1]

Then, as gradually there formed itself in the Greek mind the conception of the State as the whole of which all the individual citizens were parts, to whose interests the interests of any individual might be legitimately sacrificed, and to whose will, as expressed in its constitution and laws, the wills of all officials from highest to lowest were subordinate,—the city came at the same time to be conceived as the necessary outward framework of this inner political order. A larger State seemed to be incapable of furnishing the means for effective performance of civic functions, for how in such a State could the citizens meet in one assembly and receive announcements from one herald "not being a stentor"? and how could they have the knowledge of each other's characters, necessary for determining questions of justice and distributing offices of state according to desert?[2]

Thus, while the material unity of the town, and the concentration of life which it causes, assists the development of the conception of the State and the habits and patriotic sentiment attached to it, so, on the other hand, the development of political life thus inseparably connected with town life, completes and fixes the Greek notion of the city community—*i.e.* a community inhabiting a district with a city for centre—as the highest and ultimate form of human association.

[1] It is to be observed, however, that this walling round of whole large towns only becomes general gradually, *e.g.*, even Athens has only its Acropolis fortified under the Pisistratids.

[2] Aristotle, *Pol.* IV. (VII.) iv.

§ 5. The process of transition from the village to the town, and from small towns to larger, was often, we may note, semi-compulsory,—*e.g.*, it appears so in Athens and in Rome so far as we can dimly discern it through the mists of legend,—and we may conjecture that the process was powerfully promoted by the ambition of primitive kings whose dignity and wealth were enhanced by the result. At the same time it is, I think, to this development of civilised life in small separate communities tending to become city-states, that the transition from kingship and the further series of stages through which the political institutions of Greece passed is largely to be attributed. While kingship spreads and develops among the Germanic tribes, during the first few centuries in which they are known to us, largely, it would seem, from the value that it is felt to have as the bond and symbol of national unity, so, on the other hand, the smallness and concentrated residence of the Hellenic communities appears to have rendered the bond superfluous and the symbol unimpressive.

This is substantially Grote's [1] explanation of the origin of the oligarchy in Greece. As he says:—when the personal deficiencies of the hereditary king came to be felt, "there was nothing in the circumstances of the community which rendered the maintenance of such a dignity necessary for visible and effective union; in a single city and a small circumjacent community, collective deliberation and general rules, with temporary and responsible magistrates, were practicable without difficulty." Thus . . . "the inferior chiefs who had originally served as council to the king, found it possible to supersede him and to alternate the functions of administration among themselves; retaining probably the occasional convocation of the general assembly as it had existed before, and with as little practical efficacy. Such was in substance the character of that mutation which occurred generally throughout the Grecian States, with the exception of Sparta: kingship was abolished, and an oligarchy took its place—a council deliberating collectively,

[1] See *History of Greece*, Part II. chap. ix.

deciding general matters by the majority of voices, and selecting some individuals of their own body as temporary and accountable administrators. It was always an oligarchy which arose on the defeasance of the heroic kingdom; the age of democratical movement was yet far distant, and the condition of the people—the general body of freemen—was not immediately altered, either for better or worse, by the revolution."

As I have before said,[1] I consider that Grote somewhat underrates the importance of the primitive assembly; and his statement that it was "always an oligarchy" which took the place of the primitive kingship is probably too broad. As we saw just now, Polybius tells us that in the Achaean towns the violent overthrow of the monarchy led at once to democracy; and it is easy to conceive that in small societies undisturbed by conquest, and out of the main stream of industrial and commercial progress, a comparative equality in wealth and manner of life was maintained among the citizens much longer than elsewhere, so that when the king was superseded what naturally followed was a moderate democracy. I conjecture that this may have been the case in some parts of Arcadia also. But speaking broadly and generally, it is doubtless safe to affirm that when political society passed in Greece out of the stage of primitive kingship, it passed into that of primitive oligarchy.

It is to be noted that the transition took place at very different times in different States. In the time of Thucydides there are no kings left in any of the city-states that are in the full current of Hellenic civilisation; but that historian speaks (I. ch. iii.) of a "king of the Thessalians" in the middle of the fifth century, and we may infer from Herodotus (vii. 149) that Argos had a hereditary king at the time of the Persian war, whereas long before that date the so-called "king" at Athens has dropped to a mere elected member of a board of chief magistrates. In Corinth and Chalcis, the commercial centres which sent out colonies in the latter half of the eighth century, we learn that the

[1] Lect. II. pp. 35, 36.

colonies were sent out by a trading oligarchy. In Athens too the process, according to tradition, had begun before the middle of this century.

The process in the case of Athens, where we can trace the change most definitely, appears to have been very gradual. First the monarchical office is shorn of a part of its power by the appointment of a "polemarch" or commander-in-chief distinct from the king; then a third magistrate (ἄρχων) is appointed—who ultimately becomes the chief executive official for matters of internal government—and the kingly office ceases to be hereditary: then the term of office for all three is limited to ten years: then the office of chief magistrate—hitherto confined to the royal house—is thrown open to all the nobles (εὐπατρίδαι); finally (683 B.C.) executive functions are divided among nine annual magistrates. Meanwhile it would seem that, as a natural consequence of these changes, the council of elders, that had in earlier times shared the functions of government with the king, gradually increased in power. For when the chief magistracy became elective, the election naturally fell to this body: then, when the term of office became annual, as vacancies in the council were naturally filled by those who had served as magistrates, it is easy to understand how this permanent body would tend to become superior in prestige and power to the annual magistrate. When this process of change is complete, we have the oligarchical form of government definitely substituted for the monarchical.

The nature and ultimate result of this process of transition doubtless varied much in different communities; but almost everywhere kingship goes. Probably the change spread from community to community largely by conscious imitation; when one city had put down its king, its neighbour was moved to do the same; probably the insolence, oppression, weakness, of some kings, the ability and good government of others, hastened it here, retarded it there; but the result is too general and uniform not to be attributed mainly to general causes. And I think we may

largely attribute it to the simple conviction that as the unity and order of the gradually more civilised and concentrated community could be maintained without him, the single "gift-devouring king" had become a superfluous burden.

LECTURE V

EARLY OLIGARCHY IN THE GREEK CITY-STATE

In the preceding lecture we were considering the movement towards oligarchy in Greece, and concentrating attention on the relation of nobles to monarch. The nature of the oligarchy that succeeded was, as I have said, different in different cases. In some cases the main powers of government were retained within the royal family or clan, until the period of Tyrannis arrives. This was the case (*e.g.*) at Corinth, where we are told that the house of the Bacchids or Bacchiads ruled for ninety years—the last half of the eighth and the first half of the seventh century B.C.; a yearly magistrate being chosen out of the family to fill the place of the hereditary king. And, as I said before, we hear of similar kingly families exercising oligarchical rule in several other city-states up to the time of Tyrannis. In other cases, so far as our knowledge goes, the power was shared among a group of families when monarchy declined, *e.g.* Eupatridae at Athens and Hippobotae at Chalcis and Eretria in Euboea.

Let us now turn to consider what change, if any, took place as regards the third governmental element in the primitive polity—the assembly of the freemen in arms. There is no reason to suppose that any change in power on this side necessarily accompanied the reduction of monarchy. Here, doubtless, as Homer would suggest, the predominance of the wealthy landowners was complete in many cases before kingship comes to an end: the king was only the coping-stone of an oligarchical structure of society. Still it is easy to understand how the abolition of monarchy would

render the governing families even more decidedly predominant in this assembly, which we may suppose, with Grote, to have been retained with something like its primitive functions. But apart from any change in the relation of king to subordinate chiefs or elders, we may distinguish different causes operating to give this assembly an oligarchical character—causes somewhat different in different classes of states.

Before doing this it is needful to clear up a certain amount of vagueness and confusion that attaches to the ordinary notion of oligarchy. Oligarchy is defined by Aristotle as the rule of the rich few: and doubtless in times near Aristotle's the issue between oligarchy and democracy might be broadly stated as the question whether a rich minority should rule or the mass of free citizens. But this is not the only way in which Oligarchy = Rule of a minority might—or did—arise: since the whole body of citizens might be a minority, even a small minority, as compared with non-citizens (even excluding slaves).

This double conception of oligarchy[1] may be fitly illustrated from the case of the Greek state whose constitution most clearly recalls the features of the earliest known period—Sparta, the champion of oligarchy in Greece. We have in the Spartans a body of professional warriors—Herodotus reckons them at 8000 men at the time of the Persian war, and Aristotle reports a tradition that they were once as many as 10,000—an invading tribe permanently fixed by conquest in Sparta as owners of the land in certain parts of Laconia and Messenia; maintaining a singular system of rigorous education, drill, and semi-communistic regulation, with a view to the maintenance of simplicity of life and martial valour and skill. They lived on the produce of lands cultivated by a much larger number of serfs called "Helots"—at the battle of Plataea, in the Persian war, we find seven

[1] This double conception of oligarchy is overlooked by Freeman when he treats the three elements of his primitive polity—

King	as simply equal to	Monarchical elements.
Council of chiefs		Oligarchical ,,
Assembly of free warriors		Democratic ,,

Helots attending on each Spartan—serfs attached to the soil, but only required to supply a fixed amount of agricultural produce; and they held in political dependence the personally free inhabitants of the rest of the territory, whom we may estimate at more than three times their number.

Their original constitution was, as I have before explained,[1] the "primitive polity" but slightly modified. There were two kings—the cause of the duality not ascertainable, but probably due to an early coalescence of communities—whom we may regard as having originally the functions of the Homeric kings: in the period best known to us they were mainly important as hereditary generals; though they retained special religious privileges and conspicuous special honours, and also certain judicial functions. Secondly, there was a senate of elders, composed of men over sixty, elected for life by the assembly of fully qualified citizens—elected by a quaint old fashion of *acclamation*, estimated by officials placed so that they could not see who was acclaimed. Thirdly, there was the general assembly of full citizens over thirty, who had the power of electing senators and high magistrates, and whose assent was required in the rare event of a new law, and for the determination of war and peace, and the ratification of treaties.[2] This assembly of full citizens may be assumed to have originally consisted of the descendants of the whole conquering tribe—speaking broadly: but the condition of paying the contribution necessary to provide the common meals—which every Spartan with full civic rights was obliged to share—excluded the very poor: and this exclusion grew more important as time went on.

I ought to mention a remarkable restriction in the power of the assembly, said to have been made a century after

[1] Lect. II. pp. 38, 39.

[2] When Herodotus (vi. 56) tells us that the kings have the "right of making war upon whatever country they please, without hindrance from any other Spartans," I think he must be understood to mean not the right of declaring war, but of determining the course of the campaign after the declaration of war. Or Herodotus may have made a simple mistake: cf. Thuc. I. xx. Cf. also Herodotus, iii. 46; v. 64; vi. 106.

Lycurgus, that "in case the people resolved on a wrong course the senate with the rulers should reverse their decision." [1] It has been inferred [2] that this must have reduced the decision of the assembly to a mere form: but I think it evidently in no way affected their power of *refusing* assent to what was proposed—*preventing* any proposed change—it only gave an equal power of prevention to the senate.

This was the original constitution: but there was presently added a board of Ephors or Supervisors, elected annually in some way which we do not precisely know, but which, Plato says, comes near election by lot. Appointed, it seems, originally for police purposes, and as a check to neglect of duty or misuse of power by other magistrates, these Ephors gradually increased their power and became the supreme executive for domestic affairs, with a considerable amount of control even in war. Their power, in its nature and extent, the secrecy and relentless severity with which it was exercised, and its object — the maintenance of the constitution alike against discontented Spartans and discontented serfs and dependants—has some striking resemblance to that of the Council of Ten at Venice. They could arrest and imprison any Spartan—even magistrates, suspending them from their functions: even the kings were bound to appear before them after being three times summoned; and they had power of life and death over the serf cultivators and the inhabitants of the dependent towns of Laconia.

Now, in modern times, no one seems to have any doubt that the Spartan government is oligarchical or aristocratic (the two terms being used nearly convertibly—not distinguishing as Plato and Aristotle do the "government of men of merit" from the "government of the few rich"). But there is considerable disagreement as to the reason why it is so. Is it (1) because the Spartans are few compared to their many serfs and subjects? Or is it (2) because the

[1] Plut. *Lyc.* vi. 7.

[2] See Spencer, *Political Institutions*, § 488; derived from Grote, Part II. chap. vi. Grote's view, however, is that which I have given.

Spartans themselves are a many governed by a few? The former answer is not, I think, what a Greek would ordinarily have given. The Greeks regarded the Helots as broadly equivalent to the slaves in other cities, and Aristotle at least in considering the political constitution of Sparta ignores the non-Spartan inhabitants of Laconia altogether. And if we consider merely the internal political relations of the Spartan community, they present rather a doubtful and changing, than a clearly oligarchical character. There may have been a time at which the "real power was in the hands of the senate:"[1] but in Aristotle's time it is clear that the substance of power had passed into the hands of the Board of Supervisors or Ephors. Aristotle speaks, indeed, of the senatorship as a position of great dignity and honour—"prize of merit"—but he does not describe it as having more than judicial functions; whereas he speaks of the Board of Ephors as "having the decision in the most important matters," and having "very great and despotic power." And though Grote, taking this latter view, calls the Spartan government a "close, unscrupulous, and well-obeyed oligarchy," we may infer from Aristotle that, in the view of Greek political thinkers, the application of the term "oligarchical" to the power of Ephors over Spartans would have seemed at least doubtful. The office of Ephor was open to all full citizens; the mode of election, not precisely known, was certainly so far democratic that it gave no advantage to wealth and social position (Aristotle complains that it admitted "poor and venal" candidates); the Board only held office for a year, and were responsible like other magistrates when they laid it down. Accordingly, Aristotle's view is that when the Ephors became predominant "the polity gradually changed from aristocracy to democracy,"[2] *i.e.* of course so far as *rule over fully qualified Spartan citizens* is concerned.

Hence, so far as Sparta can be properly viewed as clearly and permanently exemplifying the oligarchical principle,—

[1] See Bluntschli, *Theory of the State*, Book VI. chap. xvii.

[2] See Aristotle, *Politics*, II. ch. ix.: compare also VI. (IV.) ch. ix.

and certainly, as Aristotle recognises, Spartan policy was steadily on the side of oligarchy elsewhere in Greece,—it must be on account of the relation of the whole body of the Spartans as a ruling "few" to a very much larger subject population. From this point of view the Ephorate may doubtless be regarded as an eminently oligarchical institution—I mean eminently adapted to the maintenance of a ruling minority against revolutions, whether initiated among their subjects or among discontented members of their own body. But it is important clearly to apprehend the difference between the two points of view. If we conceive of Sparta as an oligarchy throughout its history, it is not that the free warriors of Sparta lost their share of political power, but that they became practically a governing few in relation to their serf-cultivators and the free inhabitants of the dependent towns of Laconia. It is from this point of view only that Spartan rule is clearly oligarchical, at all periods of its history; though in later times the reduction of the number of fully qualified citizens,[1] through loss of the means required as provision for the regular training, made the fully qualified citizens a minority even of Spartans.

§ 2. And though the Lycurgean institutions of Sparta were unique, this kind of oligarchy, in which the original assembly of armed freemen of a conquering tribe becomes a "few" among the conquered many, is by no means unique. It is clear, *e.g.* that the Dorians in Argos entered into a relation to the conquered Achaeans closely similar to that of the Dorians in Sparta; we have the serf cultivators of the land appropriated by the conquerors — only called Gymnetes instead of Helots—and a similar group of dependent towns or villages, whose inhabitants had civil freedom but no political independence. So again, in the towns of Crete we find a similar threefold structure of society; Dorian conquerors, serf-cultivators, free but dependent provincials, and in Cretan institutions as in the Spartan, the assent of the assembly of free warriors is required to important measures; though Aristotle tells us that in his time it had

[1] See Appendix, Note A.

no substantial power. And it is at least not improbable that in most other places Dorian conquest led to a somewhat similar result at first. In other parts of Greece where the political society historically known to us traces its origin to conquest, the result, so far as our information goes, was—ultimately if not at first—a government entirely in the hands of leading families, or small groups of families. This seems to have been the case in Thessaly, where the power in different cities seems to have been in the hands of noble families tracing their descent from Heracles; also in Thebes, and in Boeotia generally, where all we hear indicates oligarchical rule strictly limited to a hereditary group of landowning families, which seems to narrow in course of time. So among the Dorians we hear of political privileges confined to 180 men in Epidaurus; and we find a similar limitation in Elis.

But it is not only through conquest that this kind of oligarchical position is acquired by the body that represents the aggregate of free warriors of the tribe. For in the Greek city-state generally citizenship depends normally on inheritance; the children of aliens born within the territory remain normally aliens—they are only admitted to citizenship by special favour, except at crises of change.[1] Hence any Greek community might easily become, in this sense, oligarchically constituted as it grew from small beginnings into a flourishing city; the number of free non-citizens attracted by its prosperity exceeding that of citizens thus limited by inheritance.

I conceive that oligarchical government may often have resulted in this way in the earliest stages of the history of a colony. The earliest settlers would divide the land they occupied for the most part into equal lots—it having been on this understanding that the original settlers collected together,—and as the colony flourished and grew, the descendants of these "land shareholders"[2] would keep the

[1] In this they differed, of course, from modern Europe, where the children of aliens usually become citizens of the country in which they are born.

[2] γαμόροι or γεωμόροι. At Syracuse and Samos they were oligarchical, not at Athens.

privileges of citizenship to themselves, excluding both their serfs and the trading population that the prosperity of the town gradually attracted: and thus the government would gradually become oligarchical.[1]

On the other hand where, as in Athens, the city-state that we historically know was formed by "integration"—that is the *political* coalescence of a number of smaller towns that still continued to have a separate existence—it seems that this coalescence itself must have tended to throw the share of power originally exercised by the citizens *en masse* into the hands of the larger proprietors—the men of old family and wealth—who actually took up their abode in the central town. They alone would remain practically citizens in the full political sense, for even though the smaller proprietors were not formally excluded from the assemblies, they would seldom be able to attend.

Thus, as I conceive, in more than one way, without any formal change in the political position of the old assembly of freemen, a concentration of political power in the hands of a comparatively small minority of the free members of the community might be gradually brought about.

§ 3. There is, however, a further important cause—traceable in some cases, and which we may assume to be tolerably widespread—tending to produce an economic condition favourable to oligarchy, namely, growing inequality of property. There is, I think, sufficient evidence of an indirect kind, to make it probable that in primitive Greece the tenure of land was at first largely collective; that is, with pasture common, and allotments of land approximately equal, appropriated

[1] The Transvaal is an instance in our own time of the development of an oligarchy in this way.

I suppose that a process of this kind had taken place at Apollonia on the Ionian sea, and at Thera, where Aristotle (*Pol.* VI. (IV.) iv. 9 (1290 b)) tells us that there was "a minority of simply free"—not necessarily wealthy—"citizens ruling a majority," the civic honours being "engrossed by the families which claimed a pre-eminent nobility, as having been the original founders of the colonies, although they were numerically few and their subjects were many." As I go on to explain, the number of the ruling class would usually tend to be diminished by the loss of land—and consequently of full civic rights—on the part of many of the descendants of the original citizens.

perhaps at first temporarily to ordinary members of the community: larger portions being specially appropriated to chiefs and sometimes to braves who have rendered special service to the community.

As regards pasture, the fact that values in early times were measured in cattle seems decisive; since it is difficult to see how cattle could be a convenient medium of exchange unless pasture was in common. As regards arable land, a change seems to be taking place during the period of composition of the Homeric poems. In the Iliad, while we read of common arable land, it is noteworthy that none of the terms applied to a rich man imply landownership; the rich man is either described as a "man of many flocks and herds" or as a "man of much gold" and "much copper." And even in the Odyssey the term applied to a large landowner, "man of many lots," carries us back to the time when portions of land—doubtless roughly equal—were distributed by lot among heads of families. Again, the old institution of common meals, at Sparta and elsewhere, is probably a survival from collective ownership of land by a group of real or fictitious kinsmen.

Even after complete appropriation had come in, we find from Aristotle that there were several states, *e.g.* Sparta, in which, for some time longer, the buying and selling of the lots of land was either altogether prohibited or discouraged—only permitted under exceptional circumstances. Still, even the division of inheritances in families of varying size would tend to inequality; and the tendency would operate more rapidly when sale and purchase was permitted.

Now we may fairly infer from Solon's constitution—taken in connexion with the analogies of Rome and Germany—that for some time after private property in land had been fully developed civic privileges and burdens remained connected with the ownership of land of a certain value. The landless freeman who had to work as a hired labourer would be relieved of the duty of fighting at his own charge, and would therefore probably lose his place in the assembly of freemen. The political power of large

landowners would, in any case, tend to increase as their possessions increased. And this increase of power would be specially marked so long as the importance of cavalry was predominant in war; which was the case in early times—not of course equally everywhere, still widely.[1] The infantry seems to have long remained an unorganised rabble, except at Sparta. Obviously, only the comparatively rich could afford cavalry equipment for themselves and their followers. Thus we understand how, as Aristotle tells us, the first "polity" or constitutional government in Greece, which was formed after the era of the kings, was substantially under the control of the "knights"[2]—landowners who formed troops of cavalry at their own charges. I conceive, however, that the smaller landowners, who would serve as foot-soldiers at their own charges,—called at Athens "land-shareholders" (γεωμόροι) in distinction to the gentry of old family (εὐπατρίδαι)—would retain a place in the assembly of free citizens and the right to take a part in elections, though the offices and the substantial power would be concentrated in the hands of the gentry.

This constitution Aristotle does not consider to have been at first oligarchical in the bad sense of the term: *i.e.* not an oppressive or selfish rule of the few. And, though I do not regard Aristotle as an important authority on a period so early, I think it probable that this was largely true: that these early governments of few may be fairly called "natural oligarchies," meaning that power was left in the hands of the Few, because the Many were not fit for it and did not seem to themselves to be so.

I conceive, then, that oligarchical conditions come to predominate not in one simple way, but in a variety of ways; partly through the concentration of power in the hands of the old council, raised in power by the substitution of an

[1] I may observe that as the art of war progressed the preponderance was transferred from the knights to the heavy-armed infantry, and at a later stage again, old-fashioned soldiers were startled to find battles lost and won by light-armed troops: and Aristotle says that the development of this form of warfare gave an important gain to the poorer citizens in civil dissensions.

[2] *Pol.* VI. (IV.) 13. See Appendix, Note B.

annual magistrate or board of magistrates for the hereditary king; partly through the limitation of the numbers of fully qualified citizens (*a*) by the exclusion of the conquered in states founded on conquest and of later immigrants in colonies, and (*b*) by the effect of inequality of wealth and of political "integration" combined in states like Attica. Oligarchy is thus established in the states taking the lead in civilisation as early as the eighth century. As I said, in the period of colonisation which begins soon after the middle of the eighth century—in which Corinth and Chalcis in Euboea take a leading part—these commercial states have already passed into the stage of oligarchy. But it begins at different times in different communities and lasts for varying periods. Then in the seventh century the movement against oligarchy begins—but in parts of Greece where agricultural industry predominates and conservative habits hold sway, it lasts longer, so far as we know undisturbed.

Frequently, however, in the first stage of the struggle for power between the oligarchs and the masses, the defeat of the oligarchs does not result in the establishment of democratic institutions: Demos in this first stage is unripe for rule. The mass of free citizens have not sufficient diffused intelligence and faculty of combination to grasp collectively the reins of power: these are seized by an ambitious individual who has taken the lead of the movement with an eye to his own aggrandisement. Thus we have Tyrannis, a reversion to monarchy, but to monarchy in almost all cases of an irregular unconstitutional kind, universally regarded as a breach of right and established order, even when the monarch governed with mildness and good effect.

LECTURE VI

TYRANNIS

§ 1. I HAVE before spoken of the phenomenon of "Tyrannis" —the tendency, at a certain stage or stages of the development of Greek polity, for the government to fall into the hands of a single individual, who—in all the particular cases of lifelong despotism historically known to us—obtains power in a violent and irregular way; and who sometimes succeeds not only in holding it for life, but also in transmitting it at his death to some member of his family. This, as I said, is a feature which distinguishes the development of Greek from that of Roman polity; and it is also interesting to the student of Political Science, from the remarkable parallel which we find to it in the political development of the medieval city-community in Italy—to which I shall draw attention later.

I use the Greek name "Tyrannis," because, on the one hand, the English word "Tyranny" suggests too decidedly that the Tyrannus used his power in a practically oppressive, arbitrary, and cruel manner. This was often so, but not always, and the Greek word, as used by writers of the fifth and fourth centuries, does not imply it. Thus Aristotle, writing in the last quarter of the fourth century, tells us that there are two methods by which a "Tyrannus" might preserve his power: the repressive, which was the method adopted by the majority, and the conciliatory; but he implies that a Tyrannus who governed with mildness or moderation would be none the less a Tyrannus. On the other hand, the word "despot" does not sufficiently suggest the lawless and irregular character of the power. And this is a

fundamentally important characteristic, at least down to the time of the Macedonian predominance. The Greek Tyrannis, in almost every case known to us in free Greece, begins in a *coup d'état*, and remains irregular and lawless. We know of no case in which an independent Greek state ever "offers a crown," unless the acceptance of Gelon as king of Syracuse, after the victory over the Carthaginians, is an exception: and even this is not quite clear.

In considering the extent and conditions of Tyrannis, we are led to distinguish between an earlier and a later period. The earlier period favourable to Tyrannis begins, so far as we know, in the first half of the seventh century, in Greece proper; and in this region and in the islands and Asiatic cities (leaving out of account the eastern cities that have fallen under Persian rule) has, speaking broadly, come to an end before the end of the sixth century. It must be understood that it begins and ends at different times in different cities: and that in no particular case is this irregular despotism, even when it becomes hereditary, very long-lived. According to Aristotle the duration of the Tyrannis of Sicyon—a hundred years—is the longest. But the "Age of the Tyrants" in these regions may be taken to be about 650 to 500 B.C. Then follows the time of vigorous and brilliant republican life which begins with the Persian wars and lasts till the predominance of Macedonia. This is the period which we chiefly read about when we read Greek history: it is the time when the political consciousness of the Greek city-state is at its height, and republican sentiment, whether oligarchical or democratic, is on the whole too strong to admit of a lapse into despotism.

In the younger colonies of Sicily and Southern Italy, the period of the earlier Tyrannis begins and ends at a later date. It does not begin till the end of the seventh century, and its most brilliant time in Sicily is the first quarter of the fifth century—not long before the general putting down of Tyranni, 467 B.C.

Then what we may distinguish as the later Tyrannis begins soon after 400 B.C.: but, at least until the time

of the Macedonian supremacy, it does not spread to any extent comparable to the earlier. The distinction between the two is not to be pressed too far, as if there were a sharp division between the types belonging to the two periods respectively; but, speaking broadly, the causes of the two are different. The causes of the earlier Tyrannis belong more to the inner political development of the Greek city-states: it is usually rendered possible—the opportunity is given—by the first imperfect movements towards popular government. The causes of the later Tyrannis appear to lie more outside the general development of the polity; political disorder is always a favouring condition, but an important cause is the growing tendency to employ mercenaries.

Another kind of cause, which is operating in certain parts at the end of the first as well as in the second period, is the relation of weak states to powerful neighbours. An individual ruler is found by the powerful neighbour to be the most convenient way of governing what is practically a dependency. From this cause, for example, Tyrannis became prevalent in Ionia on the coast of Asia Minor at the end of the sixth century B.C.,—and in Greece generally after the conquest of Persia by Alexander, and before the development of Federalism, as manifested in the growth of the Achaean League, largely brings it to an end.

Speaking broadly, we may say then that the earlier Tyrannis occurs before the citizens of Greek city-states have arrived at full political consciousness. The later revives, after the habits of peaceful industry have diminished the ordinary citizen's power and habit of self-defence. And accordingly, as Aristotle explains, the person who becomes Tyrannus is a different type in each case. In the earlier times, before rhetoric was developed, the man who acquired the position of leader of the popular movement was usually a man of military ability; so that the transition from demagogue to Tyrannus was easy, and the Tyrannus of the first period was for the most part developed out of a demagogue. The later demagogue, on the other hand, was

ordinarily not a fighting man, and therefore not qualified for a successful *coup d'état:* and the later Demos, having arrived at political maturity, was generally less easy to deceive. But though more difficult to wheedle it might be coerced; and the development of the mercenary system of fighting offered dangerous opportunities for coercion by daring adventurers with military ability, especially when faction and bad government had weakened the attachment to constitutional government and the effective coherence of the community.

§ 2. The causes of the movement against early oligarchy seem to be:—

1. Oppression of smaller cultivators by men of wealth, partly by encroachments on common rights, as, *e.g.*, in Megara, where Theagenes the tyrant killed the cattle of the rich that were encroaching on common land;[1] partly again—as civilisation goes on—through increasing recourse on the part of the smaller cultivators to the dangerous resource of borrowing from the rich, so that the rich oppress the poor as creditors under the old severe laws against debt—as in Rome later.

2. In commercial towns the growth of new wealth outside the closed group of old families, which raised up a growing force of new claimants for full citizenship.[2]

3. The awakenment of mind due to trade and communication; and concomitant decaying of old simplicity of manners and old moral restraints, leading to more offensive luxury and insolence of the rich.[3]

To these we may add: 4. Distrust of unwritten law, which gradually came to be used more and more as an instrument of oppression by the rich who administered it.

This last, and partly the first, is sometimes met by the introduction of written codes. The seventh century is the period in which the codifier or legislator appears for the

[1] Aristot. *Pol.* VII. (v.) ch. v. 9 (1309 a).

[2] See Appendix, Note C, on *Early Oligarchy and Trade.*

[3] Aristotle (*Pol.* VII. (v.) x. 19 (1311 b.)) tells us that the Penthalidae were put down at Mitylene in Lesbos, because they went about the streets beating honest citizens with bludgeons.

first time in history as distinct from legend, as well as the Tyrannus. He appears first in the colonies; Zaleucus at Locri (about 662 B.C.) is mentioned as the first author of written legislation,[1] and Charondas of Catana was not much later. In both cases it seems a probable conjecture that the codifier saved the state from Tyrannis.[2] About the same time as Charondas, or earlier, we have Dracon's legislation at Athens, and, a little later, Solon's. The latter, however, did not prevent Tyrannis.[2] We do not know how far Zaleucus or Charondas or Dracon had political power entrusted to them. Solon, we know, had, and he accordingly may be classed as an example of the Aesymnete. The Aesymnete was, as Aristotle says,[3] a despot or dictator—that is he had unlimited power—but elected according to law; elected either for life or for a term of years—Solon only for one year—or to do a particular work. The instance Aristotle gives is Pittacus of Mitylene, who was appointed for ten years (590–580 B.C.). Aristotle says that he was the framer of a code, but not of a polity (*ἐγένετο νόμων δημιοῦργος ἀλλ' οὐ πολιτείας*, *Pol.* II. xii. 13). Probably he made the oligarchy tranquil and tolerable; at any rate we hear of no Tyrannus afterwards.[4] But this regularly appointed dictator is exceptional; the far more ordinary phenomenon is Tyrannis.

§ 3. In considering the conditions of the earlier Tyrannis we must bear in mind the great inequality in development

[1] Strabo, vi. 259.

[2] Solon does not "save Athens from tyranny," but gives a better preparation for working democracy; the forms of the Solonian constitution seem to have lasted through the Tyrannis.

[3] Arist. *Pol.* III. ch. xiv. 9 (1285 a); VI. (IV.) ch. x. 2 (1295 a).

[4] But Pittacus comes after a Tyrannis; indeed he put down a Tyrannus, Melanchrus (612-609 B.C. *circa*). Nic. Damasc. fr. 54 (Ap. Müller, vol. iii. pp. 388, 9) mentions as an Aesymnete Epimenides at Miletus, who was appointed in consequence of the murder of one Neleid by another who made himself Tyrannus; the rule of the Neleids was thus put down. This is not obviously due to a movement against oligarchy. Also Gilbert (*Griech. Staatsalt.* vol. ii. p. 141) remarks that Aristarchus at Ephesus—at the time of the revolt of the Persians against the Medes—is rather an Aesymnete than a Tyrannus. On the whole, there is inadequate evidence that the Aesymnete results from a struggle of Demos against Oligarchy.

of different parts of Greece, owing to which, even within the little area of Greece and her colonies, different independent communities were at the same time at different stages of development.

Civilisation, carrying with it tendencies to political change, came to Greece from the sea; so that the inland populations tended to fall behind the maritime in political development. And it came from the South and East. Egypt and Phoenicia, especially Phoenicia, handed on the torch of civilisation to Greece; so that the inhabitants of the North-west were behind those of the East and South—even the maritime parts—except so far as they received colonies from Corinth, whose exceptional position enabled her to trade equally with East and West alike. This inequality of development is strikingly shown by the different times at which different parts of Greece adopted city life. This is a point of much importance. The type of political society, of which the political and social life is concentrated in a central city, became, as we have seen, as civilisation in Greece developed, the recognised prevalent type of a civilised polity. But we must not suppose that the small independent communities of Greece assumed this form at anything like the same time everywhere. It is true, on the one hand, that it is coming in in Homer. In the Odyssey the chiefs and nobles of Ithaca, the class from which Penelope's suitors came, are conceived by the ninth- or eighth-century poet as all living in the single city of the island, and the foreign suitors are described as "those from other cities."[1] On the other hand, Thucydides[2] tells us that in his times, the latter half of the fifth century, the western Locrians, Aetolians, Acarnanians, and other inhabitants of the north-western continent of Greece lived still in the old-fashioned way in small unfortified villages, and consequently retained the old habit of carrying arms, which had been long ago abandoned in the growing security of the more civilised parts of Greece. In a great part of Arcadia, again, the "canton," or group of villages, remained the normal political unit until a comparatively late

[1] *Od.* xxiv. 418. [2] Thuc. i. 5.

period: and it is interesting to trace in the case of Arcadia—of which more is known than of the western parts of which Thucydides speaks—the gradual process by which the urban type of polity invades the mountainous district. The most striking events in this process are the cases of what the Greeks called "synoikism"—a conception and fact quite peculiar to Greek history—the deliberate and artificial transformation of a number of villages into a town; of which a conspicuous and well-known case is the foundation in the fourth century of a "great city," Megalopolis, in the south of Arcadia, as a rival to and bulwark against Sparta, founded at the instigation of the Thebans after the battle of Leuctra.

It must be observed that this synoikism has a double aspect, political and material. It is essentially and primarily a political change, but it carries with it a material change to a varying extent. What is determined and enforced is that the political life of a group of villages, which have hitherto been largely independent, is to be carried on in either a new city or an old city enlarged; that the governing assemblies and councils should meet in this city, and the governing individuals permanently reside there. As to the rest of the villagers, it would be usually left open to them to reside in their old dwellings if they like; but if they do, they must be content to be governed from the central town.

In earlier times the process of "integrating" the canton—the political community scattered in villages and small towns, with considerable local independence—into a city-state was doubtless less artificial and more gradual: but in one form or another it is going on all through Greek history.

I noticed in the last lecture how, in the earlier time, this change first tends in the direction of oligarchy so far as the constitution of the assembly is concerned. The rich men congregate in the new or enlarged city, the poor cannot afford to leave their farms; so that even without any formal deprival of old constitutional rights, the latter would cease practically to attend the general assembly of freemen. At the same time, the same concentration, as the industrial and

commercial element of the cities grows, naturally favours the movement towards democracy, of which the earlier stage gives the opportunity for Tyrannis.

But this growth of industrial elements, again, would take place very differently in different states, even where the government was centralised. In preponderantly agricultural districts, where the mobility of mind due to easy communication with foreigners, the variety of industry that trade brings with it, and the accompanying enlargement of desires are not found, the old "natural oligarchy" of rich landowners would naturally remain much longer; and in such districts, when the time for democratic movement came, the idea of Tyrannis had become abhorrent to the political consciousness of Greece generally, so that this stage drops out in their development.

§ 4. Accordingly we cannot regard Tyrannis—even in the period known as the age of the Tyrants—as a stage through which the Greek polity universally or even normally passes, though it is a stage very generally passed through by states developing under certain conditions. Certainly there are many instances of Tyrannis, and doubtless more would be known to us if our information were more complete. But, looking closer, we are able to distinguish, and it seems to me important to distinguish, the parts of Hellas and her colonies —expanded Hellas—where the conditions during a certain period were favourable to Tyrannis from those where they were unfavourable.

In the cities on the coast of Asia Minor, and the Sicilian and Italian colonies, it seems very general, and in those parts of old Greece that were open to the influence—at once civilising and disturbing—of commerce. But we cannot say this of the larger part of old Greece.

Let us glance at it. Passing over the less civilised and progressive peoples of the north-west, where primitive conditions of life and village communities went on, we find in Thessaly that oligarchical conditions continue much beyond the period of early Tyrannis, and when Tyrannus at length comes in, it is not the demagogue Tyrannus. Then in

Boeotia we do not hear of Tyrannis. There is a close oligarchy at Thebes at the time of the Persian war, which seems to be a survival of an old state of things, and when the time comes in the fourth century for an effective democratic movement, it is too late for Tyrannis; and probably this is true of other Boeotian cities. Passing to Peloponnesus—in Sparta and Laconia of course there was no Tyrannis: nor was there in Argos, which was saved perhaps by the survival of kingship with reduced powers. Nor have we any evidence of Tyrannis in Elis nor in the smaller, more democratic communities of Achaea, or in the cantons of mountainous Arcadia.

On the other hand, Attica and the maritime and mostly commercial states of the Isthmus and Euboea—Sicyon, Megara, Corinth, Chalcis—afford, from the middle of the seventh century onward, famous instances of the earlier Tyrannis; and, as I said, in a period somewhat later, we find it flourishing in the colonies—including the city-states of the Asiatic coast formed by Greek immigration before colonisation proper begins. It is especially rife in the Sicilian colonies, where it has a brilliant career. Colonial polity was doubtless naturally more mobile,[1] and perhaps also the mingling of races was favourable to Tyrannis.

And this leads me to notice that in some cases, again, Tyrannis seems to be excluded, even in regions where it abounds, by the broadening of the basis of the oligarchy. It is not an infallible remedy, but it seems, on the whole, efficacious. For example, there are five cases[2]—one in Asia Minor, three in Italy, one in northern Greece—in which, though the government is still regarded as an oligarchy, the supreme deliberative body is in number a "Thousand." Considered relatively to the size of the Greek city-state, and as compared, *e.g.*, with the oligarchical rule of single families, or small groups of families, this may

[1] See Appendix, Note D, on Priority of Colonies in Civilisation.

[2] Kyme in Aeolis, Opus and its colony Italian Locri, Rhegium, Croton. There is also Colophon, but I think the evidence for the existence of a formally limited political body of this kind at Colophon is not adequate.

be regarded as a broad-bottomed oligarchy: and in one case at least its establishment is described as an extension of citizenship. Now, it is noteworthy that in three out of these five cases we hear nothing of Tyrannis (though four of them are in the region of Tyrannis), and in one of the remaining two the Tyrannus is clearly imposed from without, as an instrument of foreign rule. Accordingly, though our information is very imperfect, it seems fair to assume that this broad-bottomed oligarchy was less exposed to the disorders that gave the opportunity to the would-be Tyrannus.

Similarly, in one or two cases where we hear of an extension of political privilege leading to a governing body of 600, we do not hear of Tyrannis.[1]

§ 5. Before leaving Tyrannis a word should be said of its effects. It is difficult for us to judge of these, especially in the earlier form, for we feel that some deduction must be made from the darkly coloured accounts of the ancient writers; we have the proverbial "lion painted by the man"; we do not know the case for the other side.

It is nevertheless noteworthy that in Greece, in spite of the prevalence of the Tyrannus in fact, we do not hear any theoretical defence of him. For instance, we do not hear that he ever posed as the defender of order, or religion, or as the embodiment of the will of the people and vindicator of its rights against oligarchical oppression. That is a defence which modern writers have given for him, but I know no Greek writer who gives it: and though, as we have seen, many tyrants make their way into Tyrannis through demagogy, they are not usually described as even theoretically maintaining the character of popular leader when they have established their rule. Practically, no doubt, they do this to some extent, especially the original Tyrannus; he continues his demagogy, but his successors usually assume the monarch. Thus, in the case of the famous 100 years Tyrannis at Sicyon, Cleisthenes is said to have crowned the man who

[1] Heraclea, Massalia (Arist. *Pol.* VII. (V.) vi. 3), but compare Syracuse in the fourth century.

decided against him as umpire in an athletic contest.[1] So at Athens, Pisistratus is said to have stood his trial before the Areopagus. So at Corinth, again, Cypselos was noted as having never had a bodyguard of spearmen during his rule. But this "popularity" seems to wear out, if not in the lifetime of the first Tyrannus, at any rate in that of his successor if he succeeds in making his power hereditary. So that Demos often joins cordially—and sometimes with passionate resentment—in the expulsion of the despot.[2]

But no doubt it was chiefly the rich and well-born who had cause to hate the Tyrannus. Certainly the "repressive method" of despotic rule, which Aristotle characterises for us, was directed chiefly against the well-to-do. The repression of banquets and clubs, of education, and of all sources of high spirit and mutual confidence among the governed, the maxim that the tyrant's subjects were to be kept "poor" and "busy"—all this would practically affect the rich only; —the poor were doubtless "busy" before. This repressive method was traditionally attributed to Periander of Corinth, one of the most famous and powerful of the Tyranni of the earlier type, and the story that Herodotus tells,[3]—how Periander of Corinth sent to Thrasybulus of Miletus, asking counsel in the art of government: how Thrasybulus took the messenger into a cornfield, talked to him about his journey, and while talking lopped off the tallest ears of corn, but gave no other answer: and how Periander understood the symbolic act—this also suggests that it was chiefly the "men of light and leading" that had to fear. So, again, the public works by which more than one Tyrannus gained fame—*e.g.* the building by the Pisistratids of the temple of Olympian Zeus at Athens—would give employment for the poor, while the taxation needed for this would fall chiefly on the rich. The same may be said of wars—at any rate such as the brigandage of Polycrates of

[1] Arist. *Pol.* VIII. (V.) xii. 2.

[2] See the case of Corinth (Nic. Damasc. fr. 60 (Ap. Müller, vol. iii. p. 394)), Chalcis (Arist. *Pol.* VIII. (VI.) iv.).

[3] V. 92.

Samos—but probably the booty of successful wars would generally render them popular.

On the other hand, we ought to note the success of the Tyranni in raising the power and prestige of the State. The Tyrannis of Sicyon seems to be its only period of greatness and — apart from party feeling — Corinthians must have had some pride in Periander, and Samians in Polycrates. Gelo at Syracuse, who, contemporaneously with the Persian invasion of Greece, defends the cause of Hellenic culture against the Carthaginians in Sicily, is a striking instance of this; after his great victory he is hardly a Tyrannus, he is an accepted monarch. We must note, too, that the Tyrannus often adorns his city and patronises literature and art.

But probably unconstitutional rule, condemned by the common moral sentiments of the more cultivated part of the nation—at any rate before the period of Macedonian predominance—was almost always found demoralising in the long run. It is, at any rate, remarkable that though Tyrannis seems to have been by no means always oppressive in its method of government; though it seems to have been sometimes mild and judicious, raising the power and fame of the community, prosperous in war and encouraging art and learning at home: still, being always irregular and lawless and introduced by violence, it was unmistakably condemned and repudiated by the moral consciousness of Greece.

The profound distinction drawn between monarchy on the one hand and both oligarchy and democracy on the other is not easily apprehended by us, studying the history of Greek political struggles in the light of modern ideas: we find that monarchy no doubt is introduced by *coups d'état*, but so are democracy and oligarchy continually brought in by revolutions that seem no less violent and lawless: especially since, in the struggle between Athens and Sparta for supremacy, each of the leading States was identified with one or other of the contending political principles. To explain the special abhorrence of Tyrannis

we have to bear in mind (1) that even when democracy or oligarchy is initiated or aided by violence, the constitution actually fixed is commonly the result of some compromise agreed upon and so formally lawful; and (2) that monarchy—at least in the period before Aristotle known to us from contemporary historians—never comes in in any other way. Further, we have to note that in the debate carried on between oligarchy and democracy there were theoretical reasons on either side of undeniable force. *Cæteris paribus*, it is obviously reasonable that the judgment of the many should prevail over that of the few; *cæteris paribus*, again, it is obviously reasonable that the judgment of the wise and good should prevail, whether they be few or many; and the minority of persons of wealth have at any rate special opportunities—through leisure—of acquiring political wisdom, and special immunities from the temptations that are the chief cause of ordinary crimes. But no similar theoretical reason could be found, as regards the human beings existing at the time when political theories were framed, for making the judgment of one prevail over that of his fellow-citizens generally.

The question may be asked, on what did the tyrant's power, if thus generally disapproved, rest as its basis? Government normally rests on either active sympathy and approval, or on habit of obedience of—if not the whole community—at least a part formidable to the rest. On what, then, did the tyrant's power rest? The answer, I think, is this: tyrannis generally begins with the more or less avowed support of a powerful section of the citizens—generally the poorer class—discontented with the actual government; but it does not need, when once established, any support beyond that of a limited body of mercenaries, who do not care what the tyrant does so long as he pays them—the citizens generally being kept obedient through habit, fear, and lack of combination.

When the period of the earlier Tyrannis is past, we enter on the stage in which republican government of some kind is normal, and for some time almost universal;

the prevalent political sentiment in the city-state is, as I said, for a century or so, almost everywhere strong enough to exclude Tyrannis. The issue accordingly lies in this period between oligarchy and democracy: the general characteristic of this stage of development is that there is a decided drift towards democracy; though in a minority of cases oligarchy maintains itself, and in a larger number there is a prolonged struggle between the Few and the Many which never seems to be decisively settled, until in the latter half of the fourth century the Macedonian predominance introduces new conditions. I am inclined to conjecture that if the internal development of these states had been undisturbed by their external relations, the movement towards democracy would have been on the whole more unmistakable, though it would still doubtless have been less complete in some cases than in others. But the predominance of Sparta—however balanced by that of Athens—gave an important support to oligarchy elsewhere, especially before the battle of Leuctra, 370 B.C.

LECTURE VII

GREEK DEMOCRACY

§ 1. In my last lecture, after completing what I had to say of the conditions of the earlier Tyrannis, I went on to characterise briefly the struggle between oligarchy and democracy that is going on through the most brilliant period of free Greece, from the Persian War to the Macedonian predominance — say 480 - 336 B.C. — one and a half centuries. The general characteristic of the political movement is a drift towards fully developed democracy, that is from more oligarchical conditions to moderate democracy, and from moderate democracy to extreme democracy.

The drift towards democracy can, however, only be traced in a broad way — it is by no means uniform or steady. In a few cases oligarchy, perhaps with some democratic forms—assemblies of citizens for some purposes —seems to maintain itself; in more cases we hear of revolutions and transient lapses into oligarchy. The tendency to democracy is partly interfered with by the external relations of states—*e.g.* the important commercial centre, Corinth, seems to have been kept oligarchical almost all the time after the earlier Tyrannis down to the Macedonian period by the influence of Sparta. It must be remembered, too, that our information is very fragmentary. Still on the whole the drift is unmistakable; of the changes that we hear of—though we cannot say "vestigia nulla retrorsum"—still, many more are towards democracy than from it.

And the "naturalness"—if I may so say—of democracy

is made to appear by the political enthusiasm that accompanies it, and by the fact that a national movement is so often also a democratic movement. We may illustrate this by the brief brilliant period of democracy at Thebes, in the first part of the fourth century. It is a movement at once democratic and national which carries Thebes to the commanding position in which it is placed by the battle of Leuctra in 370 B.C.—the decisive battle which put an end to Spartan predominance and unique military prestige. Another example may be found in the development of Arcadia immediately after. When, under the influence of the Theban leaders during the period of Theban predominance, Arcadia gave itself a new federal constitution, and at the same time formed, as I have noticed,[1] a new "great city" out of a number of villages for more efficient resistance to Sparta, the government of the new Pan-Arcadian union was, as a matter of course, democratic in form; the governing body included all of fighting age. So again, when after 334 B.C. Alexander frees the Ionian cities from Persian domination, he is described as giving them back democracy as a matter of course.

And this drift is clear from Aristotle, and the reason he gives for it is noteworthy: "Now that cities have grown so large, it is not easy to establish any other form of government."[2] Further, the drift is seen in another way, in the fact that democracy tended to become more democratic up to Aristotle's time. What he describes—very unfavourably—as the extreme form of democracy, in which the decrees of the popular assembly are above the law, was, he tells us, chronologically developed last. We may note, too, that Aristotle says that democracies are more "secure and permanent" than oligarchies,[3] and again that oligarchy and Tyrannis are the most shortlived among forms of government.[4] I take this to refer to the oligarchies of this later period, and to indicate that the reactions to oligarchy in this period of drift to democracy were mostly transient.

[1] See Lect. VI. p. 92.
[2] *Pol.* III. XV.
[3] *Pol.* VI. (IV.) xi.
[4] *Pol.* VIII. (V.) xii.

§ 2. I should now like to give a general characterisation of the types of oligarchy and democracy in this period. But as regards oligarchy we lack the evidence. We know something of the Spartan constitution; but I may again remind you that the Spartan polity was *sui generis*, a quite peculiar survival, not, in the Greek view, clearly an oligarchy—at any rate not a representative oligarchy. All I shall do, therefore, is to notice briefly what Aristotle, in the *Politics*, gives as a summary classification of oligarchies, arranging them in order of intensity.[1]

The mildest kind of oligarchy—sometimes called timocracy—was one in which there were public assemblies and numerous juries or courts of law, as in a democracy, only limited to persons possessing a certain property qualification, high enough to keep these functions in the hands of a minority of the citizens, but not so high as to make the minority a small one. The higher the property qualification, the more intensely oligarchical, of course, the form of government became: but this was not the only way of intensifying oligarchy. Sometimes the function of deliberating and deciding important matters of state—war and peace and treaties, legislation, election and supervision of the executive—which were exercised in a democracy by the general assembly of citizens, was confined, wholly or in part, to a small elected body; sometimes, again, the oligarchical character of the constitution was intensified by the vacancies in such a deliberative body being filled up by cooptation; sometimes, finally, the membership of such a body was made hereditary and thus the extremest form of oligarchy attained.

Election to the Magistracies in an oligarchy was similarly limited by a property qualification; and the magistrates were usually, altogether or for the most part, appointed by suffrage—not by lot; only in the intensest form of oligarchy were the magistracies made hereditary in certain families.

[1] *Pol.* VI. (IV.) vi. See also *Pol.* VII. (V.) vii. Aristotle's classification of different kinds of oligarchy would be of more use if he had had—as he appears not to have had—any conception of historical development rendering the kinds of oligarchy prevalent at one period different from those prevalent at another.

Sometimes, we gather, the right of voting in the assemblies was formally wider than it was practically: it being an oligarchical artifice to secure practically a preponderance of the wealthier by the apparently severe method of fining them for non-attendance. It was characteristic of oligarchy, too, to have a *small* council for the initiation of measures to be passed by the deliberative body, as contrasted, *e.g.*, with the large "Boule" of 500 at Athens.

§ 3. Let us pass to consider democracy, of which, from the literary splendour that surrounds Athens, we know more. In the case of democracy, too, the question is simplified by the express statement of Aristotle that the drift towards democracy was a drift towards fully developed or extreme democracy.[1] And of this we may take the Athenian constitution of the fourth century as a type.

In the fifth century the process of development is going on at Athens; in the fourth we have the finished result. This appears clearly from the recently discovered monograph, professedly by Aristotle, and clearly of his age, on the constitution of Athens. The writer regards the constitution as established in 403 B.C. as identical with that under which he was living at the end of the third quarter of the fourth century. He reckons it as the eleventh; and of the

[1] Aristotle distinguishes four kinds of democracy, and his order of merit is so far the reversal of the chronological order that the best is undoubtedly the oldest (cf. *Pol.* VII. (VI.) iv.) and the worst undoubtedly the latest (cf. *Pol.* VI. (IV.) vi.). Probably the intermediate in demerit are also regarded by him as intermediate in time; but they are rather vaguely conceived. His more historical idea of the best is clearly near the Solonian: in which all free citizens had the right to elect the officers and to call them to account and to judge (αἱρεῖσθαι τὰς ἀρχὰς καὶ εὐθύνειν καὶ δικάζειν), but the magistracies were limited by property qualifications; and where the people being mainly agricultural were too busy to have many assemblies, and practically too busy to serve on juries, there being no payment for either.

Aristotle mentions as an instance of the best kind of democracy the Mantinean. This would long remain purely agricultural, and Herodotus and Polybius both testify to its high reputation. Here, as Aristotle maintains, the assembly did not elect to the offices; this was done by a body elected from all the citizens (τινὲς αἱρετοὶ ἐκ πάντων). What other democracies of this old type there were, we do not know. The language of Polybius suggests that Achaea may have furnished examples of such.

preceding ten stages no less than six belong to the fifth century. The century opens with the moderate democracy of Cleisthenes; but the Athenian democracy is not finally delivered from "oligarchical tutelage"[1] by the reforms of Cleisthenes. Indeed it is, I think, a fairly trustworthy historical generalisation that "oligarchical tutelage"—the influence of the minority in any society, who along with wealth inherit culture and traditions of political experience and practice—"oligarchical tutelage" dies hard. And certainly this was so here. The council of Areopagus, according to the writer of the *Athenian Constitution*, recovered power—without any formal vote—through its services at the crisis of the Persian war, and held it for seventeen years, till 462 B.C. And that this was preponderantly oligarchical is evident from the attack made on it by Ephialtes and Pericles.[2] From that time till the end of the century the movement towards full democracy is rapid, but it is not complete till nearly all the civil magistracies are practically open to all citizens, and the attendance at the council and assembly, as well as in the law courts paid. This final result is begun in the brilliant age of Pericles—to whom the payment of jurymen is due: but the payment for attendance at the assembly is after his time. In short, I repeat the fifth century is a period of continual change, and not till after the brief and infamous interlude of oligarchy at the end of the Peloponnesian war, does the democracy become stable, at the beginning of the fourth century.

[1] The phrase is Mr. Warde Fowler's, but the view he takes is different from the above. See his *City State of Greece and Rome*, p. 161.

[2] This council was filled up by the nine chief magistrates for each year. As regards these, too, there was gradual progress. They were elected, not appointed by lot, for twenty-four years after the expulsion of the Tyrants in 512 B.C.; then, for a period unknown, appointed by lot out of a number previously selected by each of the ten tribes of Cleisthenes; then, finally, this previous selection was made by lot. When the change took place we do not know; but we do know that only after 457 B.C. was the archonship open to any but Pentakosiomedimni and Knights—the two highest property-classes; in 457 it was opened to the third class. But doubtless for some time later the competition was limited by their being unpaid.

We do not know exactly how far the Athenian institutions were representative, but we may infer from Aristotle that the following characteristics were found widely in Greek democracy of the fourth century. There was first an assembly, open to all full citizens of a certain age, actually governing and not merely electing and controlling governors. At Athens, in this supreme governing assembly, which met regularly forty times a year, besides extraordinary assemblies on emergencies, all the most important governmental decisions, including the management of the whole foreign policy of the state, and the initiation of legislation, were determined; and any citizen who had done nothing worthy of disfranchisement might speak. We learn from Aristotle that while it was the general characteristic of democracy in the small states of Greece to have as supreme organ of government such a deliberative body to which all citizens were admitted, there were considerable differences in the extent to which this body actually governed. In the most moderate form of democracy its function was to elect the magistrates, examine the accounts, and decide questions of peace, war, and alliance, leaving other matters of administration to the elected magistrates and council. It is clear however, as I have said, that the tendency of development up to his time was towards the more extreme form of democracy, in which the final decision of all important public matters is habitually claimed by this supreme assembly.

The powers of the magistrates, and of the governing council ("Boule") that prepared business for the assembly, were quite subordinated in the Athenian form of democracy. Accordingly the principle that "one man is as good as another" was applied to these offices, in the form of election by lot from among all citizens of blameless life who applied: except in the case of offices for which special qualifications were obviously required, such as military offices and the most important financial ones. To these it would have been too dangerous to apply the lot.

That poor men might really be able to take part in the business of government, attendance at the Athenian council

was paid, and ultimately at the assembly too; and this seems to have been regarded as necessary for securing the real effectiveness of the democracy. Though it must be borne in mind that the Demos at Athens and elsewhere, having a basis of slavery beneath it, did not include the greater part of that class of manual labourers which tends to preponderate in a democratically governed modern state, still it is evident from the complaints of Aristotle, not to speak of Aristophanes, that it included a mass of persons —small traders, artisans, etc.—whose poverty rendered them incapable of adequate leisure for the effective performance of public functions. Unpaid attendance was liable to be scanty attendance, and then the assembly might fall under the control of the rich and their dependents.

Administration of justice was also popular, and was also paid for similar reasons. At Athens, actions were decided by large popular juries of varying size, the normal number —at least for important suits—being 501.

There is another important characteristic of Athenian democracy when fully developed. The popular assembly did not itself legislate, or avowedly and regularly allow its decrees to override the law; though this no doubt occurred in fact too often under the influence of popular passion. The actual business of legislation was given to a numerous committee of law-makers (we hear of 1000 and 500) selected from the jurors for the year. This was not, of course, a committee of experts; still, such a body of sworn jurors would work under a much stronger sense of responsibility than the ordinary assembly.[1] And the

[1] Note the care with which in the fourth century the work of legislation was divided between ἐκκλησία and νομοθέται. 1. At the first assembly in each new year the established code was voted on (ἐπιχειροτονία νόμων)—after a debate in which every citizen could propose changes in the law—chapter by chapter. 2. If the vote on any chapter was negatived, νομοθέται taken from the heliasts (jurors) were appointed in the fourth ordinary ἐκκλησία. Meanwhile the proposer of a change had to exhibit in public the old law and the proposed new law side by side, by the statues of the Eponymi; and also to give copies of them to the γραμματεύς, who read them in public at the intervening meetings; and at the fourth the people, of course with a "probouleuma," decided the number of νομοθέται, the time allowed them, the pay, and named

sovereign assembly endeavoured to protect itself against illegality in its decrees by rendering the proposer of such a decree liable to a criminal process.[1] This protection seems in fact to have been very imperfect; sovereign Demos did not always observe his self-imposed restraints. It is clear that in speaking of that extreme democracy, which is hardly a constitution at all but a mob-tyranny, Aristotle has the Athens of his own time partly in view. But the elaborate character of the restraints at least shows that the need of excluding mere mob-tyranny was fully recognised in the political consciousness of Athens.

§ 4. I have now completed a brief sketch, following the order of development, of the chief forms of government in the Greek city-states up to the time of Macedonian predominance, and briefly discussed the causes that tended to bring them into being, and the conditions favourable to their existence, at different stages of development. There is, however, one question of much interest which I have as yet only dealt with in one case—that of Tyrannis—namely, how did these different types work in practice? How far did they maintain the well-being of the community governed? Especially we are disposed to ask this with regard to democracy, towards which, as I said, there is a natural drift in the fourth century B.C., just as there is a similar drift now in the West-European states. But this question, owing to the scantiness of our information, is still more difficult to answer satisfactorily than the questions we have been discussing.

We may, however, throw some light on it by examining the political views and theories of the eminent thinkers, chiefly of the fourth century, whose writings have come down to us. The most important are the views of Plato and Aristotle[2]; but I shall also refer to Plato's master,

five *συνήγοροι* to defend the existing law. 3. Then with a probouleuma of the council on each proposal of change, the *νομοθέται* decided finally whether the law ought to be altered.

[1] Compare Lect. XII. pp. 175, 6.

[2] We may say, generally, that in tracing the process of the development of the modern State we find the influence of Greek politics on modern primarily

Socrates, whose life ends just at the beginning of the fourth century; to Xenophon, Plato's fellow-disciple; and to Isocrates the rhetorician, whose work shows a certain rivalry and antagonism to that of Plato which Aristotle carries on; and whose political view, therefore—since he had some claim to be a political thinker as well as a rhetorician—it is all the more interesting to compare with theirs.

Both Plato and Aristotle gave much thought to the definition and classification of forms of government. Plato's dialogues present us with two different schemes of classification: one in the *Republic*, the other in a later dialogue, the *Statesman*. From this latter Aristotle's classification is in the main derived; and I will begin with Aristotle's, because, while admitting his great debt to Plato, one cannot doubt that he far surpassed him in the extent of his knowledge of political facts.

The classification adopted by Aristotle is a sixfold one. It is based on a double principle of division, so that it may be conceived as a pair of similarly divided triads. He takes the obvious and already current threefold distinction expressed by the terms Monarchy, Aristocracy or Oligarchy, and Democracy: but he combines this with a principle derived from Socrates — which like other characteristic doctrines of that sage was a truism in theory and unhappily somewhat of a paradox in practice—the principle that the

in the region of thought or ideas, while Rome is the main ancient source of modern political facts. And in the region of thought Aristotle's *Politics* has a special interest, as being the manual from which modern thought in its first stage learnt its first lesson in the scientific analysis and classification of political phenomena. This lesson is liable to be misinterpreted if we do not, in studying it, bear in mind that it is framed in view of the variety of constitutions actually developed in Greek city-states, and is primarily applicable to these. But if we bear this in mind; if we remember also that it was written just after the close of the period of real independence of Greek city-states—after the battle of Chaeronea, and the Congress of Corinth, and while Alexander was conquering Asia—and if we consider not merely the general scheme of classification, but the particulars and comments with which Aristotle fills it up, it certainly yields the most important insight into the evolution of the city-states—and especially the later stage of this evolution—as judged by a most penetrating and disengaged intellect.

true ruler is one who seeks to promote not his own interest, but the interest of the ruled. Combining the distinction thus introduced with the older threefold classification, we get three "correct" constitutions in which the governing individual or body is truly governing, in the Socratic sense:—(1) Kingdom = the rule of an individual of pre-eminent merit; (2) Aristocracy = the rule of the persons best qualified to rule; and (3) what he in a special sense calls "Polity," or "Constitutional Government," in which supreme power is in the hands of the majority of citizens, but with a constitution so arranged as to avoid the defects of mob-rule. Parallel to these we have three perverted forms:—(1) Tyrannis = the selfish rule of one; (2) Oligarchy = the selfish rule of a wealthy minority; (3) Democracy = the selfish rule of the comparatively unpropertied many.

The symmetry of the scheme obviously requires that Aristocracy—like Oligarchy, which is the perversion of Aristocracy—should be the government of the Many by the Few. And Plato certainly held that the government by persons properly qualified to govern—the essential meaning of Aristocracy for both him and Aristotle—must be the government of a few. "It is impossible," he says, "that the multitude in a State can attain the political art; in a city of 1000 men you would hardly find 50 good draught-players, much less 50 experts in statesmanship."[1] And Aristotle, in the passage in which he introduces his scheme, gives this as the received view of Aristocracy, *i.e.* it resembles oligarchy in its numerical relations, though only numerically.[2]

It is, however, to be observed that after careful discussion Aristotle decides[3] that the mass of ordinary citizens, if properly trained, may be collectively wiser than the few, and so collectively better qualified for the highest deliberative or judicial work, though not individually for executive magistracies; accordingly, in constructing his ideal state,[4] he decides that all the citizens are to share in government

[1] Plato, *Pol.* 292 E.

[2] See *Nicom. Ethics*, VIII. ch. x., and *Politics*, III. ch. vii.

[3] *Pol.* III. ch. xi.

[4] *Pol.* IV. (VII.) ch. xiv.

when they come to a sufficiently advanced age. But the citizens in Aristotle's ideal polity do not include artisans or traders, or even husbandmen—for mechanical and commercial life is ignoble and opposed to virtue, and though agricultural life is not in its nature so demoralising as mechanical or commercial life, it lacks the leisure which is essential to Aristotle's ideal of a citizen. His citizens are accordingly a body of landowners, living at leisure on the produce of their lots of land, which are supposed to be cultivated by slaves or serfs. They are still, therefore, a select minority, compared with the whole number of human beings required by the material needs of the community.

Returning to the sixfold classification, made up, as I said, of a pair of similarly divided triads, how does Aristotle arrange these six forms of government in order of merit. In the first brief draft of his views in his *Ethics* the scheme is simple and symmetrical; we have to keep the first three in order of arithmetical progression, and to invert this order in the second triad. So that the scale of merit will be

Kingship,
Aristocracy,
Constitutional Government or Constitutional Democracy,
Simple or unbalanced Democracy,
Oligarchy,
Tyrannis or illegitimate Despotism.

If one man can be found of such pre-eminent excellence as to deserve sole rule, this is the simplest and best solution of the problem: where there is no such unique individual the functions of government should be entrusted to those best qualified to perform them. But Aristotle's later views modified this order. In the treatise on *Politics* kingship no longer seems to him better than aristocracy, and his view of aristocracy has diverged, as I said, from Plato's. Still, of all governments selfish despotism is worst; and selfish oligarchy is more odious than selfish democracy.

The mere aspect of this classification suggests a painful suspicion that its author means to imply a general condemna-

tion of the actual governments in Greek city-states; for he selects to denote the perverted forms the terms which historians ordinarily use in classifying the actual governments.[1] And his further exposition makes this suspicion a certainty. His definitions of oligarchy and democracy—in his bad sense of the terms—are not merely abstract and formal: they are intended to be definitions of the prevalent political facts. This is clear from the care with which he explains that the essential difference between the two is not merely numerical—as the derivation of oligarchy might suggest—it is rather the distinction between rich and poor. He describes various kinds of each, some worse and some better; he notes too that a government may be in form democratical but substantially oligarchical; but he clearly holds that the study of the actual facts of Greek political history in the later period for the most part shows us societies divided into the party of the rich few and the party of the poor many, struggling for mastery with selfish ends; the ordinary result, whichever wins, involving the oppression of the other party.

§ 5. And this condemnation of fully-developed democracy is not Aristotle's view only. It is the prevalent view—we may almost say that it is the only view that has come down to us, if we put out of account the speeches of the orators, who, as their business was to persuade Demos, could hardly tell him plainly that he was incompetent and oppressive. Plato's antagonism to democracy is stronger than Aristotle's.

[1] In the main Aristotle's classification only systematises distinctions recognised in the ordinary thought of Greece. In a curious discussion which Herodotus (Bk. III. 80-82) maintains to have taken place among the seven conspirators in Persia, in the course of the conspiracy which ended in bringing Darius Hystaspes to the throne, the characteristics of the governments of One, the Few, and the Many are contrasted; and the profound differences between the true king and the tyrant, and again between the rule of the wise, the really best, and the rule of the wealthy few, were more or less recognised in ordinary language. What remained to complete the systematic six-fold classification was to lay stress on a corresponding distinction between constitutional law-abiding rule of the majority, keeping within the limits of moderation and justice, and the more extreme kind of democracy in which the masses systematically oppressed the rich.

Xenophon's undisguised partisanship of Sparta has drawn on him the severe reprobation of Grote. These, however, it may be urged, are all of one school of thought, they share the Socratic influence. But this cannot be said of Isocrates: yet he too, in his political pamphlets, published about the middle of the century in the form of deliberative speeches, speaks no less strongly of the oppressiveness and incompetence of unbridled democracy under the guidance of unprincipled demagogues. These men, he says, "do not merely compromise our national name: they enrich themselves at our cost by impeachments, indictments, and all the machinery of calumny, and grind us down by oppressive taxation. And their incompetence is equal to their rapacity. Under their influence we do not know our own minds for a day; and, while the penalty for private bribery is death, the most incapable men become our generals by their large bribes to the popular assembly." [1]

All this, no doubt, relates to Athens primarily. But the Athenian democracy was, by general agreement, the most brilliant example of Greek democracy, and, as I have said, doubtless a pattern widely followed in the general drift towards democracy. And Isocrates expressly tells us that his condemnation is not confined to Athens. "We are protected," he says, "by the fact that our competitors are no less ill-governed. . . . We save the Thebans and they save us. . . . It would be worth while for either to pay the members of the popular assembly of the other." [2] Of Argos—another state of old prestige that had now long been democratic—Isocrates says elsewhere, "that whenever the Argives get a breathing time from war, they take to killing their most illustrious citizens." [3]

I think we may take it as undeniable that whatever merits the full-blown democracy of the fourth century in Greece may have had, it was generally disliked and con-

[1] Isocr. (Or. viii.) *de Pace.* [Not a literal translation, but condensed from different parts of the Oration.]

[2] Isocr. (Or. viii.) *de Pace*, 171 a, b.

[3] Isocr. (Or. v.) *Ad Philipp*, 92 d.

demned by the class of thoughtful persons whose utterances go down to posterity.

But again, while agreeing that unbridled democracy is bad, our writers all seem to agree that ordinary selfish oligarchy—the government of the rich minority in their own interest—is worse. "A bad democracy," says Isocrates no less than Aristotle, "is a less evil than an oligarchy": "even our corrupt democracy would seem divine compared with the government of the Thirty Tyrants": and "if we go through the chief cities of Hellas, we find that they have prospered less under oligarchy than under democracy." [1] It is true that Plato, in the *Republic*, regards democracy as worse than oligarchy; he puts forward a theory of natural tendency to degeneration, according to which such a constitution as the Spartan—which he places next to his ideal state—tends to degenerate into oligarchy through the corrupting effect of money-getting; then oligarchy tends to degenerate into democracy, and democracy into Tyrannis. It is an interesting fact that the first theory of political evolution which the history of European thought offers us is a theory of degeneration. And instances might doubtless be quoted from Greek history to exemplify each of these processes of degeneration; but the general order of the succession of forms does not correspond to the general facts of that history, in which, as we have seen, the period specially known as the "Age of the Tyrants" comes before that of fully-developed democracy. In any case Plato seems to have given up this order of demerit at the time of writing the *Statesman;* here, as I have said, he gives the order of demerit which Aristotle has adopted, "democracy, oligarchy, Tyrannis."

§ 6. Plato's justification for assigning these relative positions to democracy and oligarchy in his later scheme is noteworthy. The government of the Many he holds is essentially a weak government; it is a form of government under which people are comparatively little governed. As compared with a government both wise and strong,

[1] Isocr. (Or. vii.) *Areopag.* 154 b, 152 c.

this *fainéant* character of democracy appears to Plato a defect; but as compared with the selfish coercion of oligarchs, it is a relative merit.

And certainly we have to note in democracy on the whole, by the testimony of all our witnesses, a remarkable maintenance of liberty in the strict sense of individual liberty—power of doing what one likes, without dangerous disorder. "The tyranny of the majority," which seemed to Tocqueville and Mill so important a danger of the coming democracy of Europe, certainly does not appear as a marked characteristic of the Demos of Athens. On the contrary, democracy leads, Demosthenes tells us, to a general absence of severity ("πάντα πραότερα");[1] a "general freedom of speech" (παρρησία), says Euripides;[2] "we go each on his own way, and do not scowl at other people for going theirs," says the Thucydidean Pericles.[3] The "very dogs are more impudent than elsewhere," says Plato, "and the donkeys march along with the air of fully-qualified citizens."[4] "You are not even allowed," says the pseudo-Xenophon (author of a diatribe against the Athenian constitution), "to beat a slave who does not get out of your way in the street."[5] This at least we moderns, whatever our political creed, shall not put down as a point against Demos. When we try to estimate the general happiness of the political and social organisation of the Greco-Italian civilised world, this great fact of slavery is a heavy weight in the pessimistic scale: there is some comfort in the thought that the weight was somewhat lightened by democracy.

But, it may be asked, was not the treatment of the rich an exception to this general disposition to make things easy all round? Were they not oppressed with unequal taxation by Demos, in his political character, and plundered by iniquitous prosecutions, tried by the same Demos in his judicial character? Well, we can hardly doubt, as our authorities agree, that both kinds of oppres-

[1] Demosth. *Androt.* 608.
[2] Eurip. *Hipp.* 422; *Ion*, 672.
[3] Thuc. II. ch. xxxvii.
[4] Plat. *Rep.* 563 D.
[5] *On the Government of Athens*, ch. i. § 10.

sion went on to some extent. All that can be said on the other side is that there is no sign that it went to such an extent as to scare rich men away from Athens, and interfere with its commercial and industrial prosperity.

As regards the large popular courts of justice, certainly the character of the forensic speeches that have come down to us from the fourth century tends to give a low idea of their efficacy as instruments for administering justice; owing to the amount of misrepresentation and irrelevant abuse of the adversary which the advocates exhibit, and their unrestrained licence in appealing to any sort of motive that may influence the judges in their favour. Still, as to the *extent* of systematic unjust confiscation through these law courts, it is very difficult to form a decided opinion. When Aristophanes describes the informer as going about picking out "fat delinquents and defaulters, pulpy, luscious, plump, and rich," he implies that they *were* delinquents and defaulters.[1] And even when we learn from Lysias that some advocates in prosecutions used to tell the jurymen that if they let off the accused there would not be funds in the treasury to pay them their three obols a day, we must surely suppose that it was a plea against mercy to a guilty defendant, not an open advocacy of spoliation of an innocent man. Still, that it should have been said at all is bad enough. So, again, though the occasional corruption and tyrannous misconduct of the office-holders under Demos cannot be doubted, it may reasonably be doubted whether it was in any degree a *distinctive* feature of democracy.

As regards the over-burdening in the way of taxation, it should be borne in mind that the practice of throwing extra burdens on the rich was old, and there is no sign that it was made worse by extreme democracy. If we hear of people ruining themselves by providing choruses and torch-races, there is considerable reason to think that it was generally by spending more than they were legally bound to spend, from love of display. We hear of a man "decking his chorus with gold lace, and then going about

[1] Ar. *Knights*, 259.

in rags himself" [1]; but the gold lace was voluntary extravagance, not exacted from him by Demos.

The burdens in war were heavier and more painfully felt; but no critic suggests that Demos was fond of going to war because he had not to pay for it,—at any rate in the fourth century, when democratic tendencies were most fully developed. Rather the charge is that he could not brace himself up with sufficient steadiness for the burdens involved in adequate resistance to Philip of Macedon.

At the same time, while giving this qualified defence of Athenian democracy, I should hesitate to extend it to Greek democracy generally. It would be presumptuous to doubt the truth of Aristotle's statement, that revolutions in democracies often occurred "from the intemperate conduct of the demagogues, who force the propertied class to combine by instituting malicious prosecutions against individuals, or by inciting the masses against them as a body." [2] He mentions a curious instance at Rhodes, where the trierarchs—the rich men made pecuniarily responsible for the provision of war-ships—were prevented by the demagogues from obtaining the contributions due to them from other citizens; and so were "compelled, by fear of the lawsuits with which they were threatened by their creditors, to form a conspiracy and abolish the democracy." [2] Similarly, he tells us that at Megara "the demagogues, in order to have an opportunity for confiscation, ejected large numbers of the nobles from the state, until they had swelled the ranks of the exiles to such an extent that they returned home, conquered the democrats in a pitched battle, and established the oligarchy." [2] If this account is accurate, it would certainly seem that the oppression of the rich in Megara was of a very violent and sweeping kind. It may be said that Aristotle is a hostile witness—but his is a mind in which genuine scientific curiosity seems to be always predominant; and, as regards the violence of democratic factions at Megara, we find a sort of confirmation in Plutarch,[3] from whom we learn that at

[1] Antiph. ap. Athen. p. 103E. [2] *Pol.* VIII. (V.) v. [3] *Qu. Gr.* xviii.

Megara—after the ordinary stages of kingship, oligarchy, and tyranny—a period of licentious democracy occurred in the first half of the sixth century B.C. The poor are said to have forced their way into the houses of the rich, ordered lunch and dinner to be served regardless of expense, and also to have passed a formal decree for the restitution of the interest that had been already paid on debts. Probably, as Grote suggests, the difference of race, surviving from the Dorian conquest, rendered the oppression of the mob more violent. The natural result was two successive relapses into oligarchy, neither of which, however, seems to have lasted very long.

A similar explanation may be given of the violent character of the democracy of Argos. It is chiefly known to us from the notorious *σκυταλισμός*, or "lynching with clubs," by which 1200 of the upper class, suspected of planning an oligarchical revolution, lost their lives, 370 B.C. But that this kind of thing was not isolated may perhaps be inferred from the manner in which Isocrates (346 B.C.) speaks of the dissensions at Argos in the passage already quoted.[1] Nevertheless, democracy seems to have been almost unbroken at Argos from before the middle of the fifth century onward:—probably rivalry with Sparta was partly the cause; oligarchs allying themselves with Sparta would have patriotic feeling against them. Generally speaking, violent democracy tended to cause a disturbed condition with sudden lapses into short-lived oligarchy or tyranny. Such oligarchies—if we may generalise from the brief history of the Thirty at Athens, probably rivalled the worst deeds of the worst democracies.

One form of spoliation of the rich—which has some interest from its analogy to certain revolutionary aims of our own day—is *γῆς ἀναδασμός* "redistribution of land." Isocrates the orator when speaking of the "usual misfortunes of cities," from which an advocate of Sparta claims that Sparta alone is free, mentions among these usual calamities "cancellation of debts"—such as Solon's great

[1] P. 112.

measure at Athens—and "redistribution of land:"[1] and Aristotle also speaks of this as a recognised method of demagogic oppression.[2] He does not, however, give any instance; and Dion Chrysostom, a Greek rhetorician of the Empire, says "we have absolutely no knowledge that such a thing ever occurred."[3] And I have tried in vain to find a historic instance of a redistribution of land carried out as a democratic measure in a peaceable and quasi-legal way, like Solon's cancellation of debt: though of course something of the kind was liable to occur in civil war when one party was violently expelled. However, one can hardly doubt that there must have been other instances of this high-handed piece of democratic oppression: though it was probably more often talked of than realised.

I have left to the last one important charge against Greek democracy, based on Athenian history. It is urged that the long struggle which ended in the acceptance of the Macedonian supremacy over Greece generally, showed the fatal short-sightedness and instability of democracy in foreign policy: and that the Athenians might have resisted Philip successfully had they had some other form of government. I do not think it can be denied that there is much foundation for the charge. But if we are comparing Athenian democracy with the other forms of government which we actually find produced under the same general conditions as the Athenian democracy—*i.e.* in the small town-communities of Greece—the advocates of democracy may fairly rejoin by asking what other of the Hellenic towns showed itself more able to cope with the situation. The warmest admirers of oligarchy will hardly claim this for Sparta.

On the whole, I incline to the view that it was not primarily democracy that was tried and found wanting in the contest with Philip: but rather the too exclusive spirit, the too limited patriotism of the Greek city-states, unable to rise to a really effective Pan-hellenism, an equal and stable federation. Later on, when the principle of federation

[1] Isocr. (Or. xii.) *Panath.* § 259. [2] *Pol.* VIII. (V.) v. [3] Or. xxxi. 332.

is at length developed from the humble beginnings of the hitherto obscure and unpretending Achaean league, and we see how much federation could effect even with Athens standing aloof and Sparta fallen from her high estate;—we may be almost willing to agree with Aristotle that the Greek race, from its happy blending and balance of qualities, might have conquered the world if it could only have brought itself to live under one government.

LECTURE VIII

IDEAL STATES OF ARISTOTLE AND PLATO

§ 1. In my last lecture, after giving a brief account of the Athenian constitution of the fourth century, I went on to note the uniformly unfavourable opinion expressed as to the working of Greek democracy by Plato, Aristotle, Isocrates, and Xenophon; there being, so far as I know, no impartial utterance of importance on the other side—since, as I said, any phrases flattering to Demos, on the part of the orators whose business it was to persuade him, cannot be regarded as evidence.

But it has been urged that "Plato, Isocrates, and Aristotle knew Athens only when her best days were past, and when the gifted and animated population of the golden age had been thinned down sadly by war and pestilence," [1] and that the Athenians, being few and depressed by diminution, had naturally let their government go to the dogs. I hardly think this explanation will do. No doubt the population of Attica was diminished; we hear of 21,000 male citizens of full age at the end of the fourth century as compared to over 30,000 in the latter part of the fifth. The smaller number, however, is certainly large enough to work the institutions of direct democracy.[2] And the Athenians were far from being permanently depressed by the ill success of the Peloponnesian war and the consequent loss of their maritime empire; on the contrary, the reader of Greek history of the fourth century is struck by the elasticity with which they recover from this blow and

[1] Warde Fowler, *The City State of the Greeks and Romans*, p. 153.

[2] Cf. Arist. *Pol.* IV. (VII.) iv. 4; II. vi. 6.

get together a second empire, though no doubt it is never anything like the first.

And, as I said, the fourth century is the period of established and fully-developed democracy; in the fifth we have the process of development. No doubt, we have a time of brilliant prosperity in the great age of Pericles, but according to the ancient authorities, though here the critical step was taken towards the ultimate democracy, there has not yet been time to see the full effect of democratic institutions. This is one reason why the prosperity of this age cannot be regarded as an effect of the type of fully developed democracy. And another reason why the Athenian constitution in the brilliant period of the fifth century cannot be regarded as typical is the very fact that Athens was then pre-eminently an imperial city: its national income was largely derived from the tribute of other cities; and the extent of governmental functions—and pay—enjoyed by Athenians was largely due to their imperial position.

Returning to the fourth century, it should be noticed that *stasis*, faction and civil strife, an evil characteristic of the city-states of Greece generally throughout their history—as we saw it was civil dissension that gave the opportunity for the Tyrannus of the seventh and sixth centuries—is not found in Athens under fully developed democracy. In Athens the period of civil strife was over by the end of the fifth century. During the fourth century factions in Athens, however bitter, do not lead to disorder and violence; the struggle that we find elsewhere so common between the wealthy with their partisans and Demos — making, as Plato says, two cities in one, each of which constantly exiles the leading part of the other —from this Athens is free. And still its democracy is subject, as we have seen, to the deep decided condemnation of the leading thinkers and writers on politics.

§ 2. But if the thinkers were agreed in not seeking a remedy for the evils of democracy in the worse evils of oligarchy, what precisely was the remedy that they pro-

posed? To this question both Plato and Aristotle give a somewhat complicated answer.

They each construct an ideal state, which they admit is not likely to be generally realised; and each also proposes a *pis aller*, a second-best course, as having more likelihood of being practically adopted. And when we compare the two, we find that though the ideal state of Aristotle is very unlike the ideal state of Plato, it has a strong general resemblance to Plato's second-best model of polity; so that we may put the teachings of the two thinkers together, and trace in them a continuous movement of thought, from political idealism of a very marked kind, very remote from practical politics, towards a more practical and empirical view.

The germ of the political ideal, common to Plato and Aristotle is found in the fundamental doctrine on which the dialectical teaching of Plato's master, Socrates, was based: that in the work of government, as in private life, the great desideratum is knowledge — knowledge of the true good of man and of the means to its attainment. A man possessed of this knowledge, if called to the function of ruling, would know how to promote the well-being of the ruled, and would know also that his own well-being would be realised in the right performance of this function. Such a man would be potentially a statesman, whether he be appointed or not; and it would be madness if we could find such a man, not to make him ruler, instead of leaving the selection of rulers to the hazard of the lot; on the other hand, without this essential knowledge the votes of all mankind cannot make a statesman. In these simple articles of Socrates' political creed we have the germ out of which the ideal aristocracy of Plato was developed. For in Plato's view this indispensable knowledge can only be possessed by the philosopher: a man must have been trained to contemplate good in the abstract before he can hope to realise it in human life. At the same time, men whose natural gifts qualify them for the long and laborious training which philosophy requires will always be few in

the best regulated community, and these few again only philosophers are qualified to select. Hence Plato's most ideal state must necessarily be an aristocracy based on cooptation; that is, it must be a state in which implicit obedience is paid to a small carefully trained class of philosophers, who recruit their numbers by selecting in youth those whom they deem fit for the training.

Of the other classes necessary to the existence of a self-sufficing human community, the only one on whose training Plato bestows serious attention in constructing his ideal state is the fighting class. The state will, of course, also contain husbandmen and artisans, who ought, in his view, to be distinct from the warriors; but it is only for the warriors that Plato works out an elaborate system of regulations. They, with the philosophers, form the guardians or protectors of the whole community.

It is not that he regards war as a normal incident of an ideal condition of human society—quite the contrary. But Plato's state, though ideal, is not designed as a Utopia—it is not a fancy-state but a pattern-state; it is framed in view of the actual conditions of life in Greek city-states, in which it was an imperative condition of national prosperity that the state should be formidable in war. At the same time his—to a modern mind startling—view of the moral superiority of the class of warriors as compared with the classes engaged in providing for the material needs of the community, is in harmony with the Greek conception of virtue, in which valour was more prominent than it would be in a modern conception. This, no doubt, is an indirect effect of the political conditions. Accordingly, philosophers and warriors together make up in Plato's ideal view a class of guardians for whom an elaborate system of training, drill, and regulation of life is worked out: a system modelled on that of Sparta, whose polity Plato ranked first among the actual forms of government of Greece, but designed to exclude far more completely the evils of selfish money-getting domesticity. These evils, Plato saw, were not completely excluded at Sparta; because the Lycurgean system,

while drilling the men to a hardy and simple regimen, had left the women undrilled; and though the barrack life and common meals of Sparta severely limited the men's enjoyment of wealth, the desire of heaping up riches for wife and family was practically found to render the Spartan only too accessible to the corrupting temptations of avarice. With a view, then, to a more absolute predominance of civic sentiment than Sparta had attained, and with a view, at the same time, to perfection of the breed of citizens, and to the distribution of functions according to fitness, Plato proposed to abolish private property and private families altogether for his class of guardians.

This communism is strongly controverted by Aristotle; and the prominence given to this controversy in his treatise on *Politics* has rather obscured the close and fundamental similarity between Aristotle's political ideal and Plato's second-best state. For Plato himself came to recognise that his communism was not within the range of practical politics; accordingly, in his "second-best state"—delineated in a dialogue, *The Laws*, written many years later than *The Republic*—he gives up his communism as regards both marriage and private property. He does not, however, abandon all hope of preventing by legislative interference the fatal division of society into rich and poor, which—as he emphatically tells us in *The Republic*—"made two states at war within a single city."[1] He now hopes to prevent this by constituting his citizens a body of landowners, with equal inalienable allotments of land, and strictly prohibited from acquiring movable property to the value of more than four times that of the allotment. The lots are not to be bought or sold; and each man is to leave his lot to his best-beloved son; his other sons "he shall distribute to such of the citizens as are childless and willing to adopt them."[2] Various other regulations are made to keep the lots equal. Should population be redundant, the magistrates are to keep it down, if possible; or—if this be found impracticable—as a last resource they are to send out a colony.

[1] *The Republic*, iv. 422. [2] *The Laws*, v. 740.

Aristotle criticises this scheme for preventing inequality of property; but he criticises it not, as a modern might do, because it interferes too much with the natural laws of economic distribution, but because its interference does not go far enough. He considers that the scheme will break down for want of a fixed limit to the number of children in a family; accordingly, he proposes to introduce such a limit in his ideal state.

He criticises other points in Plato's second-best state; but viewing it as a whole we can see more clearly than he did how similar his own political ideal is to it in its broad features. Both Plato and Aristotle agree in regarding the city-state as the final form of highly organised political society. In the view of both the state must not be larger than a single city, with the land required to support it, in order that the citizens may meet in one assembly, not too large for effective deliberation, and may have the mutual knowledge required for a good choice of magistrates, and also required—in the view of the Greek thinkers—for a good administration of justice. Indeed, on this point Aristotle's conception is stricter than Plato's: he criticises Plato's later state, which is designed to have a body of 5000 fighting men, as too large. Both agree in regarding as the statesman's end the realisation in the citizens of the highest attainable degree of human virtue and well-being; and of this, in the view of both, the highest mode is philosophy, the activity of the intellect in the attainment of knowledge. Both, again, hold that the realisation of virtue in a high degree is only to be expected from a select class of citizens, relieved from the necessity of providing themselves with the means of subsistence, and subjected to an elaborate system of education; accordingly, in the view of both, the citizens are conceived as a body of landowners, living at leisure on the produce of their lots of land cultivated by serfs. Both, accordingly, exclude husbandmen, artisans, and retail traders from citizenship. In the view of both the male citizens must in youth be thoroughly trained for war; and both recognise—Plato in his second-best state no less than

Aristotle—that it is not in human nature for this body of armed citizens to submit to simple subjection to philosophic rulers. Both, accordingly, agree in giving an important share of political power to the military landowning class, but in different ways and degrees. In Plato's scheme they have the right of electing the executive magistracy, and also the deliberative council to which the magistrates are to refer important matters; to improve the quality of the council so elected he proposes a division of the citizens into four property-classes, and a constitution so framed as practically to increase the electoral power of the higher classes. Aristotle, on the other hand, proposes to give supreme deliberative functions to an assembly of all the citizens—*i.e.* all the land-owning class—after they have passed the military age; he also proposes to give judicial functions to these citizens—assembled, I suppose, in large popular juries like those of Athens.

The form of government, therefore, in Aristotle's ideal State is materially nearer to democracy than that in Plato's second-best State if we consider only the distribution of power among the citizens; but this difference will seem to us unimportant as compared with the fact that both agree in limiting citizenship to a class of landowners living at leisure on the produce of the labour of serfs. This leads me to a final point on which they are agreed in principle: namely, as to slavery. Both hold that there must be slaves, but they hold also that the slaves should be human beings naturally adapted for slavery, and that no Hellene should be owned as a slave.[1]

§ 3. This then, in brief, is the aristocratic ideal of the great Socratic thinkers—putting out of account that ideal monarchy, the rule of the man pre-eminent in wisdom and virtue, which has clearly no relation to practical politics in Aristotle's time. Regarding his aristocracy from a historical

[1] In considering the relation of Plato and Aristotle to actual slavery in Greece, we are apt to judge it too exclusively from the modern point of view, and to say summarily that they accepted and defended slavery. We ought also to recognise how much they were in advance of their age by disapproving slavery of Greeks.

point of view, we see clearly that the Spartan institutions have served as a model; and, accordingly, both Plato and Aristotle agree in giving the Spartan polity a high place among actual Greek States; it belongs to the class of states which Aristotle calls in a wide sense "aristocratic," as distinct from "oligarchical," *i.e.* states in which the aim of the constitution is to develop and politically reward merit in the citizens.

Still, Aristotle does not consider that either his ideal polity, or anything like the Spartan—anything that could be called aristocratic—is to be generally recommended to the actual city-states that he knows. The tendency to democracy in these is recognised by him as too strong to admit of his recommending anything that could be properly called aristocracy for their adoption. What he does recommend is what he calls in a special sense "Constitutional Government" (πολιτεία)—"Constitutional Democracy," perhaps, conveys his idea better to a modern reader [1]—in which men of moderate means hold the balance between the extremes of rich and poor, and a kind of fusion is effected between the opposing principles of oligarchy and democracy.

This fusion or balance might be effected in different ways: on certain points it might be expedient to adopt both oligarchical and democratic arrangements in the constitution of the balanced state:—*e.g.* both to fine the rich for not serving on juries, as was customary in oligarchies, and to pay the poor for serving, as was customary in democracies, in order to secure the attendance of both. In other cases the required balance would be best attained by taking a mean between the two systems:—*e.g.* by making a moderate property qualification, which would admit the majority of free citizens, the condition of membership of the supreme deliberative assembly, instead of a high qualification as in

[1] Just as the general term "Constitutional Government," or a "Constitution," if applied to European States in the first half of the nineteenth century, would have been naturally understood to mean "Constitutional Monarchy." In the modern case the problem presented to constructors of constitutions was—given a king, how is his power to be limited and balanced: by the ancient thinker the power of Demos would be naturally assumed in the same way.

oligarchies. Or, again, a composite method of appointment, partly oligarchical and partly democratical, might be adopted: *e.g.* the appointments to the executive offices might be partly by suffrage—which the Greeks deemed an essentially oligarchical or aristocratic mode of appointment—and partly by lot, which they regarded as the essentially democratic method. It was not, of course, to be expected that the adjustment of the balance would be exactly even, or the same in all cases: some constitutional governments would incline more to oligarchy, and some to democracy. But some such mixed constitution, in which neither the rich nor the poor are allowed to have their way unchecked, is what Aristotle recommends as a practicable ideal for the City-States of his age; but he admits regretfully that its actual realisation is rare. The reasons for this I will give in his own words:—

"The reasons why most governments are either democratical or oligarchical are, firstly, that the class of persons of moderate means is generally small in them; secondly, in consequence of the disturbances and contentions between the commons and the men of property, whichever side gets the better, instead of establishing a government of a broad and equal kind, takes political supremacy as a prize of victory, and sets up either a democracy or an oligarchy." Further, the "two peoples which attain an imperial position in Greece, had regard solely to their own political aims in establishing, the one democracies, and the other oligarchies in the cities under their rule, subordinating the interests of these cities to their own interest. For these reasons the intermediate form of government is either never realised at all, or only seldom and in a few States." [1]

This statement represents the amount of truth that I find in the arguments that have been urged by various writers, from Tacitus [2] downwards, against the possibility of a mixed form of government. The experience of Greek history shows that the desired balance is at any rate difficult

[1] *Politics*, VI. (IV.) xi. 16, 18. The "two peoples" are of course the Athenian and the Spartan.

[2] *Annals*, iv. 33.

to maintain; one or other element tends to preponderate in the fusion and ultimately destroy the balance. To say that such a mixed form is impossible seems to me a hasty generalisation; but the experience of Greece, as summed up by Aristotle, tends to show that it is likely to be rare.

And it is evident that the fusion which he thought most widely practicable would incline rather to democracy,—this is why I have translated his term πολιτεία "constitutional democracy": it is a system in which the ultimate control would rest with the majority of the citizens. He evidently thinks it hopeless, in the Greek city-states of his age generally, to prevail on Demos to resign this ultimate control; but it may be possible to persuade him to submit to checks and balances which may prevent the oppression of the rich few by the poor many. But even this he only hopes to effect in a stable manner in a society in which the class of persons with moderate means, being numerically strong, can be maintained in preponderance.[1]

§ 4. From a modern point of view it seems strange that Aristotle, in his recommendation of a mixed or balanced constitution, appears never to have thought of introducing monarchy as an element in the fusion. The explanation, I conceive, is partly that he did not find among the politicians he knew any man of such unique merit as to render the allotment to him of so large a share of permanent power apparently reasonable; partly that a real legitimate monarchy was something not within the range at least of recent Greek experience.

We find that Aristotle recognises five kinds of monarchy, besides the illegitimate, usurped, "unnatural" Tyrannis. But (1) one of these—the Spartan—can only be called kingship by courtesy; the king is little more than a perpetual commander-in-chief; his power in civil affairs is insignificant. (2) Another species, the hereditary despotism that is natural to barbarians, he regards as beyond the pale of discussion for Greece. (3) The old kingship "according

[1] Some approximation to Aristotle's ideal appears to have been attained in the third century.

to law" of heroic times was irrevocably gone [1]; and (4) the elective perpetual dictatorship [2] which had been instituted in certain States in the first stage of the struggle between the gentry and the masses was also a thing of the past. Finally, (5) the rule of the Individual of Unique Merit, which stands first in the scale of merit in the Aristotelian classification of governments, was a purely ideal conception, in Aristotle's age at least. There was, therefore, no legitimate kingship really deserving the name "within the range of practical politics" for Greece in Aristotle's age; and it is for this reason, I conceive, that it does not occur to him even to consider a fusion of monarchy with oligarchy, or democracy, or both; for to suggest any balance or compromise with lawless Tyrannis would have been too daring a paradox.[3]

[1] It is noteworthy that Aristotle does not conceive the polity of heroic times as being a balanced or mixed form of government:—he conceives the king's power as limited by law or custom, but does not regard it as shared with council or assembly. As doubtless his view of this polity was derived from Homer, his authority may be quoted on Grote's side of the controversy discussed in Lecture II. pp. 35-37; but I nevertheless take the other side.

[2] See Lect. VI. p. 90. I do not know any historical instance of such a dictator (*αἰσυμνήτης*) being elected for life; but instances were evidently known to Aristotle (see *Politics* III. xiv.).

[3] There is reason to doubt how far Aristotle really shared the conventional sentiment against Tyrannis; but at any rate he does not expressly separate himself from it.

LECTURE IX

GREEK FEDERALISM

§ 1. We have now briefly considered the different types of government and transitions in Greece to the end of the fourth century in their evolutionary order; it being the aim of political science to get types and the general causes of transition from one type to another as clear as possible by comparing instances. First, we examined the "Primitive Polity," to be called monarchy if anything, but where it is interesting to note, in the council of sub-chiefs or elders and the assembly of the freemen in arms, undeveloped organs which become prominent respectively in the stages of oligarchy and democracy. Then we discussed the transition to primitive oligarchy, of which the most prominent aspect is the reduction of the power of the king, and ultimately the substitution for him of an annual magistracy. The council then becomes the ruling organ; the assembly was probably preserved, but the landowners of old family predominate in it. We observed different causes tending to give the assembly an oligarchical character, namely, conquest; growth, especially in colonies, of new populations without political rights; integration, under the influence of which small landowners and distant tend to drop out of the assembly; increase of inequalities of wealth and economic servitude of poorer freemen. The next phenomenon considered was Tyrannis—"irregular, unconstitutional reversion to monarchy," probably, as in Athens, with constitutional forms preserved; and we distinguished the earlier type developed out of the demagogue, and for which the reaction against early oligarchy gave the opportunity, from the later

for which the employment of mercenaries was a favouring condition. We noted that Tyrannis was a prevalent type at certain periods, but not a necessary stage through which Greek states passed.

Then, when the earlier Tyrannis has, speaking broadly, disappeared, the brilliant period of Greek history has begun which is generally characterised by a drift towards democracy. We can trace the progress in the democratic direction from stage to stage at Athens, where a stable democratic constitution is finally established at the end of the fifth century, which remains substantially unaltered up to the time of the subjugation under Macedonia. And elsewhere in Greece the same tendency to democracy is seen—though it does not by any means prevail universally. In one or two cases, as far as we know, the oligarchical form of polity maintains itself throughout this period; more often we hear of oscillation between oligarchy and democracy. Also, in the later part of the time, the habit of employing mercenaries gives a new opportunity for tyrannis. Then the Macedonian predominance and empire closes the period of effective independence of the city-states, and we come to the last noteworthy product of the fertile inventiveness of the Greek mind in the department of political construction: the Federal system, of which the remarkable development in the third century B.C. sheds a gleam of interest—not only for the student of political science, but for the ordinary reader — on the last stage of the history of free Greece, the period intervening between Macedonian predominance and the final absorption of Greece under Roman rule.

In considering the causes of transition from one form of government to another, we have so far directed our attention chiefly—putting conquest aside—to internal causes. Among these, economic causes are very important; *e.g.* the growing inequality of wealth tended, as we saw, to alter the primitive polity in an oligarchical direction, making the poor freeman more dependent on the rich: while again the more extensive use of money, leading to

borrowing on the part of the smaller cultivators, aggravated this inequality into a felt oppressiveness, and tended both in Greece and Rome to movements against the primitive oligarchy. Also — especially in colonies and commercial cities—the growth of new wealth, outside the privileged classes, was a cause making for change.

But, apart from economic causes, one main impulse to change is doubtless derived from the spread of the simple conviction that "one man is as good as another"—those outside the group politically privileged as good as those inside; a conviction of which the practical effect would be continually strengthened by the openness to new ideas—the weakening of the force of mere custom and habit—which the gradual civilisation and the mutual communication of so many independent communities would cause. This conviction is most obviously effective in the drift to democracy, but we may suppose it operative in earlier stages in a more limited form. For example, where as at Corinth, one or more annual magistrates chosen from the royal house are substituted for the king, we may suppose the opinion to have become prevalent that one man of royal blood is as good as another—and perhaps (as the Irishman in the story said) "a deal better too," since the occasional inefficiency of the hereditary king must have been a frequent argument for change. So again, when the chief magistracy is thrown open to nobles generally, we may suppose the conviction to have prevailed that one landowner of old family is as good as another.

But when we speak of the efficiency of the king or government, we have already passed the line separating internal from external relations of the community, since the efficiency of the primitive king was largely estimated with a view to war; in fact, as we saw, the introduction of a war chief, distinct from the hereditary king, is said to have been the first step in the process of change to oligarchy at Athens. And no doubt more generally, war was sometimes an important factor in producing a change in the form of government, and sometimes, on the other hand, a source of

stability, when the established government proved itself efficient.

We have noted again that the development of the city-state out of the more primitive group of village communities was importantly favoured by the value of the protection of the walled town in war.

And finally, the predominance of federalism in the last stages of the history of Greece was chiefly caused by the necessity, after the Macedonian conquest of the Persian empire, of having states larger than the old city-state, to resist Macedonia and the large states formed out of the fragments of Alexander's empire. I may add that the necessity of greater strength for defence in war has been the cause of federalism in medieval and modern Europe as well as in ancient Greece.

§ 2. The time, in short, had come for the transition from the City-State to the larger political organisations which play the chief part in modern European history—"Country-States" we may call them. There were two modes of transition by which city-states might pass into a country-state really united by patriotic sentiment as distinct from empire: the method of federation on equal terms, and the method of expansion and absorption. The former is that which prevails in this last period of Greek history when the Achaean and Aetolian leagues or federations attract the chief attention of the historian. The latter is that which enabled Rome to become mistress of the civilised world, and which we shall trace in the two following lectures. The scientific interest of this historical transition lies largely in a comparison of the two.

Both processes, as I have said, are forms of transition from the distinctively ancient conception, expressed by the term "Polis," to the conception which is most familiar to the modern mind. We naturally think of a "country," not a "city," as the local habitation of a State; indeed, we easily slide into using the word country in a double and mixed sense, —to mean sometimes a portion of the earth's surface, sometimes a political community inhabiting it, sometimes a fusion

of the two. Thus in any appeal to—any effusion of—patriotic sentiment, the characteristics of the particular part of the earth's surface inhabited by the community occupy a prominent place; to constitute the object of patriotic devotion the imagination seems to require this embodiment. When we think of the "sea-girt isle" of England, "la belle France," or the German "fatherland," we often do not separate the community from the land, but fuse the two in one notion; and in more than one case this fusion has had the politically important effect of making it seem natural and right that a portion of the earth's surface separated from the rest by marked natural boundaries should be the territory of a single state. And it is curious to note that while this blending of elements in the notion of "country" is so natural to us moderns, that it requires a little effort to distinguish the elements, we find the corresponding fusion in the Greek notion of "polis" difficult and perplexing. I believe that most moderns when they begin to learn Greek feel some wonder that a language so rich in subtle distinctions should use the same word for "city" and "state."

Well, it is an interesting evidence of the transition in political thought, as well as political fact, which goes on in the third century B.C., that in Polybius's history of the Achaean League, the word "ethnos" (nation) largely takes the place of the word "polis"; and the normal constitution of an Hellenic "ethnos"—which has now become the primary object of patriotic sentiment—is a federal constitution.

§ 3. Federation of a rude kind is characteristic of early history. In fact, we may say that, in Greece as well as in Germany, the largest political society in the tribal condition is normally a very loose federation of sub-tribes or cantons whose political union becomes closer as civilisation goes on. The sub-tribe, or canton may also be called a sort of federation of villages. Thence comes the early "integration"—the *συνοικισμός*—which forms the city-state from the canton. Then the development of the city-state in Greece seems to check further integration; and even, in some cases—*e.g.* Arcadia—to break up the wider

national union. Hence, in the brilliant period of Greek history, it is in backward parts of Greece that federation seems to succeed.

We learn from historians that—besides Achaeans and Aetolians—a union of this kind existed among the Phocians, Acarnanians, Epirots, and the more historically important Boeotians, during the palmy days of Greece. But this last instance illustrates the deep opposition to a really effective development of federalism which, during this period, was caused by the progress of political civilisation concentrating patriotic sentiment on the single city. This did not tend against union of some kind, for the city-state has its political consciousness and patriotic sentiment exalted by holding others in subjection, and is delighted to take any opportunity of doing this. But it tended powerfully against that union of co-ordination on an equal footing, which is the essence of federalism. Thus the position of the minor towns in the Boeotian league tends, so far as we see, continually to fall from that of members of a real federation into that of dependencies of Thebes; and the same phenomenon is seen in the development of the league formed by Athens after the Persian wars. Hence, before the time of Macedonian predominance, it is only, as I have said, among the more backward portions of the Hellenic body that true federalism tends to be effectually maintained, and especially among those where the development from rural canton into city had not been fully carried out. The Aetolian league, as Freeman says, is even in the later federalist period a league of cantons, not a league of cities.

It is not difficult to understand how the backward and primitive branches of the Hellenic race came to anticipate their more successful and brilliant brethren in this development. Tribes in the condition of the Aetolians or Acarnanians, scattered in villages over a thinly populated territory, have their political consciousness imperfectly developed: hence, as they easily break up, they also easily combine; but in proportion as the importance of the idea of the state grew with the growth of the city that formed

its material embodiment, the combination became more difficult.

§ 4. The old Achaean league was one of these federal unions of comparatively unimportant city-states. Hence the peculiar interest of the later Achaean league is that it is a league of cities in which the isolation of the old city-state is overcome, while it still retains its leading characteristics. It is true that Sparta and Athens stand aloof and do not accept federation, except very transiently and reluctantly. But other states of old prestige—Corinth, Megara, Argos, and the newer "great city" in Arcadia—appear to accept it cordially, doubtless as the only effective means of carrying on a struggle—which for a time was partially successful—against later Macedonian supremacy.

"This aftergrowth of Hellenic freedom," [1] as Freeman calls it, dates from 281 B.C., forty years after the Lamian war (322 B.C.) which closes the old period of Greek freedom with the vain struggle to throw off the supremacy of Macedonia, after Alexander's death. "During the wars of the Successors," says Mr. Freeman,[2] "Greece became one of the chief battlefields of the contending princes. The various cities were indeed often flattered and cajoled. First Polysperchon and then Demetrius . . . gave himself out as the liberator of Greece:" but they both "liberated cities only to become masters of them themselves. Generally speaking, each Greek town became a fortress to be struggled for, to be taken and retaken, by one or other of the selfish upstarts who were laying waste Europe and Asia in quarrels purely personal."

The revival of the old Achaean league took place, as I said, 281 B.C. But the critical step in overcoming the isolation of the city-states is not taken till thirty years later in 251 B.C., by a man of political genius, Aratos, who persuades the old city-state Sicyon to apply for admission. Hitherto the towns of the league had been individually insignificant; but Sicyon had historic prestige. From this

[1] *Federal Government*, p. 177 (2nd ed.). [2] *Op. cit.* p. 180.

time the league grows. Corinth joins in 243 B.C., then Megara and other states of north-eastern Peloponnesus. Then the "great city" of Arcadia joins, its Tyrannus voluntarily abdicating, and other Arcadian towns. Then in 229 B.C. comes a further voluntary abdication of Tyranni, and Argos of ancient fame is added to the league.[1]

After an unlucky conflict with Sparta (221 B.C.) the Achaean league goes through a period of weakness and dependence on Macedonia; but it rises again before the end of the century, and when the resistless power of Rome begins to predominate in Greece, the Achaean league is the leading political community in southern, as the Aetolian league in northern Greece. Athens in this period is politically null, and such vigour as remains to Sparta does not enable it to vie with the league.

The fundamental principle of the federation, broadly stated, was that the states forming it became one state so far as their relations to communities external to the league were concerned, while retaining their original independence and plurality in all internal matters. "There was an Achaean nation, with a national assembly,"[2] in which each of the federated states had one vote; there was a national executive, and also national tribunals to which, as to the assembly, "every Achaean citizen owed a direct allegiance." "No single city could of its own authority make peace or war" or treaties with foreign powers; and it would seem that, by the general law of the league, no single city could receive or send ambassadors without the permission of the central government,—though there are several instances of the violation of this rule in the later times of the league, when unwilling cities had been annexed to it by force. On the other hand, each city determined with perfect independence its political constitution and laws, without any interference from the central government. It seems, however, to have

[1] Compare Switzerland; how in A.D. 1315–1353 the league of forest cantons after the battle of Morgarten (A.D. 1315) was joined by Luzern, Zurich, Bern.

[2] Cf. Freeman, *Federal Government*, p. 202 (2nd ed.).

been an established principle of the federation that citizens of any one city were admitted to the "private rights of citizenship, those of intermarriage and the possession of landed property, in the other cities of the league." [1]

The national government was formally democratic, and non-representative: all citizens over thirty years of age in all the cities had a right to attend and speak in the national assembly, and the single vote of each city was, we may assume, determined by the majority of its citizens present on any occasion. But it is interesting to note how, by mere force of circumstances, the assembly practically acquired a preponderantly representative and aristocratic character, except as regards the element drawn from the single city in which the meetings were held; since attendance was unpaid, and the poorer freeman in other cities would ordinarily be reluctant to incur the sacrifice of time and money that it involved.[2]

Again, though the assembly was constitutionally supreme, the practical difficulty of having frequent meetings prevented it from attempting to administer current affairs as the popular assemblies in Athens and other democratic city-states did. In fact its ordinary meetings were probably held only twice a year for three days each time; and though extraordinary meetings could be summoned on occasion of special urgency, the power of summoning them seems to have rested with the executive. From this it followed naturally that the share of power exercised by the ten annually elected magis-

[1] Freeman, *op. cit.* p. 201.

[2] [There was also a "boule" (council or senate), but in our authorities there seems often to be] a practical identification of council and assembly. [Some passages in Polybius] look as if the two words were practically synonymous. At any rate we may, I think, infer that the assembly usually consisted of the "boule" only, [other members probably not attending].

It would seem from what we hear of Rhodes, etc., that in other cases of democracy in the late period of semi-independence of certain Greek cities as Roman allies, the formal government by the assembly of citizens became a mere form.—Cf. Cicero *Rep.* III. xxxv. Taking Polybius xxix. v. along with Cicero's account, one cannot resist the conclusion that the *personnel* of the "Boule" and of the Assembly were practically the same.

trates, who, under the presidency of the General—also elected annually—formed the executive, was practically much larger than that exercised by any executive magistrates in Athens; or, we may assume, in democratic city-states generally.

LECTURE X

ROME

§ 1. I NOW approach the portion of my subject which presents a peculiar difficulty,—from the point of view of political science—as compared either with that which has gone before, or with that which will follow. The difference, generally speaking, between the scientific and the merely historical treatment of the forms of government and of political society which history presents to us, is that in history proper we are concerned primarily with particular facts, and only secondarily with general laws and types, causes and tendencies; whereas in Political Science we are concerned primarily with the general laws and types, and only with any particular fact as a part of the evidence from which our general conclusions are drawn. Now in dealing with Greek history the distinction is easy to maintain: the great number of Greek city-states enables us—in spite of the great gaps in our knowledge of their constitutions—to draw general conclusions without much difficulty as to the different general types of government which tend to prevail at different periods in the development of the city-state, and the general causes which tend to make the polity pass from one form of government to another. But when we turn to Rome, and try to trace the expansion of the City-State into an Empire, these resources for generalisation fail us. Rome, expanding, absorbing, conquering, imperial, is something unique in history: there is, as the Roman poet says, "nihil simile aut secundum":—there have been many large empires under purely monarchical rule, but none founded and held by a City-State under republican rule, which is meanwhile

expanding into a Country-State. Hence in dealing with so unique a fact the treatment proper to political science can hardly be distinguished from that of ordinary history.

In this difficulty, I think we should try to get as much aid as we can from "Comparative Politics," by applying to the Roman polity in its republican stages the ideas furnished by Aristotle's analysis and classification of the varied facts of Greek political life, and observing both resemblances and differences.

Aristotle has been commonly believed to have included Rome among the constitutions which he studied: but what he said about it is entirely lost; and we have no reason to believe that he gave it any special attention. He did not foresee that about half a century after his death, the submission of Tarentum (272 B.C.) would bring the Greek colonies that had Hellenised south-east Italy—"Magna Graecia"—finally under the dominion of Rome: that in less than half a century more (229 B.C.) the powerful Italian republic, now undisputed ruler of Italy, would intervene for the protection of Greeks against the Illyrian pirates: and would be therefore formally admitted to the Isthmian Games and Eleusinian Mysteries as a member of the social union of Hellenic peoples: that in a generation more (200–197 B.C.) Greece as a whole would find her best wisdom in siding with the Roman arms against Macedonia, and obtain from the Roman general, who was a professed admirer of Greek culture, a decreed freedom—if the term be not a contradiction: that then, in fifty years more (146 B.C.), the Roman sack of Corinth would practically extinguish Hellenic independence.

But these events only concern us in a secondary and subordinate manner. It is more in our way to ask how Aristotle would have regarded the Roman constitution, if he had known as much of it as we know. I mean the constitution, as existing in his time, at the outset of the last quarter of the fourth century B.C.: when more than a generation had elapsed since the prolonged conflict between patricians and plebeians had been practically decided by the

Licinio-Sextian laws; and having subdued and partially absorbed her immediate neighbours, Rome was preparing for the final struggle with the Samnites for the supremacy in the peninsula.

In the first place, it would have been clear to him that it was a kind of "Constitutional Government" in the widest sense in which he uses this as a special term, *i.e.* a constitution in which a sort of fusion or balance between the principles of Oligarchy and Democracy was attained: but a balance inclining to Oligarchy, and of the kind that in a common wide use of the word might be called an Aristocracy; since the general administration of affairs was mainly in the hands of a senate, the vacancies in which were filled in the first instance by persons who had held the highest magistracies, having been elected to these by the votes of the assembly of the people. I conceive that Aristotle would have certainly held that some approximation to the kind of balance that he considers desirable between the Few and the Many, had been attained in the Roman constitution: the Many having, not the management of public affairs, but what Aristotle considers that they must have, if they are to be free and contented citizens—the power to choose their magistrates, and to call them to account after their term of office for gross misuse of their powers. But the method by which this balance had been attained was, in important respects, specifically unlike anything that had fallen under Aristotle's observation.

In the first place, it would have struck Aristotle as very remarkable that there was not *one* general assembly, but *two*, constituted in different ways, the assembly of the whole people in centuries and the meeting of plebeians in tribes.[1] The former of these was less democratically organised than the latter: its organisation—attributed to Servius Tullius—being, at first and probably at this time, such as to throw greater burdens of taxation and military equipment, and

[1] "Tribes" were divisions originally local and administrative, which became of political importance through the development of the powers of the plebeian assembly.

greater political power, into the hands of the men of property arranged in classes according to a graduated scale of property qualifications: so that the preponderance lay with the well-to-do class, who also voted before the others:—whereas from the meeting of plebeians the gentry of old family were excluded. It would have seemed to him remarkable that while the former assembly had the power of electing to the high administrative offices—consuls, praetors, censors,—the latter plebeian assembly [1] had, in conjunction with the special magistracy that directed it, the constitutional right to call magistrates to account after their term of service and to fine them, though the power of finally deciding on capital punishment was reserved for the assembly in centuries. I do not know any case in Greece in which we have the least hint of a similar duality of governing assemblies. No less peculiar would have seemed to Aristotle the popular magistracy by which the meeting of plebeians was directed and which was elected by them—the Tribunes; whose power, though it was purely negative as regards administration, was yet extraordinarily unlimited. The tribune could only act positively as leader of the popular assembly: apart from the assembly he could only forbid, not command; but there was no administrative act that was not subject to be checked by his intervention; and to make the protection thus secured through these plebeian magistrates more thoroughly effective, the tribune's person was protected with a sacredness beyond that of any other magistrate. It was a grave offence even to interrupt a tribune while he was speaking.

But it is even more remarkable to find that the main legislation of the community ultimately fell into the hands of this more popular assembly, from which the patricians, the gentry of old family, were—as I have said—excluded. We are told that long before this time a law had been passed making the resolutions of this plebeian assembly binding on all citizens—including the patricians who were not members of it; and though in Aristotle's age this legislative power of the plebeian assembly was still constitutionally subject in

[1] *Concilium Plebis.*

some manner to senatorial or patrician control—in what manner historians are not agreed—these restrictions were subsequently done away with (287 B.C.), and before Rome became undisputed mistress of Italy the legislative competence of the plebeian assembly was complete.

If Aristotle had looked back for an historical explanation of this unique constitutional result, he would have found it in the intensity and obstinacy with which the struggle between the old families and the new citizens or "plebeians" had been carried on in Rome during the first period of the history of the republic. The struggle had been so hardly fought on both sides that the plebeians seem to have organised themselves into a kind of state within a state, with assemblies of their own under officers elected by themselves; and had compelled the gentry to recognise the right of these officers to check at any point any action of the senate or ordinary magistrates that they judged to be oppressive; and finally had brought them to recognise the resolutions of this plebeian assembly as having the force of law.

§ 2. The intense and prolonged character of these struggles of the fifth and fourth century B.C., is all the more noteworthy because the first stage in the process of breaking down the exclusive privileges of the gentry had passed, without leaving any record of strife, while Rome was still under kingly rule.

The original assembly of the Roman people (*comitia curiata*) was organised on what I may call the "clan-principle"; and though at least in its later form it included plebeians, the power of the old families was doubtless undisputed in it—as in the Greek states generally in the time of primitive oligarchy. But this assembly, though it continued to exist, does not appear to have had political importance at any time in the history of the republic. The function of electing magistrates, of inflicting capital punishment, and—at first[1]—of legislation, had passed to the assembly in centuries, of which I just now spoke: *i.e.* the

[1] That is, till the purely plebeian assembly obtained concurrent legislative power.

assembly not of families or clans, but of freeholders liable to military service in which the patricians and plebeians were arranged together in classes determined by a property assessment, on a plan somewhat similar to that adopted in the Solonian constitution at Athens. However, though the distinction of patrician and plebeian is swept away in the assembly, the exclusive right of the patricians to be elected to the chief magistracies remains, and it takes nearly a couple of centuries to get finally rid of it: the decisive step being taken in 367 B.C. when it is finally settled by the Licinio-Sextian law that one of the two consuls is always to be a plebeian. It is in the early part of this struggle that the plebeians organise themselves into an assembly of their own, under the presidency of their own plebeian magistrates, the tribunes, and obtain for these tribunes the power of vetoing the acts of the regular government.

How under this system the machine of government did not come to a dead-lock it must, I think, have puzzled many readers of Roman history to guess; and it certainly shows the Romans to be a people of remarkable practical political capacity—able to work in practice a compromise that looks in theory so unworkable.

But when the plebeians had triumphed in the constitutional struggle and secured the force of law for the resolutions of their plebeian assembly, another question arises: viz. why was the victory not carried further into complete democracy? Why in the century and a half that followed the termination of the struggle, while Rome is conquering the world round the Mediterranean, does the administration of affairs remain substantially aristocratic? so that the plebeian assembly becomes an organ of legislation working normally in harmony with and, under the influence of the senate, and the tribunate is changed from the leadership of popular opposition into one of the regular offices which a rising plebeian of wealth and hereditary distinction takes on his way to the consulship and the senate; and, in short, the distinction between the *National* assembly and magis-

trates and the assembly and magistrates of the *Commons* becomes, for a long time, a mere survival of a conflict now extinct, in a nation practically governed by the gentry.

I attribute this largely to the pressure of external struggles—conducted always with ultimate success, but many times needing the utmost efforts and sacrifices. Such struggles tended to intensify the patriotism and martial spirit on which they made demands; and in a patriotic and martial people, feeling that they are well and successfully led, the habit of obedience to the existing government tends to grow strong.

But an important part of the explanation of their acquiescence is to be found, I think, in another characteristic of the Roman Plebs at this period which distinguishes it very markedly from the Athenian Demos; that its voting in the plebeian assembly was decided by the majority not of individuals, but of the divisions originally local and administrative called tribes; the divisions being so arranged that the rural element preponderated very decidedly over the purely urban. It is not too much to say that the cause of Rome's success is largely to be found in a peculiarly happy balance of urban and rural elements in the composition of the state. On the one hand, the prominence of Rome in Latium, which gave it first the headship of the Latin confederacy and afterwards enabled it to absorb the other Latin communities, seems due to its situation on the Tiber favourable for trade; which developed urban life in Rome to an extent that no other Latin town could rival.[1] On the other hand, in the political system of Rome, the purely urban element was—at least until the decay of the republic begins—remarkably subordinated. Originally the franchise in the assembly of tribes was conditional on land-ownership; the original urban population being confined to four out of the large number of tribes—gradually increasing in the republican period up to thirty-five—into which Roman

[1] Mommsen remarks impressively on the greater political force and impetus which the urban concentration of Rome gave to Latins as compared with Samnites.

citizens were distributed. Then, when with the growth of the city the landless members of the community had to be admitted, they were for some time confined to the four urban tribes; which thereby became lower in prestige than the rest, as constituting a kind of sink into which the most despised elements of the free population — the freedmen owning less than a certain amount of land—were made to concentrate. The plebs of Rome in the palmy days of the Republic were, therefore, preponderantly of the kind that Aristotle thinks specially adapted for moderate or constitutional democracy: rustic cultivators who did not want to govern, but only to be secured against misgovernment. And we may add—what was beyond the range of Aristotle's reflection—that only to a Demos like the Roman, which conquered with the sword but held its conquests with the plough, was the expansion of a City-State into a strong imperial Country-State possible.

Thus, then, it came about that when, after a prolonged struggle, the Roman people had established a system of checks and controls over their governing class so effective that, judged by Greek analogies, it seems likely to lead to complete democracy, they stopped at this point for the two centuries that decided the fate of Western civilisation; leaving the administration of affairs in the hands of what in Aristotle's sense as well as ours may be called an "aristocratic" body.[1]

§ 3. As regards the constitution of the governing class and its relations to the governed, a careful distinction must be drawn between different periods of Roman history.

For more than 150 years after the fall of the monarchy —the date of which is uncertain, as is the exact nature of the transition from monarchy to republic—the struggle prominent in Roman history is between patricians and

[1] I may note one special characteristic in which the Roman Government—until demoralised by conquest—would conform to Aristotle's conception of *Aristocracy* as contrasted with Oligarchy: *i.e.* their concern for purity and simplicity of manners, and the effort that was made by the laws, and by the censors, to repress luxury. We are told that in 275 B.C. a man who had been twice consul was excluded from the senate for having too much silver plate!

plebeians. But this struggle is not a simple contest between the rich few and the poor many: it is this partly, but this complicated by a quite different struggle, between old families and new, the struggle of the rich plebeians to get their share of public offices and dignities.

This is strikingly illustrated by the Licinio-Sextian laws (already referred to), passed in 367 B.C., after ten years of intense conflict, which constitute the most important turning-point in the struggle between patricians and plebeians. The object of these laws was on the one hand to secure one of the two highest official posts—the consulships—to citizens outside the closed group of old families; on the other hand to limit the amount of sheep and cattle that any citizen might pasture on the public domain, and the amount of public land that any individual might occupy — in the theoretically temporary but practically permanent way in which wealthy citizens got the use of public land; also to compel landed proprietors to employ free labourers in a certain proportion to slaves; and to relieve debtors from the full burden of their debts by deducting interest already paid from principal. This aggregate of regulations clearly contains two heterogeneous elements; one element representing the struggle of the *nouveaux riches* with the old families, and the other representing the struggle of poor with rich. What the mass of small rustic cultivators wanted was relief from the oppressive industrial competition and encroachments of the large capitalists: what Licinius and the leading plebeians cared about was admission to the offices. The combination of heterogeneous elements is impressed upon us by the startling fact that, as we are told, Licinius was one of the first persons condemned for exceeding the limit, fixed by his own law, of land allowed for agricultural occupation.

Hence we are not surprised to learn that when the victory is won, the leading plebeians coalesce with the old nobility: so that a new nobility is formed, in which rank is given not by patrician extraction but by having ancestors who had held the highest offices. It is true that it never

became quite so close as the old: lowborn merit has a chance and *can* win its way to the consulship, especially in the first century after the admission of plebeians to the consulship, while Rome is conquering Italy (367–272 B.C.). Still in the main the governing few have a marked tendency to hereditariness, and gradually a state of things is brought about in which the scions of "consular" or "senatorial" families do not quite monopolise the offices and the vacancies in the senate, but they secure the lion's share of them.[1]

It was the new nobility so constituted that, as represented by the senate, was practically supreme in the administration of affairs at Rome, when Rome was conquering its empire. But, though preponderantly oligarchical, this government did not resemble one of those "Governments of the Few" of which Aristotle speaks.

For in Roman constitutional theory the assembly of free citizens—in its singular double form—remained the highest authority in the community, and was fully conscious of its sovereignty: the assembly of the centuries elected the consuls, praetors, censors, and from time to time a popular candidate was carried against the wish of the nobility. It also was the final court of appeal when serious conflicts arose among the authorities practically governing; it alone retained always the old right of declaring offensive war, and the senate was accustomed to bring before it difficult or invidious questions of peace and alliance: all new laws were passed either by this assembly or the plebeian assembly in tribes. But legislation was mainly, as I have said, done by the plebeian assembly: and this very fact shows strikingly how the power of the senate was maintained by persuasion and management of the commons, not by coercing and excluding them from political rights. Though the senate for nearly two eventful centuries—between the practical termination of the old struggles of patricians and plebeians and the revolutionary period initiated by Tiberius and Caius Gracchus—practically determined in most cases

[1] Paullus, conqueror of Macedonia, was chosen for his merit, "a rarity in 168 B.C.," says Mommsen.

what laws should be passed, it found it convenient to do this chiefly by means of the plebeian assembly and the plebeian magistracy (probably to prevent popular opposition to its measures): and from time to time, no doubt, it had to give way and allow measures to be passed which were not to the taste of the nobility—though the power of each tribune to check the action of another tribune as well as of other magistrates became a valuable constitutional weapon to prevent this.

§ 4. But, it may be asked, how is it that the old conflict between poor and rich—which we have seen to be one element of the struggles of the fifth and fourth centuries B.C. between the old nobility and the plebeians—did not go on equally in the third and second century, under the *régime* of the new aristocracy of consular and senatorial families? Why does it subside until, in the latter half of the second century B.C., the Gracchi conjure up the spirits of revolution?

The answer is to be found in the results of the series of successful wars which Rome was, as I have said, waging during this period: because the method by which the Roman government staved off agrarian discontent during this period of conquest was also the method by which it solved the difficult problem, how a city-state was to hold in firm grasp an immense empire. Italy was subdued, as we know, step by step, and while the process was going on, it was the practice of Rome to exact from the conquered a portion of their land.[1] This land belonged in the first instance to the community, and large portions of it were allowed to be occupied at a low nominal rent by the rich; still from time to time great masses of the newly conquered land were distributed among the Roman citizens to be held in complete ownership. To a considerable extent, but not altogether, this was done by founding *coloniae*: which must be distinguished from the ordinary Greek colonies (ἀποικίαι), as the colonists did not become the germ of a new independent

[1] One-third ordinarily: but the amount seems to have varied: sometimes even the whole was forfeited.

state.[1] They sometimes remained Roman citizens fully qualified—in other cases they were in the position occupied in early days by the inhabitants of Latium, who were not citizens of Rome. That is, they were distinguished from other dependent allies of Rome by certain privileges—of which the most important was that Roman citizenship could be obtained by holding office in a Latin colony, so that the most talented and aspiring elements in these towns were continually absorbed in the dominant city-state. Partly in this way, partly by the sense of community of language and race, the tie of these Latin colonies to Rome proved sufficiently strong to stand—in the main—the severest strain put upon it (*e.g.* the darkest hour of Hannibal's invasion): thus Latin colonies as well as those of Roman citizens remaining such, formed an effective network of garrisons—connected by the well-known military roads of Rome—maintaining Roman dominion in other parts of Italy: while they also formed a group of centres from which the Latin language and civilisation gradually spread over the peninsula. They therefore play an important part in the remarkable and unique process of transformation by which the city-state on the Tiber was changed into a country-state extending over Italy, while still retaining the form of polity appropriate to a city-state: —still recognising as the constitutionally supreme organ of government the assembly of Roman citizens, meeting in the market-place of Rome.

Also, as I began by saying, these colonies were outlets for staving off the agrarian demand which from time to time tended to arise among the smaller cultivators that formed the mass of the Roman assemblies and armies: while from time to time a part of this demand was satisfied by allotments of public land without garrison duty.

The position of the Roman colonists was not without its drawbacks: at first, as we may imagine, their relations with the old inhabitants of the towns to which they were sent were by no means friendly. These old inhabitants

[1] They resembled the κληρουχίαι of Athens.

were, for the most part, compulsorily transformed into members of the Roman state, but without political privileges —*cives sine suffragio*: and it is not surprising that we hear from time to time of a colony revolting and killing or expelling the Roman intruders. In time, however, the old inhabitants coalesced with the new citizens and often received the *suffragium*. Thus the Roman state came to consist of citizens of two kinds, a continuous body inhabiting the territory round Rome, continually enlarged by new absorptions till it reached the utmost limits to which it seemed possible to extend the environing country of a city-state: and besides this a network of colonies, whose members, in some but not all cases, retained and handed on to their descendants the full qualifications, civil and political, of Roman citizens—the political citizenship remaining practically latent so long as they were colonists, but capable of being exercised if ever they transferred themselves to Rome.

In this way, through the double process of absorbing conquered enemies and providing room for the expansion of her own body, the settlement on the Tiber grew into a state containing—at the middle of the second century B.C.—328,000 citizens capable of bearing arms; a monstrous "polis" in Aristotle's view.

Here its growth stopped for a time, and even temporarily receded. After 177 B.C. we hear of no new allotments of land, except in a single colony in Picenum 157 B.C. It would appear that there was no more public land in Italy to divide except what was in the occupation of the rich men, who would not give it up without a severe struggle. But the demand of the poorer citizens for land—which was an important social cause of the expansion—still continued. Hence when the century of revolution begins, that lasts from the tribunate of Tiberius Gracchus to the battle of Actium—the century of conflict, dissolution and agony, bewildering, violent and bloody, through which the republic changes into the new imperial monarchy destined to linger in the East till the very verge of the modern world—the question with which it begins is again the old agrarian

question tossed between the patricians and plebeians; the "Sempronian" agrarian law of Gracchus is a revival of the agrarian law of Licinius passed nearly two centuries and a half before.

Extensive allotments of land appear to have been made in execution of the Sempronian law; and in a few years the number of citizens capable of bearing arms is stated to be nearly 400,000. A further enlargement was hardly possible in the direction of the traditional policy of extension: the next step to be taken could only be the inclusion of the other Italians who had by this time become almost as completely Latin in language and civilisation as the Roman colonies, so that the privileges of the latter had come to seem irrational and inequitable to those excluded. And this step is taken soon after the end of the second century; but it is forced on Rome as a result of civil war, and belongs in its causes and effects to the long process of revolution.

§ 5. It does not fall within my plan to narrate the steps of this revolution; but I will briefly note some of the main features and causes. Firstly, in every act of the protracted drama it is made very clear to the attentive observer that what is breaking down is not the government of a *pure* oligarchy or aristocracy, but of an aristocracy whose normal highest organ, the senate, has all through its rule had to recognise the ultimate sovereignty of a popular assembly, and the executive authority of magistrates elected by it: while it has in fact practically used this assembly as the chief organ of legislation. The "habit of obedience" on which all orderly and tranquil government rests was, in the Roman state, a habit of obeying laws passed by the assembly of plebeians in tribes on the proposals of its tribunes as much as it was a habit of submitting to the decrees of the senate. This fact is of fundamental importance—especially among so constitutionally-minded a people as the Romans—when the senate has to defend the traditional political order against revolution. It explains the startling want of direct resistance shown by this proud nobility, so strong, as

it seems, in established power and traditional *prestige*, at the outset of the revolution period; when an audacious tribune (Tiberius Gracchus) bids defiance to them, and the assembly under his leadership gets out of their management and passes sweeping measures against their interest. For direct resistance—to lay hands on a tribune, to oppose obstinately the will of an assembly whose legislative authority is as established and traditional as their own administrative authority—this would be itself revolution, and would destroy the advantage of their position as defenders of order. They let the tide of democratic legislation go over their heads, and bide their time; when the Gracchi are no longer tribunes, they take a deadly revenge; but even then they dare not reverse the most important part of their legislation.

This political condition is an important factor in determining the form taken by the long process of change from republic to monarchy. But the causes that make the change inevitable lie deeper in the moral condition of the governing class. The nobility who had the courage and wisdom necessary for the task of conquering the world of circum-Mediterranean civilisation, had not the self-restraint required for governing it justly when conquered. The "assembly of kings," as Pyrrhus' ambassador called them, is transformed to a great extent into a gang of venal and avaricious tyrants. But here again it is to be noted that the conditions of their government are such that their corruption carries with it the corruption of the popular assembly also. We watch, as we read this dark chapter of history, not merely the degeneration of an oligarchy, but also the demoralisation of an undeveloped democracy. To keep their power, the plunderers of the provinces throw large handfuls of the plunder to the people at home: in *fetes* and shows of increasing splendour, in distributions of corn first at low price, then at merely nominal prices, in wholesale bribery at elections. Thus—and especially by the distributions of corn when these have become regular and practically gratuitous—the old assembly of solid, honest, martial peasant-citizens who trooped in to vote in their great market-town with a genuine sense of

civic duty, turns into a metropolitan mob swollen by the most worthless elements of the widely dispersed mass of Roman citizens, drawn to Rome by the prospect of eating the bread of idleness.[1]

This change is, of course, intensified by the extension of citizenship to the Italians generally—after the war between the Roman State and its confederated Italian allies (90–89 B.C.)—inevitable as that measure was; and thus before the transition to what is practically monarchy arrives, the qualification of the Roman popular assembly to legislate and elect governors is more glaringly and hopelessly gone than the qualification of the senate to administer the Empire.

[1] It must be borne in mind that membership of any of the thirty-five tribes into which the Roman people was divided—though at first attached to residence in a certain district—had long ago come to be handed down as a hereditary personal right in the families of citizens who had originally acquired it by residence; and, in the latest period of the history of the republic, was not limited by any condition of owning landed property.

LECTURE XI

ROME (*continued*)

§ 1. In my last lecture I endeavoured to trace briefly the development of the peculiar balance between oligarchy and democracy, which the Roman constitution presents to us, from the early time of bitter conflicts and gradually compacted compromises through the brilliant period of prosperous expansion of the civic body and extension of imperial rule to the final decay and transition to monarchy.

But before passing to consider the characteristics of the government that was formed out of the ruin of the old republican constitution, I ought to note that Polybius, in the account he gives of the Roman constitution in his time (first half of the second century B.C.), finds in it a "monarchical" element which I have so far left in the background. He regards the constitution of Rome as a combination of the three forms recognised in the current classification—Monarchy, Aristocracy, Democracy—that is, he regards the consuls as representing the kingly element, and says, indeed, that the three elements are so fittingly distributed and balanced that not even a native can say definitely which preponderates. This is an important judgment of an observant and thoughtful contemporary; and no doubt we may infer from it that both the power and the dignity of the highest magistrate were decidedly greater in Rome than that of the corresponding official in any Greek city-state known to Polybius, and so far came nearer to monarchical power and dignity. We cannot, indeed, infer that the older type of oligarchy in Greece did not afford examples of polity resembling the Roman in this point; but we do not posi-

tively know of any such example, and I think we may infer that Polybius knew of none. The difference is connected with the fact already noted that the Roman national assembly did not attempt to govern, but was content with the power of electing its governors, and, in extreme cases, calling them to account; on the other hand, the senate, although it became practically the supreme organ of administration, always remained in theory the council whose advice the chief magistrate was bound to take in all important matters rather than the governing body whom he was constitutionally bound to obey.

It is important to bear in mind, in considering the government of Rome before the period of revolution begun by the Gracchi, that the practical control of the senate was much greater than its formal power. On the one hand, in matters which the assembly formally decided, it usually accepted the decision proposed to it by the senate; on the other hand, in matters in which the magistrates could formally act independently, the habit of deferring to the senate was firmly established. Still, the magistrates and the assembly combined—even the plebeian magistrates and plebeian assembly—*could* make the most important changes against the will of the senate, without violating the accepted constitution; and unless we bear this in mind, we cannot, as I said, interpret rightly the phenomena of the age of revolution.

Still I do not think that Aristotle would have recognised the characteristics of monarchy in the consulship, as it existed in his time or the time of Polybius, so far, at least, as the relations of the consuls to citizens are concerned. I say citizens, because the power of the consul—or the proconsul or propraetor — over soldiers on a campaign, and over the subjects of the Roman state, was much more extensive: it may be fairly said that in the provinces, for the term of their appointment proconsuls reigned monarchically,—accordingly, as we shall see, it was this *proconsulare imperium* made permanent in a single hand, which formed the main element in the power of the early emperors.

But in their relations to citizens, the powers of the consuls—in Aristotle's time and later—were very unlike anything he could have called kingly. Not only was (1) the duality a great limitation; but also (2) the power of check constitutionally given to the tribunes; moreover, (3) in the latter half of the fourth century the consuls had lost the judicial function, which had been separated off and allotted to the praetors, and the important power of revising the list of senators which now belonged to the censors. Further, as I have said, in all their more important functions they normally acted as a mere executive of the senate, to which body they were effectually subordinate. Originally, no doubt, consular power had a much closer resemblance to kingly power; and it is interesting to note the two processes of transition by which first the extensive powers possessed by individual magistrates were gradually differentiated out of the original unity of the royal power; and then, when the republic changed back into monarchy, the new imperial power grew out of a reunion of some of the divided elements. For though the imperial rule in Rome is introduced at the close of a long period of sanguinary lawlessness, we are not to regard it as essentially irregular and unconstitutional in its nature, like the Greek Tyrannis; on the contrary, nothing is more remarkable than the efforts of Augustus to drape the new absolutism in the garb of constitutional authority, and fit it in to the complex historical system of powers which had existed before it.

§ 2. Of these two transitions—from monarchy to republic and, after nearly five hundred years, back again from republic to monarchy—the former is veiled from close scrutiny in the mist of legend. We can be sure, as we saw in an earlier lecture,[1] that the transition was peculiarly violent in its manner, from the intense and lasting traditional aversion to the idea of kingship which it left behind—an aversion which gave powerful aid to the nobility in the earlier period of the republic, when any popular leader became formidable

[1] Lecture IV. p. 63.

and had to be crushed; and even at the close of the republic it is clear from Plutarch that the conspirators against Cæsar relied upon this traditional popular aversion. And we can also be sure that the original consuls were much more like kings in the range of their powers than those of more historic times, just as the first magistrates who held office for a limited period at Athens were. The early consuls possessed the judicial function which was afterwards, as I have already said, separated and given to the praetors—the only intervention of the assembly being the right of appeal in the case of capital punishment. They had the revision of the list of the senate, and doubtless considerably greater freedom in the filling up of vacancies than was customarily allowed to the censors of later time; and they had no tribunes to check them. The only difference in fact between their power and the kingly power was that which inevitably followed from the short duration of the office, which made them effectively responsible after the office was laid down for lawless acts committed during its tenure; and the check exercised by the "collegiality," as the Germans say—the duality as I have called it—of the consulship. This duality was doubtless introduced with this object. The Romans did not at first conceive that any outside control could be exercised on the highest magistrate during his tenure of office, without interfering with the effectiveness of government; he might be called to account and severely punished after he had laid down office, but if order was to be preserved, the commands of the consul while consul must be obeyed whether constitutional or unconstitutional. The only way, therefore, of preventing tyrannical acts was to have two consuls, each of whom had the power to intervene and nullify the commands of the other. The danger of divided government—especially at crises—was not overlooked, but it was thought that this was sufficiently avoided by the power reserved to either consul of nominating a dictator for six months. As, however, both consuls belonged to the closed group of old families, during the first century and a half of the republic, the

check afforded by duality was naturally found insufficient by the plebeians: and hence the tribunate was instituted —with the unlimited right of checking, separated from the right of giving positive commands—to protect the plebs against the consuls.

Then, as I have already said, other important elements of the kingly power were taken away, piece by piece, and placed under separate management similarly dual or plural. First the censorship was instituted for the management of finance and the periodical revision of the list of citizens, and their arrangement in classes for military and civil purposes, according to the amount of their pecuniary resources. The censors also had, as I have said, the function of filling up vacancies in the list of senators, and an important power of excluding from the higher ranks of senators and knights, on account of scandalous immorality, or even extreme luxury. In the exercise of this delicate function the duality of the censorship was doubtless important, as the influence of private enmities was kept in check by the necessity that both censors should concur in the mark of disgrace.

Then, further, in the critical year 367 B.C., when one consulship was secured to plebeians, the judicial function—so far as civil jurisdiction went—was separated from the magistracy thus thrown open, and given to a colleague of the consuls—at first only one—called by the old name of praetor. About a century and a half later a second "praetor peregrinus" was added for dealing with suits between foreigners, or citizens and foreigners: then, as the Roman dominion beyond Italy grew, four more praetors were gradually added—increasing the whole number to six—at first for the administration of the first four transmarine provinces of Rome; but ultimately the establishment of permanent special courts of criminal jurisdiction led to the employment of all six—after Sulla eight—praetors in judicial functions. The provinces were thus definitely handed over to proconsuls and propraetors—*i.e.* literally "vice-magistrates" who were normally consuls and praetors

with their "imperium" (power over non-citizens and soldiers on service) prolonged for a year after their year of office. The practice of employing these vice-magistrates had gradually become regular and extensive, as the number of provinces increased—praetors being only created for the first four.

Meanwhile the tribunate had been instituted as above described: and thus we have, while the republic flourishes, the old kingly power — developed and enlarged by the progress of empire and civilisation—exercised in fragments by different magistrates: always on the plan of "collegiality," so far as their civil power over citizens went, though the "imperium" was exercised over non-citizens and soldiers on service by proconsuls and propraetors singly.

We may note in passing that this splitting up of executive authority naturally tended to increase the practical power of the senate, which supplied the unity that every effective government needs in administration—the unity which in England is supplied by the Cabinet, the control of which over the heads of executive departments has also been developed, like the control of the senate, to meet a practical need, and without any formal constitutional assignment of power. If time allowed, it would be interesting to dwell on the gradual growth of the senate, from a council with purely advisory functions, customarily asked for advice by the primitive king and afterwards by the early consuls, into the practically supreme organ of ordinary administration with preponderant influence on legislation, which it was—as we have seen—in the third and second centuries B.C., up to the beginning of the revolutionary period. Here I will only say that its power tended naturally to increase as empire grew and civilisation advanced, as the growing amount and variety of the work to be done necessitated a more systematic division and assignment of departments than had been required in earlier days. Thus it was the senate that distributed the different provinces among magistrates and pro-magistrates, and assigned to each his equipment in troops, money, and

staff: and thus ultimately the whole supreme management of public finance, the government of the growing empire, the regulation of foreign affairs, fell practically into its hands. Composed, as it was, largely of ex-officials on the principle of life membership, it was an excellently constituted body for maintaining consistency of policy and preserving and handing on the results of political experience —which the system of annual magistracies rendered it difficult to preserve otherwise.

§ 3. Let us now turn to the transition from an imperial commonwealth to a monarchically ruled empire. I have already indicated that one important cause of this transition is the inadequacy of the form of government adapted to a city-state for the task of imperial rule. This inadequacy has two aspects: (1) in respect of the citizens of the Roman state; and (2) in respect of the allies or subjects.

It was inadequate so far as the citizens were concerned, because of the unwieldy size to which the old city-state had swollen by the process partly of expansion, partly of semi-compulsory absorption of neighbours, which has been described in the preceding lecture. At the same time this enlargement of size was from another point of view necessary to render Rome physically strong enough for the work of conquest and empire. Had the Roman state kept itself within the limits that seemed to the Greek thinkers desirable—and that were desirable for the satisfactory working of the political institutions of a city-state with supreme power formally vested in an assembly of citizens meeting in the forum—had it kept within these limits, then, however valorous the Romans might have been man for man, the mere fewness of their numbers would have rendered it impossible for them to hold and keep an empire. Still, though the growth was none too large for the work that Rome was called to accomplish, it inevitably rendered the form of government unsuitable to so expanded a community. At the same time when the century of revolutionary transition was begun by Tiberius Gracchus (133 B.C.), the state was, as we have seen, from another

point of view, too restricted, since the Italian allies were still outside, for when Latin civilisation had spread through the peninsula, the political difference in Italy between Roman citizens and others was felt to be a survival without justification. Finally the government was inadequate so far as the provincial subjects of Rome outside Italy were concerned, in consequence of the imperfect control maintained by the central government over the "vice-magistrates," who exercised almost monarchical powers in their respective provinces and too often used their power unscrupulously as a means of private gain.

Then, as I explained in the last lecture, under the influence of empire the efficiency of the central government steadily decayed in its two elements, the aristocratic and the democratic, alike. The corruption of the governing nobility, through the plunder of the provinces, brought with it a concomitant demoralisation of the popular assembly by their share of the plunder; and this latter effect was aggravated by the extension of the citizenship beyond the limits within which an effective community of civic sentiment, and a tolerable representation of the citizens by the assembly in Rome, could be maintained. And the condition was one in which the removal of one defect must tend to aggravate another.

In short, when Rome with its circumjacent territory, and the network of colonies beyond, counted close on 400,000 citizen-soldiers, the city-state was already strained to its utmost limits, though the citizenship of the colonies was recognised as only latent. But when the political inequality between the Romans and their Italian allies was at length in the main removed, and the latter had forced their way into citizenship, and the Roman state extended continuously through the peninsula—to the Po, and then up to the Alps—both the pretensions of the metropolitan mob to represent what had now practically become a country-state grew more palpably absurd, and the mob itself got worse.

Further, a corresponding, fateful change took place in

the army. Up to the end of the second century B.C., the old idea of military duty imposed on citizens with a certain property qualification retained its force: the citizen-militia felt itself to be the Roman people in arms, the tie of civic sentiment that united the members to each other was real and strong, and in their corporate sentiment the sense of belonging to the Roman constitutional state predominated over the sense of being the army of a given general. But in the first century B.C.—after Marius—all this is changed: the extension of citizenship diminishes the civic sentiment; an increasing part of the army—cavalry, light-troops, slingers—comes to consist of non-citizens; even for the infantry the old property qualification is abandoned, the army is formed by voluntary enlistment from all citizens indiscriminately; it comes to consist more and more of the more unstable elements of the population, attracted by the hope of plunder and ultimate allotments of land, for which they look to their general: thus the tie that binds the army to the general comes to be stronger than the sentiment of civic duty, and the army has become an appropriate organ of military despotism.

This is perhaps the most decisive element in the causes of transition. Sulla could restore the old aristocratic system, giving the Senate greater formal power than before; but he could not restore the predominance of the government of the city over the masters of the legions.

When, by the instances of Marius and Sulla, of Pompeius and Caesar, this inevitable predominance of military command, and the impotence of the civic authorities to resist it, were abundantly manifest, the only possible mode of maintaining order and the unity of the empire would seem to be to concentrate the command of the legions permanently in one hand. But in the first period of the empire this is not done by openly creating a monarch, but merely by concentrating in one hand and making permanent the powers which republican proconsuls had always exercised in the provinces. Instead of many proconsuls and propraetors succeeding each other with powers practically almost independent within

the limits of their provinces—only under the palpably inadequate control exercised by the danger of a prosecution after their return—and coming with ever-fresh greed to the brief opportunities of plunder, we have a supreme proconsular power extending over all the provinces and all the legions. And there can be no doubt that, notwithstanding all the troubles caused by the doubtful imperial elections, the provinces gained vastly by the change during the period of the early Empire; for Syria, Egypt, Spain, Gaul, Africa, the early Empire is a time of marked material well-being.

The primary element, then, of the original imperial authority consisted of the proconsular power concentrated and made permanent. The emperor is not king over Roman citizens, but he is "master of thirty legions of Roman soldiers." And it is to be noted that such a change was much less offensive to the traditional constitutional sentiment of Rome than if Augustus had made himself perpetual consul—as he seems to have first intended—or dictator; because the proconsular power, exercised only over provincials and soldiers on service, had always been conceived as more indefinite in extent and duration than the power of any urban magistrate. And, to soften the transition still further, Augustus was careful to leave such provinces as could be administered without any considerable number of soldiers as "senatorial" to be governed by proconsuls and propraetors just as in Republican times. His extended "imperium," indeed, carried with it an unlimited control of foreign affairs, peace, war, treaties, which of old belonged constitutionally to the assembly: still, in domestic affairs, the distinction between Italy and the provinces generally[1] was retained during the first century of the empire: Rome was still formally governed by senate and consuls and praetors, and under Augustus, the election to these offices seems to have been to some extent really

[1] I say the distinction between Italy and the provinces *generally*, because —as we know from the Acts of the Apostles—certain favoured provincial cities had special privileges of Roman citizenship.

independent. In relation to the Roman citizens the main element of the power normally exercised by the emperor was the tribunitian power. Augustus has other qualifications: he exercises censorial power when necessary; is chief pontiff permanently; consul occasionally to dignify the office; but he primarily presents himself to the Roman people as holding tribunitian power year after year. The popular associations of the name of tribune, the special sanctity and inviolability attached to it, its traditional unlimitedness at least in the function of restraint, were doubtless the considerations that dictated the choice of this office as the mode of transition.

But over and above all this the emperor had expressly an extraordinary power of doing whatever was necessary for the honour and welfare of the state; and doubtless from the first his will was felt to be practically irresistible. Gradually, before very long, the scaffolding of quasi-republican institutions was knocked away, and the unlimited monarch stood revealed, as the legitimate successor of the Roman people in all supreme legislative, executive, and judicial authority. Then, when under Caracalla, at the beginning of the third century A.D., Roman citizenship is bestowed on all subjects of Rome, the last relics of the distinction between Italy and the provinces fall away, and the old city-state has finally vanished in the Empire.

LECTURE XII

FUNCTIONS OF GOVERNMENT AND RELATION OF LAW TO GOVERNMENT IN GREECE AND ROME

§ 1. I PASS to contemplate the Greco-Roman polity from a different point of view, considering not the form of government, and especially the part of the community in which supreme power lies, which is what the ordinary classification —oligarchy, democracy, etc.—considers, but rather the work government does, especially the relation of government to law.

Now, as regards the general conception of the functions of government in Greco-Roman polity, there is a view widely current which contains an important element of truth, but, as often stated, is one-sided and misleading. It is said that the "ancient omnipotent governments" unlike "modern constitutional ones," "knew nothing of individual rights as contrasted with the rights of the state," and that "Greece was not a whit behind Rome in the absoluteness with which she held the subordination of the individual to the state." [1] Observe that in such a comparison we must take "modern constitutional state" to mean not merely a state in which the structure of government is fixed by a constitution providing for the intervention of the people in government, directly or by representatives, but one in which the power of government is limited by certain fundamental rights of individual citizens (*e.g.* rights of free press, free meeting, free exercise of religion, etc.):—rights expressly recognised in the constitution of the United States of America,

[1] Cf. Mr. Woodrow Wilson's book on *The State*, p. 641. Cf. also Bluntschli, *Theory of the State*, Book I. chap. vi.

and most of the West-European constitutions, though not in the English, in which the power of King, Lords, and Commons has no definitely recognised limits.

Now, it is quite true that any such definite limitations of the power of the community to regulate the lives of individuals is alien from the idea of the state both in Greece and Rome.[1] Not that Plato or Aristotle recognise any end of the state higher than the well-being of individuals; but they do not conceive government as properly limited in its efforts to promote the well-being of the governed by any fundamental rights of individuals, which it is bound not to infringe. And in the ideal of the philosophers—especially Plato—a very extensive and minute interference in the private lives of individuals was conceived as desirable.

But when we turn from theory to fact, and ask what the Greek or the Roman governments actually did, we find that outside Sparta the practical difference between ancient and modern conceptions of the function of government is very much less. Certainly the regulation of the life of the Spartan citizen is very markedly unlike anything modern; and Sparta, as we have seen, is, in fact, the point of departure which the world of fact supplies for the constructive imagination of the philosopher. At Sparta (*e.g.*) we learn that a man could be prosecuted for marrying late, and marrying badly, as well as for celibacy; and Plato (*Laws*) proposed to inflict fines and disabilities on men who remained unmarried after thirty-five. But Sparta, in historic Greece, has an almost isolated position. If we take Athens the impression is very different; and we have already noted Plato's reason for putting democracy as the worst of good and the best of bad governments, namely, that it governs very little.[2] This was in contrast to Sparta especially.

Looking closer we observe, first, that there are two

[1] Although the conception of natural rights of man as man, on which these limitations are justified, may be partly traced to the influence of Greek philosophy on Roman law, as we shall see presently.

[2] Lect. VII. pp. 113, 114.

general differences between ancient and modern states, which account for greater intervention of the state in two ways:—(1) Separation of Church and State is unknown; therefore regulation of religious ceremonies is naturally regarded as belonging to ordinary government. Thus Aristotle includes priests and other religious officers among state officials as a matter of course. It naturally followed from this that "impiety" was a subject of prosecution as a public offence.[1] (2) Predominance of war, and consequently of military duty of citizens, especially as compared with industry. This is largely due to a lower stage of civilisation, in which greater disasters are liable to be inflicted by failure in war. Still, even so, though the difference is striking when we compare Greek states with England or the United States of America, it is not very material if we compare them with the continental states of Western Europe, especially when—in the fourth century—the coercion on ordinary citizens to fight had come to be relieved by employment of mercenaries.

If, putting religion and war aside, we consider the intervention of government in the peaceful secular life of the citizens—in respect of the security of person and reputation, in matters of property, contract, and inheritance—no fundamental difference appears; no kind of socialistic interference with personal freedom, property, or contract. When we look through the list of actions, public and private, or the list of officials at Athens, or the offices treated as normal by Aristotle, we find no sign of any excessive *réglementation*. We hear of controllers of markets (*ἀγορανόμοι*) whose business it was to prevent fraud and disorder, of commissioners of the city (*ἀστυνόμοι*) who had to prevent private houses from encroaching on the public streets. But prevention of fraud, disorder, encroachment on public streets, would come within the most strictly individualistic system. The only important kind of interference which we find at Athens markedly opposed to modern individualistic ideas was

[1] Cf. the prosecution of Socrates—though Aristophanes shows that the duty of reverence was not conceived with puritanical strictness.

in the elaborate and drastic regulations made to secure an artificially abundant supply of the staff of life. Exportation of corn was forbidden; consignment of corn to any other port than Athens made a capital offence; of the corn brought in foreign vessels into the Piraeus—the port of Athens—two-thirds had to be sold in Athens. Conspiracies to buy up the corn in the market or raise the price were punishable with death. Ten or twenty "corn-warders" (σιτοφύλακες) kept statistics of the corn imported, took care that the grain was sold at a reasonable price, that the price charged by millers for barleymeal corresponded to the price of barley, and the price charged by bakers for loaves to the price of wheat. This regulation was, no doubt, more strict and drastic than anything in modern Europe; still, the economic view even of modern Europe, until Adam Smith's influence prevailed, entirely supported the general line of policy.

On the whole, then, the contrast between the practice of so-called "omnipotent" governments of the ancient world and the practice of modern governments does not come to much so far as interference in the ordinary civil life and transactions is concerned.

§ 2. When, however, we turn to consider the general relation of law to government in the ancient and modern views of it, the result of the comparison is rather the other way. The making of law is more important in the modern view of the function of government than in the ancient. The general conception of the relation passes through various phases as the process of civilisation goes on; it is different and much closer at a later stage of development as compared with earlier stages. In our present view of governmental functions we commonly distinguish (1) Legislative, (2) Executive,[1] (3) Judicial; and consider the organ answering to (1) as naturally supreme, as determining the rules applied by the judicature and carried into effect by the executive,

[1] I consider them here in relation to internal functions of government. "Executive" is a bad word for management of foreign affairs, in which so much less can be regulated by general rules.

and naturally in constant activity. We do not, of course, suppose that the amount of change which any given legislature will introduce will bear a great proportion to the whole body of law handed down; but we consider that it is constitutionally competent to change any part of it—*i.e.*, that either the ordinary legislature or the constituent body[1] is so competent; and that the normal function of the ordinary legislature, supplemented by the occasional action of the constituent body, is to be continually introducing such changes as may be required in the progress of society, either in consequence of alterations in outward circumstances, or alterations in ideas and sentiments. We consider that law which remains unaltered may be properly conceived to remain so because it is approved by the legislature or the constituent body that, having the power to alter it, does not do so. And thus we reach Austin's conception of Positive Law as equivalent to commands of, or rules laid down by whatever individual, body, or combination of bodies is ultimately supreme; so that the fundamental notions of law and government are intimately and inseparably connected.

But this view of the intimate connection of law and sovereign or supreme government is not applicable at earlier stages of development. This is well known to readers of Maine. The contrary is implied in the account of the development of law in *Ancient Law*, ch. i. and ii.; and it is more expressly asserted in the criticism of Austin in the *Early History of Institutions*, ch. xii., xiii. Maine points out that in the primitive condition of the Aryan race, "the organ, which in the elementary group corresponds to what we call the legislature . . . is the village council, sometimes owning a responsibility to the entire body of villagers, sometimes disclaiming it, sometimes overshadowed by the authority of an hereditary chief, but never entirely

[1] Observe the distinction, in modern states generally, between certain fundamental rules or principles which form part of the political constitution, and ordinary laws. It requires all the more attention from Englishmen, because their polity is an exceptional one, in which this distinction is not formally introduced.

obscured." [1] But, as he explains, when we look closely we see that these village councils are not really legislative. "The various shades of the power lodged with the village council . . . are not distinguished from one another, nor does the mind see a clear difference between making a law, declaring a law, and punishing an offender against a law. If the powers of this body must be described by modern names, that which lies most in the background is legislative power, that which is most distinctly conceived is judicial power. The laws obeyed are regarded as having always existed, and usages really new are confounded with the really old. The village-communities . . . do not, therefore, exercise true legislative power so long as they remain under primitive influences." [2] And this last statement is true of the larger bodies formed by the closer cohesion of a number of separate settlements of real or assumed kinsmen, which we find at the outset of the history of the Greek city-state. The general rules that govern the civil conduct of the tribesmen are not the general commands of any ruling individual or assembly. Indeed, in the earliest stage of which we catch a glimpse in the Homeric poems they are hardly as yet definitely conceived as general rules at all. As Maine says, "the only authoritative statement of right and wrong is a judicial sentence after the facts" [3] pronounced by the primitive king acting, not as legislator, but as judge.

This state of things has passed away at the commencement of the historic period; and when, as I described in Lecture IV., the early oligarchy has succeeded primitive kingship in Greece, we have come definitely to what Maine calls the "epoch of Customary Law,"—unwritten, but supposed to be definitely known to the ruling class.[4] And however much the ruling few in their judicial decisions, in which this customary law was declared and applied, may have warped it in their class interest, it is clear that neither they nor the subjects over whom they

[1] *Early History of Institutions*, p. 388.
[2] *Ibid.* pp. 388-89.
[3] *Ancient Law*, p. 8.
[4] *Ibid.* p. 12.

ruled conceived them as having the function of laying it down.

Then, as I noticed before, discontent with the oligarchical administration of unwritten law and, as Maine adds, the diffusion of the art of writing led to a widespread adoption of written codes in these communities.[1] But it did not follow from this that law was conceived as something which the ordinary government was constitutionally competent to modify indefinitely. Nor does this view ever seem to have been completely reached by the Greek mind. Even in Aristotle's view, legislation does not hold anything like the place that it does in a modern scheme of governmental functions. Aristotle distinguishes governmental functions not as legislative, executive, judicial, but as deliberative, executive or magisterial, judicial, and in his account of the functions of the deliberative body—whether the general assembly of citizens in a democracy, or a limited number in an oligarchy—legislation, though mentioned, has not a prominent place. "The deliberative element," he says, "has authority in matters of war and peace, in making and unmaking alliances; it passes laws, inflicts death, exile, confiscation, audits the accounts of magistrates."[2] Law-making is here evidently quite subordinate. And Aristotle elsewhere gives a reason why the power of modifying law, which must reside in the sovereign, should not be brought into continual operation. "Sometimes, and in certain cases," he says, "laws should be changed; but . . . great caution would seem to be required. For the habit of lightly changing the laws is an evil, and when the advantage is small, some errors of lawgivers . . . had better be left; the citizen will not gain so much by the change as he will lose by the habit of disobedience to authority. The analogy of the arts is misleading: a change in the law of a state is a very different thing from a change in the rules of an art.

[1] See Lecture VI. pp. 89, 90. Cf. Maine, *Ancient Law*, chap. i.—I cannot agree with Maine that codes generally included no new law. We cannot now tell how much (*e.g.*) Solon innovated; doubtless his innovations were exaggerated, but there is no reason to suppose that he did not innovate at all.

[2] *Pol.* VI. (IV.) ch. xiv.

For the force of a law depends upon a habit of obedience, which can only be given by time; so that a readiness to change from old to new laws enfeebles the power of the law." [1]

Observe that altering the law is spoken of by Aristotle as if it were a kind of "disobedience to authority." This, I think, shows impressively the difference between our view of legislation as a normal element of the political life of our society and the view naturally taken by Aristotle's readers. Though laws were continually changed in Athens and other Greek city-states, it still remained alien to the Hellenic view of law to regard it simply as the product of the popular will. His view is, in fact, in an interesting way intermediate between that belonging to the period when law is either ancient unwritten customs, or written rules only altered under the fiction of interpretation, and our modern view of legislation normally modifiable by the supreme government. On the one hand, as we have seen, he recognises that the deliberative body—in democracies a sovereign popular assembly—is κύριον περὶ νόμων, supreme in matters of legislation. On the other hand, he emphatically condemns as the worst kind of democracy, that in which the decrees of the popular assembly override the established laws.

And, in fact, the institutions of Athens in the fourth century—the period of fully-developed democracy—correspond to this view of law as something which must be altered, but which it is dangerous to alter lightly. First, as we saw,[2] the Athenian assembly, though it alone could initiate changes in the laws, did not finally decide them: the final decision was given to a select body of legislators appointed for the occasion from the sworn jurymen for the year. Secondly, what is more startling, the bringing forward of an inexpedient law was an indictable offence, for which, for a year after, a man was liable to be prosecuted. This is so strange to the modern mind that a distinguished scholar,

[1] *Politics*, II. ch. viii.

[2] Lecture VII. p. 106.

Madvig, held it to be impossible; he thought that the inexpediency of the law must be an irrelevant topic, introduced rhetorically in the loose Greek way to influence the large popular juries that gave the verdict, and that strictly the only ground for prosecution was some failure to conform to the legally prescribed method of legislation. But the recently discovered account of the Athenian constitution leaves no doubt that the inexpediency of the law was a formally recognised ground of prosecution.[1]

§ 3. Turning now to Rome we can trace more fully the steps of the process by which the idea and fact of government as normally and constantly legislative were reached. We assume, indeed, rather than historically trace the first stage in which law is a habit rather than a custom;[2] in which the institutions of the family, property, contract actually exist in a rude form; the members of the tribe ordinarily fulfil the mutual obligations involved in these institutions, but they are not conscious of being governed by general rules in so doing; only when any of the latent rules is violated in a marked way, it leads to a quarrel in deciding which recognised custom is appealed to; and when the violation of rules is felt to be very grave, it leads to condemnation of the violator as an offender against the community. This legal condemnation is doubtless pronounced by the king, whose internal functions are probably here as elsewhere at first mainly judicial. Gradually, we may suppose, out of this habit is developed the consciousness of express but unwritten customs or laws, which the citizen of Rome regards at once with reverence and with pride as his peculiar possession, his special protection against violent, arbitrary, oppressive conduct on the part of his fellow-citizens. But so long as the law remains unwritten the protection is not found to be adequate, as against the temptation of the magistrate to warp the customary law in the interest of the class to which he belongs, or to show bias in favour of an individual oppressive member of the class. Hence the demand for

[1] Aθ. πολ. 59. [2] Cf. Maine, *Ancient Law*, p. 8.

a code which results in the written law of the Twelve Tables (about 450 B.C.), framed by the famous commission of ten decemvirs.

It is to be observed that this famous code was not exactly a statement in writing of the unwritten law, as Maine might suggest (*Ancient Law*, pp. 14, 15). It was both something less and something more than this. Something less, because it is clear that many departments of law about which, we may suppose, no serious dispute had arisen, were only dealt with incidentally and partially,—a general knowledge was presumed of (*e.g.*) the institutions of the family, the fundamental rules of succession, the most important and familiar legal acts, such as the legal conveyance of property (*mancipatio*), the legal form of contract for loan (*nexum*). The Twelve Tables had, in short, a practical aim, to restore confidence in such parts of the law as were complained of as unequal, defective, or oppressive to plebeians; and the selection of topics on which legal rules were laid down was determined by this practical aim. But, secondly, though doubtless the Roman sense of right was far too closely bound by custom and tradition to admit of any great or important changes being introduced from abroad, still, when we are told that the formation of the code was preceded by a mission to Greece and the Greek towns of southern Italy to study their statutes, and when we find that the Twelve Tables contained almost literal transcripts from the legislation of Solon—we can hardly, I think, suppose that the object of the mission was merely to learn how to express and arrange a customary law that was conceived as unalterable. It is evident that some change was admitted in the previously established law, and that the Romans were prepared to avail themselves of the wisdom of the Greeks as regards its matter as well as its form. The Commission of Ten that had the function of codifying must have been considered as to a certain extent legislating, though doubtless the changes introduced were not large in proportion to the whole. Indeed, it would be hardly conceivable that a community which in (say) 509 B.C.

had made so great a change in their customary public law as to "put the monarchy into commission" as Maine says,[1] and had thus been launched on a career of constitutional change which at the date of the codification had lasted more than fifty years—it is difficult to conceive that such a community could still have regarded its private law (law regulating the relations of citizens to each other) as something altogether unchangeable, like the laws of the Medes and Persians. And, in fact, though legislation in private law was scanty for more than two centuries after the publication of the code it was not non-existent. We read (*e.g.*) of laws relating to marriage, to usury, and the nexal contract (contract for loan), changes in actions for debt, and for damages for injury to property, etc.

§ 4. Still, though there was some legislation, legislation was not at this period—nor, indeed, for several centuries later—the means by which the development of law, required to meet the changes in social needs and sentiments, was mainly brought about. For more than two centuries the leading method of modifying the law was under the guise of interpretation, by the "answers of the learned"—originally the pontiffs, afterwards professional jurists. Maine compares this process of development to that by which the English common law was modified by judicial decisions—the difference being that in England the judge who really altered the law while feigning to expound it, was himself a legal expert of the first rank, whereas in Rome the magistrate who controlled legal procedure—the consul up to 367 B.C., afterwards the praetor—was rather a politician than a lawyer. Thus in Rome the real modifying influence in this first period was, as Maine says, "the bar, not the bench"—learned counsel, becoming as civilisation and differentiation went on, more and more a professional class of jurists.

Now it is obvious that this method of altering the law under the guise of interpretation tends through its own success to be continually restricted to a narrower sphere; for as point after point, originally ambiguous, is made

[1] *Ancient Law*, p. 62.

definite by interpretation, it becomes less and less possible to introduce further changes of any magnitude in the same way. Thus though the industry of the jurisconsults went on increasing, and indeed became more and more the work of experts, it also tended more and more to become really a work of interpretation, and no longer modified important points.

When this point is reached, the obvious resource would seem to be legislation, and towards the close of the republican period the legislation of the popular assembly becomes an active source of new law. But before this—in Roman as in English law—another method of legal change was actively applied;—the over-riding of law by equity applied by the magistrate. In Rome, in the latter part of the history of the republic, the chief instrument of this was the praetor's edict, which gave notice annually of the remedies for wrongs that he would allow during his term of office. This edict, which though strictly only in force for a year, was practically handed on from one magistrate to another, was a continual means of modifying the law in the direction demanded by men's common sense of what was right and just.

And this process was doubtless aided by the development of the *jus gentium* in the hands of the "praetor peregrinus"—a magistrate appointed, as we have seen, soon after the middle of the third century B.C., with the special function of settling legal quarrels between aliens or between Romans and aliens. This working out of a regular system of private law applicable to aliens as well as Romans—something new in the history of these ancient city-states—seems to have reacted importantly on the development of Roman municipal law as modified by the edict of the "praetor urbanus."

§ 5. It is clear that the development of the kind of law afterwards known as *jus gentium* was entirely due to practical needs; and we may connect it with the development of Roman trade. As Rome's power grew by conquest Roman trade began to develop, increasing in extent and magnitude.

Foreign merchants—Tyrian, Carthaginian, Greek, Sicilian, Massaliot—came to Rome to find a market; and this access of strangers kept bringing continually more and more numerous foreign elements. Then in the end of the third and in the second century B.C., under Greek influence, a more liberal spirit towards strangers seems to have entered Rome with increasing force. This period, therefore, would be a natural time for the development of a *jus gentium*, based on principles which, as a matter of fact, were found to be generally accepted by the members of the various nations for whom the law was framed.[1] It was not at first regarded as in any way superior to the *jus civile* of Rome. On the contrary, this latter was a privilege of citizens, which, according to the traditional view, could only be partially shared by treaty by the citizens of other states.

But just because the law, applied to transactions between persons of different communities, was of necessity devoid of the historic peculiarities of the laws of the different states, it was freed from the survivals of archaic forms and archaic limitations; it thus represented more simply and completely the stage in the conceptions of natural right and justice which the Roman mind—and the mind of contemporary nations—had reached. Hence gradually the *jus gentium*, as compared with the *jus civile*, rises from a position of inferiority to one of superiority. First, the Romans, without reflection on principles, or any abandonment of the

[1] As regards the development of *jus gentium*, Maine in *Ancient Law*, chap. iii., suggests rather too much conscious investigation and induction from observation of the different Italian communities. I do not conceive the process thus. For (1) we must take in Greeks and Carthaginians as well as Italians. Rome had a treaty with Carthage long before the appointment of the *praetor peregrinus*; and (2) the process was not one of systematic investigation and induction; the effort to do justice led them to the common element in law. The development of *jus gentium* must not be ascribed too entirely to the sole work of the *praetor peregrinus*: "a large part of the actions for enforcing *jus gentium* were civil, not honorary"; from which it may be inferred that so far it was developed by gradual adaptation from *jus civile*. Still, the influence of the *praetor peregrinus* was doubtless important.

older view of the essential connection of *jus* and *respublica*, apply their practical genius for law-making to meet the actually felt needs of their intercourse with foreigners, and make a "*privatrechtliches jus gentium*"—private law common to nations. Then under the influence of Greek, especially Stoic philosophy, the notion of a law of nature applicable to man as man, higher than the ordinances of particular states, becomes dominant. Then, finally, as Greek thought influences the more practical mind of Rome, forced by its development to a kind of cosmopolitanism, the conceptions of *jus naturale* and *jus gentium* unite and produce the great source of the later alterations of the Roman law.[1] This fusion does not seem to begin before the age of Cicero—some way on in the first century B.C. The connection of *jus naturale* and *jus gentium* only appears in a rudimentary form in Cicero's treatise; and Cicero seems, in fact, to have been the first to popularise Greek philosophy in Rome. But from his time it went on increasing, and seems to have been the predominant influence in the work of the jurists of the early empire.

It does not, of course, fall within my limits to give even in outline any complete account of the transforming influence of the *jus gentium* operating through the praetor's edict. But two main points in its work—illustrated by Maine's later chapters—may be noticed:—1. "Regard for blood-relationship" in the distribution of inheritance, which led the praetors—probably early in the imperial period—to place emancipated children on an equaltiy with unemancipated, and to admit the claims of collateral kindred through females in opposition to the old principle of agnatic succession. 2. Regard to the substance of a contract, or other legal transaction—to the real intention of the contracting parties, as distinct from the forms used by them—as

[1] I doubt Maine's view (*Ancient Law*, chap. iii.) that the Romans were preserved from the defects of Greek law by the notion of a Law of Nature. I think it was more by not having large popular courts. Nor do I see any clear evidence that the theory of Natural Law was important in preventing immobile rigidity. The political instability of the City-State—as evidenced by Roman constitutional history—seems enough to produce this effect.

illustrated by Maine in the case both of Will and of Contract. It is easy to see how each of these principles—but especially the latter—would be likely to prevail first in the administration of law for aliens, who would not know or use the Roman forms of contract and *testatio*, and might have never had or long since got rid of the archaic rule of agnatic relationship.

Perhaps it may be thought that I have dwelt too long on matters more important for the student of legal history than for the student of the development of polity. But, in fact, the conception that ultimately governed Roman equity—the notion of a law of nature and natural rights [1] belonging to man as man, and of higher validity than the laws and legal rights which any particular state may have determined for itself—though only of jural importance to the Romans, becomes of far wider political importance in modern history.[2] It becomes, in fact, an important factor in the movement of thought which leads ultimately to the French Revolution; for the principles that 'men are by nature free' and 'men are by nature equal' are principles of this *jus naturæ*.

And here I must notice one point in which Maine requires qualifying. He says in his *Ancient Law*, ch. iii., that *jus gentium* and *jus naturæ* were practically convertible; and no doubt this is true in almost all cases. But just in the one case with which we as students of political science are specially concerned, the divergence and conflict between the law of nature and the law actually recognised by nations is most distinctly and impressively recognised by Roman jurists—that is, the principle that

[1] We have no English word exactly for "jus," "droit," "recht." "Law" will often do, but the terms mean the complex of rights and obligations established by the law.

[2] Speaking summarily, we may say that whereas in the development of Rome its effect is important in the region of civil law, so in modern history it is important in the region of international and constitutional law (see below, Lectures XXIV. to XXVI.). Still, even in ancient thought the conception of a law of nature of supreme validity supplies a theoretical balance to the omnipotence of the state to make its own laws. This applies to the early Empire; after Constantine there is the Church.

all men are by nature free. They all agree that slavery is legitimate *jure gentium;* and I think that they affirm with equal unanimity—and without any attempt to gloss over the contradiction—that it is contrary to the *jus naturæ*.[1] It is true that this 'natural freedom' remains without obvious effect in the Roman jurist's conception of actual rights; they do not draw from it the inference that slavery ought to be abolished at once or as soon as possible. But its effect on their medieval pupils was very different, and under the powerful co-operation of Christian sentiment this principle became an important influence in the direction of the abolition of slavery long before its influence had passed from civil to constitutional law, and it became one of the principles of 1789.

[1] See Appendix, Note E.

LECTURE XIII

TRANSITION TO MEDIEVAL HISTORY

§ 1. In the last lecture I traced briefly the development of the law in Rome; with the special object of showing for how long a period it is, in the main, independent of the intervention of government. From the stage at which, as Maine says, it is rather a habit than a custom, we traced it into the stage of unwritten custom; then when this is felt to give too much opportunity for oppression, there comes the famous codification of important portions of it about 450 B.C. Then afterwards we saw how for a long period the change in law is largely introduced under the guise of interpretation by "counsel learned in the law"; how what Maine calls the "Roman Equity" is developed; how the commercial development of Rome leads to the working out of a system of law—*jus gentium*—for decision of suits among aliens, or between aliens and Romans, on simple principles common to the varying nations; how later, under the influence of Greek ideas, the conception of a Law of Nature applicable to man as man gains ground; and how, under the influence of these two conceptions—one practical, one theoretical—which ultimately almost blend, the archaic elements in Roman Law are superseded—largely by the annual edict or "jurisdictorial programme" of the praetor announcing what actions and pleas would be admitted, and what remedies allowed for wrongs.

In the first period of the Empire—from Augustus to Diocletian—legislation more and more predominates as a source of change in law: legislation which becomes more

and more clearly imperial, though for some time the authority of the emperor is veiled under survivals of republican forms. The veil is dropped by degrees. The legislation of the popular assembly, which had been active in the last century of the Republic, dwindles and vanishes; it is in fact no longer well adapted to the refinement which Roman law had now reached. Augustus still submits his legislative proposals to it, but with Tiberius this ceases, and the Senate becomes the ostensible organ of legislation. The "bills"—as we should say—are, however, drafted in the imperial council, and towards the end of the second century A.D. the acceptance of them has become so much a matter of course that men take to quoting the *oratio*, in which the emperor stated a project of law rather than the resolution of the Senate. Meanwhile the power of modifying the law becomes concentrated in the emperor's hands: his "rescripts" to requests for guidance on doubtful cases, and "decrees" on cases brought before him judicially—of course the work of professional jurists—become binding precedents for judges. His "edicts" again, as supreme magistrate, though at first only binding after his death if renewed, gradually become indistinguishable from laws, until, after Diocletian (A.D. 305), all legislative authority, as well as supreme executive and judicial authority, is recognised as concentrated in his hands.

Side by side with this the *Responsa Prudentium*, answers of the learned, continue—certain jurisconsults being designated by Augustus as authoritative; later the force of law was given to their agreement. Their action, however, in this period was, as I have said, more purely interpretative and systematising; distinct changes being made by decrees of the senate and emperor. The praetor's edict too, which had become a somewhat unmanageable and ill-arranged mass of law, ceases to develop. It is revised and arranged by Salvius Julianus in Hadrian's time, after which it undergoes little change.

Meanwhile the study of the complex body of law thus formed is ardently pursued. Under Hadrian and the

Antonines is the golden age of Roman jurisprudence. This period ends with the death of Alexander Severus in A.D. 235. After this come the troubles from which the western part of the Empire never thoroughly recovered, in which all studies, including jurisprudence, fall into decay. In the Eastern Empire it revives again, but now labours under the difficulty of dealing with the mass of material. It is to remedy this that Justinian's great work is planned and executed, which symbolises for all time the fulness and complete concentration of legislative power in the emperor, according to the legal theory of the empire.

But when we come to Justinian (A.D. 527–565) we have passed through the great change that took place in Western Europe in the fifth century—the conquest of the Empire by barbarians as it is commonly conceived. In all parts of the Western Empire, the new process is begun which, after a thousand years, is found to have led to the making of European nations.

§ 2. The Roman Empire is commonly regarded as the transition from ancient to medieval and modern history: and rightly, I think; but from the point of view taken in this course of lectures, it is only a portion of the transition.

In studying the development of the forms of political society in Europe, the transition primarily important is that from the period in which the ruling conception of a civilised polity is expressed by the fusion of the ideas of city and state in the Greek word "polis"—a society of which those members who have the full rights of citizens can effectively meet to decide their most important common affairs in one of the open spaces of their central town. And though the Romans did not similarly fuse the notions of city and state, the share of political power which the Roman polity assigned to the citizens at large could only be exercised under a similar condition. But the proper working of such a constitution requires, as Aristotle points out, that the aggregate of citizens should not exceed a certain limit; and when the Roman state has swollen to 400,000 citizens, and still more when it has included the Italian allies, the transition

to the modern "country-state" has really taken place. And this transition was, as we have seen, a fundamentally important factor in determining the change from republic to empire. The imperial country thus formed, having outgrown the old political form of the city-state, was incapable of developing a new republican form, suitable to its changed conditions. For the difficult task of defending its empire against disordering forces, internal and external, it was necessary to fall back on the simple old method of concentrating power in the hands of a single man.

How, in the strong hands of Diocletian and Constantine, the Empire stands forth a palpable and unqualified despotism: how, partly in consequence of the influence of republican tradition, it never quite succeeds in attaining an orderly and settled origin of rule,—since the claim of the legions to appoint an "imperator" is a continual favouring condition of usurpation and source of civil strife: how the task of defending the civilised world round the Mediterranean against the barbarians in the North and the revived Persian empire in the East becomes too much for it, and a division of administration is introduced which gradually settles on the lines dividing Greek from Latin civilisation: how finally in the fifth century the irruptions of the barbarians reduce the Western half of the Empire to disorderly fragments—at all this my limits hardly allow me to glance. This period of European history I pass over, owing to the concentration of our interest on the more complex forms of polity which we call constitutional polity. Our concern is rather to show how the survival of Roman-Imperial ideas and institutions was a factor in the formation of the country-states of Western Europe which gradually grow into national unity through the long period of dissolution and reconstruction which we call the Middle Ages.

At this point, then, in our course, we turn from the more rapid development of the old city-state to examine the slower development of the modern country-state—of which we have only seen a part, as it is still actually in process. We shall find not unimportant resemblances

between the two series of political developments, but we may conveniently begin by noting a difference which is at once obvious and fundamental, *i.e.* the much larger place occupied by lawful monarchy in the latter case than in the former. As I have before noted, the only real monarchy that Aristotle knows in Greek city-states, in the present or the recent past, is the irregular, lawless, violent Tyrannis. If we put out of account the Spartan polity, where the so-called kings are a survival, we may say that Aristotle only knows lawful monarchy in the remote past, or among barbarians; or as an unrealisable ideal—the rule of the individual of unique merit, whom he does not actually find among the men of whom he has experience. But when we look at the history of the country-states of Europe, the case is very different. Lawful monarchy is the rule throughout—purely republican institutions the rare exception. By lawful monarchy I do not of course mean unlimited monarchy; but a form of government in which at any rate a not unimportant part of the supreme power is in the hands of a single individual, not subject to that condition of alternating rule and obedience which is the essential characteristic of the republican magistrate. It is true that in the greater part of the civilised countries of Europe, during the greater part of their history, the monarch's power is more or less limited in theory and practice; the habit of obedience among his countrymen on which his power rests is not a habit of unconditional obedience: the monarch has to conform to laws which he cannot alter, and to struggle and compromise with other bodies or groups of persons who have a certain constitutional share of governmental power. But he has not like the republican magistrate to step down from his official position and, standing on a level with other citizens, submit to be called to account for his exercise of power.

And this difference between the development of the city-state and the development of the country-state appears, I think, clearly and instructively in the very analogy which we are still able to draw between the two. We found in

the history of the Greek city-states a period called the "Age of the Tyrants," which intervenes between the first stage after primitive kingship in which oligarchy is normal, and the stage in which democracies are introduced in many states and a general tendency towards popular government is discernible; between the two is a stage at which there is a tendency to revert to monarchy of an irregular kind. We cannot say that this tendency is even nearly universal, but it is too widely operative not to be regarded as a normal result under certain conditions. As we saw, according to Aristotle and historians generally, this appearance of Tyrannis is to be regarded as the first form of democratic movement against the ruling nobles; this earlier Tyrannus is developed out of the demagogue, his power is founded on the need felt by the people—as yet unripe for real democracy—of a leader and protector against their traditional oppressors. Now, in the evolution of the country-state we do not find an Age of Tyrants in the Greek sense; but we do find a period—varying in time of beginning and in duration in different states—in which there is a tendency to absolute monarchy, or at least great extension of monarchical power; and we find to some extent that here, as in the Greek parallel, the development of the royal power rests on, and is rendered possible by, popular support. This phenomenon is visible both in cases where the transition to absolutism is very gradual, and where it is swift and sudden. In the leading case of France, the process may be gradually traced, through various interruptions and vicissitudes, from the accession of the house of Capet to an almost nominal throne on to the famous moment when Louis XIV. is represented as uttering the *L'État, c'est moi;* and historians all recognise the value to the monarchy of the support of the *tiers état* against the nobles, although the alliance between the monarch and the bourgeoisie takes various forms, and is not unbroken. On the other hand, when we examine the *coup d'état* by which Denmark in A.D. 1660 passed suddenly to absolute monarchy from a form of government which was very near to oligarchy, the alliance of king and commons against the governing

nobles is as palpable and conspicuous as it is at the beginning of any of the Greek tyrannies.

On the whole, then, we may find a certain vague analogy to the Age of the Tyrants in the stage of absolute monarchy, as we see it in most European states in the seventeenth and eighteenth centuries, coming as it does between a time in which the power of the nobility is the most formidable rival to the crown, and the later period in which we now are, in which representative democracy has everywhere, outside Russia, obtained at least a large share in government. For there is this resemblance, again, between the two processes of development, that in each, when the period specially favourable to absolute monarchy is over, and the tendency to constitutional government returns, the new constitutions tend to have a more democratic character than those which preceded the Tyrannis or absolute monarchy. From the facts known to us we may infer that it is usually found impossible, even where it is tried, to revive in full, at least for long, the old predominance of the nobles. Then further, where the democracy is violent and unstable, we have in the modern process as well as in the older, specimens of the later kind of tyrant who comes in after democracy; and here the resemblance is closer, as this kind of monarch in modern as well as in ancient times usually gains power in a lawless and violent manner—as in France and in South American Republics.

§ 3. But if this analogy is to some extent legitimate and instructive, it at the same time shows us the much stronger tendency to monarchy in the country-state than in the city-state, since in the former during the oligarchical period, even where oligarchy is most nearly established, the ruling few do not get rid of their king; they keep him along with at least some fragment or semblance—and generally a substantial portion—of power. In short, while we may almost say of the life of Greek city-states in the really historic period that lawful monarchy is to be found nowhere and at no time, we may almost say of the country-states that have formed themselves in Europe, and have had national life

since the Roman Empire, that lawful monarchy is to be found everywhere and at all times. The rule of the minority of wealth and old family, and the rule of the masses, tend to predominate each at its proper stage, but only partially; they come and go, but monarchy abides.

What then are the causes of this phenomenon? I conceive the main cause is that which I gave by implication before, in speaking of the transition from primitive kingship in the Greek city-states,[1] namely, that in the country-state the personal unity of the monarch is a needed bond and symbol of national unity for a much longer period than in the city-state, where mutual communication and combination of the citizens is so much easier, and we may add which possesses in the walled town with its market-place and temples such a striking and visible sign and bond of corporate existence. We have already noticed that the process of making a country-state—I mean the process of bringing it to real organic national unity—as we see it in the leading West-European States, is a very slow process; centuries elapse during which the forces tending to cohesion struggle with chequered success against the forces tending to dissolution. Hence as the national consciousness develops, and the demand for unity and order is strongly felt, the necessity of kingship for the realisation of this demand is also felt with equal force; the alternative is usually not the establishment of republican order, but the disruption of the state between conflicting authorities. Thus—to take one instance—in the early history of France, when the power of the king is actually at its lowest ebb, at the transition from the Carolingian to the Capetian dynasty, the result is not that the great nobles try to establish an oligarchy and to govern France as a body; they rather threaten to become a somewhat disorderly group of petty rulers, each "monarchising" in his own district.

But though this seems to me the main cause of the prominence of kingship, still other causes co-operated, and chief among these is the pre-existence of the Roman Empire

[1] Lecture IV. p. 71.

itself. The Roman Empire of the West passes away in the fifth century, but the ideas of the empire have a much longer life, and in various forms and modes influence the subsequent development of Europe down to the period of absolute monarchy. First, when the barbarians begin to overrun the civilised world in the fifth century, this civilised world has been under absolute monarchy during the four centuries in which they have been getting acquainted with it; hence, when the new barbarian kingdoms are formed out of Roman provinces, the more civilised portion of the population composing them hands on the ideas and habits belonging to absolute monarchy. So far as the barbarians submit, as they must to some extent, to the intellectual influence of a superior civilisation, that influence is a monarchical influence. We see this conspicuously in the case of the Frankish monarchy, which takes a leading place in the formation of the political institutions of modern Europe. We see it even in the early times of the earliest Merovingian monarchy in France, though here the impulse which conquest gives to the development of kingly power is soon more than counteracted by the inadequacy of the hereditary king for the task of government, greatly increased in difficulty by conquest. It reappears still more strikingly in the monarchy of Charles the Great, who actually assumes the imperial crown. And, observe, the influence of the Roman Empire thus revived is not limited to the power possessed by the series of potentates who wore the imperial crown. If this were all we should have to admit that the imperial position weakened rather than strengthened the effective power of the German monarchy to which it was attached; but we have to consider that its influence over ideas is powerful the other way; it keeps before the minds of men a monarchy of ancient prestige as the generally accepted highest form of government. Then after the revival of the study of Roman law in the twelfth century, the ideas of the empire become effective in a new and important way through the channel of the legal profession. The modern lawyers taught by the Roman jurists manifest a steady tendency to

take their view of the relation of law to government, and hence a continual bias towards assimilating so far as possible the position of the modern monarch with that of the ancient emperor.

To these influences on the side of monarchy, connected with the Roman Empire, we must, I think, add an important part of the influence of the Christian Church. Here, however, the statement must be carefully guarded, as this influence is of a complicated and varying kind, very different at different periods; and we have to distinguish, on the one hand, the force exercised by the Church as an organised body with corporate interests to defend, and on the other hand, the political ideas and sentiments that tended to be connected with historical Christianity, and to be propagated by the clergy as preachers of this,—for these two forces were often opposite in direction. Regarded as an ecclesiastical organisation, the Catholic Church, throughout European history, is often brought into intense conflict with the monarchical governments of different European countries; and when this happens the Church is naturally led to ally itself with anti-monarchical, or at least anti-absolutist, elements and tendencies in the secular organisation of society, in order better to carry on this conflict. But regarded apart from its corporate organisation and the sentiments connected with that, Catholic Christianity normally exercised an influence on the side of order, and therefore of monarchy. It enjoined obedience, in general terms, to the "powers that be," but its traditional conception of such powers was monarchical. It had grown up under an absolute monarchy, and it carried the habits of thought thus generated into the period of dissolution and reconstruction of political order that followed the barbarian invasion, and thus tended to regard the anti-monarchical forces as anarchical and rebellious.

The ultimate result of all these causes combined, in the West-European nations generally, was that the first period of properly modern history—history of the West-European states completely reduced to civilised order—is a period of

what may be called absolute monarchy. The organisation of all governmental agencies under the control of a hereditary monarch, whose will at any point at which he chooses to exercise it is undisputed, came to be not only the actually predominant type, but widely accepted as the form of political institution adapted to the maintenance of orderly civilisation. It is in the seventeenth century that this stage is reached, in the development of West-European states generally—after the close of the wars of religion that form so stormy a transition from medieval to modern politics. France leads the van, gives the fashion, spreads the ideas of this modern monarchy; but the conditions of other countries are sufficiently similar to give it a natural predominance over civilised Europe.

§ 4. In the course of the lectures that follow I propose to trace briefly the process by which this general result was reached. I shall begin by marking its chief stages, and trying to distinguish and characterise the chief elements of the growing societies which were powerful and important at the different periods.

In dealing with these elements it is important to keep steadily before our minds the far greater complexity of the political phenomena of the European country-state as compared with the Greek city-state. In the Greek state, we have a community of which the conditions are at first predominantly rural—an agricultural community in which, after private property in tilled land has been established, the fully privileged citizen is a land-owner who lives on the produce of his own land, whether tilled by himself or by others, and goes to war at his own charges: in which accordingly, as inequalities of property come in, the larger land-owners tend to absorb political power and economically oppress the smaller farmers. But gradually, in the communities who live in the full stream of commerce and civilisation, urban conditions prevail over rural; these wealthy land-owners become the leading inhabitants of the walled town, and afterwards landed property ceases to be a necessary qualification for citizenship: the life of the

community, religious as well as secular, is unified by its material embodiment in the city.

In tracing the history of the modern state we have to notice as a main thread (if I may so say) of development—as in the early period of the old city-state—the connection that is so long maintained between political power and land-ownership, and the changes that this connection goes through as the nation passes into what is called the feudal period and then emerges from it. But at the same time we have to note, as another thread of development running alongside of this and variously intertwining with it, the growth within the country-state of towns with a large degree of self-government. And in the same way we have to note, as a characteristic feature of medieval European history, the separate organisation of the clergy as a body having a structure and a corporate life distinct from, though intermixed with, the structure of the secular government and the life of the nation as a political organism. In each of these cases the scientific student of history has to trace the political development of the elements separately, and also to trace their varying relations to the development of the nation as a whole. Both Church and cities have contributed, in fundamentally important ways, to the formation of the modern European states: but each element, in certain cases and at certain periods, has become a force antagonistic to the development of national unity: the Church, so far as it has tended to the establishment of a theocracy, and the cities so far as they have aimed, either alone or in federation with other cities, at an independence incompatible with national unity and coherence.

Hence when just now I characterised European monarchy as representing national unity and order in opposition to the disruptive and disorderly tendencies of oligarchy, I gave an incomplete view of its position. A similar resistance was required, at certain periods, to the Church when its theocratic pretensions, under the control of a foreign potentate, became exorbitant; and to the cities or communes, when they pushed too far their claims of inde-

pendence. The strength of the monarch's position was that he represented national unity and order against each of these different and conflicting elements in turn, when it tended to interfere with the independence and coherence of the nation.

§ 5. The development of the towns in medieval history will be the subject of later lectures. Here I will only observe that where this development is most full and striking, the scope for it is given by another element of complexity in the development of modern European states which must be noticed—the Holy Roman Empire. I have spoken of the ideas left behind by the old Roman Empire as an intellectual force operating on the side of monarchy; and I think there is no doubt that the revival of the imperial title assisted in maintaining the general view that the government of one supreme will was natural and normal. But, as I said, it is none the less true that the Holy Roman Empire itself was a source of weakness rather than strength to the monarchy, in each of the two countries in which—from the time of Otto the Great—national kingship was overlaid with the lofty but somewhat hollow pretensions attaching to the imperial title. If there had been no Holy Roman Empire—if the German king had had no further ambition than to be king in Germany, if he had not had his attention continually distracted and his resources continually exhausted by Italian adventures—I see no clear reason why Germany should not have attained national unity under a king, like France and Spain, at the close of the Middle Ages; and at any rate, it would not have been split up into a bewildering profusion of principalities, great and small, held together by the imperfect bond of a so-called empire, as we find it when modern history begins. The Teutons would surely have been aggregated in states as large as those of their northern kinsmen the Scandinavians. Similarly—though this is more doubtful—there might have been a united Italy, or at least a North Italy and a South, divided perhaps by the Papal territory. And I think we may say that what actually happened instead belongs to

that large part of the phenomena of history which we are forced to regard as the effect of accident: *i.e.* we cannot trace any general causes clearly tending, with a force practically irresistible, to produce it. There was no apparent reason for expecting the revival of the Roman Empire in the West in A.D. 800 if there had not then lived a monarch of so unique and commanding a genius that we must regard him as an accident; and if the Holy Roman Empire had not been instituted in the person of Charles the Great, I see no reason to suppose that it would have been established at all. It is true that in the fifth and sixth centuries, when the Roman Empire of the West has just fallen, the Church makes repeated efforts to resuscitate the empire; it entreats the barbarian kings to make themselves Roman Emperors, to assume the rights of Roman Emperors, to enter into the same relations with the Church in which the Roman Emperor stood.[1] But as the old civilisation was more and more submerged and broken up under the invading tide of barbarism these efforts died away; the Church itself suffered a partial lapse into barbarism; and when society and the Church together began to emerge out of this condition at the close of the tenth century, the Roman Empire of the West belonged to so remote a past that its revival would hardly have appeared practicable, if it had not been for the remarkable extension which the Frankish kingdom had reached in the powerful hand of Charles the Great—and that, too, as the champion of Roman Catholic orthodoxy. I conclude, then, that had there been no Charles the Great, Otto and his successors would only have been German kings.

Observe that this accident, as I have called it, does not make any difference in the broad general result of monarchical absolutism attained at the end of the seventeenth century; only in Germany and North Italy the monarchical powers are exercised by a number of smaller princes, who have attained practical independence in Germany and formal independence in Italy. There are indeed some free city-

[1] See Guizot, *Histoire de la Civilisation en Europe*, chap. vi.

states surviving among them—results of the great medieval development of the city-communities, to which I shall ask your attention in subsequent lectures. But ultimately the result, as regards the prevalent type of government, is essentially the same in Germany and Italy as it is elsewhere, only the process that leads to the result is fundamentally different. Outside the empire it is the central power that wins; the great nobles have to submit to become mere adjuncts of the crown: in Germany they put on crowns—royal or grand-ducal—themselves.[1]

§ 6. Bearing in mind, then, the complexity of elements in West-European states generally, as above described, let us examine briefly the stages of the process of change in political institutions as existing in the fragments of the Roman Empire broken up by the barbarian invasions, and the new countries which—largely through the extension of Christianity—shared in the growing civilisation compounded of old and new elements. It is an assistance in tracing this process among the diverse courses of development—especially of Italy and Germany as compared with France and Spain—to keep in view that the different lines not only come round, broadly speaking, to the same result of absolute monarchy in the seventeenth and eighteenth centuries, but they start from the same beginning as regards the main depositaries of secular power in each nation, namely, from the old Teutonic community which I described in my second lecture.

As I before reminded you, in this community, when we first know it, supreme power belongs to the tribal assembly of freemen bearing arms: in this peace and war are decided, heinous offences punished, chiefs chosen to preside over local divisions, and commanders in war chosen from among the chiefs. In some cases—in Tacitus' time clearly a minority—the command in war belongs to a

[1] In the states of North Italy the result is reached through the different process of municipal republicanism, which early predominates over feudality and then lapses into Tyrannis which develops into hereditary monarchy without losing its despotic quality.

king; he, too, is elected, but generally from among the members of one family, and is permanent chief in peace as well as in war. As under the influence of neighbouring Roman civilisation the Germanic tribes form larger aggregates — voluntarily, or under more or less compulsion — kingship extends, as the bond required to hold these aggregates together. Then, the Roman armies being more and more formed of barbarians, the Germans are trained for civilised war both within, and in conflict with, the Roman armies, and the civilised world behind the frontiers of the Roman Empire is more and more adapted to be their prey. At length the barrier is too weak to keep them out, and they spread over the provinces, not at first as conquerors, nor with any settled hostility to the empire, but mostly quite prepared to acknowledge its supremacy, and act as its military auxiliaries, if it will provide for them. At the same time, early in the fifth century it is evident that, in the western provinces of the empire, large bands of them have, as the phrase is, come to stay; partly by violence, partly by arrangement and compromise, the incomers change —sometimes rather gradually—from auxiliaries comfortably quartered on the provincials to conquerors who allow the provincials a more or less reasonable share of their own property. The process is favoured by the continued usurpations, rebellions, and civil strife that go on in the Roman government of Western Europe. Gradually it becomes manifest that the preponderance of military force in these regions is overwhelming on the barbarian side; the prestige of the empire slowly sinks and—at any rate beyond the Alps—completely collapses, and before the end of the fifth century barbarian kings have undertaken the task of governing Romans as well as Germans, from the Rhine to the Atlantic and from the German Ocean to the deserts of Africa.

Let us fix our attention on the Frankish kingdom; for this—owing to its subsequent extension into the empire of Charles the Great—takes the lead in determining the political institutions of medieval Europe. I may observe that

the Franks, when they have become predominant under Clovis, are less Romanised than the other barbarians—*e.g.* Goths and Burgundians—and their constitution shows markedly the characteristics of the primitive polity. The primary result of the formation of the new kingdom is to increase the power and dignity of the king; he is the one bond of union of different peoples; to the former Roman subjects he takes the place of the collapsed Empire; to many, even of the Germans, he stands in the relation of conqueror. The conquering Franks become politically weaker through dispersion; and though the army remains conscious that it is an assembly of freemen in arms, and occasionally intervenes effectively at political crises, still, all real participation of ordinary freemen in the management of the affairs of the nation ceases; the rare assemblies of warriors become practically mere military reviews, and the local divisions come to be controlled by royal instead of elected officials. Nor does it appear that the power that is thus lost by the body of common freemen is seized in the main by an old nobility. It rather tends to fall into the hands of the counts and dukes who administer the provinces of the Frankish kingdom under the Merovingian kings, when these kings prove unequal to their task of maintaining order and cohesion. But these counts and dukes appear to be taken from the king's following, and to have rank, at first, only as his representatives. The administration of the realm is in the hands of the king's household—when the hereditary monarch is too feeble to govern, it is the *major domus*, the overseer of his household, who naturally supplants him.

I say "supplants him"; for though the power of the old Teutonic kingship thus grew to meet the demands made on it by the task of governing the large miscellaneous aggregate formed by conquest, it did not become strong enough for the task. Nor could change of dynasty adequately remedy its deficiency. For several centuries—broken only by the brief interval of strong Carolingian rule—civilisation in Western Europe seemed to be struggling painfully with ever-renewed disorder without making any real way.

This, if we can call it a stage of development, is the second stage. In this time of peril to social order it would seem that neither the habit of obedience to king or magistrate, nor the reverence for religious admonition, nor the sense of common citizenship and the impulse to co-operate for common interests, are forces strong enough to save civilised society from chaos. The bond by which society knits itself together is that peculiar fusion of public and private rights and obligations, that peculiar combination of personal ties with the ties formed by joint ownership of land, which we know as the feudal system.

LECTURE XIV

FEUDAL AND SEMI-FEUDAL POLITY

§ 1. In the preceding lecture I endeavoured briefly to characterise the course of political change in that portion of Western Europe—specially important for the student of West European polity—which was united under the imperial rule of Charles the Great, up to the point at which it passes into the condition known as feudal. This latter transition and its results we must now proceed to analyse more closely.

The feudal system may be referred, I think, to a coalescence of the following tendencies, each of which is traceable before and apart from it:—(1) The tendency of the intenser and closer personal relation of lordship and service to prevail over the relation of free citizen to his fellow-citizens and the community, when this latter tie proved too weak to resist the disruptive forces of disorder. The two different relations—of lord to dependent, and of freeman to freeman—had always existed in the old Teutonic community; we may perhaps say in the European community, since they are clearly seen at Rome.[1] We do not, however, find at Rome the Teutonic custom that, in the tribal state, chiefs at least could have in their service free dependents as well as dependents only half free, *i.e.* men whose service was free and martial, having no necessary tendency to degrade the follower who rendered it into a lower class. This relation is one of the germs of feudalism. It was natural that in troublous times this relation between inferior and superior freemen should be

[1] Civis—civis, cliens—patronus.

largely extended by the desire of the weak to seek the protection of the strong, and of the strong to add to their strength by new dependents.

(2) A second distinct element in feudalism is the growing tendency of the relation of the individual to the land to determine his political relation. In the old Teutonic community the free citizen is entitled to his allotment of land, not so much as property, rather as a right involved in full citizenship. At first such allotments are temporary, the lots are periodically re-distributed; and even when this has ceased, for a time they are not divisible, or strictly alienable or heritable—though a son naturally succeeds his father. Gradually, as available land becomes completely occupied, heritability, divisibility, and consequent inequality come in; and while the connexion of citizenship with the possession of land remains, cause and effect are inverted; the landless man loses his privileges as a citizen, and he has to find a lord, if he wants a place in the social system. He therefore enters the service of some large landowner, in some form or other; he obtains his protection for a return in money or service, and often becomes a cultivator of a part of his land for a rent. We see this tendency definitely in England before feudalism, strictly speaking, is introduced by the Norman Conquest.

Conceive these two tendencies as separate factors, and then suppose them combined. By their coalescence we get the fusion of personal service and land-tenure, which is essential to feudalism. And here I must distinguish the relation of the feudal lord to the inferiors who owe him primarily and chiefly—though not solely—military service, from his relation to the originally free cultivators of his land whose services are non-military. This latter relation, though an accompaniment of feudalism, is not strictly feudal. The strictly feudal relation is that of vassal to lord. This is—to use legal terms—at once personal and real; the vassal owes his lord the loyal service of a dependent freeman—and especially service in war—but he owes it on the score of certain joint rights in a portion of land, ultimately called a fief.

But the prominent political character of feudalism is due to a third combination of causes. A further fusion takes place of landholdership, if extensive, with the exercise of important governmental functions over freemen generally residing on the land. This latter fusion, again, is due to the combined effects of two movements: (1) the largely successful efforts of large landholders to obtain independent jurisdiction over persons, free as well as unfree, living on their estates—a movement in which, in the fragments of the Frankish empire in which feudalism proper has its primary home, the churches take the lead and the laymen follow; and (2) the successful efforts of the dukes and counts who were originally public officials with functions revocable at will, and public sources of revenue—but who succeed in getting their functions regarded as hereditary and in obliterating the distinction between public and private revenue. Thus private landowners assuming, as such, governmental functions, and public officials treating their powers and privileges as a kind of heritable property,[1] the fusion of private and public rights and obligations on the basis of land-tenure is pressed on both sides. Suppose, at the same time, that a marked social separation has been established between the dependents of a lord who owe him military service—some of whom may have risen from a semi-servile condition—, and those who cultivate his lands and pay him rent or non-military service—some of whom have been originally free. The general feudal conception of political relations is now complete.

§ 2. Let us now turn from contemplating the process to consider the chief features of the formed result,—the social and political structure of a society in which feudalism is established, omitting for the present the clergy, and disregarding the independent structure and self-government of

[1] The confusion of governmental power with private ownership seems to belong to the Teutonic political ideas, as we find them most simply and strikingly manifested by the Merovingian kings of the Franks. Thus, after the division of the kingdom formed by Clovis' conquests among his four sons, we find that Chilperic, one of the four, gives five towns—of which Bourdeaux is one—to his wife Galswintha as "Morgengabe."

the towns, which in the earlier stage of feudalism is, in most districts, very undeveloped.

We see a society of which the members are bound together in a scale of different ranks, fixed and kept stable by a scale of relations to land. The most marked division of the scale is that which divides the upper, military portion from the lower, chiefly agricultural portion,—the soldier, "miles" or knight, whatever his grade, from the peasant, whether free or servile. The upper portion of the scale—the military class who live on the produce of the soil which they partly own but do not actually cultivate—owe military service of a fixed amount, fixed by custom, to their immediate superiors, to whom they are bound by ties of personal loyalty, established by an oath of fidelity. Besides the general obligations of not injuring the lord in any way in person, family, or fortune, the vassal was specially bound to adhere to his side in war, and to attend his court of justice, take part if called on in the administration of justice and submit to its decisions. He was also bound to certain occasional payments—chiefly "reliefs" paid when the fief passed by descent, "fines" on alienation, and "aids" given on certain occasions of special need of the lord.[1]

The lowest grade of these vassals might have for their immediate lord a king or a duke owning no superior except the emperor; but for the most part the chain of feudal allegiance had several links. Thus the great vassals over whom the king of France had for a long time little more than a nominal sovereignty had to a great extent vassals who were lords in their turn to other vassals. Two consequences of this, when feudalism was fully developed, are to be specially noted as fatal to political order: (1) The loyalty of the vassal was held to be due to his immediate superior, and therefore ordinarily only through him—perhaps through more than one link—to the king, who had

[1] The recognised occasions varied at different periods and places: by Magna Carta in England they were limited to three—when the lord's eldest son was made a knight, when he married his eldest daughter, and when he had himself to be redeemed from prison.

not a right to exact an oath of fidelity, except from his own immediate vassals. Consequently, if the king and a great vassal quarrelled, the latter could usually rely on his military dependents following him into rebellion. (2) Originally the design of the system was that a vassal should have only one fief, but this rule was nullified by ambition and cupidity; so that a noble might at the same time be vassal of two conflicting sovereigns, or an independent sovereign might be at the same time the vassal of another. Such complications obviously tended to make the tie of fidelity illusory.

The former of these consequences was of most general importance; and it is specially characteristic of the strong government of our Norman William, that while introducing feudalism into England he excluded this consequence. To quote Stubbs: "At the famous Council of Salisbury of A.D. 1086 we learn from the Chronicle that 'there came unto the king . . . all the landholders of substance in England whose vassals soever they were, and they all submitted to him, and became his men, and swore oaths of allegiance that they would be faithful to him against all others.'" [1] According to the old law, even on the Continent, the duty to the king was understood to be reserved in swearing fealty to an inferior lord; but the reservation was not expressed, and it became evanescent in feudal morality during the dominant period of feudalism in France and Germany. With it the sovereignty of the emperor, and for a time of the king of France, over his great vassals became equally evanescent: war and peace, coinage, justice in all degrees—there was no sovereign right that they did not claim to exercise at their free discretion.

Let us now contemplate the lower part of the scale, the peasant cultivators. With regard to the rights and status of these, it is difficult to make any generalisation, because they varied and fluctuated much, and at many times and places are obscure. But the general broad fact is this. There are firstly, slaves who have been gradually lifted up

[1] *Constitutional History*, vol. I., chap. ix. p. 266.

to serfdom—largely by the influence of the Church—and who, though in legal theory subject to taxation and forced labour without limits, gradually come to have rights secured and obligations limited by custom; and secondly, freemen who have descended in the social scale, who—especially in the troublous times of the ninth and tenth centuries—had placed themselves under the protection, sometimes of secular lords, but usually of some bishop or abbot—sometimes bringing their land with them,—and had accepted the position of tributary dependence on certain fixed terms of payment in return for this protection. Sometimes they may have been forced into this condition; but usually they seem to have entered it voluntarily, though afterwards they may often have been forced to submit to more oppressive conditions. For there seems to have been a general tendency—though varying much in different times and places—to assimilate the two elements of the peasant-cultivator class; so that while one element rose out of slavery into serfdom, the other element was liable to be depressed towards serfdom. Thus even the free peasant cultivator seems to have been considered, at any rate in some places and times, as attached to the soil no less than the slave; and they had mostly no legal appeal against the justice administered by the lord.[1]

Viewing as a whole the system that I have briefly sketched; I may observe that in this system, regarded from

[1] The relation of the military landowning class to the peasant cultivators might be compared with the relations of Spartans to Helots in Greece. Indeed feudalism is sometimes conceived as having been, in the leading case of France, simply the result of the superposition of a tribe or horde of barbarians on a civilised peaceful people: the conquering barbarians take the land of the conquered and live at ease, while the conquered till the land; thus the 'noble' class and the fighting class become identical. And there is much truth in this; but it simplifies too much. For conquest alone, with appropriation of land by the conquerors, would not necessarily have produced the political result of feudalism. For instance, in the case of Sparta, where we have a less civilised conquering tribe superimposing itself on a part of Greece in a higher state of civilisation and becoming landowners at leisure and fighters, the internal political relations of the tribe are not materially altered by the conquest. As I pointed out, the primitive features of the polity survive remarkably in the Spartan constitution. But this is far from being

the point of view of Comparative Politics, the characteristic which in some treatments is most prominent—the military tenure—is the least distinctive: since the connexion of military service and land-tenure is found in states of society very remote from the feudal—as *e.g.* in Sparta. From our present point of view we are more concerned to lay stress on (*a*) the substitution of personal loyalty to a superior for the tie of common citizenship, and (*b*) the fusion of governmental rights with land-tenure on a large scale—the right of private coining and private war, the independence of regular taxation, the exclusive exercise of original jurisdiction, possessed by the great feudal lords. A community in which these governmental powers and privileges are possessed by certain large landholders as such is obviously imperfectly coherent in theory, and consequently likely to be—as in fact it was—very imperfectly orderly in practice.

The best that can be said for this system is that, with all its theoretical defects and practical incompleteness, it did—by welding together the strong sentiment of personal loyalty and the stable attachments connected with the possession of land—provide a temporary scaffolding or framework of order on which a truer national life could grow. Its radical defect was that confusion of public and private rights which was yet essential to it. If indeed we imagine the possessors of these blended rights, in their different grades, animated by strict Christian morality, the fusion loses much of its dangers; the ownership of private property, to the sincere Christian, is a social function to be exercised for the common good for which he has to render a strict account, as much as the possession of governmental power. It is the impressive manner in which feudal forms suggested this high ideal that has constituted the attraction of the feudal system to romantic admirers. But the ideal was separated by too great a gap from the possibilities of average

the case in feudalism. Feudalism is not the primitive Teutonic polity superimposed on Roman civilisation; the essential features of the old polity are fundamentally altered. The difference is due to the inapplicability of the forms of the old polity for the new situation and to the great influence of the institutions of the Roman Empire.

human nature, at least at this stage of its development; the actual result was too much like what follows, according to the German proverb, from "making the goat the gardener." And when we speak—as we legitimately may—of a feudal monarchy, we must bear in mind that the strength of kingship, the secret of its ultimate predominance, lay in the fact that all through this period it was conceived as outside, no less than within, the feudal hierarchy; as representing, however dimly and ineffectively, the undivided power of the state, the source of a higher and more equal justice, to which the classes at the base of the social system might appeal, and of an authority that might legitimately claim to check the disorderly strife of the intervening ranks of the hierarchy.

§ 3. The feudalism that I am describing had for its primary sphere the countries that had been united under Charles the Great. It appears to have become settled and coherent in France by the tenth century. In Germany its development was somewhat later, owing to the greater strength beyond the Rhine of more primitive institutions and customs. Through the influence of the Empire it spreads into Denmark; and the Norman Conquest introduces an important element of it—the military tenure—in a very complete form into England, while excluding the political disintegration which we have seen to be so disastrous a characteristic of continental feudalism.

And this leads me to notice an objection that may be taken to the general conception of the subject that I have been expounding. It may be said that "Feudalism," or "Feudal Monarchy," and still more the "Frankish Monarchy," in its pre-feudal stages, are notions not sufficiently generalised for the purposes of political science, which, as I explained before, aims at getting, by comparison and induction from particular instances, as precise notions as can be formed of general types and tendencies. Now the Frankish Monarchy—it may be fairly urged—is merely the type of government that preceded feudalism in the particular case of the great kingdom established by the

conquests of Clovis at the close of the fifth century, and enlarged into an empire by Charles the Great towards the close of the eighth century. But in England, in Spain, in Scandinavia there was no Frankish and especially no Carolingian Monarchy; and what we require in tracing the general process of development are general conceptions which apply more or less—if not in equal degree—to a number of cases.

In replying to this objection, it must of course be admitted that the Frankish Monarchy is the name of a particular historical form of government, and not of a general type abstracted from a number of examples. But so—it may be replied—is the Roman Empire itself; and yet the Roman Empire has necessarily to be presented as a fundamentally important stage in the development of political institutions in Europe. Though only some of the modern West European states are formed out of the fragments of the ancient Roman Empire, still it is an important factor, though more indirectly, in the causes which have made the others what they are. For, to take one kind of influence only, the fact that throughout medieval history in all West European states the clergy acknowledge a divided allegiance—being only partly under the government of any particular state, partly under that of an independent sovereign holding court in Rome, who claims to judge and tax the clergy throughout Christendom—this fact cannot be explained without reference to the pre-existing secular empire of Rome. As Hobbes strikingly says, the Papacy is the ghost of the Roman Empire sitting crowned on its grave. Well—it may be urged—in the same way, though not quite in the same degree, the existence of the Frankish Empire is a leading and central fact in the history of West European states generally; so that its influence is important not only in the subsequent development of the countries into which it broke up—France, Germany, and North Italy—but of other countries too. Had it not been for the manner in which Roman and German elements were brought together in the Frankish Empire, we should not

have had the feudalism which is not confined to France and the Empire, but makes its way through the influence of the Empire into Denmark, and through the Norman Conquest into England and even Scotland, and into Southern Italy. Hence the political institutions of the Franks under Clovis and his successors—and still more under Charles the Great—have a central importance in Europe which does not attach, *e.g.*, to the political institutions of England at as nearly parallel stages as we can get—say under Egbert and Alfred, and Edgar and Canute; since some of the distinctive characteristics of the feudalism that spread over the larger part and the leading part of Western Europe are connected in a special way with the peculiar conditions of the Frankish Empire.

At the same time, I admit to some extent the force of the objection above stated. Though feudalism is predominant in Western Europe from the tenth century to the thirteenth, still feudalism proper remains a partial phenomenon; and I think we ought to observe carefully the development of the states outside the limits of feudalism proper, in order by comparison of strictly feudal and non-feudal conditions to arrive at a rather broader characterisation of the stages of development represented in France and Germany by "Frankish" and "feudal" monarchy. And for this purpose the study of English history is in some respects peculiarly adapted; since in England, before the Norman Conquest, we are able to contemplate a course of development which is broadly in the same direction as that which ends in feudalism in France and Germany, while yet its result is not exactly feudalism. Indeed, the difference between the old English institutions at the point reached in the eleventh century, and the feudalism introduced by the Normans is, in Stubbs's view, fundamentally important, although the gulf that divides the two is not very deep and wide; since the fact that feudalism proper came to us in a foreign garb caused Englishmen to react against it, and contributed ultimately to reduce its influence, both as regards intensity and duration, to something very different from the feudalism of the Continent.

§ 4. How then shall we try to characterise with greater generality the stages of political development of which "Frankish" and "feudal" monarchy are special cases? I think that if we try to look beyond the limits of feudalism proper, and include these in a wider generalisation, we can only regard them as phases in one long process, marked by the following tendencies. The popular element of the primitive polity, the supreme control of the assembly of freemen in arms, decays from a combination of causes: partly through the greater power and prestige given to the king by the larger aggregate; partly through weakening of the bond of fellow-citizenship, when the nation is spread over so large an area; partly through unfitness of a non-representative assembly for government of so large a body. At first it looks as if the power thus lost by the people would accrue to the monarch. He becomes a personage of greater dignity. The nation's peace becomes the king's peace, and the nation's land becomes the king's land. Still, we cannot say that the movement is definitely towards a strengthening of monarchy. As Stubbs says of the Anglo-Saxon system: "The growth of the royal power was theoretical rather than practical. What it gained on one side it lost on another. The king became the source of justice, the lord and patron of his people, the owner of the public lands; but he had almost immediately to part with the substantial exercise of the powers so appropriated." [1] In order to carry on the work of government, the subordinate chiefs had to be allowed an amount of power which made them formidable rivals. The result is not, on the whole, a strengthening of monarchy, but a fluctuating balance between monarchy and oligarchy; and oligarchy, as I have said, of a disruptive kind, tending to give powerful lords too great individual independence. Monarchy, as I have already said in speaking of the Franks, grows to meet the greater task imposed upon it by the larger size of the nation; but it does not grow strong enough to perform the task completely; it has to struggle against the tendency of subordinate governments

[1] *Constitutional History*, vol. i. p. 207.

to become hereditary and semi-independent—little monarchs, each within his own district.[1]

Hence the most general statement of the type of political organisation in this period—extending, let us say, roughly, till the twelfth or thirteenth century—is, not that it tends either to monarchy or to oligarchy, but to a fluctuating balance between the two. What seems universally true is that the relation of the lord to his servant or retainer tends to predominate over the relation of the ordinary citizen or free member of the tribe or nation to his fellow-citizens and to the nation; while, at the same time—as Stubbs says in the case of England—territorial relations are substituted for personal ones. Whereas the fundamental maxim of the primitive polity is that every free and fully privileged member of the nation has a right to a share of the national land, so that the individual's political status determines his relation to land, in the later stage that we are now discussing this is reversed—the political position of the individual depends on his relation to land. On the one hand, the landless man has to find a lord; on the other, an important part of governmental rights—jurisdiction in various degrees—come to be inseparably connected with landowning; the national courts tend to become more and more the courts of large landowners.

These tendencies, then, are clearly exhibited outside feudalism proper, though they find, as we before saw, their most conspicuous manifestation in that system.

I may illustrate this further by examining more closely, in the particular case of England, the difference between the semi-feudal conditions before the Conquest, and the feudalism partially introduced by the Normans. First, as regards military tenure, we see a process towards feudalism going on before the Normans, but the definite legal result not yet attained. Land is not definitely held on terms of military service—as it was after the Conquest when the country was divided up into "knights' fees," *i.e.* holdings from each of

[1] The same struggle is found in Scandinavian history.

which one knight was expected to appear when the feudal host was summoned. But much land is practically so held, since dependents of lords have received land, remaining dependents, and small landowners have become dependents, to gain the protection of the chief. All these owe service to their overlord, and appear as his followers when summoned, though such service is not yet a strictly defined condition of their tenure. The old civic obligation on freemen, as such, to fight in defence of their country, still remains; the army called out to resist an invasion is called out on the basis of this civic obligation; but still it is largely composed of dependents who follow their lords.

And observe, this civic duty of serving in the national militia was maintained and developed by the Norman kings, and was one important mode by which they largely prevented the political effects of feudalism in weakening royal power and national cohesion. Thus the principle that the vassal was bound to follow his immediate lord to battle, even against the king, was never admitted in England; and the evils of private war and baronial castles, which became chronic in France, are only transient disorders in English history. Similarly, private coinage, which comes in under Stephen, is finally crushed by Henry II. So again, as regards judicial arrangements:—grants of land to thegns and to the Church had long before the Conquest been commonly coupled with grants of jurisdiction—"sac and soc"—conveying an exemption from the ordinary court of the hundred, and sometimes even from the court of the shire; so that, before the Conquest, the "right of justice" had been an inseparable incident of land-tenure. But the old national courts still remained; the administration of justice did not become completely feudalised. And this, again, placed a weapon in the hands of the Norman kings which they turned to good account in their struggle with the barons.

LECTURE XV

MEDIEVAL THEOCRACY

§ 1. In the last two lectures I traced briefly the steps by which Western Europe—primarily the part of it included in the empire of Charles the Great, France, Western Germany, and North Italy passed from the conditions of the Roman Empire to those of feudalism; remarking that it is from the Carolingian Empire as a nucleus that feudalism extends. Through the Empire it is carried into Eastern Germany and Denmark; through the influence of Southern France into the Christian Spain gradually won back from the Moors; through the Norman conquests into Southern Italy and (with limitations) into England. Though all Western Europe was not feudal in a strict sense, we may speak broadly of its feudal period. Feudalism, as we saw, results from an attempt by the barbarian kings, raised in power and prestige by conquest, to work a civilised administration with a human material having primitive Teutonic ideas and habits, and with the bond of tribal community weakened by the effects of that conquest. The result, as a form of polity, may, as I said, be described as a fluctuating struggle between monarchy and what we may call—in contrast with the early oligarchies of the Greek city-states—a kind of disintegrative oligarchy. In the feudal period we have what we may call the modern country-state in the making; it tends to be imperfectly coherent and imperfectly defined, for the fusion of governmental power and landownership interferes both with definite boundaries and with internal order. It tends to be imperfectly coherent, from the absence of a central

power strong enough to overbear and crush any disorderly individual or group in the name of the community; and it tends to be imperfectly defined owing to the manner in which fragments of the country—feudal fiefs—combine with other fragments of alien countries through marriage and inheritance.

But, as we further noticed, owing to the greater complexity of the political evolution of the modern country-state as compared with the ancient city-state, we have not merely to consider the feudal organisation proper—so far as feudalism prevails—and the relations of the military landowning class to the peasant cultivators. We have also to take note of alien elements in this feudal organisation, which, though when feudalism is strongest they are welded into it and partially feudalised, are yet essentially distinct. These are three. There is (1) the monarch, who, as we saw, has always to be considered in two aspects, partly as the coping-stone of the feudal edifice, feudal suzerain, but partly as having certain relations of right and duty to the rest of the community besides his feudal vassals, which are alien to feudalism, and the development of which ultimately destroys feudalism. He is king of the whole people as well as overlord in the feudal hierarchy; and though this does not mean much where feudalism is strongest, it always means something. (2) The clergy, who have—till the Reformation—their own organisation under the headship of an independent sovereign, for whose support they are taxed, and who claims, with more or less success, to be a final court of appeal in ecclesiastical causes. This organisation, on the one hand, extending as it does over Western Europe, tends to unite it into one civilised order, and on the other hand ultimately becomes an obstacle to the coherent organisation of each individual state. I say "ultimately," because (*e.g.*) in England before the Norman Conquest I conceive that the unity of the Church helped the formation of a single nation out of a number of communities formed by different settlements. (3) The towns, which—though they enter into feudal relations both upwards and downwards, have feudal superiors

and inferiors—are yet, when fully developed, essentially alien to feudalism in their character and organisation. It is in the semi-independent self-government of towns that popular government revives in medieval Europe long before it obtains its partial and mostly transient share in the government of the medieval nation.

Now if these three alien or semi-alien elements in the feudal organisation of society had always been fully conscious that they represented—as in a certain sense they did represent—the cause of civilisation as against the imperfect order and coherence of the feudal system, and if in consequence they had been continually in alliance against feudalism, the course of development of medieval polity would have been much simpler, and much easier to grasp in a general conception.[1] But this is not the case. The monarch and the church are, especially from the time of Hildebrand onwards, continually falling out; and when they fall out, each allies itself as occasion offers with the feudal element of society. So again, the monarch, though generally inclined to favour the development of towns, is sometimes led to co-operate with his great feudatories in repressing them.

Ultimately, as I said, it is the monarchical principle that prevails; the completer order and unity that distinguishes the modern from the medieval state is formed on a monarchical basis. The central authority which ultimately becomes strong enough to crush the disordering and disintegrating tendencies of feudalism is a monarchical authority. But before this happens, a movement to bring the European state-system into more coherent order on the basis of theocracy has developed, culminated, and collapsed; this I propose briefly to describe in the present lecture.

§ 2. It is customary for modern writers on Politics to include, among the forms of government which they characterise and classify, a form called Theocracy. So far it has not come in my way to deal with this; since in the sense in which it appears to me most convenient to use the term, fully developed Theocracy does not clearly come before

us in the history of the Greek city-states, nor in that part of the history of Rome to which I have directed your attention; and accordingly it finds no place in the political ideals of Greek and Roman thinkers. The place of religion in the life of the community, and even in its political organisation, is indeed recognised by the Greek political philosophers—*e.g.* Aristotle, as I said, reckons priests among officials—but it is religion strictly subordinated to the purposes of the state and the control of the secular government. But in tracing the development of political institutions in medieval Europe, we find at a certain stage what may be properly called theocracy established in a portion of Italy, including the great city of Rome, and in a more subordinate way, in the ecclesiastical states of the Empire in Germany. And we also find a vigorous and sustained attempt to make this theocratic government practically supreme over Western Europe;—an attempt of which the success, though never more than partial, is at certain times and places very striking.

Before examining the conditions and stages of this movement towards theocracy, it will be well to begin by defining the term. In the first place, the use of it does not imply any theological proposition. By theocracy we do not mean a State in which God governs, but a State in which persons claiming some special authority to declare the divine will are habitually obeyed on this ground, not only in the ordering of religious worship, but in the administration of secular affairs. Again, I do not think it is enough to constitute theocracy that a hereditary monarch is conceived to rule by divine right—or even, in less civilised ages, in virtue of divine descent. Such special relation to the divinity gives additional prestige to the ruler believed to be so favoured, and an additional motive for obeying him; but it is hardly enough to constitute a specific difference in the form of government; since it does not necessarily cause any change in the appointment or functions of the monarch round whose head this halo is thrown. The case is somewhat different when the king or the nobility have a monopoly of important priestly and prophetic functions, and a

generally admitted claim to know the rules by observing which Divine anger may be averted or appeased, and can use the influence over opinion and sentiment which they thus gain to repress or elude opposition to their rule. In this case I think we should say that the monarchy or oligarchy that is thus strengthened and rendered more stable has acquired a theocratic tinge or aspect, though it remains monarchy or oligarchy none the less.[1] It seems to me, however, most convenient to use the term theocracy, strictly taken, to imply a social organisation in which the persons who assume a special intimacy with heaven, a special acquaintance with the Divine will, are organised in a professional body specially devoted to their religious calling, and for the most part distinct and separate from the ordinary secular government; then, in proportion as this separate body acquires power in secular affairs, the government tends to have a distinctly and preponderantly theocratic character; and when this ecclesiastical body has obtained supreme control, we have Theocracy complete.

Now in the history of the Greek city-state, this degree of influence of priests—if it ever existed—must be placed before the period historically known. I say "if it ever existed," because it can hardly be doubted that the Greeks have been more religious than they are when we first know them in Homer. The only question is how far this religiosity went. But in the history of the Greek city-states, during the period historically known, the priesthoods never appear to have this kind of independent and predominant position in the political sphere. Religion is an indispensable element of political society, but has no discernible general importance in determining political changes. It is no doubt occasionally worked with effect in particular cases; as when the Pisistratids are driven out of Athens partly through the persistent instruction of the oracle of Delphi to the Spartans to liberate Athens—due, it is alleged, to the liberality of certain wealthy Athenian exiles in rebuilding

[1] This was the position (*e.g.*) of the patrician oligarchy at Rome in their struggle with the plebeians.

the temple of the Delphian Apollo. And on the whole religion is in Greece a conservative force; the philosophers, indeed, attach an importance to it as a means of maintaining good political institutions, which rather surprises us when we consider the very little effect it seems actually to have in checking revolutionary movements. But they always assume it to be strictly under the control of the good and wise secular government which the philosophers aim at instituting.

When we turn to the history of Rome, religion seems to play in early times a more prominent part. What we hear of Numa suggests that religious influences had a good deal to do with the unification and development of the State in one stage at least of the legendary period of Roman history; and in the historic period it seems to be a really valuable force on the side of the old oligarchy in their struggle with the plebs. It enables them at any rate to delay the movement towards extension of political privileges which they cannot prevent. But it does not in Rome, any more than in Greece, lead to the establishment of any ecclesiastical caste or order that seeks power as such; in fact, one of the most important differences between the Græco-Italian idea of the State and the medieval and modern idea is, that in the former it is conceived as having the functions which in medieval times were separated and bestowed on the Church, and which modern theories have at any rate not yet restored to the State. Thus the ideal of the thinkers naturally gives it the fundamentally important duty of maintaining the virtue of the citizens, by supervising their education through the period of childhood, and correcting their vicious and luxurious habits in adult life.

Of course the separation of Church and State does not necessarily lead to Theocracy. Indeed, it may be said that Theocracy, when complete, involves a fusion of Church and State. Still, where there is a separate organisation of professional priests, religious ideas and sentiments strongly influential, and a social condition like that of the early Middle Ages, with national unity imperfect, and political

order precarious and unstable, so that any element of society that has any fighting force is driven in self-defence to use that force, we have a condition favourable to theocratic attempts.

§ 3. I propose, then, to begin by tracing the development of this separate organisation. It had its origin, as is of course familiarly known to all of us, in the Hebrew or Jewish polity, which was, in important periods of its history, completely theocratic. The place occupied by civil law in Græco-Roman polity was, in the Jewish nation, filled by the law of God; the normal motives to obey this law being trust in the promises and fear of the judgments of the Divine Lawgiver, who had made a special covenant to protect the Jewish people, on condition that they rendered Him due obedience. And the sources from which knowledge of the law was actually gained had the complexity often exhibited by the jurisprudence of an advanced community. Christianity inherited the notion of a written divine code, acknowledged as such by the "true Israel"—now potentially including the whole of mankind, or at least the chosen of all nations—on the sincere acceptance of which the Christian's share of the divine promises to Israel depended. And though the ceremonial part of the old Hebrew code was altogether rejected, and with it all the supplementary jurisprudence resting on tradition and erudite commentary, still God's law was believed to be contained in the sacred books of the Jews, supplemented by the records of Christ's teaching and the writings of His apostles. By the recognition of this law the Church was constituted as an ordered community, essentially distinct from the State; the distinction between the two being sharpened and hardened by the withdrawal of the early Christians from civic life, to avoid the performance of idolatrous ceremonies imposed as official expressions of loyalty; and by the persecutions which they had to endure, when the spread of an association apparently so hostile to the framework of ancient society had at length caused serious alarm to the imperial government.

We may say that, through this separateness, the Christian

society carried within it from the first the germ of theocracy; but for a long time the body of men who recognised the authority of this divine law governing all human life, though forming a quasi-political society, lived in the midst of the vast civilised society under Roman law, keeping aloof from secular organisation, and not attempting to control it and modify the administration of secular law in accordance with the new code. Indeed, in its earlier stage, the Christian community assumes an attitude of alienation from all secular government. In the view of primitive Christians, ordinary human society was a world temporarily surrendered to Satanic rule, over which a swift and sudden destruction was impending; in such a world the little band who were gathered in the ark of the church could have no part or lot. Thus patriotism and the sense of civic duty tended, under the influence of early Christianity, either to expand into universal philanthropy, or to be concentrated on the ecclesiastical community. "We recognise but one Commonwealth, the world," says Tertullian. "We know," says Origen, "that we have a fatherland founded by the word of God." [1]

This attitude was partially, but only partially, changed when the Christian Church became under Constantine the established religious organisation of the Roman Empire. The Christian priesthood still kept in theory aloof from the world and the things of the world; and in practice, whatever worldliness might attach to any of its bishops did not yet take the form of an effort to control secular government in secular things. The Church has its own rulers under the supremacy of the emperor, in the main unconnected with the secular government; though certain administrative functions of moral or humane import—such as visiting prisons to prevent illegal imprisonment, suppressing gaming, preventing women from being forced on the stage—are given to the bishops by the Justinian Code; and in the decay of the municipalities in the fourth century, the bishops come to occupy a not unimportant place in municipal administration. This use of ecclesiastics in ad-

[1] Compare the author's *History of Ethics*, pp. 111, 112, 119, 120.

ministration may perhaps be regarded as a first step towards theocracy, but only a step towards it. In religious and moral questions, no doubt, the clergy claimed the obedience of the laity in whatever rank. A bold and conscientious bishop might admonish an emperor who had failed in his religious or moral duty, impose penance on him, refuse him absolution. But so long as the Roman Empire lasted in West or East—whatever may be said of ambitious individuals—no attempt was made by the clergy as an organised body to use this means of influence for interference in the appointment of emperors or their tenure of office, or for control of their ordinary administration.

§ 4. In Christianity under the Empire, then, we have the separateness of organisation in which lies the seed of the future theocracy; but the seed is as yet undeveloped. The development of this seed, I conceive, was due primarily not to any movement of theocratic ambition within the Church, but to the force of external circumstances—the collapse and chaos of secular authority that followed the fall of the Western Empire. When the Empire broke up, the Church held together. It was—again to use an ecclesiastical simile—a kind of ark in which civilisation was carried across the disorder of the first five centuries after the barbarian invasions. The unity of Western Christendom was the source of such unity as was maintained in West European society in this chaotic period. The Church, strong in its cohesive organisation, conscious of its complete intellectual superiority to the barbarian invaders, possessing in its teaching and ceremonial the one mode of intellectual influence capable of powerfully impressing their rude minds, and gaining fresh vigour from its successful struggle with disorder—made itself a place of the first importance in the barbarian kingdoms formed out of the break-up of the Roman Empire, and out of the Teutonic nations outside, over which its sway was gradually extended. The fact is manifest in English history, no less than in that of France or Germany, and also in Spain between the Gothic and the Moorish conquests; but it is specially marked in the

empire of Charles the Great, of which the sacerdotal character is one of the most striking features. It is Charles who mainly founds the institution of the Christian tithe; and to his policy is to be traced the existence of the great ecclesiastical magnates—the archiepiscopal electors, who for so many centuries in Germany rival the highest secular princes in rank next the emperor. Indeed, we may say that if he subdued and won to medieval civilisation the formerly barbarous east of Germany by the sword, he held and controlled it by the crozier.

The general result was that bishops became important members in the administration and in the councils that assisted the secular rulers in the work of government; while the churches and convents retained and increased their endowments of land. And gradually—in the natural reaction of facts on ideas—the clergy began to put forward wide-reaching claims to independence and control in secular matters. Independence of clergy from secular jurisdiction, extension of episcopal and papal jurisdiction over secular matters, assertion of authority to resist and even to depose a wicked and tyrannical prince—these claims are found as early as the ninth century. As yet, however, the internal organisation of the Church had not reached its full unity and coherence. For this a separation of the clergy from the lay feudal system is necessary; and this separation meets with difficulties, by the very reason of the leading part which, especially in France and Germany, the clergy had taken in the building up of society after the period of dissolution and disorganisation. A natural consequence of this was a partial feudalisation, and therefore secularisation of the ecclesiastical offices.

When, as I said, society in the fragments of Charles the Great's empire begins to reconstruct itself with the help of the feudal system, the local authorities of the churches are found occupying very important positions in the secular feudal hierarchy. Bishops, and even convents, have attained a semi-independence, and exercise semi-governmental powers over wide districts, just like the secular feudal lords; thus

introducing, one may say, a sort of sporadic partial theocracy into the feudal polity. But the theocracy thus introduced was of a kind that tended to destroy its own principle, by assimilating the ecclesiastical too much to the secular governor. This is manifested in later times in a most striking form in the Holy Roman Empire, where, as the central power grows weak, ecclesiastical lords are found possessing a very important share of the principalities formed in the process of dissolution, and both their behaviour to the governed, and the attitude of the minds of the governed to them, is very like the corresponding behaviour of secular princes. But in earlier medieval times, the same phenomenon appears—if not in the same degree—in other West European states. Indeed, in the Frankish Empire the immunities or exemptions from ordinary jurisdiction of the realm, which contributed so importantly to the fusion of governmental functions and landownership, were first granted to clergy, and then afterwards to the great lay nobles. And even an enemy of ecclesiastical domination can hardly deny that their place in the feudal organisation was well merited by the services that the Church had rendered to civilisation, in supplying a strong bond of union and aid to order amid the disorder of the first five centuries after the barbarian invasions. If the Church wanted earthly rewards, it had fairly earned its right to its large share of land and secular governmental power in the feudal system in which the holding of land and governmental power were combined. But the question was not whether it deserved these secular rewards, but whether it could keep them without losing its distinctive character; at least unless an effectively centralised organisation, and a stern separate discipline counteracted the tendency to secularisation that these rewards inevitably brought with them. And the historian, I conceive, will be disposed to answer this question as Hildebrand answered it. Without some such vigorous impulse as that which he gave, the temptations of great wealth and great power, together with the influence of parental affection and the

tendency to hereditariness which the feudal system carried with it, would probably have turned clerical dignities into patrimonies all over Western Europe, and their distinctively ecclesiastical character must have been obscured and corrupted more completely than it actually was even in spite of Hildebrand and his successors.

Well, when the celibacy of the clergy and the effective central organisation under the pope was successfully realised, it was almost inevitable that the power thus formed should attempt a complete and all-embracing rule over the society on which they had already acquired so strong a hold: that they should definitely come to view the division of spiritual and temporal authority as rather a distinction of methods of rule than as a distinction of matters subject to rule;—for morality as a whole belongs to the spiritual sphere, and what political question may not be claimed as a question of morality? True, the clergy govern by what are called "spiritual" means — excommunications and interdicts, threats of divine anger and promises of divine favour; but so far as these are effective at all, they are effective for the attainment of any secular end; and if it had been once admitted that—as the ecclesiastical writers contended—it was for the Church alone to determine the limits of their exercise, it seemed probable that those limits would be drawn so wide as not to leave room for really independent secular government. And owing to the lamentable hiatus already spoken of between feudal theory and feudal practice, there was crying need of clerical surveillance and admonition to keep secular governors to their duty—if only they could be kept to their duty by such means. Hence Hildebrand's dream of a pope sovereign arbiter of all disputes, holding in his hands the supreme mediation in questions of war and peace, adjudging contested successions in the kingdoms, deposing tyrants, and, in short, forming instead of king or emperor the real coping-stone of the feudal organisation—this was a dream which the state of thought and feeling in the period of the great crusades and the state of political facts in the

imperfect order of the feudal system, irresistibly pressed the Church to realise.

§ 5. The most important phase of this attempt at complete theocracy culminates in the pontificate of Innocent III. (A.D. 1198–1216); while the whole attempt may be taken to begin and end with two famous and dramatic struggles —beginning with the struggle between Hildebrand (who became Pope Gregory VII. A.D. 1073) and the Emperor Henry IV., and ending with the struggle at the outset of the fourteenth century, between Pope Boniface VIII. and Philip the Fair of France, when the king with the support of his whole kingdom bids defiance to the Pope's solemn claim to be "set over the nations and kingdoms to root out and to pull down, to destroy and to overthrow, to build and to plant," burns his bull in public, and seizes his person. In placing this as the end of the attempt at theocracy, I do not mean that the papacy abandons its claims, I do not think it has ever—even now—formally abandoned any claims, but that it then becomes evident that its power over men's minds had so far diminished as to exclude any prospect of complete theocracy, though it was still strong enough to intervene effectively on occasion in secular affairs in Europe generally, and strong enough to take a regular leading place in the political conflicts of Italy.

It may be interesting to observe more closely the nature and extent of the theocratic power exercised by Innocent III. over Europe. It was not—as secular power usually is in such times as those we are contemplating—stronger at the centre of the region over which it extended and growing weaker in proportion as it was exercised at a longer distance. On the contrary, remoteness seems to enhance its prestige. It is striking to note the need of careful management and diplomacy which characterises the policy of the papacy in Italy even in Innocent's time, as compared with the lofty tone of command which the pope successfully assumes to secular potentates at a distance. Thus (*e.g.*) Innocent orders Andreas Duke of Hungary to march to the Holy Land, in order to leave his brother the

king at peace; orders this brother to make war on the Ban of Bosnia, as a punishment for having protected heretics; stirs up the kings of Denmark and Sweden to deprive the King of Norway of his crown; reduces king after king to declare himself tributary to the Holy See. In A.D. 1198—as the ecclesiastical annalist claims—the king and the kingdom of Portugal were received under the protection of the blessed Peter, as tributary to the Apostolic See. In 1204 the King of Aragon offered his kingdom to Pope Innocent, and constituted it tributary to him and his successors for ever. In 1207 the King of Poland, and in 1213, as we all know, King John of England accepted a similar position.

It is true that these admissions of the pope's suzerainty were not in any of these countries endorsed by the people—in fact, they represent, as we know in England, an effort of monarchy to lean on the Church for support in its struggles with the nobility—but the fact that they are made by king after king is very striking. They show us the pope endeavouring to assume the position which, according to the older medieval political ideal—which Dante, a century after Innocent III., tries vainly to revive—ought to belong to the emperor, the summit of the feudal hierarchy. And it is important to note, in considering the long-sustained efforts of the papacy to establish a supremacy in things temporal in Western Europe, that it had, if I may so say, two strings to its bow. There was, as Stubbs says, "the general proposition asserted by Gregory VII. and his successors that the pope is supreme over temporal sovereigns; the spiritual power, of which the pope is on earth the supreme depository, being by its very nature supreme over the temporal." [1] But besides this there were, as we have seen, special claims to suzerainty over particular countries founded on particular legal assumptions and particular acts. It is easy to see how by skilful management the latter special kind of supremacy might seem on occasion to arise naturally out of the general, and to

[1] Stubbs, *Constitutional History*, vol. III. ch. xix. p. 300.

strengthen it in its turn. Supremacy of this special kind was established or claimed during this period over Scotland and Ireland, as well as England; and during a long time over Naples, as well as transiently in the cases of Aragon and Portugal just noticed.

§ 6. The precise quasi-legal arguments by which these theocratic claims were supported have to a great extent lost their interest now. They have for the most part more than the usual absurdity, baselessness, and incoherence that characterise medieval reasoning, in spite of its acumen, subtlety, and industry. The claim rests on invented history, forged documents, scriptural texts grotesquely perverted, irrelevant analogies seriously pressed: the False Decretals of the ninth century containing forged letters of early popes in which obedience was enjoined on secular princes; the fictitious donation of Constantine—as first mentioned in A.D. 791, but not put forward prominently till the eleventh century—by which that emperor, on retiring to Constantinople, was gravely alleged and believed to have handed over to the blessed Pope Sylvester not only the imperial insignia, robe, sceptre, and palace, but all the provinces and cities, the whole territory of Italy and the West; the perversion into a kind of feudal homage of the oath by which Otto the Great, who revived the Holy Roman Empire in the tenth century, promised John XII. to protect the Holy See and respect the liberties of Rome; the monstrous deduction of supremacy in the secular sphere from the gift of the keys to Peter, or from the assumption that the "sun and moon" typify respectively the papacy and the empire!

Reading such arguments we are inclined to conclude hastily that the whole force of the theocracy rests on the superstitious credulity of a half-civilised age. But this conclusion would be hasty and one-sided. It is important to dwell on the really weighty considerations that we find mixed with or underlying these grotesquely fallacious assumptions and inferences. Firstly, the separate and semi-independent organisation of the Church rested on the

conviction that the unity of Christian society depended on the unity of the Church, and that for this latter a strong internal cohesion was required which could not be maintained without a steady maintenance of priestly independence;—hence the claim to withdraw priests from secular jurisdiction and secular taxation. Secondly, a genuine conviction of the constant need of ecclesiastical interference in the interest of right and justice operated to the same result; since the characteristic of medieval society was a high ideal of the holy and tranquil order that should be maintained in the *civitas Dei*, which the converted Western world theoretically formed, while at the same time the actual facts showed continued and multiplied violence, oppression, and encroachments by the strong on the rights of the weak.

Then, as the influence of Aristotle uniting with traditional Christian doctrine gives birth to medieval philosophy, the supremacy of the Church over the State is supported by Aristotelian thought applied to the Christian view of life. What Aristotle had said of the superiority of *θεωρία* over political action as an element of human well-being was turned to support the superiority of religious or spiritual life over secular life; and therefore of the organisation whose end was spiritual well-being over that which merely aimed at secular well-being. Again medieval thought grasped and dwelt on the old Aristotelian distinction between the true king who governs according to law (*κατὰ νόμον*) for the good of the whole, and the tyrant who violates law for his selfish interest. There must be some remedy for this lawless selfishness; and the interference of the priestly admonition seemed an obvious available remedy. But if so, the function of applying this remedy must be in the hands of the Vicar of Christ who alone is above kings and princes. Hence the claim to depose princes who disobeyed the decrees of the successor of St. Peter. And this naturally led to the further assumption that the authority that can depose can also refuse to institute; can deny the consecration which the common Christian con-

sciousness held to be necessary to the proper institution of monarchs. This once admitted, a supremacy is admitted which feudal homage could hardly make more complete.

Not, observe, that the ecclesiastical hierarchy aims at assuming the functions of secular government; with the subtlety of distinction characteristic of the medieval—especially the scholastic—mind, their advocates are usually careful to point out that though the Church has the "two swords," temporal and spiritual, it does not handle the temporal sword; the actual exercise of secular power it leaves in other hands, but it claims that it must be exercised under the control and with the consent of the Church.

Well, as I have said, this claim ceases to be an important obstacle to the independence of secular governments after the end of the thirteenth century; but there remains the organisation of the clergy under a foreign sovereign, who up to the Reformation never gives up his right to tax, and habit of taxing, them in some form or other, or his right to hear appeals from ecclesiastical courts, and give dispensations from the rules of ecclesiastical law; and this remains an obstacle of varying force to national unity and coherence. In the fourteenth century, however, the papacy is weakened by the so-called "Babylonian captivity" at Avignon, A.D. 1308–1376, which brings it too much under the influence of France; then by the Great Schism A.D. 1378–1417 and the attempt to reduce within the Church the monarchical despotism of the pope by effectively subordinating him to general councils. When its prestige revives through the failure of this attempt in the fifteenth century, the Renaissance is in full swing, enfeebling the religious beliefs on which the force of the papacy depends; and the papal monarchy concentrates its effort on strengthening its territorial position in Italy.

LECTURE XVI

MEDIEVAL CITIES—GENERAL TYPE

§ 1. I NOW turn to another of the three elements in the medieval polity, whose development, even in the feudal period, was alien to the predominant feudalism—the trading and industrial element, represented by the cities.

Speaking generally, the medieval city may be contemplated in two aspects: on the one hand, it is a part of the larger whole which we call the nation, and its development has an important effect on the destinies of the nation. To this aspect I shall recur later in the course. On the other hand, the very imperfect order and coherence which the feudal system attained left the medieval city a very considerable degree of independence, varying of course inversely with the degree of coherence of the larger whole of which it was a part; and it is from this point of view that I wish in this and the next four lectures to trace its evolution. I will treat first of the general type of medieval city.

In a previous lecture I have laid stress on the general similarity of the political development of the West European nations. I do not mean that we find them all having the same type of government at the same time; but that if we contemplate them in a group we shall find—as we found in the case of the Greek city-states—that there is a preponderant tendency for them to have a certain type both of social structure and of government at each of the normally successive stages of their development. Thus—as I explained in Lecture XIV.—though feudalism, strictly speaking, was only established in a part of Western Europe,

still it is a large part, and we find what may be called quasi-feudal conditions outside the range of feudalism proper. So, again, as regards the movement towards theocracy: though we cannot say that this movement affects all West European countries alike,- for example the relation of the pope to Italy is always quite peculiar—still its effect is strikingly diffused over Western Europe, as we saw by the list of countries over which the pope claims suzerainty. So, again, as I shall hereafter show, most of the West European countries in the later Middle Ages, from the thirteenth or fourteenth to the sixteenth or seventeenth century, go through a stage in which representative assemblies of some kind- Meetings of Estates, Diets, or Parliament—obtain a certain share, though often only a transient share, in the control of national affairs. The same may be said of the preponderance of absolute monarchy in the seventeenth and eighteenth century; it is undoubtedly the prevalent fact, though England—an important exception—is not the only exception.

A similar statement may be made with regard to the medieval city community, to which I have now to direct attention; and here it is all the more needful to lay stress on it, because this general uniformity of type is obscured, for the ordinary reader of history, by the great and striking differences in independence, power, and splendour, which the cities attained in different countries. But in spite of these, we can discern a remarkable resemblance in the type as developed in different European countries. In England, France, and Germany, in Sweden and Italy, wherever cities in the Middle Ages become sufficiently important, and have a sufficient degree of independence, for their political life to have full play, they commonly present an industrial organisation unlike anything modern, and also in striking contrast with the phenomena presented in the life of the ancient city-state. This contrast is due to a combination of causes. It is partly to be traced to the most fundamental difference between ancient and modern European civilisation—the fact that the former is based on slavery; and accordingly

mechanic labour, even when performed by freemen, appears (even to the philosopher) a naturally servile occupation. In the medieval town, on the other hand, mechanic labour is free from the earliest time at which we have definite knowledge of it; while later, mechanic industry as such rises to dignity and power for the first time in European history all over Western Europe.

But the full contrast between the constitution and life of the medieval city as compared with that of the ancient city-state is partly to be traced to that greater complexity of the political phenomena of the European country-state of which I before spoke, the greater differentiation, as Spencer would say, of its parts, as compared with the Greek city-state. The ancient city-state, as we have seen, is formed by mere concentration of a small agricultural community; so that the chief landowners, the men of old family and wealth, become the leading residents of the town; whereas the medieval towns grow up within a community of which the governing class, speaking broadly, remains outside them. The chief feudal landowners retain their Teutonic habits and remain obstinately rural. They live mostly outside the industrial towns, sometimes in close proximity, sometimes quite in the country, where, as the semi-order of mature feudalism grows, they everywhere on the continent build castles for defence and offence: the towns are left in the main to the at first comparatively despised part of society that has to live by industry and trade. And the more the town grows in importance and independence, the more, speaking generally, it differentiates itself, in its political structure and life, from the country. The inhabitants of the town—even the leading inhabitants who manage its affairs—come to be recognised as essentially different in their manner of life and predominant interests from the leading members of the community who rule in the rural districts round, and still predominate in the government of the country as a whole. The word "citizen" comes to be used in a new sense to mean, not as the Greek πολίτης and the Latin *civis*, a member of a state having

political privileges and a certain share in the control of the government of the state, increasing as the state moves towards democracy; but an inhabitant of a city as distinct from an inhabitant of the country—a "bourgeois," having distinctively urban interests and urban ways of life, which mark off even the leading citizens as a class unlike the rural gentry—with whom, in many cases, they are for a prolonged period in hostile relations.

This remains broadly true, in spite of very important differences in the political development of different groups of medieval cities—due to the different relations in which the city and its governing class stand to the government and the governing class of the neighbouring country. Of these differences the most striking are ultimately traceable to the institution of the Holy Roman Empire, and its effect in weakening the central government in the straggling realm of which the emperor was theoretically sovereign.

We considered this in a previous lecture,[1] but the point that I am now especially concerned to notice is that modern Germany and North Italy, as they last on through the period of monarchical predominance, are not composed merely of semi-independent principalities. The weakness of the Empire has been the opportunity of the towns as well as of the princes. In Germany it has enabled a large number of them, partly by purchase, partly by usurpation, partly by force—in spite of the resistance of their immediate lords ecclesiastical and secular, and at one period of the emperor also—to raise themselves to the position of imperial cities, tacitly acknowledged to be as independent and semi-sovereign as the principalities—*i.e.* owing no allegiance except to the emperor and the imperial diet, in which they have a recognised place from the end of the thirteenth century. And this position they formally maintain so long as the empire lasts. It must be admitted that in modern history they have not much manifest importance, they keep quiet, and the ordinary historian does not notice them. But in the later Middle Ages it was different; they

[1] Lecture XIII. pp. 196–198.

struggled and fought, at first singly, against the feudal lords in their neighbourhood; later in leagues and confederacies. When the Hanseatic league of the great commercial cities of North Germany makes war on its own account, and on equal terms, with the Scandinavian kingdoms, the most ordinary historian has to notice them.

In North Italy the monarchical power of the emperor is on the whole still more shadowy than in Germany. He has a recognised right to wear the Lombard crown, and repeatedly tries to maintain effective sovereignty in Italy, but never with more than transient success. Accordingly in Italy the cities attained a still more brilliant, though mostly briefer, autonomy than in Germany, and even temporarily a practically complete independence—indeed, over a considerable part of North Italy, the cities subdue the country, and the land is divided up into city-states with adjacent territory as in the old times of free Greece. Even before the middle of the twelfth century, the Lombard cities —as we shall see—have developed sufficiently and attained sufficient independence to engage in mutual wars of a violent kind. Later on Florence and Siena, Venice and Genoa attract the attention of the reader of history much as do Athens, Sparta, and Thebes; and the multitude of other cities practically independent for a long period is forced on his notice by the relations of these. Of this rich development of independent medieval municipal life in Italy little indeed remains in the seventeenth century; but still there are a few fragments—Lucca, Genoa, and the wonderful Venice, the marvel of oligarchical stability in medieval and modern times.

Now, it will easily be understood that the greater the degree of independence the city attains, the stronger its analogy becomes to the completely independent city-states of ancient Greece. With a view, therefore, to working out this comparison, I shall, in the next four lectures, concentrate attention on the political structure and phases in the political development of the medieval city-communities of Germany and Italy; and especially shall point out in the

case of Italy how the very predominance of the cities introduced important differences into their political constitution, social life and ultimate destiny, as compared with the medieval cities in other West European countries. For the present, however, I wish to dwell on similarities rather than differences—the common characteristics of the medieval type of city. And to exhibit these, I will now turn to the country which, in respect of the vigorous exercise of control by the central government, is at the other pole from Germany and Italy—I mean England.

§ 2. The history of the cities in England during the Middle Ages is sadly deficient in the romantic interest which is amply spread over the history of the cities of the Empire. The "irreconcileable warfare" with the possessors of fortified castles which we have in Germany; the violent campaigns of city against city which are so frequent in Italian history—all this is excluded by the strong central government which is, on the whole, maintained in England after the Norman Conquest, broken only by comparatively brief intervals of civil disorder. This strong central government keeps the development of the towns within narrow limits. The right of independent warfare at all is a right that they are effectually prevented from claiming, though from time to time their discontent causes a certain amount of transient disorder; indeed, private wars are effectually kept down even among the feudal barons, after the "unlicensed castles" have been destroyed at the close of the twenty years of anarchy in the reign of Stephen. The development of the English boroughs is, as we shall see, important in the political development of the nation; but the municipal government of the English towns, through whatever changes it passes, never claims or exercises the more important functions of sovereign government. Its development can never be compared to the development of an independent state; it is always to be viewed as the development of a part of a larger political whole.

Yet, notwithstanding this fundamental difference, we may still trace a common type in the structure of English,

German, and Italian medieval towns, a type of which the characteristics come out more fully, the more fully the structure is developed, *i.e.* when the English towns—while still remaining completely under the control of the national government—have emancipated themselves from the local administrative system and acquired adequate powers of self-government. Not only are both classes of towns essentially industrial communities, of which the ruling members—those in whose hands the municipal government is placed—are engaged in trade or manufacture, and are influential through their industrial occupations and connexions; but further, their industrial structure—the component elements of the whole body, and the relations among these elements, the manner in which their economic structure influences their form of government, and the manner in which their government exercises the powers that are entrusted to it in matters commercial and industrial—are strikingly similar. In the most famous and powerful of the Italian Republics—Venice apart—in Florence, no less than in a peaceful English market-town, the citizen proper, the typical citizen, is a person engaged in trade or manufacture; and when the city is fully developed, the civic body is framed on the principle that the right of citizenship and the right to carry on an independent trading or industrial occupation are properly inseparable. In either case, the civic body so constituted endeavours, by market regulation and inter-municipal negotiation, to secure every advantage it can over rival towns; and considers that every leading or important occupation should have its own organisation, its own officials, expected to carry out a searching system of industrial supervision over its members. And in many cases it comes to be the accepted idea that each of these industrial groups should have its own representation in the governing body of the city.[1]

I would especially note this last feature, by which the medieval civic body becomes a kind of federation of industrial groups—"crafts, mysteries, or arts" of which we

[1] Ashley's *English Economic History*, vol. ii. p. 7.

now see a survival in the London Companies of Drapers, Clothworkers, etc.—each group having certain independent powers of self-government, of which the main public and avowed object, and at first, we may believe, one of the main real objects, was to bring about such a supervision of each trade and craft as should maintain the quality of wares, and the generally accepted standard of good work. This structure of the civic body for economic and political purposes combined was only reached after a process involving a certain amount of struggle and conflict; and though the intensity of the struggle and conflict varies very much—in England it is comparatively slight—there is still much similarity in the stages of the process as we compare it in different countries of Western Europe.

In the first place, in England no less than on the Continent, the town only gradually works itself free from the social and political system of the neighbouring country. Accordingly, citizenship is at first confined to those inhabitants of the town who hold land within the town boundaries; such "burgage tenants" alone are fully qualified members of the town assembly.

Then, after the industrial character of the town has become clearly marked, in England no less than on the Continent the mercantile element, as distinct from the artisan element, take the lead, and for some time practically monopolise the government of the city. In at least some English towns in the thirteenth century, craftsmen are formally excluded from the class of "freemen" of the town; if a craftsman wishes to become a freeman, he must first forswear his craft and get rid of the tools from his house. Even the claim of the crafts to organise themselves for purposes of self-government is sometimes resisted; in London, in John's reign, the citizens offered to make an annual payment to the exchequer if the weavers' guild were abolished. In time, however, the tables are completely turned; not only is the partially independent organisation of the crafts tolerated, it becomes a part of the policy of the central government to foster and

extend it; before the end of Edward the Third's reign, instead of the craftsmen being incapable of citizenship, citizenship in London comes to be bound up with membership of one of the companies. Each "craft" or "company" has regular meetings, and elected officers who enforce a certain amount of taxation for common purposes and exercise certain rights of jurisdiction and search.

This gradual advent of members of crafts to equality of privileges with the merchants may be called the "movement towards democracy" in the medieval city community, corresponding, in some degree, with the movement towards democracy in the Graeco-Roman city-states; and in both cases the democracy is, regarded from a modern point of view, palpably incomplete. But the difference between the two movements is very striking. In the Greek city-state, throughout the struggle towards democracy, both oligarchs and demos remain largely agricultural, and though free mechanics ultimately—where democracy wins—become full citizens, still, mechanic labour remains largely servile. Whereas, as we have seen, in the medieval town the oligarchs—if I may use the term—are essentially traders, the democracy essentially a democracy of handicraftsmen. Note further, that in the old city-state—as afterwards in the democratic movement, so far, of the modern country-state—the struggle is for an extension of personal privileges; whereas the crafts in the medieval town are organised bodies, struggling for corporate privileges. Partly in consequence of this, we have to recognise, as the last stage of development of the medieval city—seen in England again, as well as in Germany and Italy, though in a less degree—a tendency to a new kind of oligarchy, formed within the crafts when they have attained their privileged position. A separation takes place between the master-artisans, to whom the privileges of the craft are confined, and an increasing class of journeymen; and obstacles are put in the way of journeymen becoming masters—such as heavy entrance-fees, and the obligation of providing an expensive breakfast or dinner for the members of the craft. Further,

even among the master-craftsmen an oligarchic system of government grows up or becomes intensified; the very political success of the crafts tends to destroy their democratic character, because—when the rule is established that membership of an organised craft is a necessary condition of possessing the civic franchise—persons superior in wealth and social position to the ordinary artisan become members of the "arts" or "companies," and naturally acquire a leading position in them. Accordingly, we find that the government of the companies, and also of the civic body composed of companies, becomes in many cases highly oligarchical in its latest stage.

I have endeavoured to give a typical account of the process of development when allowed to become full. It must be understood that variations and exceptions in detail are numerous; and especially, it must be understood that both as regards the disengagement of the city-government from that of the country, and the relations of the cities to feudal nobles, and as regards the changing relations between merchants and artisans, there was normally in the leading continental cities a violent and prolonged conflict which has no place in England. Especially in Italy, relations between citizens and nobles are, as we shall see, a permanent source of disorder.

§ 3. The times at which the cities obtained more or less independence, as well as the degree of independence attained by them, vary very much in different parts of Western Europe. In the case of Spain an early independence appears to be the natural accompaniment of the part taken by the cities in the struggle against the Moslems from whom Spain is slowly being won back. Thus Spain in the eleventh century has chartered towns who elect their own magistrates and judges and commanders in war, and pay only fixed moderate rents for their land.[1] In Italy, in the beginning of the twelfth century, most of the Lombard

[1] It is interesting to note—in contrast with Italy—that in Spain, many of the early charters provide expressly that no noble shall acquire real property or erect a fortress within the community.

and many of the Tuscan towns have, as we shall see, acquired similar privileges.

Turning to France, we find a number of types of semi-independent towns and degrees of independence, owing to the different conditions of different parts of the country during the feudal period, and it may be worth while to dwell for a moment on these differences, as an illustration of the rich variety of medieval political phenomena. In the central region where the king's power is real, though the royal policy is to foster the growth of the towns, for the increase of wealth and population, it only extends the civil rights of the inhabitants and does not grant them any portion of sovereign power. From "villeins" the townsmen have become "king's bourgeois"; and the increase of freedom and security thus obtained is very valuable; the "charter of Lorris"—the model for such towns—is widely demanded and obtained during the twelfth century; but the militia of such towns are still commanded, their taxes collected, their justice administered by royal officials. The old arbitrariness in the administration of justice and the imposition of taxes and labour is, however, done away with; all payments and services are fixed at a definite amount. Of the western part of France, which is under English rule in the twelfth century, much the same may be said, though the charters conceded by Henry II. and Richard are a little more liberal of political privileges. In the North-East and South-East, on the other hand, some cities attain a political independence practically equal to that of the great feudal nobles; while remaining under the suzerainty of duke, count, or bishop, they gain complete control over the administration of urban justice, make peace and war and treaties on their own account, elect their own magistrates and govern themselves by their own laws. But the social structure and type of self-government of these semi-sovereign cities are different in the North and South respectively. In the South—especially the old Roman Provincia—where the tide of barbarian conquest has only partially effaced the old Gallo-Roman

social organisation, the cities contain an element of old nobility, so that the preponderance of the industrial element is less complete. Here the political institutions more resemble those that we shall observe in Italy when we come to the Italian towns: we find "consuls" with their special and general councils, the Parliament or Assembly of the people at large, and in some cases even the foreign Podesta. On the other hand, it is in the North, in Amiens, Beauvais, Soissons, that we have the most distinctly medieval type of town; here free associations of traders and artisans, who have grown wealthy and strong by industry and trade, band together to "swear the commune" and purchase or wrench by force from their neighbouring feudal superiors a substantial amount of independence, *i.e.* complete original jurisdiction—even to capital punishment—over their own citizens, and the right of making peace and war. Then, as the kingdom of France grows towards coherence, the independence of the semi-sovereign cities everywhere diminishes, and ultimately becomes a thing of the past. Still the development of the cities has had an important effect, as we shall see later, on the development of the government of the nation.

LECTURE XVII

MEDIEVAL CITIES—GERMAN

§ 1. In these lectures on the medieval city-community, I am anxious to bring out clearly at once the most important resemblances that we find when we compare the medieval cities in different European countries, as well as the no less important differences that arise from the different conditions of different countries. I am, however, somewhat more concerned to lay stress on the resemblances, because they are apt to be ignored by the ordinary historian. For instance, in Freeman's excellent essay on *Ancient Greece and Mediæval Italy*, there are many interesting analogies and diversities noted between the development of the simply independent city-state in ancient Greece, and the practically almost independent city-community in medieval Italy; but in fifty-one pages there are only a few lines, easily overlooked, that even suggest the feature which the famous Florence has in common with other less glorious cities in other parts of Europe, namely, that the civic body proper was composed of commercial or industrial elements, organised in incorporated trades and crafts.

Well, to bring resemblances and differences clearly and yet briefly before you, I have directed attention to England, where we see the medieval city developing under the effective control of the central government. But, as I said, I wish also to take a look at Germany, as we see in Germany the pure type of medieval city in the highest degree of independence which the pure type reaches, and also at North Italy, where we see the medieval city at its very highest degree of independence and predominance, but where its

very predominance has impaired the purity of the type, because the feudal nobles, compelled or persuaded to take up their residence in the towns, are a more or less alien element in a predominantly industrial polity, and, as we shall see, grave consequences flow from the intermixture of this alien element.

Accordingly the subject of the present lecture is the political development of the city-community in Germany, *i.e.* in the regions north of the Alps, under the dominion of the Holy Roman Empire. And here it is convenient to notice a distinction between two portions of Western Europe, which is important in tracing its social and political development in the Middle Ages. This is the difference between the part that has been civilised and in which civilisation, the old Roman civilisation Christianised, is submerged and diminished but not destroyed by the barbarian invasions and conquests; and the part that has been barbarous and in which the new civilisation, formed of Teutonic, Roman, and Christian elements blended, is extended during the early part of the Middle Ages. Speaking broadly, the Rhine and the Danube were the boundary of the old Roman Empire on this side, though, as the limits of modern languages indicate, the influence of the Roman civilisation only extended up to the border in an enfeebled form. At any rate Germany beyond the borders has to be entirely civilised under early medieval conditions; and in this process of carrying civilisation eastward both the Church and the cities play an important part. And for a long time the civilising action of the two elements—the ecclesiastical and the industrial—works in harmony. We have indeed to begin our survey of municipal development by noticing the very important influence exercised by the Church both in Germany and in Italy on the first stage in the development of the towns. This is partly due to the alliance of Church and Empire, which is the basis of Charles the Great's strongly held dominion. The Church is a great instrument of his policy, as is most strikingly seen in his conquest-conversion of Saxony, with eight

bishoprics and monasteries from which civilisation spread. The same alliance is maintained in the revived empire of Otto the Great in both Germany and Italy; only while in Italy the Church was the protector of the remains of the old civilisation, in Germany it was the source of new civilisation.

Accordingly, partly through the policy of the Frankish monarchs, partly through the influence of religion on their minds and those of other wealthy landowners, remarkably large tracts of land came—through royal grant, through gift or bequest, sometimes through the surrender of small landowners seeking the protection of the Church in troubled times—to be held by bishops and abbots, who thus entered into the feudal system, and became co-ordinate with the great lay-feudatories; their military tenants being bound to obey the king's summons to military service, as much as any vassals of lay lords. But though thus semi-feudalised, the Church did not strip off its distinctive character; and through the special effectiveness of the protection that its religious influence enabled it to give, it took the lead in fostering the growth of cities. This was a part of its general civilising work in the regions beyond the Rhine and the Alps.

Here I may remark that in one important respect the type of the German town reminds us of the old Greek town more than the town of medieval Italy does, viz. that it is in its way a colonising type. It spreads municipal civilisation by land as the Greek town spreads it by sea, extending into Hungary and Poland, into Scandinavia and Russia;—indeed the eastern part of what we now call Germany was largely won over to Teutonic civilisation by the planting in it of German communities with municipal constitutions, amid an agricultural population mainly of Wendish or other Sclavonic stock.

As compared with Italy or Spain, the striking development of the German cities does not come early, but it is remarkably enduring; their external importance is on the increase till the fourteenth century, and is

maintained undiminished for two centuries more. And though the Church, as I have said, takes the lead in fostering their development, they ultimately came to be liberally encouraged by the princes and other lords of the soil in the thirteenth and fourteenth centuries, largely on the simple economic ground that the rents and dues paid by them to the territorial lord were found to be a valuable source of revenue. It came to be commonly recognised as a first-class improvement of a large landed estate to get up a thriving town upon it. In tracing, however, the normal political development of these town communities we have to remember that they both begin and end at different stages; towns of a later foundation have often not got to go through the struggles and the earlier grades of emancipation of the older cities: on the other hand, many of them do not fight their way to the position of free cities of the Empire; they have, after a struggle, to acquiesce in subjection to bishops or secular princes. In the latter part of the twelfth and the beginning of the thirteenth century we see the older cities struggling after an independence equal to that which the Italian cities have attained; especially the episcopal cities struggle with their bishops for the complete right of self-taxation, coining, taking tolls, administering justice—the harmony between ecclesiastical and industrial aims being now a thing of the past. The cities are temporarily checked by the opposition of the Emperor Frederick II. (first half of the thirteenth century), but they continue the struggle, and in the end a large number of the towns become—by force or purchase—Imperial Cities, owning no obedience except to the Emperor and the Diet; and only less independent than the Italian cities, because the Holy Roman Empire—though too weak for the task of giving unity to Germany—is more of a reality on the north than on the south side of the Alps.

§ 2. Let us look more closely at the stages of the process. The old episcopal towns, as I have said, take the lead in it. Here the Church, though it early acquires independent jurisdiction over the dependents on its estates,

has at first no political control over free landowners, or the tenants of the monarch or other secular lord, living in the town. The town, in fact, has not at first any political unity. But as the towns grow, and their inhabitants become distinctively urban in their interests and ways of life, then the need the townsmen feel of special rights and privileges and a special administration of law and justice, combining with the desire of the great ecclesiastics to extend their power, leads to the political unification of the town under the headship of the bishop. And in this first process the distinctively industrial character of the town is already marked. Trade and commerce progress markedly in the tenth and eleventh century in Germany, especially after the predatory inroads of the Hungarians have been finally checked in A.D. 955 by the victorious arms of Otto the Great. Large markets, visited by strangers, are established and thrive in all parts of Germany, and German merchants extend their enterprise to England, Spain, and the Far East. And we note that the peaceful pursuits of religion and trade are naturally combined; and that regular frequentation of, and special pilgrimages to, great churches render ecclesiastical towns the natural place for the development of a market. Hence when, to foster commerce, the monarchs grant a special privilege and a special "king's peace" to these towns, that the markets and those who visit them may be protected from disturbance, it is in the cities where bishops have their seats that this largely, though not solely, occurs.

The administration then of the leading cities was unified under the rule of the bishop; and this had at first a certain tendency to depress the originally free inhabitants of the town towards the social level of the townsmen originally dependents of the bishop. This led to a conflict of aims between bishop and town, which manifests itself when the first great quarrel occurs between Church and Empire in the latter part of the eleventh century, when town after town takes the side of Henry IV. against his rebellious bishops. But as the prosperity and wealth of the towns

grow—and we are told that in Cologne, while still under archiepiscopal rule in the latter half of the eleventh century, there were "600 most wealthy merchants"—they acquire a large degree of self-government. The organ that exercises this government in the name of the citizens is in the older cities usually formed by degrees, its nucleus being a body of judges—*scabini*, *schöffen*—whose judicial functions are of old standing, handed down from Carolingian times, but who gradually acquire, usually in conjunction with other leading citizens, administrative and even subordinate legislative functions, till ultimately a governing Town Council is formed under the presidency of one or more "Burgomasters." The importance of their administrative functions grows, as the town under their government is gradually obtaining by purchase or conflict, through custom recognised as law or through express contract, the powers previously exercised by episcopal or princely officials.

This government is originally and for a long period a "natural oligarchy," *i.e.* the persons who exercise it, however elected, are exclusively the wealthier citizens. Usually, I think, the councillors holding office for a year, the outgoing councillors determine their successors, so that government is practically in the hands of a group of what might be called "senatorial families." We have to observe that, especially in the older towns, the society that thus struggles into independence has not at first the preponderantly industrial character which it ultimately assumes; it originally contained knights as well as free non-military burgesses, and cases occur in which these knights (*milites*) have a special representation in the municipal government. In time, no doubt, the feudal element becomes so much the weaker that it has either to quit the town or be absorbed by the mercantile element; still the body of fully qualified citizens that resulted usually held for some time to the possession of town-land of a certain value as a necessary condition of full citizenship. And even in towns of later growth, like Lübeck and Hamburg, in which there was from the first no feudal element at all, a similar oligarchy of

merchant-landowners seems to have formed itself. In any case the government of the town soon comes to be in the hands of a preponderantly mercantile minority of the townsmen, the organ of government being, as I have said, an annually appointed oligarchical council. This council often assumes complicated forms—in earlier times from conflicts between the families monopolising government and other members of the mercantile class, and in some cases partly because certain governmental functions are assumed by a voluntary association of merchants; afterwards from struggles with the artisans. But it is noteworthy that throughout its history the government of the German town remains in the main *conciliar*—the chief administrative organ is a council or system of councils—the constitution does not move like the old Greek town towards the plan of administration by general assembly of citizens; nor does it like the old Greek or medieval Italian town fall under a Tyrannus.

Not that the general body of free citizens is to be conceived as altogether excluded from participation in government, though its degree of participation varies very much in different places. It is often summoned when new statutes are made, when treaties are entered into or military expeditions are decided on, when important new taxes are imposed or debts contracted, etc.; but its meetings are at the discretion of the council, and they become rarer as time goes on. Sometimes—though not usually—the general body of citizens has the election of councillors.

Generally, we may say that, in the first stage of development of the self-governing town, after an important amount of self-government has been achieved, there is a tendency for the government to become more oligarchical—something like the tendency which we observed in the Greek city-state from inequality of landed property. Only in the medieval town the oligarchy is essentially mercantile; and it has no sooner been fully developed than it finds itself face to face with a Demos of artisans, organised in associations of the peculiarly medieval kind described in the last

lecture. They are called in Germany by various names, *e.g.* "Fraternities" in Cologne, "Gilds" in the Westphalian towns, elsewhere "Unions" (*Innungen*), etc. For convenience and brevity I will call them crafts. Their resemblance to modern trade-unions is striking; but the difference was as marked as the resemblance. The medieval crafts were not associations of hired labourers, but of master-workmen working on their own account, employing apprentices and sometimes journeymen who were not, as such, admitted to the association.

§ 3. This seems a convenient place to discuss the origin of this peculiar economic structure of the medieval city, the organisation of its industrial element into distinct "gilds," "crafts," "arti," or "mestieri"—corporate bodies with certain powers of regulation of the industry and control over its members. Here I am obliged to disagree with the conclusions of a writer to whom I owe much—Professor Ashley. He appears to reject the theory of a Roman origin of the "craft-gilds" or "associations of all the artisans engaged in a particular industry in a particular town, for certain common purposes,"[1] because the growth of a separate class of artisans presupposes a comparatively late stage in the development of industry, a stage that was only reached in England in the twelfth century. He says: "No doubt the artisans in the later Roman Empire had an organisation somewhat like that of the later gilds. Moreover, it is possible that in one or two places in Gaul, certain artisan corporations may have had a continuous existence from the fifth to the twelfth century. . . . But when we see that the growth of an artisan class, as distinguished from isolated artisans here and there, was impossible till the twelfth century . . . and that the ideas which governed the craft-gilds were not peculiar to themselves but common to the whole society of the time; then the elements of organisation which may conceivably have been derived from or suggested by the Roman artisan corporations become of quite secondary importance."

[1] Ashley, *English Economic History*, Book I. ch. ii. § 8.

Now we shall all agree that in the English towns which Mr. Ashley has primarily in view, there cannot have been a continuous existence of organisations of artisans from Roman times downward. That is incontrovertible; but it appears to me hasty to conclude from this that the derivation from Roman artisan corporations is therefore of secondary importance. Mr. Ashley overlooks, I think, the large place that has to be assigned to imitation in the development of political institutions. Doubtless in towns of recent origin, on the Continent no less than in England, the organisations of artisans cannot have been directly derived from the artisan corporations (*scholae*) of the later Roman Empire; but they may still have been so derived indirectly, through imitation of older towns in which this corporate organisation of industry had had a continuous life. And I think that the broad similarity between the economic structure of the Italian town and that of the English or German town renders this conclusion probable. It is true that this structure, in most cases, does not attract the attention of the chronicler till a late date; but in Venice, as early as the ninth century, we find this organisation both of perfectly free workers in more dignified industries—such as architecture, mosaic-work, etc., "arti" proper—and humbler workers in "mestieri" (*ministeria*) who seem to have been not completely free, as they had to perform certain public services gratuitously. Here at least the organisation cannot be of Teutonic origin, and the Roman origin is obvious; then, as we compare the structure of other Italian towns when we come to know it, we find it so similar as to suggest a similar origin; it certainly cannot have come from the Lombards, who are admittedly the most barbarous of all the Teutonic invaders. But if we have to accept a Roman origin in Italy, the broad similarity of the structure of the Italian to that of the Teutonic town renders it most probable in the case of the latter.

It may be remarked in passing that one reason for dwelling on this is, that it is important in a general view of the Italian town not to overlook its connexion with the muni-

cipality of old Roman civilisation. We are to conceive the relics of the older civilisation as surviving—so far as they did survive—chiefly in the towns; and we may thus partly explain the antagonism to feudality manifested by the Italian cities when they grow strong and thriving, and the enthusiasm with which, in the twelfth century, the revived study of Roman law is embraced.

§ 4. In any case, these associations had doubtless existed and operated long before the corporate control exercised by them over persons engaged in the respective trades was formally granted and recognised as legal. We find them widely established in the latter part of the eleventh and in the twelfth century, though their range was being extended by new grants. But at this time they are still under the control of the municipal authority, and have not always even the full right of electing their own officials; though, so far as legalised, they have the right of meeting, laying down rules for the practice of their respective handicrafts, and enforcing observance by penalties.

We are to conceive this "demos of handicrafts" as partly composed of citizens free by extraction but landless, partly of serfs who have gradually freed themselves from servile conditions. For labour—the labour of the town—has two stages to go through in that march upward in the social scale which it effects during the later period of the Middle Ages. It has first to throw off the relics of rural serfdom—a process which we have evidence of early in the twelfth century, and which culminates in the establishment of the principle that any serf who has resided in the town for a year and a day is *ipso facto* free. Then, when civil freedom is secured, comes the struggle for corporate independence and for a share of political power. The former is first reached—the crafts mostly obtain complete independence of organisation, and such powers of independent self-government as are required for their industrial aims. A share of political power is longer deferred; the struggle, in its length and obstinacy, reminds us of the Roman struggle between patricians and plebeians, though in the medieval city the

barrier to overcome is not formally one of birth, but of calling and status. It is, as I have said, a mercantile oligarchy contending with a demos of handicrafts; the struggle begins in the thirteenth, or sometimes even in the twelfth century, but the victory is not generally won till the fourteenth. It has to be gone through in all the old cities, I think,—only in some towns of later foundation are the handicraftsmen full citizens from the first.

The share of political rights conceded to the artisans is very various, and sometimes rapidly fluctuating—for example, in Strasburg, from A.D. 1334–1482 we may count sixteen different constitutions. When the crafts win, as a rule, they get a share in the power of the Council in some way or other, but the ways are various. Sometimes craftsmen are simply declared admissible as councillors; sometimes a body of representatives of crafts sit as a separate bench in the old council; sometimes they form a new governmental organ, with certain powers of control and co-operation, outside the old council. Mostly, too, they obtain some control over the election of the one or more Burgomasters. Finally, as we saw, in some towns, the victory goes further. The constitution of the town is remodelled on the gild-principle, the merchant-associations, where they exist, being brought down to the level of the newer craft-associations; it becomes governmentally a kind of federation of trades unions, so that every citizen has to be a member of a trade-association, which thus becomes a political division or element of the civic community. I am speaking of Germany, but it will be remembered that in London too, from Edward III.'s time, every citizen has to be a member of some organised trade or "mystery."

On the whole, whatever special political privileges are retained by the old citizens—and several important towns remain preponderantly oligarchical—still, it is everywhere established as a general rule that citizenship is independent of landowning, and that the class of citizens includes artisans (*i.e.* master-workmen, working on their own account, having gone through a regular apprenticeship) as well as

merchants. It is noteworthy that the bulwark of oligarchy in this movement is found in the cities with widely extended foreign trade—naturally, from the predominance of great capitalists in the leading business of the town. And it is a bulwark which gains strength from the power and prestige of the Hanseatic League formed by these cities. Even after the crafts have won either complete political equality or at any rate a share in government almost everywhere in South and Middle Germany, on the Lower Rhine, and in Westphalia, and in many towns of the North and East, they still remain excluded from the councils of the leading towns of the Hanseatic League, though their members are recognised as citizens, and the presiding officials of the crafts form a kind of consultative chamber, occasionally called on for advice by the governing council of the town; and their struggles in these towns to get a share of the councils after the end of the fourteenth century mostly fail.

We thus have two stages, broadly analogous to those of the Greek city-state: first, as the town grows prosperous, there is a movement from natural oligarchy towards more sharply exclusive oligarchy through inequality of wealth; then there is a movement towards a more popular constitution. Only in the medieval town the oligarchy is an oligarchy of merchants, the demos a body of organised handicrafts. Further, we may observe that here and there the development of the German cities resembles that of the Greek in exhibiting something that corresponds to the earlier age of the tyrants—so far as, when the political movement begins among the artisans, they appear not as independent combatants for political rights, but rather as auxiliaries of the ecclesiastical or secular lord in his struggle with the old citizens. Thus, in Cologne, in the thirteenth century, an archbishop introduced artisans into official posts as convenient tools. This, however, is a partial, occasional, and transient phenomenon in the German development, to which too much importance must not be attached; and as I before said, it is a noteworthy characteristic of the German cities that when they have emancipated themselves from their inferior feudal lords,

and become imperial towns, they never give themselves over voluntarily to the rule of a single person for a time, as the medieval Italian cities frequently do; or fall under the usurpation of a tyrant, as is the case with both medieval Italian and old Greek cities. This, I suppose, is due partly to their less complete independence, and the consequently subordinate place that foreign war occupies in their existence; partly to their more purely industrial character. They are not plagued, as the Italians are, with disorderly nobles in fortified palaces; the disorderly nobles are outside in their robber castles, and the knights within the town have been successfully transformed into peaceful merchants.

§ 5. A considerable number of these cities (ultimately fifty-one), as "Free Imperial Cities" of Germany, retain a large amount of independence amid the larger states that make up the feebly cohering survival of the Holy Roman Empire, to the close of the eighteenth century. But a vigorous pulse of political life no longer beats in them; they do not, indeed, manifest any tendency to fall under despotic rule—still, it is noteworthy that the democratic movement has ceased since the fifteenth century, except that there is a brief revival of it during the Reformation period, followed by a strong reaction; so far as political change is discernible, the drift is steady towards narrowing oligarchy. After the desolating Thirty Years' War, which sadly reduced the prosperity of the German cities, the idea of the governing council being representative of, and responsible to, the citizens at large almost dies out. The general assemblies of citizens cease altogether to be summoned, and the influence of ordinary citizens on the appointment of councillors almost comes to an end.

I noticed just now the bulwark of oligarchy formed by the towns of the Hanseatic League, which early in the fifteenth century adopts the policy of repressing revolutionary movements in any of the towns forming it, by the formidable penalty of exclusion from the markets of the League. Then, before long, the reaction takes hold of the

other towns, in which the artisans had previously gained a footing in the government. Election is replaced by co-optation, or reduced to a mere form; membership of the council becomes practically permanent, or is alternated backwards and forwards among members of a limited group of families. This is partly due to the contagion of the monarchical ideas in the neighbouring country-states. The view that the masses are naturally "subjects" rather than self-governing citizens invades the cities from the country; only in the cities they become subjects of a council instead of a monarch. Partly, however, the oligarchical change is due to a gradual but profound alteration in the character of the associations that have been fighting the battle of democracy—a change corresponding to what we noticed as a feature of English municipal development. When they first organise themselves, it is with the consciousness of exercising in their corporate capacity a public function, and the rule that every independent worker in the trade must belong to a gild is partly maintained that this function may be properly performed, though no doubt it has also the more selfish aim of preventing inconvenient competition. Though the gilds are normally restricted to master-workmen who have served a certain apprenticeship, the proportion of servants to masters is small, but little capital being generally needed—so no substantial barrier excludes any competent and duly trained worker. But success and extension of markets gradually tend to turn the gilds from practically free associations of labourers into profitable and more or less close monopolies of persons owning some capital. The sons and sons-in-law of members are admitted easily. To outsiders, admission is made difficult in various ways; they have to pay money, to produce a costly masterpiece, to give luxurious inauguratory dinners, to show that they possess capital or a house, are not illegitimate, or sons of peasants, and so forth. Thus the number of journeymen outside the gild increases rapidly in proportion to that of masters, and they begin to form special fraternities. The Fourth Estate commences to organise itself, but

it is not strong enough yet to carry the democratic movement further.

It is not surprising that as the gilds have thus come to represent capital in antithesis to labour, their internal constitution should practically have become more oligarchical, and that the government should fall more and more into the hands of the wealthier minority. And thus the whole political structure of the city becomes a sort of petrified hierarchy of privileged industrial classes, as much opposed to modern ideas and needs as is the privileged landowning class in the country round, and as certain to be swept away when the democratic movement in the nation—the larger whole—revives.

LECTURE XVIII

MEDIEVAL CITIES—ITALIAN: LOMBARDY

§ 1. In my last Lecture I traced briefly the development of what I called the pure type of medieval city-community in the country in which we find the pure type in the highest degree of independence which it reaches in Western Europe, namely in Germany, or more strictly, the territories of the Empire north of the Alps. As we saw, in other countries north of the Alps the development of the central government reduces the self-government and partial independence of the cities; while in Italy, to which we now pass, the distinctively industrial character of the city is less obvious and marked on account of the very fact that makes their development more interesting—that is, on account of their predominance over feudality in large parts of Northern Italy. We saw that the liberties of each city, where feudalism is fully developed, are obtained from the feudal or ecclesiastical chief of its own district, by force and conflict, or purchase, or gradual encroachment, or by free grant when the economic advantage to the feudal chief of developing trade and population within his territory come to be fully perceived. In many cases the feudal or ecclesiastical chief retained an overlordship over the city; and even where, as in Germany, the "free imperial cities" acknowledged no political superior but the emperor, whose control after the middle of the thirteenth century grows very shadowy, they still have powerful and formidable feudal nobles in their immediate neighbourhood. But in Italy where the cities are predominant, they not only bring the neighbouring feudal lords under their authority,

but even go further and change them into a civic nobility within the town. Still, on the whole, and speaking generally, even in these cases the Italian city, viewed in its economic and social constitution, is to be conceived as preponderantly industrial; the typical citizen, even here, is a person engaged in industry; and in the cities that enjoy the fullest development, when the movement towards democracy begins, the demos that struggles for power is—as in the German cities—a demos composed of organised trades or crafts, *arti* and *mestieri*. Moreover, it must be remembered that, as Freeman says, the process of forcing feudality into civic life "was never carried out through the whole extent of the kingdom. In its north-western portion powerful feudal princes went on reigning over Piedmont, Montferrat, and Saluzzo, even elsewhere feudal chieftains of less dignity maintained their wild independence in many mountain holds. In short, the brood of petty rulers, holding nominally of the Emperor, and neither citizens nor Tyrants of any city, was for the most part driven into inaccessible holes and corners, but it was never wholly rooted out." [1]

It is the antithesis to a feudal or semi-feudal society surrounding them, and more or less colliding with them, that gives the medieval cities their peculiar character of combining resemblances to ancient and to modern polities. They resemble the ancient city-states of Graeco-Italian civilisation in being city-communities; they anticipate the country-states of modern civilisation in being predominantly industrial. Speaking generally, in the larger whole of the medieval kingdom that is gradually struggling towards the coherent order of the modern nation, the martial land-owning class are still predominant; but as their manner of life is mainly rural and not urban, they do not give the predominant character to the cities, even when they are admitted into them and take a prominent place in them. This contrast between city and country and the predominantly industrial character of the city is found essentially the same throughout Western Europe, wherever

[1] Historical Essays, 2nd series, *Ancient Greece and Medieval Italy.*

we examine the medieval city; for example we find it as strikingly marked in Perth as described in Scott's *Fair Maid of Perth*, as it is in any German or Italian town.

§ 2. Before we study the phases of development of the Italian cities, it will be well to spend a few moments in a survey of the history of the larger organism of which they formed a part; since not only is it the peculiarity of this history which gives these cities their special opportunity for independent development; but this peculiarity also accounts for the very diverse conditions under which we find the different cities and groups of cities.

As I explained more at length in an earlier lecture, a chief key to early medieval history lies in the fact that when the old Empire broke up the Church held together; the ecclesiastical society which the barbarians found in the civilised world that they conquered had a cohesion and vital force which naturally secured for its governors a prominent place in the new secular order which gradually grew out of disorder. This characteristic manifested itself in Italy in a special way, owing to the special prolongation of the connexion between Italy and the Roman Empire still surviving in the East. Beyond the Alps what was once wrenched away from the Roman Empire was never even in part restored to it; but in Italy this was otherwise. Italy was recovered to the Empire by Justinian in the sixth century; and though the whole land was imperial only for about fifteen years, from A.D. 553–568, when the greater part of it was wrested away again by the formation of the Lombard kingdom in the north and Lombard duchies further south, still important parts of it remained really or nominally subject to the emperor at Constantinople.

And here I must ask you to note an important characteristic of that central strip of Italy which in modern history we are familiar with as the States of the Church. We are rather apt to connect the formation of this territory with the worldly ambition of the popes, and no doubt worldly ambition had something to do with it; but it is historically more instructive to conceive it—as in fact it

was—as a State of which the greater part was never for any long time separated from the old Empire until, through the great compact between the Pope and Charles the Great, it combined itself by the desire of the clergy with the new Empire. In its original condition it was composed of two portions, one on the north-east governed from Ravenna by the "Exarch" of the old Empire, the other the Roman duchy, which in the struggle against the Lombards became practically independent under papal hegemony before the end of the sixth century, largely through the statesmanship and energy of the very able monk who in A.D. 590 became Pope Gregory I. After the end of the sixth century, though there is still a Duke of Rome, the pope is the really effective head, for secular as well as ecclesiastical purposes, of the territory round Rome that remains free from the barbarian invaders. And even within the Lombard kingdom his influence is important—when the Arian Lombards have been converted to orthodoxy. But though it became semi-independent, the *Ducatus Romanus* did not at once break its connexion with the old order; nor perhaps would it have broken it—even in spite of the religious dispute between Western and Eastern Churches on the question of image-worship in the first half of the eighth century—if the Emperor at Constantinople had been able to protect it. At any rate it is not till the Lombards have conquered Ravenna and the territory governed from it in A.D. 750, that the Papacy makes the alliance with the Frankish kings, giving to Pepin (A.D. 753) the title of *Patricius Romanorum*, who in return reconquers the exarchate of Ravenna from the Lombards—after it has been four years in their possession—and gives it to the pope; a donation confirmed by Charles the Great, when in A.D. 773 he has conquered the Lombard kingdom. But it would seem that even when these donations are made, the Papacy does not at once formally break with the Empire. It is not till A.D. 781 that the pope ceases to use the years of the Roman emperors as dates. For a brief interval Rome then recognises no emperor, but this seems to the Church an unnatural state of

things; it has no wish to stand alone; accordingly, in A.D. 800, it overcomes the real or feigned reluctance of the great Frankish king, and formally restores to Western Christendom its secular head, under whom it exercises a special quasi-secular rule over the old imperial territory—the territory of the old exarchate of Ravenna and that of the Roman duchy, connected by a narrower strip — thus dividing Northern from Southern Italy.

This papal rule over territory is a natural effect and recognition of the place taken by the Bishop of Rome at the head of the struggles of civilised Italy against the Teutonic invaders. One result of this is that Italy is cut into two parts for the purposes of our inquiry. In fact, this bisection is really effected at the time of the Lombard invasion in the sixth century; for though the tide of the Lombard invasion flows nearly to the extreme south through the barrier formed by the successful defence of these central fragments, still this barrier has the effect of separating the Lombards of the southern duchies—Spoleto and Benevento—from the Lombards of the kingdom. Then—which is the important point for us—when the Papacy wedded itself to the new Empire, carrying with it the old Roman duchy, and receiving the reconquered exarchate of Ravenna, it thereby cut itself off from the other fragments of the old Empire that had kept themselves free from Lombard dominion. Hence the municipalities of Gaeta, Naples, and Amalfi in the south-west, which gained a semi-independence by their success in the struggle with the invaders, grew into that independence as nominal parts of the old Eastern, not—like the Lombard municipalities—as parts of the new Western Empire; and consequently they grew up into independence much earlier than the municipalities of North Italy, and grew out of the administrative system of the old Empire, uninfluenced by the political conditions which the barbarian conquests had brought about in Western Christendom generally.

The early independence of these municipalities is important, for the stimulus of the example it doubtless gave

to others; but of their history we know little. But a much more important city — Venice — is also among the fragments of old Roman dominion, which maintained a nominal adhesion to the old Eastern Empire and never passed under Frankish rule; and the unique history of Venice, its complete separation for many centuries from the political movements in North Italy generally, may be largely traced to this fact.[1]

§ 3. It may be observed that even if Venice had fallen under Lombard rule, it would probably have begun its career of independent development and commercial enterprise and power earlier than the inland cities, because we see this to have been the case with the commercial rivals of Venice, Genoa, and Pisa. The Lombards not being navigators required to have their maritime commerce done for them. Genoa indeed, in the north-western corner of Italy, between the mountains and the sea, remained for a long while unconquered by the Lombards, and even after it was conquered it seems to have enjoyed a sort of semi-independence. At what time the practical independence of Pisa in external relations begins, we cannot say; but we hear of its fighting the Moslems by sea from the middle of the tenth century, and it undertakes along with Genoa the enterprise of conquering the island of Sardinia early in the eleventh

[1] Venice is the only medieval city developed with complete unbroken independence, outside feudalism, and with no admixture of barbarian conquerors. Refugees from cities of North-Eastern Italy, flying time after time from invasions, gradually come to make a home in the lagoons; at first they reside there only temporarily, going back after the tide of invasion has subsided. From A.D. 452–568 the population is forming; after the Lombard invasion of the latter year they have come to stay; Venice is formed. From this date to the end of the eighteenth century it lives unconquered—a wonderful life. This long period is divided into two tolerably equal portions. From A.D. 568 to the period of the *serrata del maggior consiglio* (closing of the great council) A.D. 1297–1318 the State is developing towards oligarchy, which afterwards remains stable. The first period begins with "integration." Originally the separate islands in the lagoon appear to have been governed by separate tribunes; in A.D. 584 "greater tribunes" were elected as a kind of central committee, and in A.D. 697, for greater strength, a "duke" or "doge" elected, to whom the tribunes became subordinate—peace, war, treaties being decided by a general assembly.

century; and from the magnitude of this enterprise carried successfully through, we may reasonably infer a considerable previous period of semi-independence.

When we turn to the inland cities a further distinction is required between the cities of Tuscany—which form a part, though administratively disconnected, of the Lombard kingdom—and the cities of Lombardy and the valley of the Po, including the region in the north-east called the Trevisan Marches, which afterwards is in the main absorbed by Venice. The leading inland cities of Tuscany—Florence, Lucca, Siena, especially Florence—have a longer and more interesting development than any of the cities of Lombardy, and I propose to trace this in another lecture, as it is chiefly here that the industrial element reaches a decided political predominance. In the cities of Lombardy the political development of this element is cut short by the fact that, in the thirteenth and first part of the fourteenth century, almost everywhere Tyrannis comes in; but in the earlier part of the history these cities take the lead. This appears to be due to the outlying position of Tuscany, from the point of view of the Lombard kingdom. When Charles the Great took over this kingdom towards the end of the eighth century, it was his policy not to make the subordinate rulers too strong; accordingly the main part of the kingdom was divided into districts of not very great size under counts; but in the outlying districts, in the marches, a somewhat stronger and therefore more independent government, under "markgraves" or "marquises," was required for effective defence. Then, when the German kings, beginning with Otto the Great in the middle of the tenth century, succeeded to the crown of the Lombard kingdom and the imperial title and renewed the compact with the Church, Tuscany formed an exception to their general policy, which was to weaken the markgraves and the more powerful counts, partly by strengthening the Church by benefices and exemption of their lands from the jurisdiction of the counts and marquises, partly by strengthening the lesser nobles against the greater, *e.g.*

making the position of the lesser hereditary, and thus moving towards feudalism. As the latest historian of Florence says,[1] things went otherwise in Tuscany; whether owing to the smaller expansive force which feudalism had there, or the greater difficulty of governing the country across the Apennines, or the need of a barrier against the growing power of the Popes, the dukes or marquises of Tuscany grew in force and power, and keeping down the bishops and minor feudatories -in contrast to Lombardy —they at the same time repressed the movement of the cities towards independence, so that it begins later.

§ 4. Let us for the present concentrate attention, then, on the cities north of the Apennines, which take the lead in the movement towards independence. Here we may first observe that the cities, when they begin to develop under the revived Roman Empire, in the latter part of the tenth century, have already acquired habits of self-defence and independent corporate action in the time of trouble and distress that intervenes between Lewis II., the latest vigorous Carolingian, and Otto (*i.e.* from A.D. 875-950). In this "darkest age" in Western Europe generally but especially in Italy, they had—as some compensation for their troubles—been allowed to rebuild their ancient walls, as a necessary defence against the raids of Hungarians and Saracens. The cities become fortresses and the citizens acquire military training and habits. "The cities were divided into four or six quarters, ordinarily taking their name from the nearest gate, because the citizens of each quarter were specially called upon to defend this gate and the neighbouring wall."[2] Each quarter had its own standard, its "company" (or two) of heavy armed horsemen (rich citizens or nobles), a double number of archers and heavy-armed infantry, besides which all citizens between the ages of 18 and 70 had to come armed with swords to the *place d'armes* of their quarter, when the tocsin sounded. In the war with the Emperor Conrad the Salic (A.D. 1035-1039)

[1] Villari, *I primi due secoli della storia di Firenze*, vol. i. p. 74.

[2] Sismondi, *Histoire des Républiques Italiennes du Moyen Age*, vol. i. p. 374.

Heribert, Archbishop of Milan, completed the military system by the introduction of the *carroccio* (waggon carrying the standard), which raised the importance of the infantry.

One can see that if the new Empire interferes vexatiously with the self-government of these cities, it will have a difficult task. But for some time the new Empire has no such policy. The Holy Roman Empire, as revived in Otto, is in fact an alliance of the Church, representing the more civilised element of Italian society, with a German king, on whom it confers a title of unique dignity, carrying with it the sovereignty of the now old kingdom of Italy. Consequently the policy of the German king is to lean on the Church for support against Lombard feudality. Accordingly Otto "extended the power of the bishops to extend his own." [1] The bishop in every city becomes a rival of the count; and his jurisdiction is largely substituted for that of the count. The Churches gladly give the Emperor the right of nomination to sees, as they regard him as their friend and ally against feudality. Along with the Church the cities rise into power, archiepiscopal and episcopal cities taking the lead.

In the first stage, then, here as in Germany, the industrial element of the community in the towns grows under the shadow and shield of the Church. At the end of the tenth and in the first part of the eleventh century it has shaken itself free from the feudality that dominates the country; and in old episcopal or archiepiscopal towns, of which Milan is a leading case, it has done this by marshalling itself behind its bishops, who acquire—under the usually remote and ineffective supremacy of the emperor—practical sovereignty in the towns. Then, as we saw in Germany, the allies—the ecclesiastical chief and the growing industrial element—find their interests and aims divergent, and the industrial element struggles towards independence, at first by quiet encroachment, afterwards

[1] Ferrari, *Storia delle Rivoluzione d'Italia*, vol. i. p. 217.

German bishops, as we saw, were territorial magnates, Italian bishops were poor and anti-feudal.

with conflict; the process being favoured till 1122 by the great struggle between papacy and empire about election and investiture of bishops.

The prevalent type of constitution formed in the first half of the twelfth century, as the town emancipates itself from episcopal control, is government by a varying number of "consuls" as executive magistrates, who command in war and administer justice in peace. The towns are still under oligarchical control, but the group of ruling families that govern the town becomes larger; behind it we see, not yet claiming equality, but growing in organised strength, the corporations of arts and crafts (*corporazioni delle arti e dei mestieri*) who take a prominent place in the military organisation, transforming themselves into "companies, battalions, regiments," grouped round the *carroccio*.[1] The consuls, numerous and frequently renewed, are not a very powerful executive; for effective government they require to be assisted by a council of trust and secrecy (*credentia*), chosen from different quarters of the city and summoned by the consuls; this advises on details of current administration. Besides this, there is usually a "great council" for more important matters variously constituted, in some places more oligarchical than others, the intervention of the general assembly, doubtless containing members of leading "arti," being reserved for crises of war, siege, etc. The members of these councils are not popularly elected, at least directly, but appointed either by the consuls themselves, or by specially appointed electors. And this is the ordinary Italian custom, direct election by citizens at large is rare. As the administrative functions of the consuls grow, we find them separated from the judicial; thus in Genoa, in A.D. 1134, there were three administrative consuls (*consules communis*), and eight judicial consuls (*consules de placitis*). The number of administrative consuls—which varies from three or four up to over twenty—corresponds to or is some multiple of the quarters of the town.

§ 5. Then in the first half of the twelfth century the

[1] Ferrari, *op. cit.* vol. i. p. 472.

great independence of the cities is shown by their wars with one another, for then first are developed in full force and profusion those violent and continually renewed conflicts of city against city, which distinguish Italian history from the medieval history of any other West-European country, and which remind us of ancient Greece.

The causes of the wars appear to be various. Partly there is a rivalry of long standing between old Roman cities, whose pre-eminence is retained in the ecclesiastical organisation, and the cities which were the military centres of the Lombard kingdom, *e.g.* between Milan and Pavia. Partly, again, the rivalry of cities is exacerbated by their taking sides in the quarrel between emperor and pope. Sometimes merely ecclesiastical disputes give the occasion for war. But, on the whole, the causes appear to be largely economical; as the cities grow rich and populous they are irritated by the checks which other cities place to the development of their industry and trade. At first the larger cities attack the smaller—Pavia attacks Tortona; Cremona, Crema; Milan, Lodi. This leads to leagues among the towns, Lodi, for instance, placing itself under the protection of Pavia. Usually the militia of the larger city marches out and destroys or carries off the harvests of the enemy. The war between Milan and Lodi (A.D. 1107–1111) begins thus; but it ends with the destruction of Lodi-vecchio, whose inhabitants are distributed in six villages. The war of Milan against Como, A.D. 1118–1127, which a Comasque poet compares to the Trojan war, begins with trouble between a bishop appointed by the anti-pope Burdino, and Guido the legitimate bishop of Como. The Lombard towns being mainly on the side of the emperor, a number of them aid Milan. The villages of the Italian lakes, subject to Como, partly revolt. Ultimately Como submits; its inhabitants agree to raze their fortifications, pay taxes to Milan, and serve as allies in its wars.

In the middle of the twelfth century comes the crisis in the movement towards independence of the towns of North Italy, in a severe struggle between the cities and

the imperial sovereignty—now represented by the resolute Frederick Barbarossa—who seeks to deprive the cities of their semi-sovereign rights, which from his point of view are usurpations, and to reduce their governments to the position of mere local governments in a coherent and orderly state. At first, the rivalries of the cities favour the emperor's policy; his armies appear irresistible, and Milan, the foremost of the rebellious cities, is taken and razed to the ground. But presently the love of independence overcomes the sentiments of old municipal hostility: a league is formed of Lombard cities—including old enemies as well as old friends of Milan—who, in spite of Frederick, rebuild the old archiepiscopal city, make head successfully against the German armies, and inflict a decisive defeat at the battle of Lignano in A.D. 1176. Then, at the treaty of Constance in A.D. 1183, they obtain—by a settlement that is not practically disturbed, so long as the independence of the Lombard cities lasts—the rights of obeying only their own laws, being governed by their own magistrates (the formal assent of the emperor being in some cases required), making peace and war and alliances, administering their own finances (with the exception of certain payments on occasion to the imperial treasury). This legal security of rights that had long been practically assumed, is primarily won by the cities of the league that is fighting the emperor; but he cannot refuse to his friends what has been granted to his enemies, and the liberties stipulated by the treaty of Constance become common to all the towns of Italy.

§ 6. I now turn to another, fundamentally important, characteristic of the career of the Italian cities, *i.e.* the antagonism between cities and country. This—like the rivalry between city and city—is mainly economical in its causes. The feudal nobles (*castellani*) impede communication and commerce; they hamper the roads by tolls, and rob the merchants; the energies of the cities are distracted from peaceful industry to an intolerable extent by the need of fighting their way through these obstacles.

The war with the feudal nobles in the country had been going on during the municipal wars of the twelfth century, but the more important part of it was after the Peace of Constance. "Milan, risen from her ashes . . . deprived all the nobles of the country round of their jurisdiction,"[1] Genoa is devouring the marquisate of Finale throughout the twelfth and thirteenth centuries, and elsewhere—*e.g.* Novara, Asti, and in many other cases—the violent conflicts go on through the thirteenth century. The *castellani* defend themselves by opposing city to city, but they only put off the inevitable destruction.

If we ask why in Italy alone the cities win their struggle with feudality, the answer is that they were more developed and numerous in Italy, "the imperial country," and that feudality was weaker here in comparison, owing to the policy of the Emperor, as previously described. An additional force on the side of the cities is supplied by the desire of civic freedom spreading into the country.[2]

Then, when the victory is in the main won by the towns, comes the final step which has, for Italian municipal life, the most important and, on the whole, disastrous consequences—the forcing of the *castellani* into the cities. The motive for this, on the side of the town, was to bring the fruits of victory within the limits of legality by getting the noble out of feudal jurisdiction into the jurisdiction of the city. The motive for the noble was to put an end to a conflict in which he was always getting the worst of it. Accordingly he accepted the terms; he was compelled to build a palazzo within the city, and reside there a certain number of months in the year—often doubled in time of war. If he did not become a citizen in the city with which he had fought, he did so in another with which he had formed an alliance. Presently the nobles took the line of making the best of the situation: "they paid court to the citizens, and from prudence, fashion, caprice or as a pastime entered the

[1] Ferrari, *op. cit.* vol. ii. p. 105.

[2] *E.g.* Bologna buys the "rustici del contado di Bologna" in A.D. 1236. Ferrari, *op. cit.* vol. ii. p. 111.

Great Councils." [1] Thus, as—by natural compensation—new families enriched in industry and commerce also entered the circle of 'conciliar' families, the ruling oligarchy in the towns was enlarged.

This is what happens in the cities of the plains of the Po, where the victory of the cities over their feudal neighbours is decisive. But elsewhere, *e.g.* in the leading cities of the Trevisan march—Verona, Vicenza, Padua, etc.—the feudal element is strong, owing to the more mountainous nature of the country; and though here too the country nobles largely enter the towns, they appear to do so on a superior footing—a superiority which leads to the earlier establishment of Tyrannis here, as compared with Lombardy.

The aim of the cities in thus using their victory was, as I have said, to bring the feudal nobles effectively under the control of municipal government; but they had left them too strong and, in a broad sense, too feudal for the possibility of that result. They had taken from them "their jurisdictions, their towers, their fortresses, their regular troops," [2] but had left them their lands and wealth, their titles, palaces, and mostly their peasant cultivators—dependents, if no longer serfs—their military skill and practice, their social prestige and family ties. Hence the nobles look down on the traders whom they have been forced to accept as fellow-citizens; the palaces they build in the cities are fortresses; they arm their dependents and find a fighting *clientèle* in a part of the populace; and, in short, carry on their old life as a disturbing element in the growing industrial society.

We must conceive a certain opposition and antagonism as having always existed between the old nobility in the town and the mercantile element; but whereas in the German town the mercantile element soon absorbs the old feudal element—which is not there reinforced by the new feudal element forced in from the country—in the Italian town it is thus reinforced, and becomes a permanent source of disorder.

[1] Ferrari, *op. cit.* vol. ii. p. 126.

[2] *Op. cit.* p. 130.

It may be asked, why did not the cities confiscate the estates of these disturbers of the peace. The answer is that their independence—almost complete as it seems—was not complete enough for that. The Empire tolerated private war, for man was a fighting animal; and it might have had to tolerate high-handed robbery of lands; but it would have refused to recognise its consequences as legal. A city that had tried to destroy the feudal nobility would have been manifestly hostile to the imperial-papal system and to feudality generally; and the existence of the cities seemed to themselves to depend on the maintenance of the former, nor could they venture to defy the latter.

§ 7. The result of this introduction of the feudal element into the towns is ultimately fatal to their prosperous development as free industrial cities. But the first effect was a very peculiar institution—the annual foreign *Podestà*. Frederick Barbarossa, in his struggle with the independence of the towns, had tried to maintain the imperial authority by the establishment in each of the important centres of a governor or Podestà. Everywhere the cities had repudiated and struggled against, sometimes ill-treated or expelled—even assassinated—these foreign importations; and yet after the Peace of Constance has sealed their victory, they one after another adopt an institution nominally the same—a Podestà, a stranger knight, chosen from some other city, and invested with the highest executive power.

The primary cause of this peculiar Italian institution would seem to be the strongly-felt need—peculiar also, as we have seen, to Italy—of repressing the civil disorder which the forced introduction of the feudal nobles into the cities has so much aggravated and intensified. But the Podestà, at least in the cities of Lombardy, is not merely a judicial functionary, though special stress is laid on his judicial duties; some of the political as well as the judicial functions previously exercised by the consuls devolve upon him. And in some cases at least it would seem that a perception of the advantage of single headship, in external no less than in internal relations, contributed to the adoption of the

institution. His function was primarily to repress anarchy within the city, by stern impartial maintenance of legal order against the most powerful disturbers of it—the regular selection of a stranger must have been on this ground; but he also had to direct military expeditions. The armed force of the city was placed at his disposal for both objects.

Through the institution of the Podestà, the typical government of the Italian city becomes much more complicated. For the consuls are not done away with, though the name is often changed; they are formed into a council, and retain the general administration of the city. While at the same time another council, special council of the Podestà, is formed to advise the new governor; the members of this council—which appears at Milan in A.D. 1199—are called secretaries, councillors, or "sapientes" of the commune. And there is also of course the "great council" and the occasional *Parlamento*. The Podestà swore fidelity to the city and its laws. He had to come with a prescribed staff of judges, servants, men-at-arms, etc., and had a fixed salary and furniture provided. Fines determined for his transgressions were subtracted from his salary. He had to remain for a fixed time after his year of office, in order that complaints might be examined and reparation made. He must have no relations in the city, and not accept any entertainments in it.

The process by which the city, little by little, submitted to give itself a foreign governor can in some chronicles be traced. Thus in A.D. 1190 Genoa finds its consuls inadequate: "conspiracies, discords, and divisions are interminable"; [1] accordingly a Podestà is appointed, who razes the palace of one of the most violent partisans and restores order. Two years afterwards they return to the consuls; but the civil strife breaks out again, and they are obliged to re-establish the Podestà. Next year they still hesitate; but ultimately reconcile themselves to the permanent institution of a yearly Podestà.

[1] Ferrari, *op. cit.* vol. ii. p. 172.

So Milan has its first annual Podestà in A.D. 1186; but then it returns to the consuls with enlarged powers—and this is repeated for three years in succession; then in 1191 two Podestàs are tried to content the two parties, but this does not answer, and in the second half-year consuls are re-established. Then in 1193 they have consuls again till 1199, then a Podestà—and the oscillations continue till after 1212.

In some cases the institution is not established without disturbances, and there are serious risks attached to the office. Thus in Bologna in A.D. 1194 we hear of a Podestà who has to fly; and, being pursued and taken, his teeth are pulled out by the furious nobles, in revenge for the fines he has inflicted on them. In 1208 a Podestà of Lucca is killed; in 1213 a Podestà of Modena has his tongue pulled out.

The Podestà does his work, well or ill; but the surges of faction are too strong for him, and in the thirteenth century the tendency to monarchical government in the cities north of the Apennines is overwhelming. I have called this "Tyrannis" to mark the resemblance between Italian and Greek history; and in fact the despots of the Italian city in many cases deserved to be called τύραννοι for the manner in which they gained power, and tyrants for the manner in which they used it. But though the Tyrannus often is established by violence, he mostly goes through the form of election.

As I have before said, there was a greater predominance of the municipal over the feudal element in Lombardy proper than farther eastward; and in fact it is in the eastward towns that monarchy first comes in and first becomes regular. The more regular kind begins in A.D. 1209, when Azzo VI., Marquis d'Este, is declared Lord of Ferrara. "Ce fut la première fois," says Sismondi, "qu'un peuple, en Italie, abandonna ses droits pour se soumettre au pouvoir d'un seul." [1] Then about twenty years later (A.D. 1225) the first famous tyrant, Eccelino da Romano, establishes his

[1] Sismondi, *op. cit.* vol. ii. p. 312.

power at Verona, a city close under the Alps and therefore more dominated by feudality than the cities of the Lombard plain. In his case the prominent factor is the violence of faction, causing a need for a bold leader of military skill. But though Tyrannis first came in in these eastward towns, in Lombardy too, as Hallam says, "before the middle of the fourteenth century, at the latest, all those cities which had spurned at the faintest mark of submission to the emperors, lost even the recollection of self-government, and were bequeathed, like an undoubted patrimony, among the children of their new lords." [1] To trace the political development of the Italian species of medieval city through its full evolution, we have to go to Tuscany.

[1] Hallam, *Middle Ages*, vol. i. chap. iii. pt. ii. p. 408.

The transient revival of the republic at Milan, 1447–50, should just be noticed as an exception to this statement, but only just noticed.

LECTURE XIX

MEDIEVAL CITIES—COMPARISON OF ITALIAN CITY-COMMUNITIES WITH ANCIENT GREECE

§ 1. In a preceding lecture I noticed that Italy, far more than any other part of Europe, suggests to the ordinary historian—I mean the historian who is not specially concerned with what may be called the morphology of states—a comparison with ancient Greece. For North Italy is the only region in medieval Europe where the greater part—though not the whole—of a continuous territory is divided up into the domains of a number of city-states, just as the more civilised portion of ancient Greece was. In Germany, even where the cities flourish most, they are "mere exceptions to princely rule." [1] Also, it may be observed that medieval Italy, during the flourishing period of its practically independent city-communities, outstripped the rest of Europe in intellectual and material civilisation;—though not, of course, so markedly as ancient Greece did in its palmy days. Certainly, in spite of the great differences, to which I shall presently advert, the history of the Italian republics presents a remarkable general resemblance to the history of ancient Greece, which I will try briefly to put together.

In the first place, the towns in Italy grow strong and prosperous out of the semi-barbarous disorder into which society has lapsed, as the Greek cities out of primitive barbarism: (*a*) from the military advantage of the walled town at this period of the art of war; and (*b*) the economic prosperity due to civilised industry and trade within the

[1] Freeman.

walled towns in a society which is taking the lead in European civilisation and industry.

Secondly, in medieval Italy, the city-communities show the concentrated political life and something like the intense patriotism of the Greek city-states; and in both cases this is largely due to the same cause—the much closer implication of the well-being of the individual with the well-being of his community here than in country-states. In both cases, again, this patriotism shines more brightly in the earlier period of their history, when their citizen soldiers combine to repel a powerful invading monarch who seeks to subjugate them. The manner in which enough, though not all, of the Lombard towns combine, in spite of old feuds, to resist Frederick Barbarossa (A.D. 1167–1183), may be compared to the manner in which enough, though not all, of the Greek states combine to resist the Persian invasion, in spite of hereditary jealousies and border wars.

Then in both cases, as time goes on, we find the cities becoming hopelessly divided, not only from each other, but within themselves by the resentments of violent and prolonged faction. As Sparta and her allies fight Athens and her allies, so the league of Guelf cities fights the league of Ghibelin cities. Again, in the earlier intermunicipal wars of both ancient Greece and medieval Italy, city fights city as a united community; but in the Greek wars of the fourth century B.C. the "exiles" of the city assailed are often a noteworthy element of the assailing force; and similarly in the Italian intermunicipal wars, chronicled from the latter half of the thirteenth century and later, it is no longer "Parma fights Piacenza," but "Parma with the exiles from Piacenza assails Piacenza." [1]

Again, in both cases, civilisation with the habits of peaceful industry and the luxury thereby obtained, gradually makes the citizens of important towns personally disinclined for war, which they carry on more and more by means of mercenaries. Thus, partly from incapacity to form a stable union, partly from diminishing capacity for personal service in

[1] Ferrari, *op. cit.* vol. ii. p. 257.

war, they are ultimately unequal to a contest with the larger country-states in their neighbourhood—in the case of Greece the fragments of Alexander's empire, and in the case of Italy the larger West European states; and thus their territories become the "battlefields of contending strangers." [1] This state of things is begun for Italy by the invasion of Charles VIII. in A.D. 1492. As Macaulay says: "From the moment that Charles VIII. descended from the Alps, the whole character of Italian politics was changed. The governments of the Peninsula ceased to form an independent system. Drawn from their old orbit by the attraction of the larger bodies which now approached them, they became mere satellites of France and Spain. All their disputes, internal and external, were decided by foreign influence." [2]

Turning to their internal development, we find everywhere at the outset the administration of government—so far as the city is self-governing—in the hands of the few; while certain very important decisions are brought before a general assembly of the people for simple acceptance or rejection. The citizens at large—meeting in the "Agora" in old Greece, and the "Parlamento" in medieval Italy—acquiesce in the rule of a few leading families. Then dissensions between the nobles and the people come in, and we see a drift towards democracy. This is most interesting in the Tuscan cities, whose internal history as compared with most of those north of the Apennines, gives fuller instruction as to the development of the medieval type of city, owing to their longer republican independence; but it occurs also, though in a less developed form, in the Lombard cities. This tendency to widen the area of citizenship may be compared to the similar tendency of Greek city-states in the later period of their history as independent communities. Further, as the movement towards more popular government goes on, the use of the lot as a mode of appointment comes in in medieval Italy as in ancient Greece. And finally, in both cases, we find the liability to lapse under the rule of a single person in times

[1] Freeman. [2] Essay on *Macchiavelli*.

of disorder and faction—a tendency which becomes stronger after a certain time of republican life, partly from the weariness of republican faction, partly from the already-mentioned growing dislike of personal military service, which civilisation gradually causes, and the consequent employment of mercenaries.

To carry the comparison down to particular states, we may compare the brilliant position that Athens, the leader in the democratic movement in the Greek city-states, took in the general development of art and literature in ancient Greece, with the similarly brilliant position occupied by Florence in the development of art and literature in medieval Italy; since Florence also takes a leading part in the movement towards democracy—the medieval democracy of organised crafts, which we observe in the Italian republics in the latter half of the thirteenth and in the fourteenth century. And we may also compare instructively the institutions of Venice, the strikingly stable oligarchy of medieval and modern Italy, with the institutions of Sparta, the strikingly stable oligarchy of ancient Greece so far as we consider the Spartans as the governing few.[1] The diminishing powers of the Venetian Doge, confined with increasing strictness and jealousy,[2] may be compared to the diminishing powers of the hereditary kings of Sparta. On the other hand, the growth of the power of the Ephors at Sparta with their secret procedure and terrifying judicial homicides, may be compared to the growth of the power of the Council of Ten together with the ultimate creation of the three Inquisitors at Venice.

§ 2. Well, these are striking resemblances; to put it summarily, in both cases we have, as regards external relations, independence successfully defended through union within the city and a transiently effective combination with other cities, and independence lost through disunion and through factions that at once connect and disintegrate the cities; and in both cases we have, as regards internal

[1] See Lect. v. p. 80. [2] See Appendix, Note F.

political development, primitive oligarchy, drift to democracy, and widespread lapse into monarchy or Tyrannis. But each point of resemblance is qualified by very important dissimilarities. The independence is different in degree; the factions are different in kind; the oligarchy in Italy is more complex and differently related to the main stock of citizens; the monarchy which suppresses republican constitutional freedom is in Italy to a much greater extent regularised by formal election, and regarded as legitimate by general sentiment; and the Italian democracy is more partial—at least if we consider not the number of inhabitants, but the number of free men for it never effectively included all the free native inhabitants of the town, but only a certain number of organised trades and crafts; and it is more imperfectly developed, as the Italian demos never attempts actually to govern like the Greek. The Parlamento, as Freeman says, is in later times usually called together "to vote away its own liberties." Finally, the medieval democratic movement stops at a certain point; the organised crafts becoming oligarchical through the influence of capital, the whole constitution, where it does not fall under Tyrannis, tends decidedly in its last stage to settled oligarchy.

Let us briefly consider each of these points in order. The first two are connected; for the conditions that render the independence of the Italian municipalities inferior in degree to that of the Greek cities, also render their prevalent factions—in the period in which faction is most violent and pernicious—essentially different in kind. Indeed, nothing brings out more strikingly the incompleteness, in idea, of the independence of the Italian cities, than the fact that in the great struggle between Guelf and Ghibelin factions, which rages within cities and among cities in the thirteenth and fourteenth centuries, the issues for which the two parties nominally fight should be so entirely outside the individual political life of these communities. In the corresponding period of Greek history, when citizens continually slaughter and expel citizens of the opposing party

and exiles fight against their fatherland even along with its hereditary enemies, the issues at stake are avowedly the fundamental principles of the political constitution, the question whether oligarchy or democracy is to prevail. But in the Italian faction-fights, the names under which the factions fight are the names of two German ducal houses, rival claimants for the imperial crown—whose claims excite civil strife in Germany as early as the second quarter of the twelfth century—the house of Welf or Guelf, of which our own royal house is a branch, and the house of Hohenstaufen, from the name of whose castle, called Waiblingen, the name Ghibelin is formed. It is true that this merely Germanic character of the issue is rather apparent than real. The point that interests the Italians is that the actual emperor—from A.D. 1138–1250, after which the Empire is for the Italians virtually a negligible quantity, except for a very brief interval—is almost always a Hohenstaufen, while the pope almost always supports the Guelf claims; the factions are understood to be imperial and papal. But this again shows how fully the Italian cities recognise their position as parts of a larger political whole constituted by that peculiar alliance of the Roman Church with the German monarchy, which had given birth to the Holy Roman Empire. Nor would it be even adequately true to say that as the danger to the independence of the cities comes from the Emperor and not from the Pope, the Guelf party is really fighting for independence. This is, indeed, to a limited extent the case in the later part of the struggle, but only to a limited extent. Firstly, we have to note that in the Papal States, when the Papacy endeavours to make its sovereignty real, it is the foe and not the friend of municipal independence; while beyond these limits some cities, such as Pisa, are at once proud of their traditions of republican independence, and proud of their traditional loyalty to the imperial cause.

At the same time, there is really more analogy than at first sight appears between the medieval Italian party conflicts and the old Greek, because—though all long-lived

party watchwords have a mixed and fluctuating import and these are no exception—still it is to a considerable extent true that the Ghibelins represent the feudal element and the Guelfs the industrial element in the cities; not altogether, for there are many noble families on the Guelf side, but still to a considerable extent.

§ 3. This leads me to my third point of comparison—the difference between the oligarchy of the old Greek and that of the medieval Italian city. In the Italian city there are two distinct antagonisms and conflicts, to each of which the familiar antithesis of "oligarchy" and "democracy" might be applied, and indeed actually was applied at the time; first, the antagonism between the feudal nobility—landowners with military habits which they carry with them into urban life—and the persons engaged in trade and industry who formed the great majority of the well-to-do citizens; and secondly, the division and struggle between the commercial and professional element, grouped in what were called at Florence the "greater arts," and other industrial groups occupying a lower position in the social scale.

Now in the history of the Greek cities this double antithesis is not clearly brought out. No doubt so far as oligarchy survives in the later period of free Greece, it to some extent changes its character; from an oligarchy of old families, inheriting not only wealth but ancestral prestige and traditions of ancestral merit, it tends to become an oligarchy of wealth—a mere plutocracy. Still we nowhere find the jealousies and dissensions that doubtless existed between old families and new wealth expressing themselves in a strongly marked way in political institutions and laws. For example, when the drift towards democracy shows itself in Megara in the seventh century B.C., though Megara has for some time been a commercial and colonising state, it is, as we saw, as rich landowners oppressing peasant cultivators that the oligarchs excite resistance.[1]

But in the Italian town the double antithesis is very

[1] Cf. Lect. VI. p. 89, and Appendix, Note C.

marked; on the whole, the struggle between the feudal and industrial element comes first, and then the struggle between the *popolani grassi* and the organised artisans and labourers afterwards; still the two to some extent overlap. The second struggle is comparatively undeveloped in most of the cities north of the Apennines, with which we were chiefly concerned in the last lecture, because of their general lapse into Tyrannis; but it is fully exhibited in the history of Florence, the leading city of Tuscany, to which I am about to turn.

§ 4. Finally, I ought to say a word on the difference between the despotism of medieval Italy and the Tyrannis of ancient Greece. The most striking difference lies less in the substance either of the power or its mode of acquisition (or even the conditions that favoured it) than in the form. The Greek despot almost always began and ended unconstitutional; the Greek city, as we saw, does not—in any case historically known to us—submit itself voluntarily to the lifelong, still less hereditary rule of a lord. Whereas when the towns of Lombardy fall under despotism towards the end of the thirteenth century, it is, as I said, usually with the form of election. This more constitutional character of monarchy in Italian towns and a greater tendency to adopt and acquiesce in it is partly due to the influence of the conditions of neighbouring lands, on which the Italians, recognising as they did the formal supremacy of the Empire, could not look down as the Greeks looked down on the barbarian monarchy of Persia. They saw all around them cities with a civilisation similar to their own under princes and other lords, and a similar destiny could not seem to them so unnatural and odious as it did to the Greek political consciousness. Indeed, even the freest Italian cities, even Florence, find it expedient in crises of foreign danger to give the lordship of their city to some king or prince; though they are careful in doing so to retain substantial self-government in internal affairs.

We have to observe further that the growing superiority of heavy-armed cavalry from the thirteenth century till gun-

powder comes into use, and the development of mercenary warfare to a degree quite unparalleled in Greece, were favouring causes of Italian despotism. Thus the tyranny into which Italian republican life lapses corresponds rather to the later age of tyrants in Greece; its characteristic difference being that its origin and character is in many cases, if not in all, more legal; if often grows out of the power conferred by the apparently free choice of the town desiring greater strength against foreign or domestic foes. It is owing, I conceive, to the more democratic origin of the Italian cities that we have in their development so little corresponding to the earlier age of the tyrants in Greece. The industrial civic element, organised in its commercial companies, seems to be politically experienced from the beginning of the movement; it does not give the opportunity which the first popular movement in the Greek state did, for the popular leader who aims at making himself a tyrant.

LECTURE XX

MEDIEVAL CITIES—FLORENCE

§ 1. LET us now turn to Florence, which we may take as a type of the movement towards democracy—the medieval democracy of organised trades and crafts—in the Italian cities.

The effective independence of Florence, and of Tuscan cities generally, is, as I said, later in commencement than that of the cities north of the Apennines, owing to the stronger rule of the Marquisate of Tuscany, but it is more enduring. Florence is developing her republican polity and bringing its industrial character into fuller manifestation long after almost all the Lombard cities have fallen under despotic rule. In the course of this development the constitution becomes extremely complex. The chief causes of the changes seem to be (1) the continually renewed efforts to repress the lawlessness of the nobles by fresh governmental organisations; and (2) the increased and extended representation of the trades or *Arti* in the government. The former characteristic is, as we have seen, peculiar to the Italian city; the latter, on the other hand, shows its essential affinity to the general type of medieval city.

The independence of Florence may be taken to begin—if it begins at any point of time—in A.D. 1115 after the death of the Countess Matilda, who had governed alone the Marquisate of Tuscany from A.D. 1076. Under her rule the city had had no theoretical self-government; but practically members of the leading families took part in the administration of justice. Matilda herself presided over the

tribunal when able to be present; but in her absence—which political and administrative occupations rendered not infrequent—the decisions were often left to civic judges. Further, in the struggle that was going on between pope and emperor, while the city of Florence along with its feudal superior the Countess embraced the side of the Pope, the feudal nobility around, who conceived themselves oppressed by this feudal superior, were largely on the side of the emperor. Accordingly, the struggle of the cities with the rural nobility—which we followed in the case of the Lombard cities—began in Florence before any formal municipal independence was attained. The transition to independence, therefore, takes place without much of a shock; the members of the leading families who had carried on the executive government in Matilda's name now carry it on in the name of the city.

This government before long comes to consist of twelve persons called Consuls, elected annually two from each of the six quarters of the city. They belonged to the class of leading citizens largely consisting of feudal nobles, but they were assisted by a council of a hundred or more, in which the industrial element was included and doubtless had the predominance. We may assume that it included representatives of the organised trades, afterwards known as the "greater arts," or of some of these; since in the last quarter of the twelfth century we find that the heads of the *Arti* are considered competent to have a function formally assigned to them in the treaties negotiated by the city; and we may assume that a long period of thriving organised existence has preceded this political recognition. Indeed, the external policy of Florence appears to be governed from the first by its commercial interests. There was also the *Parlamento* for great occasions; but its meeting was mostly a pure form, and as it often met in a piazza of very moderate size or in a church, it is evident that the mass of the citizens had no effective share in governmental decisions.

§ 2. So far there is no antagonism between the noble and

the industrial elements; but from A.D. 1129 onwards we read of the destruction of neighbouring *castelli* and the forcing of the noble owners into the city, which thus increases its feudal element.

Then in the latter half of the twelfth century comes the struggle with Frederick Barbarossa, who appoints Podestàs in Florence and other cities; but this imperial system—never very effective—collapses at the end of the century. Nevertheless, here as in Lombardy, the peculiar institution of having an annually appointed foreign noble as Podestà or head of the government is introduced, and soon after (A.D. 1212) has superseded the consuls, who seem to be transformed into a sort of privy council of the Podestà. The transformation here seems to be due partly to the sense of the superior efficiency of the single governor for the wars with *castelli* and neighbouring towns which Florence is carrying on during this period; though the choice of a foreigner seems to show that the same need was felt here as in Lombardy of an impartial stranger to repress the lawlessness of the nobles. At any rate, in the first half of the thirteenth century, feuds break out among the nobles, presently merging in the general Guelf-Ghibelin quarrel. There are Guelf nobles as well as Ghibelin nobles; but the old families are almost all Ghibelin and the industrial element, the organised *Arti*, is mainly Guelf.

The antagonism of nobles and industrials grows stronger; and in A.D. 1250 the people give themselves a separate organisation—both military and political, under the headship of a *Capitano del Popolo*. The object of the organisation is to repress effectively the lawless violence of the nobles; the six quarters are divided into companies, twenty in all, each with its standard, so that the people may all form and unite in military order when the *Capitano del Popolo* rings the great bell on the "Torre del Leone."

The organisation is presently suspended during a temporary predominance of the Ghibelins, but it is revived with modifications in A.D. 1267. The result is an extremely complicated constitution, because the guiding principle of

the Florentine movement towards popular government is to leave—in the main—the existing government with important functions, and to superadd a new organisation for the better protection of popular interests. Thus we get the following constitution from 1267 onward. There is, first, the Podestà as before—an annually elected foreign noble—with a privy council of 90 and a larger council of 300; these councils are composed of nobles and commons combined. But for the ordinary despatch of administrative business there is a body of twelve, called the Twelve *Buoni Uomini*, two from each of the six quarters; they are elected from the people, and are advised by a council of 100, also elected from the people. Then there is the *Capitano del Popolo* who is, like the *Podestà*, a foreign noble, selected from a Guelf town; he also has his special and general councils; he leads the citizen militia, infantry composed of the people in companies, while the Podestà is the chief representative of the republic in foreign affairs, and often the commander-in-chief of the whole army, but more especially of the cavalry, composed almost entirely of nobles and other professional soldiers.[1] The Podestà presided over ordinary civil and criminal justice; while, as I have said, it was the special function of the *Capitano del Popolo* to repress crimes of violence committed by the nobles against *popolani*.

The result was that in case of a measure that had to obtain the concurrence of all the deliberative bodies, the process was singularly complicated. A measure proposed by the twelve *Buoni Uomini* had to be voted (1) by the Council of 100, (2) by the special council of the *Capitano*, (3) by the general council of the *Capitano*, usually

[1] While from A.D. 1250 the predominance of the industrial element in the life of the city becomes stronger and shows itself in the political organisation more and more, on the other hand, the military superiority of the feudal element becomes greater through the improved heavy armour of the cavalry, as was shown in the battle of Montaperti A.D. 1260. From this came the development of mercenary warfare; sons even of noble families become commanders of bands of *gens d'armes* and acquire reputation in the new art of war. This, as I said, is a fruitful source of tyrannis.

on one day; and the next day by (4) the special council of the Podestà, and (5) the general council of the Podestà. To avoid intolerable delays the speaking was severely limited, which is perhaps one reason why political oratory seems never to have had a rich development in Florence —or indeed in Italy generally.

§ 3. But this is not all. The idea of Florentine government, as so constituted, is not complete unless we take into account the organisation of the dominant Guelf party, and the organisation of the trades, or *Arti*.

As regards the former, there were appointed at this time six *Capitani di Parte Guelfa*—as they were afterwards called—also with councils special and general, to administer the funds of the party derived from confiscated property of Ghibelins. They gradually became an organ of regular government for certain purposes—it being assumed that the Guelf party was always to be in power. This introduction of party organisation into regular government is a noteworthy feature of the later medieval political constitution which no modern State has yet imitated. For example, in England, from A.D. 1715–1760, it was an established maxim that the Whigs were always to be in power; but the constitution did not in any way recognise the Whig party. I mentioned just now, in speaking of the parties in Florence, that the struggle between Guelfs and Ghibelins did not completely coincide with the struggle between Grandees and People (*Grandi* and *Popolani*), though it did in some measure. The old noble families were almost entirely Ghibelin, and the strength of the Guelf party lay in industrial support; but there were Guelf nobles as well as Ghibelin nobles; and in fact of the six *Capitani di Parte Guelfa* three were *Grandi* and three *Popolani*. Later they have a palace of their own and, as I said, certain public functions, the chief being the persecution of Ghibelins. This, as we shall see, is a function which afterwards becomes of decisive importance in determining the character of the government.

§ 4. But the organisation of the trades or *Arti* is still

more important—is, in fact, the pivot on which the constitution of 1267 turned. And as it is in this organisation, and its representation in the government of the city that the distinctively medieval structure of the city first becomes prominent, I will dwell on it at more length.

The origin of the industrial associations, called in Italy *Arti*, goes back, as we have seen, to the Roman times; and doubtless in Florence they were effectively organised at an early period. Probably all that was done in A.D. 1266–1267 was to give legal recognition—and perhaps greater fixity and order—to a constitution which had long been in existence and effective operation: and to give them formally an important, though still subordinate, place in the new governmental structure. The chief governing organs of these trade associations—the *Capitudini delle Arti*—sat *ex-officio* in the special or privy council of the *Capitano del Popolo*, as well as in the general council.

The *Arti* thus recognised were seven—known as *Maggiori Arti*. One of these, the "judges and notaries," stands apart from the others as not being *primâ facie* commercial:—it is to be observed, however, that the provision of good judges and notaries was considered in Italy to be of great importance for commercial prosperity, for the decision of commercial disputes, the framing, revising, and enforcing of the statutes of the corporation, drawing up contracts, etc. The other six *Arti* represent the leading branches of foreign trade in Florence. The first place, at this time, belonged to the *Arte di Calimala*, the trade of refining and dyeing foreign cloth, and the *Arte della Lana*, which dealt in home-made cloth. Owing to the original inferiority of Italian wool, and the superiority of Italian taste, the prosperity of the *Calimala* came first; afterwards, as successful efforts were made to improve the raw material in Italy, the manufacture of home-made wool became more important. Along with these two, the *Arte del Cambio*, bankers and exchangers, held the first rank. Next came the *Arte della Seta*, dealers in silk, which grew in importance later. The next, *Medici*, or "physicians," seems at first sight pro-

fessional rather than commercial; but in fact the *medici* were dealers in drugs as well as medical advice, and along with *Speziali*, dealers in spices, represented a not unimportant branch of oriental trade. The list is closed by dealers in fur.

These associations taken together — more than one of them comprehending several allied branches of industry — come forward as the natural leaders of the industrial population of the city; and doubtless at this time are so regarded by the lesser *Arti*, which, in the course of the next generation, acquire legal organisation, and later, political recognition. The names of these—linen-drapers, shoemakers, smiths, provision-dealers, butchers, vintners, innkeepers, harness-makers, curriers, armourers, locksmiths, masons, carpenters, bakers—sufficiently explain the distinction. The lesser arts are almost exclusively concerned with the internal retail exchange of commodities and services, and have accordingly a restricted sphere of business interests in contrast with the greater arts. These being engaged in commerce extended widely from West to East, became naturally familiar with, and keenly concerned about, the external political relations of the city, which, of course, they directed largely on commercial principles.

To give an idea of the organisation of these *Arti*, I will take the one which at this time held the leading position—the *Arte di Calimala*. Every six months the heads of warehouses and shops met and chose electors, who elected four *Consoli*, who governed the *Arte* with the aid of a chancellor (*camerlingo*), a notary who looked after the exact observance of the statutes and often made speeches at the meetings on behalf of the consuls, a special council of twelve, and a somewhat larger general council. The consuls inspected the shops and warehouses, and punished adulteration, bad quality of wares, short measure, and careless book-keeping, with fines, and, as ultimate sanction, exclusion from the *Arte*.[1] The consuls of the seven greater Arts—called *Capitudini*

[1] They had also *consoli* abroad to look after the interests of members of the *Arte*—the institution of consuls in modern states is lineally descended from this.

delle Arte—are, as I have said, in 1267 formally included in the special or privy council of the *Capitano del Popolo*, which indeed is called *consiglio speciale e delle capitudini*.

§ 5. It will be seen that in the strangely elaborated constitution just described, the nobles have but a small share, and the importance of the heads of the *Arti* in the councils was doubtless great. In fact, the *Arti*, greater and lesser, were, for political purposes, the *Popolo*. But their preponderance is markedly increased fifteen years later (A.D. 1282) when the chief executive government is placed in the hands of six *Priori*, elected for periods of two months, one from each of six greater arts. The seventh, judges and notaries, is omitted as having enough political influence from the nature of their calling; as we saw, the notary is an important official in each *Arte*. Thus eligibility to the chief executive is made dependent on membership of one of these organised trades; nobles who wish to be elected have to enrol themselves in one or other of the six *Arti*.

We have now, it seems, an industrial oligarchy formally established. But as yet it is a natural oligarchy; there does not seem to be as yet any complaint of exclusiveness in the greater *Arti*. They are the natural leaders of the *Popolo;* and all the *Arti*, greater and lesser, appear in the thirteenth century to be still united against the nobles, somewhat as in England the urban capitalist and the artisan were united against the territorial aristocracy, in the struggle against the Corn Laws in the early part of the nineteenth century. This is shown eleven to thirteen years later—in A.D. 1293–1295—when the tables are turned still further on the nobles, and the most noble families in Florence are formally made ineligible to the office of Prior. We find that the *Priori* are then elected by the presidents of twelve *Arti* and other *sapientes et boni viri artifices*, members of *Arti*, drawn from different quarters. Indeed, some of the lesser *Arti* appear to have taken a prominent part in the popular movement of this date; and all the twenty-one *Arti*, greater and lesser together, pledged themselves to maintain the most remarkable innovation of this time, namely

the "Ordinances of Justice," directed specially against the nobles. On these I propose to dwell for a moment, as they show in a very striking manner the difficulties with which the Italian cities had to contend in their endeavours to accomplish the elementary task of enforcing the observance of law and civil order on a nobility which all the civilisation attained by the end of the thirteenth century, in the centre of European civilisation, had left essentially barbaric.

It is evident that, even in Florence, where the industrial element had a specially full and prosperous development, even after it had enjoyed for nearly thirty years the political predominance secured in 1267 and increased in 1282, in spite of the *Podestà*, of the *Capitano del Popolo*, of all attempts to organise the industrial element in self-defence—in spite of all—the nobles, with their wealth, their prestige, their family ties and dependents, were able to defy the law to an extent intolerable to peaceful citizens, to overawe witnesses, rescue arrested criminals, and thus secure practical impunity for their habitual outrages. To put an end to this the new Ordinances were instituted and a new machinery for enforcing them.

The chief features of the Ordinances were: (1) The family tie, which had been a support of lawlessness, was turned into a means of repression. If a member of a noble family—a family that had *cavalieri* among its members—committed an offence, his relatives were made responsible. It was further established that all *Grandi*, from the age of fifteen to seventy, had to appear annually before the Podestà, and to give security for good behaviour; in the case of minor acts of violence, the surety had to pay the fine and recoup himself from the offender's goods. If a *popolano* should be killed or mortally wounded by a *grande*, it was the duty of the Podestà to behead the criminal, destroy his houses, and confiscate his goods. (2) But the most startling measure was that adopted to meet the difficulty of getting witnesses to acts of violence to come forward. It was ordained that common rumour, attested by two[1]

[1] Afterwards raised to three.

credible witnesses, should be sufficient to prove a crime against a noble. It would be difficult to defend this; but the violence of the remedy proves the obstinacy of the disorder. Its application was limited by the proviso that if *popolani* take part in the quarrels of *grandi*, these exceptional ordinances are no longer applicable.

The new machinery was the appointment of a *Gonfalonier of Justice*, having at his command a body of 1000 *popolani*—afterwards increased to 4000—bound to appear in arms at the palace of the *Signoria* when called upon, or in case of uproar. The Gonfalonier has to support the Podestà in executing the ordinances; or if the Podestà and the *Capitano del Popolo* neglect their duty, he has to act in their place. The Gonfalonier formed, with the six Priors, the *Signoria* or chief executive government, and ultimately became its chief member. He was elected annually, and like the Priors, by the presidents of twelve *Arti* and other Artisans, drawn from the different quarters of the city. Only members of *Arti* were eligible, and nobles were excluded, even if enrolled in a company.

Even these drastic ordinances did not attain their end at once. For half a century the nobles struggle against them; and, in the feud between "Whites" and "Blacks" at the beginning of the fourteenth century, the nobles seem to be fighting quite in the old style. But the people stick to the Ordinances, so that they must have had some substantial effect; indeed, in 1338, Rome asks a copy of them from Florence.

§ 6. Meanwhile, in A.D. 1323, an important change, specially interesting to the student who compares medieval Italian with ancient Greek polities, takes place in the mode of election to magistracies—the partial introduction of the lot. Hitherto the *Priori*, while changed every two months, had been elected for every six months; but this was thought to render candidatures, with accompanying intrigues, too frequent, and it was resolved to elect at once all the *Priori* for forty-two months ahead, *i.e.* for twenty-one changes, and afterwards determine the succession of the two months'

tenures by lot, no one being re-eligible until the whole number was exhausted. This also had the advantage—from a democratic point of view—of practically throwing open the post to a larger number of persons. The office of prior, in fact, would necessarily be held within three and a half years by 126 different persons, which must, one would think, be at any rate a considerable part of the whole number of persons who seemed to their fellow-citizens competent to fill it. And as the same method was extended to all the magistracies—which Sismondi estimates at 136—it would certainly seem that an office of some sort would be almost a certainty to a respectable Florentine citizen, with leisure for public affairs—for no office was paid, except those held by foreigners. Sismondi adds that "almost all the free cities of Italy hastened to adopt this innovation of the Florentines;" [1] and says that the practice, in the early part of the nineteenth century, still survived in Lucca, and in the municipalities of Tuscany and of the States of the Church.

In contemplating the number of her magistrates, we must bear in mind that Florence had become a large city in the first half of the fourteenth century. Sismondi estimates that in A.D. 1343 it had 150,000 inhabitants.

Observe that, though the change in the mode of election thus described is democratic in the sense of opening to a larger number of persons the prospect of office, the persons choosing are still a select few, for the names to be drawn by lot are not elected by the citizens at large. At the same time, elaborate plans were adopted to prevent the exclusion of any really eligible citizen. It may usefully illustrate the character of the fourteenth century polity of Florence, if I follow the chronicler [2] in describing the procedure adopted for electing the *Priori* and *Gonfalonieri* in 1328, when, after the death of the Duke of Calabria, who had for three years held the "signory" of Florence,[3] a serious attempt was made to put the government on as

[1] *Histoire des Républiques Italiennes*, vol. v. ch. xxx.

[2] Giov. Villani, lib. x. ch. cviii.

[3] I may remark incidentally that nothing shows so strikingly the diffi-

broad a basis as possible, consistently with keeping the power in the hands of the Guelf party. The plan was as follows:—(1) The *Priori*, with the addition of two *popolani* from each quarter of the city, made a selection of the non-noble citizens of the Guelf party, over thirty years of age, qualified for the priorate. (2) The *gonfalonieri delle compagnie* (captains of militia companies), with two *popolani* added from each company, did the same. But this was not enough; the party organisation and the industrial organisation had also to assist in the selection, so (3) the *capitani* of the Guelf party, with their council, also made their list; and (4) also the *cinque uficiali della mercatanzia* (five trade officials), along with two *consoli* from each of the greater Arts. It is as if in England we had adopted the policy of having the Liberals always in power—as the Whigs were always in power under the two first Georges—and the ministry was chosen by the Cabinet, aided by a committee of the National Liberal Federation and the delegates of the leading trades-unions.

When the lists are made out, the final determination of persons eligible for the office of Prior during the next two years is made by secret ballot by a somewhat differently constituted body of persons, namely the *Priori*, the Twelve *Buoni Uomini* "with whom they took counsel on important matters," nineteen *gonfalonieri delle compagnie*, two *consoli* for each of the twelve greater *Arti*, and thirty-six persons added by the Priors and *Buoni Uomini*, six from each of the six quarters of the town. Sixty-eight votes were required for approval. Then the names of these approved persons were put in purses, one purse for each quarter of the town, from each of which a name was drawn by lot every two months; each of those whose names were drawn was then Prior for the ensuing two months, subject to the prohibition preventing the same person being Prior within two years,

culties under which republican independence was maintained in medieval Italy than that even Florence, its leading defender, should be from time to time obliged to accept temporarily a foreign lord. He was only accepted with careful reservation of the rights of municipal self-government; still, that he should be accepted at all is a striking fact.

or two members of the same house holding the office within the same six months, and two brothers, or father and son, within a year. The *Gonfalonieri* and the Twelve *Buoni Uomini* were elected from similar lists, and each Art elected its consuls in a similar manner.

It is to be observed that at the same time (A.D. 1328) the before-mentioned complicated system of councils was reduced to two—the council of the *popolo*, composed of 300 Guelf *popolani*, and the council of the *comune*, composed of 250 approved persons, nobles and *popolani*. The aim was that all the great interests of the state might be somehow represented; even the nobles having, in the council of the *comune*, a representation designed to give them substantial protection against class oppression.

§ 7. But constitutions in these troublous times were brief in duration. The union of feeling between the greater Arts representing the commercial element and the lesser Arts containing the artisan element, has been diminishing; and the double discord, between *grandi* and leading *popolani* on the one side, and the richer *popolani* and the ordinary artisans on the other, gives the opportunity for Tyrannis—to which the cities north of the Apennines have by this time generally succumbed. When in September 1342 Walter de Brienne, Duke of Athens, made himself temporarily master of the city, it was a combination of the ancient nobility and the lower class of artisans, which, in a disorderly *Parlamento*, acclaimed him lord of the city for his lifetime.

But in the July following all classes united to free Florence from the tyrant. A brief effort was made to maintain this union by giving the nobles a share of the offices, and the ordinances against them were transiently suspended. But the enemy of the human race, as the chronicler puts it,[1] stirred up pride and insolence in the nobles; the people rebelled against their outrages, and forced them out of the chief magistracy; a brief armed struggle took place, and the nobility succumbed finally (A.D. 1343). As a class, the old nobility never compete

[1] G. Villani, lib. XII. ch. xix.

again for power. The Ordinances are permanently re-established, but in a more equitable form; the responsibility of kinsmen for a noble criminal was restricted to his nearest relatives. Also the notion of *grande* is changed; a *popolano* guilty of certain crimes is declared a *grande* — with his family and kin unless they deliver him up to justice; on the other hand, a number of old noble families or individuals are as a favour declared *popolani* by public decree.

A similar plan under different names was adopted by other free republics of Tuscany—Siena, Pistoia, Lucca; and generally in the cities that remain free the nobility is excluded from all the magistracies; and in more than one a register of nobles is opened as at Florence, on which to inscribe by way of punishment the names of disturbers of the public peace. This is one of the most remarkable institutions which medieval history shows us.

To go back to Florence. The old nobility having finally lost power, the question remains how, in an exclusively industrial government, power is to be divided between the plebeian oligarchs and the artisans organised in the lesser crafts. At first, after A.D. 1343, it seems as if the latter would preponderate. Between A.D. 1328 and 1343 — especially in the struggles of A.D. 1342 and 1343—a great stride has been made towards democracy. As the chronicler says: "The people, having won its victory over the grandees . . . rose to great position and boldness and mastery, especially the middle class and the smaller artisans."[1] On the whole, the government of the city fell to the executives of the twenty-one *Arti*. The old division into six districts having become antiquated, the city was now divided into four quarters, and the number of *Priori* increased from six to eight, two from each quarter, making—with the Gonfalonier of Justice, now regarded as head of the government—an executive of nine; and it was arranged that three out of the nine should be taken from the lesser Arts. As a matter of fact—as the chronicler goes on to say—the immediate result was that they got more than this proportion,

[1] G. Villani, lib. XII. ch. xxii.

especially as the prohibition against two members of the same family being Prior within six months pressed harder on old families, whose ties of kin were known to remote degrees, than on new people who kept no account of cousinship.

§ 8. But oligarchy, as we have before observed, usually dies hard. When it was found, as we are told, that "mean and ignorant persons obtained the office of prior," [1] a reaction took place towards practical oligarchy, effected in a rather peculiar way. I have described how the predominant Guelf party was organised as a Guelf society with council and captains, and how later its captains constitutionally took part in framing the list of eligible citizens from whom magistrates were elected by lot. They had also an officer for the accusation of suspected imperialists; and under their influence Ghibelins had been practically excluded from office for three-quarters of a century (A.D. 1266–1343). Soon after the change of 1343, however, it was believed or pretended that a lax selection of eligibles had admitted Ghibelins; and under cover of zeal against this generally proscribed party, the Guelf society—in which such of the old nobles as were Guelf retained considerable influence, and coalesced with leading *nobili popolani*, somewhat as in ancient Rome, to form a new group of oligarchical tendency—contrived to keep power in its hands for twenty years. They got a law passed which rendered every Ghibelin who held office liable to punishment—capital or pecuniary, at the discretion of the magistrates; while it gave the leaders of the Guelf society the function of "warning" suspected Ghibelins. By this imputation of Ghibelinism they managed, from A.D. 1358–1378, to scare from the offices not only Ghibelins but any person opposed to the governing group.

Hence discontent, leading to what is perhaps the most famous revolution of Florence, the revolution of the *Ciompi* (A.D. 1378), which has a double historical interest—(1) because it is the high-water mark of the democratic movement

[1] Hallam, *Middle Ages*, chap. III. part ii. p. 429.

in Florence, and (2) because here for the first time the movement goes beyond the limits of the regularly organised trades or crafts, and temporarily gives a share in government to a still lower stratum of the people. This stratum consists partly of groups of workers who had not obtained independent incorporation, but were in a dependent relation to one or other of the greater arts. For example, the *Arte di Lana*, which I may perhaps translate by the familiar term "Drapers' Company," had wool-combers, dyers, and weavers in this way dependent on it, but included also unskilled labourers, *ciompi*.

It would take too long to follow the phases of the revolution. It is effected by a combination of the persecuted Ghibelins real or suspected, the lesser Arts and this lower stratum; at a certain point the lower stratum gets the bit between its teeth and seems to carry all before it in a rush of popular excitement which reminds one of the *émeutes* of the period after A.D. 1789. It temporarily gains the right of furnishing one-third of the executive of nine (the eight Priors and the Gonfalonier of Justice); but the wave of sedition dashes further; there is a reaction, and the result is a constitution in which the lesser Arts predominate. But this only lasts for three years; in A.D. 1382 the *nobili popolani* regain power—the effective democratic movement is over.[1] The *minori Arti* retain, it is true, one-fourth share of the magistracies; but they cease to be genuine "craft-guilds"; rich young men enter them, and they become passive instruments in the hands of a ruling oligarchy of capital. Indeed, fifty years later, the transition by which the republic gradually passes into the practical monarchy of the Medici has popular support, just as the transition at the end of the Roman republic has.

[1] I have dwelt on Florence alone, to give as much clearness as possible to a brief narrative; but similar temporary triumphs of the democracy of organised but inferior crafts appear in other cities—*e.g.* Siena—about the same time.

LECTURE XXI

MEDIEVAL REPRESENTATIVE INSTITUTIONS

§ 1. I NOW pass to describe briefly the origin and decline of the type of polity which tended to prevail in Western Europe in the later Middle Ages, intervening between the feudal or quasi-feudal conditions of the earlier Middle Ages—which, overlooking minor variations, we may take as lasting from the tenth to the thirteenth century—and the predominance of pure monarchy in the sixteenth and seventeenth centuries. We may call it "monarchy controlled by assemblies of estates," bearing in mind, as an essential characteristic, that these assemblies include, besides nobles and clergy, representatives of the cities.

But before I enter on this description, I should like to draw attention to an important difference between ancient and modern political ideas, on which what I have to say will throw light. Aristotle, in the passage already quoted, describing the functions of the deliberative body,[1] says nothing about taxation. The function of raising the funds necessary for public objects seems to be regarded by him as so clearly secondary and subordinate that nothing is said about it. On the other hand, in Locke's famous *Treatise on Civil Government* (A.D. 1690) the question who is to determine taxation seems to be even more fundamental than the question who is to determine legislation. Locke is willing to admit that a people may hand over to an absolute monarch the function of making laws, subject only to the vague condition that the laws must be designed for

[1] See Lecture XII. p. 174.

the good of the people; but he will not admit that they can ever be held to have similarly handed over to any government the right to "raise taxes on the property of the people, without the consent of the people, given by themselves, or their deputies." [1] And this view—startling as it is from the point of view of recent, no less than of ancient political theory—corresponds to the prominence which the question of finance historically occupies in the constitutional struggles of the seventeenth century.

This difference between ancient and modern political ideas is due, I think, to the manner in which modern polity grew gradually out of feudal conditions. In the feudal polity taxation proper has no place; the king is conceived to defray the expenses of his kingdom from the resources of his domain, and the feudal services, dues, and occasional "aids" rendered by his vassals. Then, as the expenditure of the Crown increases, especially from the superior utility of paid professional soldiers in war, the monarch's need of getting money conflicts with the established habit among his vassals of paying as a matter of right and duty only fixed rents and dues, or commutations for services. As Hallam says of the King of France, when the period of assemblies begins: "There was one essential privilege which" the monarch, in spite of increased power, "could not hope to overturn by force, the immunity from taxation enjoyed by his barons;" [2] and, we may add, that the security from arbitrary increase of annual payments, given by their charters to the enfranchised towns, could not be simply ignored. From the monarch's point of view, then, the institution of general assemblies was important as a means of overcoming the obstacles thus placed in the way of his finance.

§ 2. It is fundamentally important that the stage of medieval political development in which assemblies partly representative become important organs of governmental control, was preceded and partly caused by the development

[1] *Treatise on Civil Government*, ch. xi. § 142.

[2] *Middle Ages*, ch. ii. pt. ii. p. 223.

within the country-state of city-communities with an independence rivalling that of the feudal lords, but internally organised, as we have seen, on principles quite unlike the feudal—essentially industrial—with more or less tendency for some time to a semi-democratic constitution. It is owing to this development that the assemblies when formed are not merely assemblies of nobles—fighters and clergy—but include representatives of the growing industrial element of society; and it is this inclusion of an industrial element that most definitely marks these assemblies as expressing a new stage in the development of the nation.

For the feudal element of these assemblies is not novel; it is only a later form of the assembly of the monarch's immediate vassals which, under the name of "royal court" or "council," is a known and familiar organ of government in the feudal period, though the degree of regularity with which it performs its functions is very various. It represents the council of chiefs in the primitive polity; it is called together to advise the king on questions of peace and war, give important judicial decisions, and regulate the occasional war taxes ("aids") which in feudal times were almost the only distinctly public form of taxation. If this alone had continued to give advice to the monarch and consent to the laws and the taxes, even if such councils had become more regular, they would merely have continued the struggle between monarchy and oligarchy of which I have already spoken as characterising the earlier Middle Ages. But by the introduction of the cities a more democratic element comes in to the "meetings of estates" which partly aid, partly control monarchy from the end of the thirteenth century onwards.

The formation of these assemblies is a sign and expression of the growing coherence of the nation; this is a statement that may be made about them all. But as to the causes that mainly led to them, it is, I think, difficult to make any statement that is clearly applicable to all cases. Sometimes the impulse to their formation seems to proceed entirely or mainly from above, and to

be due to considerations of policy, mainly of finance, on the part of the monarch; sometimes, again, it seems to come from below, and to be a more comprehensive and impressive result of a spontaneous movement of voluntary association among persons and bodies in the same social condition which characterises the later period of the Middle Ages; often, of course, both causes blend.

Now one might perhaps have expected that where the movement that gives deputies of the third estate seats beside barons and prelates comes from below rather than from above, it would be most likely to develop into stable and permanent constitutional government. But the fact is otherwise. It is in Germany that we see the force of spontaneous association working most clearly and impressively; it is (*e.g.*) in Germany that the famous voluntary leagues of cities are formed—especially the Hanseatic league, a most striking instance of the strength and practical independence given by the spontaneous confederation of elements that individually remain in formal political dependence. Taking its rise in the unions formed by German traders in foreign countries—England, Flanders, Scandinavia, Russia—for the protection of their common interests, and in smaller unions for different objects among the trading cities of North Germany, we find at length, in the middle of the fourteenth century, a great union of North German towns, under the name of *Hansa*, governed by the resolutions passed at meetings of the deputies of the several towns, and having for its primary aims the security of the sea and land routes, the settlement by arbitration of disputes between cities that are members of it, and the acquirement and maintenance of trading privileges in foreign lands. In A.D. 1367–1370 it wages war successfully and gloriously against the Scandinavian kingdoms; and it maintains a vigorous life for a long subsequent period, controls the internal polity of the cities composing it, and even—when the Reformation comes—concerns itself with religious interests. And this is only one among several instances of confederation of German cities in the later Middle Ages,

after the decline of Imperial power had set in. Nor is it only in the case of cities that this spontaneous tendency to unite for the defence of common interests is exhibited in Germany; the nobility, especially the lesser nobility, similarly unite in brotherhoods for the defence of their rights and privileges; the movement even reached the peasants, though only imperfectly and transiently except in the famous case of the Swiss. Finally, it is especially in Germany that in the fourteenth and fifteenth centuries —the period of medieval parliaments—the force of voluntary combination is manifested, uniting nobles and clergy, knights and citizens into more comprehensive unions for protection against the oppression of the princes. Yet in Germany this medieval system of meetings of estates loses force, and even when it survives in the seventeenth and eighteenth centuries, can offer no effective resistance to the predominant absolutism.[1]

In England, on the other hand, where the transition from the medieval to the modern parliament is gradual and unbroken, there is no such spontaneous impulse to association manifested by the cities; they are at first called in irregularly by the baronage, chiefly it would seem for moral support, and in order to give the barons' struggle with the king a more impressive air of being a national struggle; and they are afterwards summoned regularly, chiefly for the greater convenience of getting money for the financial needs of the king by negotiating with the cities in the aggregate, through their delegates, rather than negotiating with them separately. In Spain, where these assemblies appear earlier, Prescott says that it is now too late to inquire "whether the convocation of the third estate to the national councils proceeded from politic calculation in the sovereign, or was in a manner forced on him by the growing power and importance of the cities."[2] But in France, as in England, it is evident that the impulse proceeds primarily from above; though the assembly

[1] See below, Lecture XXIII. p. 336.

[2] *History of Ferdinand and Isabella* (in a footnote to the Introduction).

thus called into being in France shows before long a disposition to grasp the reins of power when the monarch's rule appears feeble and unsuccessful.

§ 3. Before I go on to analyse the exceptional conditions which led to the completer and more successful developments of these medieval representative institutions in England, let us examine—by way of contrast—the case of France; partly because, when the period of pure monarchy succeeds this generally transient period of representative institutions, it is in France that it appears most splendid and impressive.

We may begin by noting that, as Guizot points out,[1] when the *tiers-état* begins to play an important part in the medieval history of France, the independence of the towns is no longer what it was; as the power of the Crown grows, extensively and intensively—the lawyers aiding it—and with it the internal order and coherence of the realm, the administrative independence, and especially the semi-sovereign powers acquired by some cities, are gradually reduced or abolished as incompatible with the coherent order which is the lawyer's ideal and which is also, so long as it is established by establishing the predominance of the Crown, naturally the aim of the monarch's ambition. This process is going on during a great part of the thirteenth century, though it continues for two centuries more; but it is not till the beginning of the fourteenth century that the representatives of the cities are summoned to form a "third order" in the assembly of the "estates-general," and it is not till the middle of the same century that this third order becomes self-assertive and aggressive. The explanation is, I conceive, that the Crown, though it aimed steadily at stripping the towns of quasi-sovereign powers, was not afraid of them, not in conscious rivalry with them, as it was with feudal nobles and clergy; and it was an important gain for the Crown, in its general anti-feudal policy, to enter into direct relations with the towns not only in the royal domain, but in the realm at large.

[1] *Histoire de la Civilisation en France*, Lect. xix.

In the first meeting of the estates-general in A.D. 1302, the king's object seems to have been primarily to demonstrate that he had the support of his whole kingdom in his contest with the pope. But, as I have said, another very important motive—and on the whole, I think, the most important motive in France as in England, though its importance may not have been recognised at the time—was the desire to get money more easily. The general assembly facilitated the financial arrangements which the king would otherwise have had to make with his vassals individually; he probably expected, as he actually found, that the deputies of the towns would be more easily induced to lend him pecuniary aid, so that their presence along with the feudal nobles would render the whole process of getting money less difficult. But this expedient, however attractive, could not be tried without a certain danger to monarchy; the danger that the greater opportunity of combination thus given to the representatives would lead them to assume governmental power, and interfere in legislation and administration, whenever the monarchy was weak. And this in fact took place in France in A.D. 1357, in the dark hour of disaster after the battle of Poitiers; when it is to be noted that the movement of reform, or one may say of revolution, is made by the citizens chiefly, led by the representatives of the merchants of Paris. A similar movement—also led by the urban element—was made in A.D. 1413 when the country was torn by the violence of conflicting factions.

But the want of union among the different estates—especially between citizens and nobles—sufficed to prevent these spasmodic attempts at popular control from having permanent effects. One cause of this want of union lay in the exemption of the nobles and clergy from the *taille* or land tax imposed on the non-nobles. The principle was adopted that "the clergy pay with their prayers, the nobility with their swords, and the people with their money"—at any rate so far as the normal burdens of taxation were concerned. The privileged classes being thus in the main

detached from interest in the financial question discussed with the estates-general, the *bourgeoisie* were in the long run too weak to struggle singlehanded with the monarchy. The turning-point of this struggle—considering the fundamental importance of finance—came in A.D. 1439 when the estates consented, or were successfully understood to consent to the *taille perpétuelle*. The principle that the consent of the estates was necessary to legitimate taxation was not indeed expressly given up; indeed, it is asserted half a century later in A.D. 1484, and more regular assemblies every two years are demanded. The Crown promises what is asked—and calls no more assemblies but collects the taxes as before!

It would take too long to follow the history of the various assemblies of estates-general, and estates-provincial, in France. They constitute an important and influential organ for the expression of popular wishes, from which the government when wise obtains valuable advice and suggestion. But one may say generally that the want of union among the different classes represented is the main cause that prevents the composite assembly from obtaining an important and permanent share of governmental power. This fateful disunion between nobles and commoners was strikingly manifested at the meeting of estates-general in A.D. 1614, when the nobles make formal complaint to the king that an orator of the third estate has compared the three orders—nobles, clergy, and commons—to three brothers of the same family. The third estate only claimed to be a younger brother; but the nobles would not admit even that degree of fraternity. When the three estates next met in A.D. 1789—a century and three-quarters later—the youngest brother, as sometimes happens in families, had grown to be the strongest, and he made his strength felt.

A similar cause produced similar effects in Spain, where the representation of cities in the national assemblies had been introduced as early as the twelfth century, and where—both in Aragon and in Castile—the control of these assemblies over the Crown appeared for a long time much

more firmly established and regular than in France, and seemed up to the fifteenth century, to have more prospect of developing into regular, constitutional government. But here too the strength of the monarchy lay in the absence of union among its competitors for power, and the willingness of these competitors to accept privileges at the expense of their fellows. Thus the force of the representation of the towns of Castile was weakened by the bold diminution in its numbers which the Crown effected in the fourteenth century, when the number of cities returning deputies was reduced to eighteen; at which number it remained with slight variations—the privileged cities resisting any attempt to increase it. Here too the nobility claim that their personal military service exempts them from taxation; and it is the division thus established between nobles and citizens that makes the transition to absolutism so easy in the sixteenth century.

The Parliaments of the Scandinavian kingdoms had a more solid popular structure—including representatives of peasants as well as of nobles and cities; indeed, Sweden furnishes an instance of effective parliamentary power even in the eighteenth century. Still, we may observe that the *coup d'état* which turns the government of Denmark into a pure monarchy in A.D. 1660 turns on the same separation of financial interest; the burghers are irritated by the refusal of the nobles to be taxed when they reside on their estates, and their irritation, skilfully fanned by the king, produces a popular revolution that has as its result absolute monarchy.

§ 4. If, then, we ask why in England alone among the larger states of Western Europe the medieval assemblies of estates have led by a continuous process to modern parliamentary government, the main answer, I think, must be that the cause which produced failure elsewhere—the want of union among different sections and classes—was far less operative in England. I do not say that the England of the fifteenth century is free from provincial jealousies or class jealousies, but they have far less effect here than else-

where. Of this I think there were two chief causes: the insularity of England and the strong government of the Norman kings.

I incline to believe that insularity, with its marked boundaries, rendered unity of national sentiment easier from its direct effect on the imagination, people outside the island being palpably foreigners. Hence the remarkably complete—and under the circumstances rapid—fusion between the Norman conquerors and the conquered English. If we may trust the *Dialogus de Scaccario*, it was practically complete in one and a half centuries. Another perhaps more important effect of insularity lay in the comparatively peaceful conditions it secured, through the long absence of serious fear of invasion. From this cause "militancy," as Mr. Herbert Spencer would say, was less preponderant than on the Continent. There had always been in England, to an important extent, land held on non-military tenure, "free socage," side by side with land held on military tenure; and through the comparatively peaceful conditions due to insularity, the more peaceful element of the landed proprietary tended to absorb the other. The Crown had to defend its possessions on the Continent, but the duty of serving beyond sea in these wars gradually came to be felt as a burden—knights were glad to escape it by "scutage." But when this transformation of the burden into a pecuniary one has been effected, the pecuniary obligations of knighthood are felt to be oppressive, and we find in the thirteenth century that it has to be imposed compulsorily. Thus the distinction between the military and the non-military element among the smaller landed proprietors naturally tends to be effaced; and the union of the rural gentry and the city-merchants into a strong and spirited body of "commons" becomes easier.

The other important cause of the greater internal cohesion of English society is the predominance and vigour of the monarchy founded by William the Conqueror. Feudalism in a sense was introduced by William, but the main political effects of feudalism—the disintegration of

governmental power—were carefully excluded. His strong hand and skilful policy prevented the followers with whom he divided the spoil from attaining anything like the independence of French and German feudatories. Thus we saw [1] that in England the principle was maintained, at any rate in theory and form, that direct allegiance to the king was due not only from his immediate vassals, but from the vassals of those vassals. And in liberally distributing the plunder of English land, William took care to give it in a scattered form, so that, as far as possible, no powerful noble should have too great a preponderance in any one region. Except in the counties palatine of Chester and Durham, charged with military defence against the Welsh and Scotch, the administrative system prevented large power from being placed in the hands of any great nobles.

Again, effective control over the local administration of justice is maintained in England from the twelfth century by itinerant justices; and this royal justice by subordinating local customs increases the homogeneity of the people, which, it must be remembered, had been great in pre-Norman times compared to the Continent. From Henry II. onward, with inconsiderable exceptions, England has only one common law. And further, when representative institutions begin, there is nothing in England corresponding to "provincial estates," only one parliament.

Again, the cohesion of classes in England was aided by the peculiar English view of nobility as a quality which did not descend to younger sons. This seems to be partly due to the fact that the House of Lords [2]—the "great council

[1] Lecture XIV. p. 206.

[2] Under the influence of feudalism, introduced by William, the National Council—of which the democratic element had vanished long before the Norman Conquest—was almost insensibly changed from the assembly of the wise men into the king's court of feudal vassals (Stubbs, *Select Charters*, p. 15) and practically of the greater barons, though all military tenants-in-chief had a constitutional right to attend. Thus, so far as parliamentary development is continuous, it is the House of Lords that represents the old National Council.

of the realm"—is in use as a normal element of our strong centralised Norman government, in a degree unparalleled in continental states. The Norman king is not afraid of opposition to his measures from his council of lords; what he does fear is local resistance to them; and that the assent of the council tends to prevent. Hence the distinction between barons individually summoned to the council and those not summoned becomes more marked in England than elsewhere, and those not summoned blend with the smaller vassals of the Crown ultimately into gentry.

Thus we have a strong monarchy, a relatively feeble nobility, and a homogeneous and united people. Hence the nobility, when driven to resist the tyranny of the Crown, is naturally led to strengthen itself by alliance with other classes that feel this oppression.[1] And the union is facilitated by the fact that the development of cities in England shows no such struggles between citizens and feudal nobles as we often meet with in continental history. It is to be borne in mind that England was preponderantly an agricultural and pastoral country in this age—but such large towns as there were, mostly depending directly from the king, had not in their history any such memories of long, bitter, violent quarrels with the nobility such as elsewhere tended to prevent union. And the vigorous centralised administration, subjecting, as it did, the inhabitants of the smaller towns to the county authorities for various purposes, accustomed the rural and urban elements to common action.

Thus the exceptional vigour of the monarchy in the century and a half after the Norman Conquest, co-operating with other causes to produce an exceptional capacity for combination among the elements of English society, is a main cause of the exceptional strength of the Parliament that becomes a regular part of the government at the beginning

[1] Thus it was the barons who extorted Magna Carta from John in A.D. 1215. But the barons lean on the people, and Magna Carta is not framed in the interests of an oligarchy in a bad sense. It aims at securing freedom from arbitrary taxation, at least for all free landholders, and from arbitrary imprisonment and punishment for all freemen.

of the fourteenth century. Here, as elsewhere, the opportunity of Parliament lies in the financial need of the Crown; but through the firmer cohesion of the representative elements in Parliament[1] the opportunity is used here with more steady resolution than in most other countries; and before the end of the fourteenth century the weighty principles are established that new taxation[2] is illegal without the consent of Parliament; that legislation requires the concurrence of the two Houses;[3] that the Commons may inquire into and claim amendment of the abuses of the administration. It was also established, though less clearly and completely, that the rights and liberties of Englishmen could not be legitimately invaded or altered by any mere command or ordinance of the monarch.

These principles strike root deeply in the political consciousness of England, so that even when after the Wars of the Roses the spirit of Parliament temporarily declines and the Crown becomes practically predominant, it does not openly dispute and override the traditional rights of Par-

[1] The principle of representation is not to be found in Magna Carta, but, so far as free landholders go, it was gradually introduced, largely, I suppose, with Hallam and Freeman, as a convenient way of obtaining money. It was not indeed for financial reasons that representatives of the cities were first summoned to Parliament by Simon de Montfort in A.D. 1265. Still financial reasons operated to make this regular, and to bring about the first complete representation of three estates in Edward I.'s reign in A.D. 1295; soon after which (A.D. 1297) the necessity of the assent of Parliament to the imposition of new taxation is formally acknowledged. At first Parliament has three estates, and knights vote and tax themselves separately from burgesses; but the clergy cease to attend in the fourteenth century—preferring to assemble separately in convocation—and knights blend with burgesses. But we may note that in the fifteenth century the electorate becomes less popular—the limitation of "forty-shilling" freeholders in A.D. 1429 disfranchising a considerable number. Also in many boroughs the municipal governing body becomes co-optative and usurps the right of electing representatives. This phenomenon is similar to what we have noticed in the more independent city-communities of Germany and Italy.

[2] With some doubt as to customs, which becomes very important afterwards, till finally settled by the Long Parliament.

[3] At first the usage is that new laws are made "at the request of the Commons and with the assent of the Lords"; then gradually the petitions assume the form of complete statutes under the name of bills, it being found that the Crown did not always really grant what was petitioned.

liament. The Tudor monarchs have their way, and in certain directions encroach seriously on the traditional rights of Englishmen: but they have their way usually through the complaisance of Parliament, not by violating its constitutional rights.

LECTURE XXII

MOVEMENT TO ABSOLUTE MONARCHY

§ 1. EARLIER in the course,[1] in comparing broadly the development of the country-state of Western Europe with that of the city-state of ancient Greece, I drew attention to one strongly-marked difference of this later evolution, when we view it in its strictly pŏlitical aspect, concentrating our attention on government and its form. This is the permanence of monarchy. Hereditary monarchy lives on through the stages of development, in which, nevertheless, we can trace analogies to the different forms of government which succeed one another in the development of the city-state. It lives on through the stage that corresponds to that of the early oligarchies—the oligarchies of old families, in the city-states. Even in that period of the Middle Ages in which the "turbulent nobles," as the historians call them, obscure the splendour and reduce the power of the mònarchy; in which we hear of dukes and counts or earls vying in power with the monarchs to whom they pay nòminal ŏbedience; they never succeed in destroying, hardly ever desire to destroy the institution of hereditary monarchy. And monarchy lives still, in most European countries, in the democratic period through which we are now passing; when in almost every civilised country at least a large share of legislative power is in the hands of representatives of the people, and in most such countries they have acquired an important amount of control over the administration of current affairs. And thus—as I pointed out—the period of approximately absolute mon-

[1] Lecture XIII. p. 188.

archy which intervenes between the two, and which is predominant in most important European countries in the latter part of the seventeenth and till near the close of the eighteenth century, this period—though it has perhaps a certain analogy to the earlier age of the tyrants in Greek history—is not a period of irregular and lawless reversion to the rule of one, but of the predominance, gradual or sudden, of one element over others in the old established government.

As I said, the main cause of this phenomenon is, in my view, the greater need in a country-state of the unity and concentration of power given by life-long headship, owing to the greater difficulty of maintaining national unity and political order in a people dispersed over so large a space. We see from the history of France and Germany that increase of the power of the leading nobles against the king may tend ultimately, not so much to the formation of a concentrated oligarchical constitution, as to the breaking up of the state into parts; and to the lawless oppression and disorderly feuds of individual nobles, as contrasted with the organised and quasi-legal oppression of class by class which the early oligarchy in Greece and Rome shows us. Hence so far as a national consciousness is developed in the country, it sustains the monarchy as a necessary bulwark against this disruption, and as civilisation grows, the increasing number of persons who wish to live in peaceful legal relations with their neighbours demand the aid of the king, and are prepared to render him their support, against lawlessness and disorder.

But though this is the main cause, we also had to take into account the influence of ideas derived from the Roman Empire, transmitted in various ways—at first through the habits of obedience of the people conquered, then through the dignity and prestige of the ancient title when revived by Charles the Great A.D. 800, then through the influence of the Church—though, as we have seen, this is of a chequered kind; finally, through the influence of the lawyers.

Through the influence of these causes combined, mon-

archy holds its own through the various shocks and vicissitudes which it encounters during the long process of the Middle Ages and the period of religious strife that followed, and by the beginning of the eighteenth century has ultimately prevailed on the whole, though not everywhere. In the ancient oligarchy of Venice, in the modern confederacies of Holland and Switzerland the republican form of government is maintained. In England since A.D. 1689 the monarchy has to govern face to face with a parliament —representing, in the main, a broad-bottomed oligarchy— whose supremacy in legislation and finance it had finally admitted; and it only maintains its effective control of administration by the method which polite people call influence, and rude people corruption by places and pensions. In Sweden in the north, after a brief period of practically absolute monarchy, from A.D. 1693–1718, the extravagant strain which had been put on the resources of the nation by the martial adventures of Charles XII. had caused a reaction towards the control of an assembly, which, as in England, was predominantly oligarchical, and which lasted more than fifty years (A.D. 1720–1773); while in the east the Polish nobility had secured their practical independence at once of monarchy and of order, and offered to the contemporary observer an interesting example of the worst kind of oligarchy known to history. Still, these were all exceptions. Elsewhere in Romance and Germanic nations alike, in France, Spain, Portugal, the two Sicilies, in Denmark including Norway, in Austria and most of the smaller states in Germany and North Italy into which the Holy Roman Empire had practically resolved itself, the monarchical form of government is victorious.

Accordingly, if in the middle of the eighteenth century an impartial continental observer had retraced briefly the course of European history from the point of view from which I have tried to sketch it in these lectures, he would probably have regarded monarchy of the type called absolute [1]

[1] I have allowed myself to use this term for brevity though as we shall see it requires qualification (see pp. 336-339).

as the final form of government to which the long process of formation of orderly country-states had led up; and by which the task of establishing and maintaining a civilised political order had been, on the whole, successfully accomplished, after other modes of political construction had failed to realise it.

Then just when this monarchy seems most completely established, in the very country where it has been most splendid and triumphant—in France—there begins a movement of thought and opinion which gradually generates a passionate demand for liberty, equality and popular government, which first powerfully co-operates in the formation and determination of the destinies of the great federal republic in North America; then, gaining strength with this success, overthrows the monarchy in France; then further—in spite of the disillusionment caused by the sanguinary disasters that attend this overthrow, and the subsequent lapse into the military despotism of Napoleon, in spite of the reaction in other countries, supported by strong patriotic sentiment, against this aggressive Napoleonic despotism and its revolutionary antecedents—the movement towards popular government revives, grows, and to a great extent attains its end all over the countries sharing West European civilisation. So that now, after the interval of a century and a half, absolute monarchy, instead of being the normal form of government in a civilised country-state, is commonly regarded as suited only for semi-civilised Russia, and unworthy of the advanced communities of Western Europe.

In this and the following lectures I propose to consider these two movements towards so-called absolute monarchy, and from this to constitutional monarchy or republic. From one point of view—which is the ordinary one—they seem diametrically opposed to each other; the one, speaking broadly, from liberty to despotism, and the other from despotism to liberty. But this is only from one point of view; from another point of view they are only two stages in a continuous process tending in one direction, namely, to the

realisation of the modern conception of political society as contrasted with the medieval conception. For a complete and duly balanced view of the whole process it is necessary to consider it from both points of view.

§ 2. But here, perhaps, I may instructively digress to answer a simple question suggested by what I have just said—to which, however, it is not easy to give a simple answer. I have spoken of medieval and modern conceptions of political society; but where, it may be asked, does modern history begin? It is difficult to answer the question decisively, because the process of change from medieval to modern ideas and facts is gradual and continuous; and there is a great difference of opinion as to where this date should be fixed.

For example, Bluntschli[1] fixes it as late as A.D. 1740. From the Reformation to about 1740, he says, we see in Europe generally the old age and decay of medievalism rather than the youthful characteristics of a modern era; and it is not till about 1740 that we feel that a new time is coming. And I think there is some truth in this, and that it is only towards the middle of the eighteenth century that the West European monarch completes his change from an overgrown feudal lord to a modern absolute king.

For it is noteworthy that, on the one hand, during the feudal and quasi-feudal period, the monarchy, as I have before said, is only half-feudal. On the other hand, relics of the feudal ideas appear to cling to monarchy after it has effectually suppressed feudalism. On the one hand, during the feudal period, the king, while the highest feudal lord, has, at the same time, relations other than feudal to the community as a whole and all its members—relations due to a blending of old German and Roman imperial ideas—with perhaps a tinge of Asiatic monarchy derived from the Old Testament. On the other hand, when the feudal and quasi-feudal institutions have given way before the growth of the modern State, relics of the feudal confusion between public and private rights still cling round the monarch. He conceives himself to have a sort of ownership of the land

[1] *Theory of the State*, bk. I. chap. v.

and its inhabitants, and to be something more than an official appointed to promote their well-being. France, for Louis XIV., has become in its entirety the king's domain. When, in A.D. 1710, he has a transient scruple about taxing his subjects, he is reassured by the reflection that he is the real owner of all their property. So again, though states cannot be divided like properties among the children of the ruler, it still seems right that they should be united like properties through marriage. So England gets plagued with Hanover. The idea that a monarch was doing nothing wrong by sending his subjects to fight in quarrels in which they had no interest belongs to the same survival. The change is gradual; but, speaking broadly, I think we may put it, as Bluntschli puts it, at about the middle of the eighteenth century. It is about then that the leading West European monarchs begin to be generally regarded, and to definitely regard themselves, as public functionaries in whose hands the power of the State is conceived to be concentrated for public ends.

Still, I cannot regard this change in ideas and sentiments as so important as Bluntschli regards it; it does not alter the distribution, nor materially affect the ordinary exercise, of political power. Bluntschli's date, then, seems to me eccentrically late.

On the other hand, it is rather common to make modern history begin with the fall of Constantinople in A.D. 1453; and no doubt the year that saw the substitution of the Turks, as a first-class European power, for the ancient Roman Empire of the East, and at the same time, through the emigration of Greeks from Constantinople, saw a powerful impulse given to the revival of learning in Western Europe—this is a specially critical year in more than one way. And in fact the beginning of modern history may be properly put at different dates, according to the different points of view taken.

But for the purpose of the present course, the date just mentioned seems to me as much too early as Bluntschli's is too late. Monarchy is at this time still struggling with feudality, still hampered by medieval parliamentary insti-

tutions—assemblies of estates. In France, indeed, it is clearly gaining ground, and before the end of the fifteenth century its predominance is temporarily complete. And we observe a marked emergence of effective monarchs, a marked movement towards the predominance of monarchy, at the end of the fifteenth century, in France, England, and Spain alike. But the process is still incomplete. In France the power of the monarchy is reduced again by the struggle of the Reformation period—in the civil strife that repeatedly breaks out in the latter part of the sixteenth and first part of the seventeenth century we have not merely Protestantism struggling with Catholicism, but also the nobles struggling with the Crown; the estates-general too again become transiently important. In England the Tudor rule carefully avoids the appearance of absolutism, preserving the formal control of Parliament over legislation. In Spain, too, the parliamentary traditions are still strong; and it is by skill rather than force that Ferdinand gets his way. Absolutism in Spain is not established till Philip II. (A.D. 1556–1595); and in France, the finally decisive work in establishing it has to be done in the seventeenth century by the great Richelieu, and, after him, by Mazarin. The final settlement of monarchy as completely victorious was after the struggles of the Fronde. This would bring it to the middle of the seventeenth century, and this is the time in which, taking Europe as a whole, the most decisive drift in this direction is felt.

"Thus it is in A.D. 1660, as I said before, that the most dramatic transition to absolutism that European history affords takes place in Denmark. The king overcomes the nobility by the aid of the burghers and the clergy, who are irritated by the refusal of the nobility to bear their due share of taxation; and in A.D. 1665 he establishes a fundamental law, giving him and his heirs unlimited sovereignty. In Portugal, again, the final meeting of the *Cortes*—the medieval representative assembly—is in A.D. 1674. And it is in the third quarter of the same century (A.D. 1650–1675) that the process is going on by which, in the rudiments of what is afterwards to be Prussia—in

Brandenburg, and Cleve, and Preussen—the "Great Elector" is breaking the power of the assemblies of estates and shaking his kingly power free from their financial control, in spite of stubborn resistance, at least in the case of Preussen.

Accordingly, I am disposed, from the point of view of our present study, to answer the disputed question, 'Where modern history begins,' by placing its beginning in the middle of the seventeenth century—treating the period of the Renaissance, and the period of the Reformation and the religious strife that followed, as constituting a long transition between medieval and modern thought. By the middle of the seventeenth century the treaty of Westphalia (A.D. 1648) has closed the period of religious wars; and then, or not long after, it is clear that in most West European states, monarchy is predominant over elements in the state that have struggled with it. It is decisively predominant over the successors of the great nobles, who in feudal ages had so often rivalled the monarch in power and dignity. It is also finally predominant over the weakened ecclesiastical power of a divided Christendom—that power which, when Western Christendom was united, had put forward such high-reaching claims; and which, in the great thirteenth century, seemed so near establishing the throne of the vicar of Christ above those of all secular kings and princes, with authority to depose them at its will. It has, to a great extent, absorbed under its rule the cities which had, in various parts of Western Europe, achieved so high a degree of independence. And finally, it has in most cases become completely predominant over those representative assemblies which checked and balanced its power in the centuries of transition, when the West European states were growing out of the disintegration of feudalism, and growing towards the completer unity and order of the modern state. And thus, through the predominance of monarchy, states are finally constituted all over Western Europe, whose internal coherence, unity, and order contrast strikingly with the divided authority, doubtful cohesion, and imperfect order that characterise medieval institutions.

§ 3. Let us look more closely at the transition. When we compare the political and social relations of man in the Middle Ages either with those that Græco-Roman history shows us, or with those of the period that I distinguish as modern, we find them characterised by a singular combination of legality and illegality. They are characterised by formal legality because every one has rights; this is the great advance that has been made on the civilisation of the ancient republics, with its large class of slaves, legally their masters' chattels; from the king on his throne to the serf who turns the clod every medieval class has important rights secured by law and custom. But again, the medieval state is characterised by actual illegality, because no one can be adequately sure of getting his rights. When a dispute arises as to rights—which, from their bewildering variety, complexity, and fluctuation, is a highly probable event,—or when they are openly overridden by high-handed aggression, there is no central supreme power in the State which can determine the dispute with absolute decisiveness, and can bring the organised physical force of the community with irresistible weight to crush any openly recalcitrant individual or group of individuals.

Now, a power of this kind is assumed as essential in the generally accepted theory of the modern state. It is, indeed, implied in the very definition of a political community commonly received. In all modern discussion as to the best manner of determining the appointment, functions, mutual relations of legislative, executive, and judicial organs of government, it is assumed that, whatever difference there may be between different forms of government, there will be some power somewhere that can finally determine what the law is, can get it decisively applied to the settlement of any particular dispute that may arise, and can effectively enforce it. This assumption is not, indeed, completely realised throughout the whole system of West European states; but though it is not realised completely, it is so approximately. The element of romantic interest which medieval society derives from the fact that individuals and

classes must be prepared to fight for their own rights if they wish to enjoy them, is, speaking broadly, absent from modern political society in its ordinary condition.

It is from this point of view that the transition to absolute monarchy is, when we now look back upon it, seen to be a stage in the direction in which the constitutional monarchy of the nineteenth century is a further stage. The triumph of monarchy represents the first introduction of approximately complete unity and order, by the effective subordination of all other authority in the state to the authority of the monarch. And the fact that this is so is, as I have said, a main part of the explanation why the change comes about. As the slow process of civilisation goes on, the need of more perfect order is keenly felt, and the completer repression of the anarchical resistance of powerful individuals or groups has consequently more and more the support of public opinion. The sentiment of national unity grows, and with it a sense of the importance of making this unity more complete, with a view not only to internal order, but to strength in struggles with foreign nations. Hence, anything that tends to keep up *imperium in imperio* within the nation, is viewed with aversion and distrust by this patriotic sentiment, which, consequently, gives powerful support to the monarch in his conflict with all such anarchical forces and tendencies.

These forces are various and changeful, and hence the struggle towards completer order on the basis of monarchy is prolonged, and in most cases has marked fluctuations. Monarchy gains ground under a strong king, mostly by slow degrees, and then seems to lose it again under a weak one, sometimes with a sudden collapse. Nor is it always the monarch who wins in the struggle—for example, in the Romano-Germanic Empire. But though the monarch does not himself triumph, the monarchical form does, in the main, even in Germany, the princes becoming practically monarchs. The monarch, as we have seen, has to struggle in turn with each of the different elements of the nation: sometimes with nobles, sometimes with towns, sometimes with religious

bodies; and in each case the struggle takes varying forms in different ages and countries. Sometimes the powerful nobles represent other families of ancient prestige and large domains rivalling the monarch's. Then, when these are brought under, the struggle sometimes recommences—*e.g.* in the case of France—with the younger branches of the royal family itself, whom the hereditary monarchs have made rich and powerful. In the earlier feudal times the struggle is usually with powerful individual feudatories, then later, when the tendency to combination has grown, it is with leagues and associations of nobles, or perhaps, as in Germany, leagues of towns. So, again, the conflict with ecclesiastical organisations takes different forms. In the twelfth and thirteenth centuries it is a struggle with the one Church of western Christendom, united under a foreign sovereign in Rome who aims at theocratic supremacy. While in the religious dissensions that fill the period immediately preceding the final predominance of monarchy—say, from Luther's attack on indulgences to the peace of Westphalia—it is the fragments into which the Church has broken up that threaten to disorganise the political order of Western Europe, as their lines of division cut across those that separate nations. But amid all these vicissitudes and variations, the preponderance of the general tendencies that are carrying monarchy to victory is all the more strikingly manifested. The winds and the waves of civilisation are in its favour, since the growth of monarchical power is practically bound up with the growth of political order.

§ 4. And the same fact—that monarchy represents the unity of the nation—gives us, when contemplated on its negative side, the answer to the question why the more perfect order that the modern state requires could not at first be established on the constitutional basis that it has actually attained in the nineteenth century. The answer is broadly, as we have seen, that the classes with which the medieval monarch has to reckon in the latter part of the Middle Ages, and whose consent has somehow to be gained if the work of government is to be carried on,—these

classes appear, even when brought together in assemblies of estates, to be usually incapable of attaining such a full and stable union as might gradually have converted representation of classes into representation of the nation. England is an exception—I have tried to explain why and how—but in most cases the representatives of different classes in the medieval assemblies considered in the preceding lecture remain merely and palpably representatives and defenders of sectional interests, which gives them a double weakness in any struggle with the Crown—the weakness arising from mutual disunion, and the weakness arising from the fact that each group of representatives is or appears to be maintaining the interests of a part against the interests of the whole, the privileges of a section against the common interests of the nation. And, as we have already seen, while it is on the side of finance that their opportunity of gaining a share of governmental power arises, it is also on the side of finance that the separation of interests tends to be strongly marked.

But even apart from the weakness we have noted in the assemblies which, as we look back, appear in the later medieval period as actual or probable competitors with the Crown for supreme power, it is easy to see why pure monarchy should supply the first form in which the conception of supreme power adequate to the maintenance of order actually embodied itself. We have indeed only to apply to this special case the reason given in my first lecture [1] for the general predominance of monarchy, as compared with other forms of government, in civilised societies; namely, that it is so much the simplest and most obviously effective mode of attaining the consistency of resolution and action which belongs to our ideal of government generally, however constructed. To put it in the scholastic manner of the later medieval thinkers: the "unity" which should be characteristic of an ordered state is most easily attained by placing it under the rule of that which is intrinsically and *per se* one.

[1] Lecture I. p. 10.

And this tendency of thought may, I think, be strikingly illustrated if we examine the modern doctrine of sovereignty when it first makes its appearance in the history of European political thought. Jean Bodin or Bodinus is the writer to whom is due the first clear and full enunciation of this doctrine, and when we examine his exposition of it in his great treatise *De Republicâ* (A.D. 1576),[1] we find that while it is theoretically applicable to aristocracy and democracy no less than to monarchy, yet that Bodin himself is, as Sir F. Pollock says, "prone to identify the theoretical sovereign with the actual king in States where a king exists."[2] He holds indeed (as Austin) that in every independent community governed by law there must be a power from which laws proceed and by which they are maintained—since it is idle and chimerical to assume absolutely immutable and irrevocable laws—whether the power resides in one person or in many; and that this power, being the source of law, must itself be above the law and therefore not legally limited.[3] Theoretically, I say, he finds this unlimited power in all governments worthy of the name; he holds it to be necessary to the very existence of an independent state; in fact, we have in his book the fundamental general conception of the modern state put forward in opposition to the medieval ideas. And in classifying actual governments he theoretically intends to be guided entirely by the facts. But practically, when he comes to apply the doctrine to concrete political facts, he has a strong disposition to identify the theoretical sovereign with the reigning monarch if he can, where the facts at all admit of it. In the case of the German Empire of his time, it would be flying palpably in the face of the facts to do this; he therefore classes the government of the Empire as an aristocracy. But he has no doubt that in France the king has

[1] Bodin's book might be regarded as the first *modern* systematic work on political science; but it is better to take it as transitional.

[2] *History of the Science of Politics*, p. 49.

[3] *I.e.* not limited by positive laws; for it did not enter into Bodin's view to deny that sovereigns were limited by the law of nature.

the unlimited power he attributes to his theoretical sovereign.

And as I shall show in a subsequent lecture, almost the same may be said of Hobbes in the next century. His absolutist doctrine is avowedly neutral as between monarchy, aristocracy, and democracy, but its tendency is palpably monarchical. What his general theory demands is absolute power somewhere; but he prefers to place it in a king.

LECTURE XXIII

MOVEMENT TO ABSOLUTE MONARCHY—*continued*

§ 1. The correspondent movement of facts and ideas which in the last lecture I tried briefly to characterise gives, I think, the main line of causation that leads gradually and with fluctuations, but decisively on the whole, to the pure monarchy of the seventeenth and eighteenth centuries. But, as I said, we must also take into account the special influence of Christian theology and also that of Roman law. I have before observed that in both these cases to some extent, but especially in the case of Roman jurisprudence, we have the indirect influence of the extinct Roman Empire. Let us examine each of these, taking first the theological influence, which requires careful treatment, because it is really complex, and different elements of it operate in different ways.

It is sometimes said that the doctrine of the "divine right of kings," as preached by the clergy on the side of the monarch in (*e.g.*) the seventeenth century is a medieval doctrine. And this is partially true, but only partially. This doctrine of orthodox seventeenth-century Christianity is doubtless a survival or bequest from the medieval view of the universe and human society; but it is a survival of which the political effect is entirely altered by the changed conditions of its continued existence. A medieval thinker would no doubt hold that legitimate kings reigned by divine right; but this proposition would no more determine the limits of their regal powers than the scriptural proposition that "the powers that be are ordained of God" would, in the view of a modern orthodox Christian, determine the dis-

tribution of governmental functions in the British constitution. According to the medieval view, all power, all lordship was ordered by and derived from God; the statement was not more true of, let us say, the King of France than it was of the great nobles who held fiefs under him by hereditary right which he could not diminish or take away.

At the same time, it remains true that the medieval thinkers were led by their theology to a decided preference for monarchy; the best form of government in their view—as is argued in a treatise on the Rule of Princes, attributed to Thomas Aquinas—is that which most closely resembles the government of the whole universe by one supreme God. As Christianity had grown up under a monarchy, the Church's natural conception of political order was monarchical. Also its claim to control by consecrating the supreme secular governor is more naturally applicable to monarchy; it is difficult to conceive the consecration or anointment of a Council or Popular Assembly as an impressive ceremonial. The Christian ideal, then, was primarily monarchical; but it is to be observed that this ideal—at least in its earliest and most strictly medieval form—does not lead the thinker to recognise in theory, in his ideal view of Christendom, the absolutely independent sovereignty of the monarchs of the separate nations into which Western Christendom comes gradually to be definitely organised; it rather led him to aspire after a monarchical organisation uniting the whole Christian world under one headship. Human society, in its ideal condition as conceived by the medieval thinker, would constitute not only a universal Church, but a universal secular community (*civitas Dei*), the Church monarchically organised under one pope, the secular polity under one emperor, wielding respectively the "two swords" of the Gospel narrative, by which spiritual and secular government were symbolised.

As regards the manner in which, with this essential dualism of two swords and two governments, ecclesiastical and secular, the essential unity of the Christian polity was to be maintained—on this question there was, as we have

seen, a fundamental controversy running through the whole period of medieval thought, at least since Hildebrand. According to the ecclesiastical party that supported the claims of Innocent III. and Boniface VIII., the unity was to be attained by simple subordination of the secular sword to the spiritual: the pope was appointed by God as supreme arbiter of questions of morals; all questions of politics were questions of morals; hence the pope—as Boniface claimed—was "seated by God on the throne of justice above all kings and kingdoms." But these claims (which would, if realised, have converted Western Christendom into a thoroughly theocratic polity, which it never actually became even for a time) were disputed by an important section of the medieval thinkers, who interpreted the superior rank of the spiritual government as meaning only the superior importance of the spiritual welfare of mankind with which it was concerned, and not at all as carrying with it a right to overrule secular governors in their own department; and who accordingly found the ideal unity of Christendom in the Divine Head, represented in the spiritual and secular spheres by pope and secular monarch respectively.

Then, when the growing weakness of the Empire rendered the idea of a secular unity under the emperor more and more clearly impossible, ecclesiastical writers on politics did not at once give undivided support to monarchy in the separate nations, because their conflicts with the secular power led them to lay stress on the natural—only remotely divine—origin of the state, as contrasted with the directly divine origin of ecclesiastical rule. Indeed, in the later Middle Ages, from the end of the thirteenth century onward, it is the most accepted doctrine that secular government rests on the consent of the people, who have an original right to choose their own form of government; so that, though the proposition "that the ruler is the vicegerent of God" is not formally abandoned, it becomes practically insignificant and ceases to give any support to monarchy. Then afterwards, during the period of religious strife, the

influence of Christianity is mixed and varying. Both Catholics and Protestants, when under Protestant and Catholic governments respectively, have a strong disposition to favour political doctrines tending to subordinate monarchy to the control of other powers; but after A.D. 1648, when this period is over and the established divisions of Christendom have put an end for ever to the ecclesiastical efforts after a theocratic organisation under the pope, the preponderant influence both of Reformed and of Catholic Christianity is again decidedly monarchical. We may say that its natural tendency to support order and especially monarchical order has now free play; so that the orthodox seventeenth-century interpretation of the text, "the powers that be are ordained of God," is that no Christian may lawfully resist a legitimate monarch.[1]

On the whole, therefore, the Reformation and its consequences are an important factor on the side of monarchy. Even in the most purely Catholic countries, after the century of strife is over, the rivalry of the Pope with the King for secular sovereignty has gone never to return; the Church finds its best interest in leaning on monarchy and trusting to it for material support while giving it moral support. And in Anglican and Lutheran countries the subserviency of the Church to the Crown is even more marked.

The broad tendency of the disruption of Christendom, caused by the Reformation, to strengthen the secular power is strikingly illustrated in the case of Spain. Spain, in the period succeeding the Reformation, stands forth as the

[1] It may be observed that the early Reformers, Luther, Melancthon, even Calvin, were led—partly by the return to Scripture and early Christianity, as they understood it, partly by reaction from the Anabaptists, etc.—to lay stress on the obedience due to the powers that be, and to keep aloof from revolutionary schemes of government. Speaking generally, moreover, the movement within the Church against papal power, naturally allied itself with the centuries-old struggle between civil and ecclesiastical power. But this alliance is not permanent or universal: indeed in the later wave of reformation, which connects itself not with Luther but with Calvin, we find claims to supremacy of ecclesiastical over civil power which are very like papal claims: but they lack political force, the Reformers having so strong a need of the aid of the secular power.

great bulwark of Catholic orthodoxy; it is the country in which Catholicism is at once most irresistibly predominant, and most intensely fanatical. It is the country of Ignatius Loyola; above all, it is the home of the Inquisition; and though we cannot find any important movement towards Protestantism, or any other form of heretical or schismatic doctrine in Spain at this time, still the Inquisition managed to consume some 6000 human beings in successive "acts of faith," during the reign of Philip II. Here then, if anywhere, one would think the spiritual power of the Papacy might successfully maintain its claim of superiority over the secular power. But in fact it is quite otherwise; indeed, it is hardly an exaggeration to say that Philip II. is for practical purposes as autocratic in ecclesiastical matters in Spain as Henry VIII. is in England. He holds the patronage of all the cathedral churches in Spain, chooses archbishops, bishops, and abbots, regulates the details of ecclesiastical discipline, and refuses to admit the pope's bulls and despatches when they contravene his policy. The Inquisition is his instrument, not the pope's; it is he who gives it orders; he names, dismisses, controls the Inquisitors. Indeed, in spite of his religious fanaticism, we find him using it for purely secular purposes when the instruments of his ordinary administration fail; for example, when his Custom-house officers cannot stop the exportation of horses into France, he pretends to believe that the horses are intended for Protestant armies, and makes the Inquisition therefore forbid their export. The pope complains, but he has to submit; his spiritual weapons are ineffective; the king's fanaticism is intense, but it is limited and qualified by a still intenser belief in himself and his sovereign rights.

And similarly in the French monarchy of Louis XIV., the Church—though it retains important privileges, varying in different parts of the country—is effectually subordinated to the Crown, to which it gives loyal support. Its most eminent orators give, like some leading representatives of the Anglican clergy in England in the seventeenth

century, the most unqualified adhesion to monarchical absolutism in its extremest form. "The prince, the anointed of the Lord," says Bossuet, "is responsible to no man for the orders he gives" . . . "no one can say to him why do you do thus" . . . kings, "you are gods," that is, the orator adds—for the phrase, he feels, verges on idolatry—"your authority has a divine character, you bear on your foreheads the mark of divinity." [1]

§ 2. I now turn to the lawyers. Here the influence of Roman jurisprudence is more steadily on the same side—in favour of monarchy: this influence first becomes important after the great revival of the study of Roman jurisprudence—first in the University of Bologna—in the twelfth century. For the later and splendid period of ancient Roman jurisprudence, from which the books that teach medieval students come down, is of course the Imperial period: it is a fundamental doctrine of the jurists whose wisdom they imbibe that all governmental power is concentrated in the hands of the monarch. Accordingly, in France in particular, where the feudal disintegration of the nation has gone furthest, the corps of lawyers trained in the study of the Roman jurists bring to the task of serving the king a professional bias for unlimited monarchy: they are determined to regard the French king as inheriting the powers of the Roman Emperor. This conviction makes them zealous in combating all conflicting claims: and they thus become the important and indispensable instrument for reducing the independence of the great nobles and making the jurisdiction of the monarch effectively supreme throughout the land.

And the influence of Roman law supplies a part of the explanation of the failure of the medieval essays at parliamentary government in Germany. As I said in an earlier lecture,[2] the tendency to association and federation—not only of individuals with other individuals of the same class to defend class privileges, but of bodies with bodies—is so

[1] Bossuet, *Politique tirée de l'Ecriture*, Books III., IV., V.

[2] Lecture XXI, pp. 305, 306.

striking in the social and political history of Germany from the thirteenth century onward—so much more striking than in England—that I should certainly have expected that it would have been more effective than was actually the case in maintaining representative assemblies in the country-states formed by fragments of the Empire when it becomes clear that the Empire could not be maintained as a coherent whole. There is, no doubt, the general cause of disunion among the classes who had resisting power, and this is specially marked perhaps in the Empire owing to the irrevocable collapse of the Imperial power in the later Middle Ages. They confederated but did not blend. The violence too of the internal dissensions in the period of religious strife—say, with intervals, from Luther's revolt to the end of the Thirty Years' War—is doubtless another cause. The exhausted fragments of the nation had a specially strong desire for the order which monarchy offered. But the "reception" of Roman law is important—the great influence of Roman law in Germany, due to the German king being Roman emperor, is one cause.

All this becomes the more noteworthy when we remember that the ideas of the Roman jurists as to 'man being by nature free and equal' gave later on an important contribution to the movement of pre-revolutionary thought which ultimately destroys absolute monarchy in Western Europe.

§ 3. I have now to point out the qualifications and exceptions which we have to bear in mind, in framing this conception of absolute monarchy as a stage in the development of West European polity. I begin with the qualifications. In the first place, there remain—to a varying extent in the different countries where the Crown is predominant—survivals of what I may call the abortive medieval Parliaments; which, though they have ceased to threaten a serious competition for power with the Crown, yet exercise a certain check on it; or, at the lowest, hamper it a little, and keep alive the idea of the people's consent being necessary to taxation.

Thus in France, though the estates-general have ceased to be convoked after A.D. 1614, estates-provincial still go on in certain parts—Languedoc, Provence, Burgundy, Brittany, and some smaller portions chiefly situated near the extremities of the kingdom. These estates have nominally the function of voting the taxes for these districts. They never oppose an effective resistance to the Crown, but it sometimes cannot get the supplies it wants without a little management, a little corruption, or a little intimidation.

In Spain, again, there are similar survivals, and here there is a marked difference in different portions of the kingdom. The *Cortes* (Parliament) of Castile have been reduced to impotence under Charles V.: but the *Cortes* of Aragon—where the royal power, in medieval times, had been more jealously limited than in Castile—still retain substantial checks on the monarch's will till near the end of Philip's reign—and in matters of taxation, till long after. Indeed, the Spanish Crown has difficulties with the provincial *Cortes* of Aragon even so late as the first years of the eighteenth century: till in A.D. 1707 it takes advantage of the suppression of an insurrection to abolish the special rights and privileges of the province; and it is not till A.D. 1714 that a similar fate befalls the Catalonian constitution, after a resistance on the part of the Catalans of great obstinacy and valour.

Similarly in the principalities of various size into which the territory of the Empire has all but broken up in Germany, the power of the princes continues to be somewhat hampered—to a varying extent in different places—by the survivals of the provincial assemblies of estates; though the control exercised by these assemblies is nowhere very effective, and diminishes as time goes on. Their share in legislation was in most cases the first to go—the assembly was reduced to a merely consultative function; and even where the formal constitutional necessity of the assent of the estates to laws was still recognised, every effort was made to get it regarded as a mere formality. The control over taxation, though vigorously attacked, lingered some-

what longer: but even here the estates were commonly more concerned to obtain privileges and exemptions for special classes than to make their control over general taxation effective.

But secondly, even when the will of the monarch has come to be theoretically irresistible, the West European monarchy is practically limited, not only by traditional law, custom, religion, etc., but by the resisting force of the human instrument through which it has to work: especially the sense of personal dignity of the nobles, the intellectual habits of the lawyers, the *esprit de corps* of both. This was pointed out about the middle of the eighteenth century by one of the most influential writers of his age on political theory—Montesquieu—who indeed, to mark the distinction, uses the term monarchy with a meaning expressly distinguished from despotism. I shall examine the general drift of Montesquieu's speculation, as a factor in pre-revolutionary thought, in a subsequent lecture, but what he says on this point I will give in the language of one of the most judicious of our own eighteenth-century historians—Robertson [1]—at the close of his view of the state of Europe.

He says that when the complete predominance of the monarchy was established two things remained which prevented the government of France from degenerating into a mere despotism. First, though the nobles of France had lost political power as a body, they retained their personal privileges and pre-eminence of rank. They preserved a consciousness of elevation above other classes, and exemption from their burdens: a privilege of assuming ensigns indicative of dignity; a right to be treated with a certain degree of deference during peace, and a claim to various distinctions when in the field. Many of these pretensions were not derived from positive laws: but being defined and ascertained by the maxims of honour and supported by the whole force of a strong sentiment of personal dignity, they practically set

[1] Robertson's *Charles V.: Introductory View of the State of Europe*, § III. [The two paragraphs that follow are mainly in the words of Robertson but abridged.—ED.]

limits to the power of the monarch. An intermediate order was thus placed between the monarch and his subjects, with traditional privileges which he had, on the whole, overwhelmingly strong motives for *not* violating.

The other important barrier to royal caprice—peculiar to France — was the jurisdiction of the *Parlements*, especially the *Parlement* of Paris to which the supreme administration of justice was committed. The kings of France, when they first began to assume the legislative power, produced their edicts and ordinances in the *Parlement* of Paris, where they were registered: and this customary function of registration gave the *Parlement* an opportunity of protesting against an ordinance it disapproved: which it on occasion effectively used.[1]

In both these cases the king could overbear the resistance by a vigorous exercise of will: but the *esprit de corps* of both nobles and lawyers was so strong that it gave him considerable trouble to overbear it.

§ 4. In the greater part of the study in which we have been engaged in this course of lectures, we have been concerned at each stage with the comparison of the leading political characteristics of a group of independent or nearly independent communities, subject to somewhat similar conditions of life and sharing a common civilisation—Greek city-states, medieval city-communities, medieval and modern country-states — and we have endeavoured to see clearly the general resemblances among the forms of government, and the relations of the government to the governed, in the different members of the group of states, the changes that take place in them and their causes. But it has been my aim, in all such comparisons, to notice differences as

[1] The *Parlement*—originally a national assembly exercising, as ours, judicial among other functions—was specialised to judicial functions by Philip the Fair in A.D. 1302, and lawyers became prominent in it (in the fourteenth century it had 88 lawyers and 12 peers). The great L'Hôpital in 1566 (under Charles IX.) introduced serious conditions of age and capacity. Membership, handed down often and always held for life, gave practical independence, and the *Parlement* became a body in which strong *esprit de corps* was maintained for good and for evil.

well as resemblances; and when I have spoken of a "prevalent" type of government, to be careful to limit and qualify the statement by bringing into clear view the particular instances in which the prevalent type did not prevail. These negative instances are generally of the highest importance in examining the causes or conditions of the prevalence of the type in the positive instances. Accordingly, in the last lecture, while pointing out how pure monarchy tended to predominate in the West European states in the seventeenth and eighteenth centuries, I was careful to notice the existence of important exceptions to this general result.

Let us now look a little closer at the leading exceptions and their causes. Omitting Venice and the German cities—the relics of mediæval republican life—and the temporary lapse of Sweden towards oligarchical control after Charles XII., these are England, the Netherlands, Switzerland, Poland. First let me note that in three of these four cases, the influence of physical conditions is obvious. How the peculiar conditions of English life that specially favoured medieval parliamentary institutions were largely due to the insularity of England I have already shown. How the Alps exceptionally protected the struggles of the Swiss peasants to free themselves from the oppression of their lords, and how the almost amphibious condition—politically speaking—of important parts of the Netherlands, aided by the force of religious enthusiasm, enabled them, in the century of religious strife that followed the Reformation, to defy successfully the apparently overwhelming military superiority of Spain—these are all familiar historical observations. To these two republican federations I shall recur in my concluding lecture on Federalism; here I will only briefly note and explain the difference in their permanence. In the case of Switzerland, the federal and republican form of government rendered natural by its physical conditions and the origin of its independence, is successfully maintained through the eighteenth century. In the case of what we call Holland the same form of government is also

explained by the conditions of origin, and is also nominally maintained during this period; but its success here is imperfect and chequered, and it tends to lapse into practical monarchy—plainly, I think, from the greater dangers of war, to which the low-lying Netherlands are exposed. It is at the crisis of alarm caused by the invasion from France that in A.D. 1672 William III. is proclaimed stadtholder of Holland with unlimited powers: and maintains his predominance till his death in 1702. And a similar alarm in 1747 causes the appointment of a hereditary stadtholder of the seven united provinces.

Turning to Poland, where we see the ultimate triumph of the turbulent nobility in the struggle with monarchy, we have an interesting negative example of the value of the industrial element, developed in the cities of other West European states: that is, of its value at once to monarchy in its struggle with the feudal or quasi-feudal nobility, and to social life and political order. For the characteristic of Poland, as compared with the more western states generally, is that the nation has not developed an effective industrial class: the trade in the towns is in the hands of foreigners: accordingly the oligarchy triumphs over monarchy and manifests in a striking way the disintegrative, anarchical tendencies of medieval oligarchy. The "*liberum veto*," by which from A.D. 1650 onwards a single member of the Polish Diet could refuse assent to the resolutions of the entire assembly, is a characteristic expression and symbol of the place of Poland in the development of European oligarchy.

§ 5. We have to examine carefully the exceptional course of English political development, not merely as Englishmen, but as students of political science, because it is a very important factor in the general history of West European politics. For when the further step comes to be generally taken from pure monarchy to those nineteenth-century constitutions in which at least a large share of power is given to representative assemblies elected by a widely extended suffrage, it is the result of the peculiar

course of development in England which to a great extent gives the model followed in this constitution-making. This is all the more remarkable as the ideas of the constitution-making and the sentiments which powerfully impel towards it radiate from France as a focus rather than from England.

The period in England in which we see a tendency towards increase of monarchical power, or at least a struggle of monarchy to maintain its predominance, is about two centuries from the accession of Henry VII. to the Revolution of A.D. 1688. The characteristics of this period I shall pass over very briefly, as its general features are well known, and the details are of subordinate interest in the general study of the development of West European polity. As we all know, after the Wars of the Roses, the power of the old baronage appears to have suffered a collapse, and Parliament becomes practically more subservient to the Crown than it has been in the two preceding centuries. At the same time, though the Tudors got their way, it was their policy to leave the legislative supremacy of Parliament formally intact, and they respect the jealousy of its traditional privileges which the Houses of Parliament show. The theory of the constitution is not attacked on their part; the English answer to Knox's diatribe against the "monstrous regiment of women" is that the government of England is a mixed and limited monarchy.[1]

It is not till the later years of Elizabeth—after foreign danger has passed away—that the Commons begin to reassume something like the independence of spirit in criticism of acts of the Crown which Parliament had shown before the Wars of the Roses. On the other hand, the theory of an "absolute and paramount power inherent in the very nature of the regal office" [2] was spreading, especially among the lawyers, as it was on the Continent; and it was supported by the Anglican Church, reviving the doctrine of the divine right of kings harmonised with the Law of Nature as being quasi-paternal.

[1] Hallam, *Constitutional History*, vol. I. ch. v.

[2] Taswell-Langmead, *English Constitutional History*, p. 490.

Then with the accession of the Stuarts, the conflict finally breaks out between monarchical and parliamentary claims to supremacy and is never really at rest till settled in favour of Parliament by the revolution of 1688. The conflict has two distinct elements—political and religious. The new absolutism struggles with old parliamentary restraints, and Anglicanism struggles with Puritanism and Catholicism; Anglicanism being always on the side of the Crown, and practically supporting advances in the absolutist direction until the time of James II. The decisive force in the revolution of 1688 is the alienation of Anglicanism from James; had it not been for this it is perhaps doubtful if even the unbroken traditions of parliamentary supremacy in legislation and taxation would have prevented monarchy from becoming predominant in England as on the Continent.

The personal change from Tudors to Stuarts is in this respect providential. The Tudors aim at having their own way—and generally get it—but are politic enough to avoid alarming opposition by advancing claims opposed to English parliamentary traditions. James I. is a pedant and a doctrinaire, and therefore inclined to advance claims tending to enlarge the royal prerogative in theory more than he means actually to maintain.[1] This leads to the definite counter-assertion of privileges by the Commons. The errors of Charles I. and James II. were different; but probably few kings of equal ability and industry have so little understood the art of governing. Speaking broadly, the victory of Parliament—which does not, as one reads the history, seem at all a certainty—depends on its solid support on precedents of the fourteenth and fifteenth centuries. But this alone would not suffice without the religious factor; and it may be doubted whether things would have gone as they did had the religious factor been absent.

To the result attained in A.D. 1688 and the subsequent development of English polity I shall recur later. But

[1] See his *True Law of Free Monarchies* (cf. Hallam, *Constitutional History*, chap. vi.).

first I propose, in the next three lectures, to turn from the development of political facts to the development of political ideas, or rather to direct attention to the development of ideas as among the most important political facts. This is I think a necessary part of the subject of political science so far as it deals with the phenomena of civilised societies: and it is a part which grows in importance as civilisation advances.

LECTURE XXIV

POLITICAL THOUGHT. HOBBES AND LOCKE

§ 1. In this and the two succeeding lectures I propose to trace very briefly the movement of modern political thought up to the point at which it takes effect in the French Revolution.

I will begin by saying a few words on the general relation of political ideas to political facts. By political ideas I mean primarily ideas of what ought to be in a governed community of human beings, so far as government is concerned. Such ideas may relate to (1) the way in which the organs of government ought to be appointed; (2) the powers which they ought to have; (3) the manner in which those powers ought to be exercised over the governed; (4) the extent and formation of the groups under separate governments—states and nations; (5) the external or international relations of these groups. These questions are all more or less connected: but sometimes attention is directed more to one than another; and, in the line of thought which we are to examine together, attention is chiefly concentrated on the first two questions —the principles on which government ought to be constituted, and the extent and justification of its rightful authority over the governed.

In saying that political ideas are primarily ideas of government as it ought to be, I do not mean that they are not also ideas of governments as they are and have been. In quiet times the government that ought to be is for most persons the government that exists, though they would like

some details changed. And even in revolutionary times, when there are widespread aspirations after something very different from what actually exists, any political ideal that aims at being practical is likely to be modelled on something that is known to exist—or at any rate is believed to have existed—elsewhere. We can often see this clearly even when that ideal is apparently worked out by an abstract *a priori* method. It is striking how experience controls and limits the imagination even of the most idealistic political philosophers. For instance, Plato's Republic is a proverbial term for a Utopian constitution of political society: and certainly Plato's communistic scheme of abolishing private property and private families is such as never has been, and we believe never will be, realised. Yet even Plato is so far limited by the actual facts of Greek society that he can only conceive as a political ideal a town-community organised mainly with a view to war—a free community extending over a continent, to which war is a subordinate consideration, it does not enter into his head to imagine.

But again: the development of political ideas is influenced in a different way by their connexion with political facts. The ideas are related to the facts of political history not only as effect to cause, but also as cause to effect. The actual conduct of men, whether governors or governed, is to an important extent influenced by their opinions as to what is right and just; and thus political theories, while partly determined by pre-existing facts, become in their turn political forces operating among others to modify the facts. And hence to an important extent they come to be shaped and fashioned as instruments for the attainment of this practical end.

Now the influence thus exercised by theories on facts is very different in amount in different ages and countries, and it is noteworthy that it is decidedly greater in modern and even in medieval European history than in ancient. So far as we can see, the course of Greek history was in no important respect affected by the speculation of Socrates,

Plato, and Aristotle. Socrates and Plato argued for aristocracy on philosophical principles, and their views spread among cultivated men: but none the less the drift of political change at Athens tended steadily to democracy; and, so far as we know, there was never any slightest chance of realising, or any smallest effort made to realise, the political ideals of Plato and Aristotle. Whereas in the history of Europe from A.D. 800 the influence of ideas on facts has in various ways been very marked. Not to speak of minor and more disputable effects, no one can doubt that the theoretical rights of the medieval Roman Empire (which was, we may almost say, rather more of a theory than a solid fact during the greater part of its existence) contributed largely, as I have said in a previous lecture,[1] to force the history of Germany and Italy into such very different lines of development from that of France or Spain: no one can doubt in modern international law the great influence of the theoretical view of the law of nature upon actually accepted rules of international conduct: [2] finally, no one can doubt that abstract doctrines as to the rights of man and the sovereignty of the people have been a decisive force in the great movement which from 1789 onward has been suddenly or gradually transforming modern European polity.

Thus the succession of political theories and systems is governed by two distinct kinds of causes—internal and external—the separation of whose effects is a rather difficult task, though fundamentally important for the student of the history of Political Philosophy. In the first place, we can always trace in this succession the action of internal laws of development; we find that conceptions and principles at first vague are made more clear and precise by reflection, and inferences which they by implication contain are more explicitly set forth. In this way whatever inconsistencies lurk in the dominant doctrine are made evident, and its unwarranted assumptions are exposed to

[1] Lecture XIII. pp. 196-198.

[2] Cf. my *Elements of Politics*, chap. xv. p. 243, 2nd ed.

view: so that, by the mere forward movement of the human reason, it tends to be overthrown or limited in favour of some opposing theory, which, at first protected by its own comparative indefiniteness, is forced by its triumph into a similar process of development. We have seen in recent times how, *e.g.* "Liberty" as an object of aspiration at first means both individuals doing what they like, and the majority having their own way: later the opposition and conflict between the two is seen, and democracy presents itself as possibly "coming slavery." [1]

But the actual course of this succession is very different from what it would be if political theories remained merely in the study or the lecture-room: since, so far as political doctrines are useful weapons of conflict, they tend to be taken up when they are required for action and largely moulded by the exigencies of conflict. This is strikingly illustrated by the fate during the Middle Ages of a doctrine with which we shall have a good deal to do—the doctrine that the legitimate source of the authority of secular government is the consent of the governed. This doctrine, through the greater part of the Middle Ages, enjoyed a kind of acceptance among jurists; for the authority of the emperors—the supreme secular authority according to the medieval view of the political order of the Christian world—was stated in the *Institutes* of Justinian to have been transmitted to them by the Roman people. So long however as Church and State are in harmony, the doctrine remains of antiquarian interest alone: but when popes and emperors fall out, it occurs to zealous partisans of the Papacy that the people can legitimately take back what it has given, and that an "emperor who has broken his compact should be turned off like a thievish swineherd." [2] Thus an exact notion of the 'transference of power' becomes of immediate practical interest. The question is raised, Granting the original right of the people to the power now

[1] Cf. Mr. Herbert Spencer in *The Man versus the State.*

[2] Manegold von Lauterbach (born A.D. 1060) *apud* Giesebrecht *Sitzungsber. der bair. Akad.* 1868.

possessed by monarchs, can it be resumed by the people when once it has been given away? If so, how and under what conditions? However these questions are answered the doctrine gains a logical development: the fundamental conception of the transference of sovereign power becomes more exact and precise. And political thought moves towards the elaborate 'social compact' theory of the seventeenth and eighteenth centuries.

But the manner in which this notion of the social compact is used by leading thinkers in this later period no less strikingly illustrates the influence of fact on thought. For Hobbes uses it as a basis of absolutism, Locke as a basis of limited constitutional government, Rousseau as a basis of the sovereignty of the people.

§ 2. Let us begin with Hobbes — as indeed modern political thought may be said to begin with him. The establishment, in the region of fact, of political unity and order on a monarchical basis has for its counterpart, in the region of thought, the doctrine of Hobbes. It is his clear, uncompromising enunciation of the modern doctrine of sovereignty which marks in a decided way the transition to modern thought.

His view seems to have first taken shape in A.D. 1640, when our great rebellion was impending but had not yet come: but I shall deal with it in the form it assumed in his most famous treatise, the *Leviathan*, which appeared in 1651 —midway between the execution of the King in 1649, and the execution of the Parliament in 1653. It is not surprising that at such a crisis a philosopher should have a keen, even an exaggerated sensitiveness to the evils of anarchy: and should lay even exaggerated emphasis on the conditions of order.

Hobbes, like Bodin,[1] lays down that in every political community worthy of the name — in every community that enjoys stable political order — there must be vested somewhere, in some body or individual, a power which, being the source of law, cannot be subject to the restraints

[1] Lecture XXIII. p. 328.

of law. That is, it cannot be subject to the restraints of positive law—what we call the laws of the land, laws of human making: for it is and must be the supreme human law-maker in the land, and cannot be bound by its own laws. It is, indeed, subject to that higher moral code —the Law of Nature or Divine and Supreme Reason— naturally known to every man as a rational being. No one in Hobbes's time would have dreamt of denying that every one was in some sense bound by the law of nature, and therefore the sovereign must be so bound. But practically in Hobbes's view this law only binds the sovereign before God: for the law of nature requires an interpreter, and the subjects must accept the sovereign's interpretation: it cannot be allowed that each man is to claim a right to judge the sovereign by his private interpretation of the law of nature, and to resist what he judges to be a violation of it—for then the door would be open to hopeless anarchy. Hence:[1] (1) "The sovereign's actions cannot be justly accused by the subject." (2) "Whatsoever the sovereign doth is unpunishable by the subject." (3) "It belongeth of right" to the sovereign to judge and do "what is necessary for the peace and defence of his subjects"; (4) and to "judge of what doctrines are fit to be taught them." (5) The sovereign has "the whole power of prescribing the rules, whereby every man may know, what goods he may enjoy, and what actions he may do, without being molested by any of his fellow-subjects"; (6) and "the right of all judicature and decision of controversies"; (7) "and of rewarding and punishing" as he shall judge best; (8) "and of making war, and peace, as he shall think best"; (9) "and of choosing all counsellors and ministers"; (10) and "these rights are indivisible" and inalienable.

It is to be noted that particular importance is attached to the "control of doctrine" by which Hobbes especially means religious teaching. Nearly half the book is occupied in defending this feature of a Christian Commonwealth—as

[1] *Leviathan*, chap. xviii.

Hobbes designed his to be. Throughout the later Middle Ages—from the end of the eleventh century—the West European states had been liable to feel the difficulty of serving two masters, the ecclesiastical and the civil. But this difficulty was temporarily intensified by the disruption of Christendom, and the violent struggle between Protestants and Catholics. When Hobbes's views first took shape (A.D. 1640), there had been about a century of civil strife or danger of civil strife in Western Europe, due to religious dissensions. We can understand how to Hobbes the doctrine that sets up "canons against laws and a ghostly authority against the civil," [1] seems one of the worst diseases of a commonwealth: for which it seems to him the only cure to claim for the civil sovereign an inalienable right to be "judge of opinions and doctrines" and prevent the teaching of any not conducive to peace.

Hobbes's political creed may be therefore described as Absolutism: but it is not fundamentally or primarily monarchical absolutism. It is *governmental* absolutism, the theoretical triumph of the principle of Order over all conflicting principles of political construction. For observe that in Hobbes's cardinal doctrine, it is only necessary to political order that this indisputable and indivisible supreme power, unlimited by law, should exist in *some* body or individual: he does not affirm it necessary that it should be vested in a monarch: his condition is equally fulfilled if it be vested in a body of nobles or the people *en masse*. So that his cardinal doctrine is equally applicable to monarchy, oligarchy, and democracy. He holds that the individual in any ordered community ought to acquiesce equally in any established form of government—except so far as the obligation to obedience is overborne by the still more fundamental law of self-preservation—*so long as the government is able to protect him but no longer*. This last qualification was very important in A.D. 1651; and I may observe that this unsentimental absolutism, limiting the subject's loyalty by the monarch's power of protection, was not at all to the taste

[1] *Leviathan*, chap. xxix.

of ordinary loyal partisans of the temporarily dispossessed monarch of England.

At the same time, Hobbes's preference for monarchy in the abstract is plainly avowed; it is not the only legitimate form of government, but it is the best form; it has more advantages and fewer drawbacks than any other. Also his conviction is clear that if his doctrine of sovereignty is once admitted by Englishmen, if it is admitted that there is an unlimited sovereign somewhere in the British Constitution, no one can doubt that, by our constitutional tradition, the hereditary monarch is that sovereign. A parliament that the monarch has the undoubted right to dissolve is evidently, he thinks, not sovereign in his sense, only an inconvenient practical check on sovereignty and therefore a danger to order.

Probably this expresses the ordinary view of the time, as to the application of the notion of sovereignty. At this period of European history, the doctrine of sovereignty unlimited by law as essential to a state, though unmonarchical in theory and essence, was generally monarchical in effect and application. What the bodies contending with monarchy actually claimed was not to share sovereignty but to limit it.

§ 3. But to return to Hobbes's main theory:—How does he prove the necessity that he affirms? How is the individual to be reduced to this complete subserviency to his sovereign? Here Hobbes's method of establishing his doctrine is not characteristically modern: he employs notions and assumptions handed down from earlier ages. He assumes that doctrine of government arising from consent of subjects of which I have spoken—the doctrine that political society is normally instituted by a compact, through which individuals living in a "state of nature" form themselves into a community, and bind themselves to obey a government. He argues that it is the paramount interest of each and all such individuals to combine thus to form a stable commonwealth: because the state of nature, being a state of anarchy, is necessarily a state of universal war and misery. And he

argues that only a compact binding each and all to unquestioning obedience to a sovereign with unlimited power can really establish a stable commonwealth: any introduction of conditions into the compact must open the door to disputes incapable of decisive settlement, and so to anarchy.

Here it is important to observe the distinction between the traditional and the original elements in Hobbes's doctrine. That the condition of political society was preceded by the state of nature was a long accepted view, and also that the mutual rights and duties of government and governed depended on some kind of ancient compact between them. But the accepted view was that in the state of nature individuals were bound by the laws of nature or reason: and that normally—allowing for the imperfection of human nature—they might be expected to obey these laws. Man, it was commonly thought, is a rational and social being, distinguished among other animals by his appetite for tranquil association with his fellows, and his tendency to conform to the guidance of reason. Hence, when in a state of nature—not under human government—he normally recognises that he ought to abstain from aggression on his fellows and observe compacts with them. No doubt—being an imperfect creature—he sometimes breaks his compacts and attacks and quarrels with his neighbours: and then no doubt it is inconvenient for the neighbour that there is no government to restore order and he has to fight for his own rights. The state of nature was no doubt—and is now as exhibited in the mutual relations of modern nations—a state in which war occurs and has to be allowed as legitimate: but still war is an exceptional incident, a casual break in men's normal observance of the simple rules prohibiting mutual injury and commanding observance of compact.

This was the received view: but all this Hobbes boldly traversed. Man, he said, is naturally a selfish being: his vaunted social inclinations are really desires for benefit or glory to be obtained from others. No doubt he needs the help of others: but this need, if all fear is removed—*e.g.*

if his superiority in power is clear—leads him to seek dominion over them rather than equal society with them. Hence the state of nature must be conceived as a state in which men's conflicting desires and consciousness of practical equality of force lead to continual war. They covet each other's goods and attack each other to get them: for fear of such attack they conquer their neighbours for security: and when there is no other motive they make war for glory. Hence even for a reasonable man who finds himself in this state, the desire for peace and for the observance of rules that conduce to the maintenance of peace, must remain a mere aspiration, so long as a commonwealth is not constituted. We cannot reasonably limit the 'right' or natural liberty of each in this state to possess himself of anything—even of the person of another: for such appropriation may be the best means of preserving his life; and reason forbids him to omit the means by which his life may be best preserved. By rendering unreciprocated obedience to moral rules he would simply make himself a prey to others, and it cannot be his duty to do that.

In this condition the life of man—in Hobbes's vigorous English—will doubtless be "solitary, poor, nasty, brutish, and short": [1] but still this is his natural condition: though naturally he has a paramount need of peace, he is naturally—*i.e.* apart from the convention establishing political order—incapable of attaining it: his one chance of peace is to agree to obey a government whose right to command he agrees not to question so long as it secures him the supreme blessing of peace.

You see the two parts of the view hang together: it is because the ungoverned state is so miserable that government must be allowed such unlimited power. If you dispute this view of the state of nature, Hobbes's answer is forcible; it has a painful element of truth if only half truth. I will give it in his own words: "In all places, where men have lived by small families, to rob and spoil one another, has been a trade, and so far from being re-

[1] *Leviathan*, chap. xiii.

puted against the Law of Nature, that the greater spoils they gained, the greater was their honour." [1] But, you may say, it is because they are savages. No, says Hobbes, "as small families did then; so now do cities and kingdoms which are but greater families (for their own security) enlarge their dominions, upon all pretences of danger and fear of invasion, or assistance that may be given to invaders, endeavour as much as they can, to subdue, or weaken their neighbours, by open force, and secret arts, for want of other caution, justly; and are remembered for it in after ages with honour." [1] Look, again he says, at "the manner of life, which men that have formerly lived under a peaceful government, use to degenerate into, in a civil war." [2] If you still doubt, says Hobbes to his contemporaries, consider what opinion of his fellows a man's actions even in a governed society imply—"when taking a journey, he arms himself, and seeks to go well accompanied; when going to sleep, he locks his doors; when even in his house he locks his chests; and this when he knows there be laws, and public officers, armed, to revenge all injuries shall be done him." [2]

For such a being then, the only compact which could produce stable political order must be one that established somewhere or other—in king, senate, or popular assembly—a power of command absolute, inalienable, indivisible, unlimited; or strictly limited only by the individual's right of resisting or evading punishment—his right to self-preservation.

The doctrine of Hobbes thus represents in an intensely emphatic and one-sided form the general conviction that, as I have said, accompanied the great transition in Western Europe, consummated in the seventeenth century, to the modern state formed on the basis of monarchical absolutism;—the conviction that for stable political order, there is required in the state a power somewhere, indivisibly and indisputably supreme; and that this end will be best attained by vesting the power in a hereditary monarch.

But, as I have explained, his doctrine is primarily and

[1] *Leviathan*, chap. xvii. [2] *Ibid.* chap. xiii.

fundamentally governmental absolutism, and only secondarily and in its application to contemporary facts monarchical absolutism. And it is to be noted that its important effect on subsequent political thought is rather in its former aspect —the doctrine that sovereignty unlimited by law must reside somewhere in every ordered political community is still a widely accepted element of current political theory. As a support of monarchy in the struggle in England Hobbes's doctrine had not much influence: it was equally alien to the Whig sentiment of liberty and the Tory sentiment of loyalty—as it acknowledged no obligation to a dispossessed monarch—while its uncompromising subordination of Church to State pleased nobody. Still it represents, as I said, in the region of ideas the movement that is carrying the West European polity to the stage of pure monarchy.

§ 4. But, as we saw, though this period of monarchy which may be roughly called absolute is a normal stage in the development of West European states generally, the course of development of England is different and exceptional: the attempt at monarchical absolutism failed in England. The long conflict between monarchical and parliamentary claims to supremacy suddenly ends in 1688 in a settlement made decisive by the dispossession of the recalcitrant family of Stuart. It is thus finally settled that the English monarch's claim to the obedience of Englishmen is strictly subordinate to the rule of law only modifiable by Parliament; applied by judges only removable by Parliament; and that the taxation of the people required for governmental expenditure can only be determined by the representatives of the people.

The general political theory which justified this momentous conclusion of the long struggle is found in Locke's *Treatise on Civil Government*. While studying his doctrine it is important to remember that he writes for a people whom a continuous tradition of four centuries has led to regard the co-operation and consent of a Parliament of two houses—a single Parliament for the realm of England—as

necessary to the making of laws which Englishmen are bound to obey, and the raising of taxes which Englishmen are bound to pay. And they habitually regard this as a privilege of Englishmen, being familiarly acquainted with the different state of things in France.

Locke, like Hobbes, starts with the traditional and generally accepted view that the legitimate claim of any government to the obedience of the governed must be normally based on a fundamental compact, by which the members of a political society have, to obtain the advantages of government, resigned a portion of the rights which originally belonged to them as independent human beings.[1] But Locke's conception of the terms of the compact is fundamentally different from that of Hobbes. According to Locke, the compact by which individuals form a society, and agree to be bound by the decision of the majority of a society, is entered into for certain definite ends: and when the majority of the society so formed establishes a government, it must be supposed only to entrust power to this government for the attainment of these ends: and if this trust is violated the duty of obedience to government ceases.

This essentially different view of the fundamental compact and its results is connected with a view, very different from that of Hobbes, as to the condition in which men naturally are previous to their entrance into a political society. And here we have to observe that Locke's view of this state of nature—though it differs in some important respects from the view which was traditional and ordinarily accepted in this age of thought—is still much nearer to the traditional view than the dark picture painted by Hobbes.

As I have said, the traditional view was that apart from political society, human beings, distinguished as they are from other animals by the gift of reason, had been bound —and would always be bound—to obey the law of nature, which every man can know by the sincere exercise of the

[1] I say, traditional view, cf. *e.g.* Hooker, *Laws of Ecclesiastical Polity* Book I. chap. x.

reason God has given him. This conception of a law of nature, universally applicable to men as men, of higher origin and higher validity than the mutable positive laws of particular human societies, had been handed down from medieval to modern thought. The medieval thinkers had derived it from Roman jurisprudence,[1] at first chiefly through the channel of ecclesiastical tradition, afterwards through the direct study of Cicero and the great Roman jurists of the ancient Empire: but in the age after the Reformation, in the collapse of the real though imperfect regulative influence exercised over Western Europe by the Catholic Church before the Reformation, the great need felt of some universally acceptable principles of right, independent of ecclesiastical authority, had brought the conception of the law of nature—and with it that of a state of nature prior to political society—into greater prominence. The most important rules of this law so far as it related to adults were negative: summed up in the great rule of abstaining from all personal injury to others, and all interference with their use of the goods of the earth originally common to all. But, as derivative from the duty of abstaining from injury, was the duty of making reparation for injury that had been committed: there was also the important positive duty of fulfilling compacts freely entered into. We must not forget the rights of parents over children—politically important, because, as may be seen from Locke's controversial arguments, certain partisans of absolute monarchy made in the seventeenth century a desperate attempt to find a basis for it in the accepted view of the law of nature, by regarding it as developed out of the natural authority of parents over their children.

In short, the rules of the Law of Nature were the rules which, according to the old individualistic view of the State, it was the primary duty of the State to enforce. But in the state of nature individuals had to defend their own rights and exact reparation for their own wrongs: therefore, private war, to obtain such reparation, had to be admitted

[1] Cf. *ante* Lecture XII. pp. 181-183.

to be an inevitable incident of the state of nature—though not, as Hobbes paradoxically affirmed, its normal condition.

This, then, being the now accepted view of the law and state of nature, how was the authority of government to be based on principles of natural right so conceived? The accepted answer was that there were two such ways: it might be derived from an original consent of the people governed, or it might be based on conquest in a legitimate war. For it seemed that combatants repelling a violent aggression must have a natural right to kill the aggressors: and it seemed that if they must be allowed a right to kill, they must be allowed to inflict the milder penalty of servitude.

§ 5. So far Locke accepts the traditional view of the origin of legitimate government: but at this point he introduces an important change. For you will observe that the doctrine, as I have so far stated it, might be used to justify the most unlimited despotism: if only it was admitted—as was generally held—that every man has a natural right to deliver himself over into slavery. For thus the slavery of a people may result from an originally free consent, or as a deserved penalty for wrongful aggression. And in fact Grotius, in his epoch-making work on *International Right in War and Peace*, which appeared in A.D. 1625, does argue that a perpetual despotism may be legitimately established in either of these ways:—perpetual, since, as he says, "the slavery of a people is naturally perpetual, because the succession of parts does not prevent it from continuing one people." [1]

Here Locke's view is widely different. According to him no man has the right to consent to be a slave: for a man has no absolute power over his own life—suicide is not allowed by the law of nature—and therefore "cannot,

[1] Grotius, *De Jure Belli ac Pacis*, Book II. chap. v. § 32. Speaking broadly, the task of modern thought as regards Natural Right was to apply to public law ideas and principles which the Roman jurists applied to private. The epoch-makingness of Grotius lies mainly in his application of it to international law. The importance of Locke's work is its application to constitutional law.

by compact . . . enslave himself to any one, nor put himself under the absolute . . . power of another, to take away his life, when he pleases." [1] Nor again can the aggression of ancestors justify the enforcement of servitude on their descendants for all time. Indeed, the state of natural independence is not to be regarded as something existing only in the remote past. It is a state out of which each individual must be conceived to pass by his own consent expressly or tacitly given, before government has rights over him: only every one who owns property in a country — and even a temporary resident while he resides and so makes use of its land — must be understood to have consented to obey the government of a country so long as he so owns or uses.

And in conceiving the compact by which the government of a country was originally formed — as we have no direct evidence what it was — we must assume it to be such as men living in natural freedom and independence would reasonably combine to make: and if so, the governme that results cannot have an arbitrary and unlimited power. For it cannot be supposed that men would give up their natural freedom and their natural right to punish aggression, except for the end of securing a better preservation of their lives, liberties and estates than they can provide for themselves. The power of government, in short, is naturally and reasonably limited by the end for which it is instituted: and this end is to remedy the drawbacks of the state of nature.

These drawbacks are three. In Locke's words: "First, there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them: for though the law of nature be plain and intelligible to all rational creatures; yet men being biassed by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.

"Secondly, in the state of nature there wants a known

[1] Locke, *Treatise on Civil Government*, Book II. chap. iv. § 23.

and indifferent judge, with authority to determine all differences according to the established law: for every one in that state being both judge and executioner of the law of nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat in their own cases; as well as negligence, and unconcernedness, make them too remiss in other men's.

"Thirdly, in the state of nature there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offended, will seldom fail, when they are able, by force to make good their injustice; such resistance many times makes the punishment dangerous, and frequently destructive, to those who attempt it." [1]

In short, the state of nature is wanting in these three respects — clear definition of the law; impartial application; completely effective enforcement. These drawbacks make the state of nature certainly unsafe and uneasy — though not the condition of mere perpetual war and misery that Hobbes held it to be — and hence it is reasonable for men to submit to the limitation of their natural rights which government entails, if government will provide a remedy for these drawbacks. But it would be unreasonable for them to submit except on this condition. Hence the power of government must be understood to be limited by the condition that it is to be used in the execution of established known laws, applied by impartial judges: and the further condition that it is not to take the property of the governed without their consent given personally or by deputy. For—and this is an important and original point in Locke—the individual's right of property is not derived from government or from any compact with other men. It is derived from the natural right of any individual to material things with which he has mixed his labour—provided that his appropriation of them leaves "enough, and as good . . . in common for others." [2] The goods of the earth

[1] Locke, *op. cit.* Book II. chap. ix. §§ 124-126.

[2] *Op. cit.* Book II. chap. v. § 27.

in the state of nature are by natural right common: but a man's labour in the same state is manifestly his own: and when he has invested the latter in any portion of the former, it becomes by right his own—provided the opportunities of others are unimpaired. This right, then, is independent of and prior to the compact from which government springs: accordingly, it cannot be supposed that any reasonable man would give the government he agrees to establish a right to take his property without his consent. If government does not fulfil these conditions, if it has recourse to arbitrary coercion—outside the due enforcement of law—and to taxation to which consent has not been given, then it violates the ends for which government was instituted, and the governed have a right to regard the compact as dissolved.

On the other hand, the governed, though they had an original right to choose any form of government they liked, have not a right to change it when once chosen, so long as it fulfils the conditions of its trust. But when any government comes to an end — either naturally, as when a royal family dies out, or through violation of trust—then the supreme legislative power reverts to the people, to keep or bestow at its free choice. The people may thus be said to have inalienably and perpetually a latent sovereignty, but only latent.

One more condition has to be named. The supreme government originally appointed by the people has no right to transfer its power to others. No such transfer has any validity. Now the supreme organ of government is necessarily the organ that makes the laws, not the organ that carries them out: *i.e.* the legislature—in England the king and the two chambers—, not the executive—the king without the chambers: if, therefore, the legislature is changed from that originally appointed — changed either with its own consent or otherwise—the duty of obedience to it ceases. And the legislature *is* changed, says Locke, when a prince who is only one part of the legislature, subverts or suspends the laws laid down by the legislature

and requires his own arbitrary commands to be obeyed instead. Also, the legislature is in effect changed when the prince hinders it from assembling in due time or from acting freely: or if by his arbitrary power he alters the electors or ways of election without the consent and contrary to the common interest of the people: or finally, if he delivers the people into subjection to a foreign power. A prince who does these things alters the constitution which his people has agreed to obey: and thereby loses his claim to their obedience. And this, the Whigs claimed, was what James II. had done or sought to do.

LECTURE XXV

POLITICAL THOUGHT: LOCKE TO MONTESQUIEU

§ 1. In my last lecture I gave a brief sketch of the views of Hobbes and Locke: Hobbes representing in the region of ideas the movement which is carrying Western Europe from the divided authority and imperfect political order and coherence of the Middle Ages, to the modern state formed on a monarchical basis; Locke's doctrine corresponding to the exceptional course of events which established constitutional instead of absolute monarchy in England; Hobbes writing at the crisis of the Great Rebellion and supplying a theory of legitimate government which would do equally well for Charles or Cromwell, but would repudiate any division of powers; Locke's book appearing immediately after the Great Revolution of 1688, and giving the theory on which it was defended.[1]

Let us observe the notions common to the two. Both start with the conception of a state of nature, in which adult men are jurally independent, no one having a right to govern any other—whatever he may do by the exercise of force. Both agree in regarding an "original compact" of such originally independent persons as the normal method of establishing a legitimate government. I may add that both recognise also conquest as a source of governmental rights, though Hobbes holds that here too there is a compact between victor and vanquished, while Locke holds that only conquest

[1] It gives, of course, rather the doctrine on which the revolution was justified by constitutional theorists than the view with which it was made.

in a *just* war can establish rightful dominion, and that only over the persons who took part in the war.

You will note that the question in all this discussion is a jural one. It is not the question how government came to be, but how it came to be legitimate. Of this compact seemed the normal explanation. Now it might seem that if the rights of government depend on an ancient compact, the problem of determining them is one for the historian. But neither Hobbes nor Locke actually use a historical method, except subordinately for confirmation of their conclusions. Hobbes indeed repudiates it in principle,[1] and though Locke is hardly prepared to go so far he does so practically, for he determines what the compact must be supposed to have been by considering the ends which reasonable beings in a state of nature must be supposed to have had in view in entering into a compact.

Both again apply their opposed doctrines of unlimited and limited powers of government respectively to all forms of government. Hobbes's absolute sovereign may be one, few, or the whole people acting corporately: though he has a preference for monarchy. Similarly Locke's theory admits all forms of government, if only their exercise of power conforms to his conditions; the original compact may constitute democracy, oligarchy, monarchy, or any mixed form; to whichever form may have been selected, obedience will be due so long as it is faithful to its trust and no longer. But as Hobbes has a preference for monarchy, so Locke, on the other hand, regards as preferable a government in which the legislative power is separated from the executive, and is put wholly or mainly into the hands of "divers persons" who make laws as a body which they have afterwards to obey as individuals. It is preferable, because it avoids the temptation to human frailty which is given, when the same persons who have the power of making laws, "have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the

[1] Cf. *Leviathan*, end of chap. xx.

law, both in its making, and execution, to their own private advantage." [1]

And when this separation is effected, the legislature is naturally and necessarily supreme over the executive: since the organ that carries out the laws must necessarily be subordinate to the organ that makes them. It is true that where, as in England, the supreme head of the executive is also a part of the legislature, and so has no legislative superior, there is an admissible sense in which he may be called supreme or sovereign—as in fact he is traditionally called. But it remains true that he is only a part of the really supreme or sovereign portion of the government: and the oaths of allegiance and fealty taken to him are taken to him not as supreme legislator, but as supreme executor of the law made by him jointly with others.[2] This is how Locke meets Hobbes's argument that the hereditary monarch has for so many centuries been alone called sovereign in England. The answer is, Where the legislature is distinct from the executive, the legislature must be supreme: and for centuries the monarch in England has only been a part of the legislature.

Hence, it was argued, when the monarch subverts or suspends the laws as laid down by Parliament, or alters the election or ways of election to the House of Commons "without the consent, and contrary to the common interest of the people," or hinders Parliament "from assembling in its due time, or from acting freely": he in effect changes the established legislature. So again, when as head of the executive he sets up his arbitrary will against the laws he is appointed to carry out, or when he "employs the force treasure and offices of the Society to corrupt the representatives and gain them to his purposes," he acts contrary to his trust. In either case his right to the obedience of his subjects is forfeited, and they may legitimately set up a new monarch in his place.[3]

But how does Locke answer Hobbes's strongest argument

[1] Locke, *op. cit.* chap. xii. § 143. [2] *Op. cit.* chap. xiii.
[3] *Op. cit.* chap. xix.

that if conditions are thus introduced into the fundamental compact on which government is based, anarchy comes in? Partly he admits it. Anarchy does come in: the right that the governed have to resist a government that violates its trust is not a right that belongs to the state of political order: it is a reversion to the right of resistance to wrong which belongs to the state of nature. This Locke fully admits; and with fine rhetorical effectiveness he turns the argument against his opponent. Herein lies, he says, the great heinousness of the crime of a government that violates its trust that they bring in the evils of anarchy.[1]

But let us not exaggerate the danger: it is not lightly that a people can be got to face the difficulties and dangers and inevitable evils of a revolution; it is only a grave and persistent violation of trust by their established government which will make them do this. And indeed, he contends, by establishing a general recognition that the power of government is a trust held under conditions and not an arbitrary power, you really diminish rather than increase the danger of rebellion and anarchy: for you diminish the danger of oppression, and history shows that whatever theories thinkers may lay down, oppression will in fact lead to revolution.

§ 2. When we pass from the seventeenth to the eighteenth century in tracing the development of political thought in modern Europe, the main interest of the student begins in England, but before the middle of the eighteenth century passes to France. Even, I think, for a Frenchman who is tracing the chief factors in the movement of thought that led up to the great revolution of 1789, Hobbes and Locke are more important than any French writers of the seventeenth century. And even for Englishmen who are studying the history of political ideas with a special interest in the antecedents of modern England—even they, I think, about the middle of the century must temporarily transfer their main attention from England to France. For in English political thought in the latter half of the eighteenth

[1] *Op. cit.* chap. xix.

century the most interesting elements may be traced to French influence — influence either positive and directly stimulating, or stimulating indirectly by rousing vehement antagonism.[1]

In the first half of the century the movement of thought in England is rather languid, but for the careful student it has the interest which sometimes attaches to a dull and stagnant period, intervening between two periods of intellectual stress and movement: one can trace in it the fading out of old manners of thought and the nascent efforts to get to new points of view.

Locke's view of the fundamental social compact as source and limit of governmental right is widely accepted, but to a great extent with mere conventional acceptance and not with vital grasp. So far as thought is exercised on it, the development it undergoes is in the direction of separating the practical question, How are the duties and rights of government here and now to be determined? from the historical—or prehistoric—inquiry, On what terms did our ancestors originally consent to obey government? It was more and more felt—and not only by persons of revolutionary tendencies—that the former question ought not to be determined by the result of the latter inquiry. Suppose our ancestors did commit the "grave absurdity" of letting themselves be taxed without their consent: is that any reason why we should for all time submit to the intolerable consequences of their folly? No, answers (*e.g.*) a most moderate and sober Professor of Moral Philosophy, Francis Hutcheson, who taught in Glasgow from A.D. 1730 to 1746, we are free from the obligation of such an unreasonable compact, and "may insist upon a new model of polity."[2] With this qualification, Locke's views are accepted as orthodox Whig doctrine; but the interest taken in them is not very keen; while the opposing doctrine of the divine right of kings, against which Locke's argument was primarily

[1] As examples of the latter I may just mention the writings of Burke, our greatest writer of this period.

[2] Hutcheson, *System of Moral Philosophy*, Book III. chap. v. § 4.

directed, though it continued to be preached from pulpits, had ceased altogether to have any serious influence in what I may call the week-day world. Thus it is treated as an antiquated absurdity, too childish for refutation, by Bolingbroke, who does the chief political thinking for what Mr. Leslie Stephen styles the "Walpole Era."

In the history of Political Philosophy Bolingbroke hardly deserves a place, but the history of political thought or ideas is not exactly the same thing, and in the history of English political ideas he cannot be passed over; since he was not only the

> . . . guide, philosopher, and friend [1]

of the growing parliamentary opposition to Walpole (A.D. 1725–1741); his ideas not only throw valuable light on the contemporary phase of our constitution; they lived on after his political career was over, and had considerable effect on the course of English politics. We may trace their effect even in the more profound and limpid political reflections of Hume. Thus in the *Dissertation on Parties* in which his long opposition to Walpole was summed up, he anticipates Hume in drawing attention to the peculiar position of English parliamentary parties under the first two Hanoverian kings. The Whigs, by the very force of their triumph, had become the party of the court: the Tories had no less inevitably gone into opposition to the reigning monarch. Thus each party found itself driven by circumstances into collision with its original principles. Parties in this condition naturally tend to degenerate into factions: and the consequent evils are impressively driven home by Bolingbroke. To his influence perhaps is partly due the deeply unfavourable view of political parties which prevails in the succeeding generation—in spite of the fact that they are the recognised instruments of parliamentary government. I do not know any vigorous defence in English literature of the working of parliamentary party combination, until the fine

[1] Pope, *Essay on Man*, Ep. IV.

outburst at the end of Burke's *Thoughts on the Present Discontents*—nearly thirty years after Walpole's fall.

What then was Bolingbroke's political ideal? A rather vague and superficial one, which I only notice because of the special importance of English constitutional history in the political development of Western Europe. He wants, for the protection of liberty, to maintain the "balance of the constitution"; and, to this end, he wishes to put an end to the corruption that is threatening the independency of Parliament, by forming a real "country party" in which the distinctions of Whig and Tory are to be obliterated. He does not see—what is evident to the more disengaged and penetrating reflection of Hume—that it is in fact corruption, or at least the influence of the Crown over members by places and pensions, which sustains in the eighteenth century the balance between Crown and Commons. Destroy this influence, and the tendency of the new constitution would inevitably be—as subsequent history has shown—to transfer power from the Crown to ministers appointed by Parliament. Bolingbroke will not see this, he expounds his "Idea of a Patriot king," who is to dispense with corruption, and yet to govern as well as reign, to put an end to the mischief of faction and at the same time maintain the balance of the constitution.

The idea was essentially unpractical but it had practical effects: as a *Quarterly* reviewer says, it "contributed in no small degree to bring about that great revolution which transformed the Toryism of Filmer and Rochester into the Toryism of Johnson and Pitt"[1]—substituting as the object of loyal devotion, instead of the king claiming obedience in virtue of divine right, a king demanding and winning it through his patriotic superiority to party, and his steady undivided concern for the true interests of the country. Such was doubtless the ideal which George III. formed at the outset of his reign; and—though any idea of dispensing with corruption must have soon vanished—it was partly by appealing to the strong body of vague

[1] *Quarterly Review*, vol. cli. (for 1881), p. 343.

sentiment existing in the nation in support of this ideal that George III. and the younger Pitt crushed the Whigs in 1783.

In tracing the influence of Bolingbroke I have been carried beyond the period in which he lived and wrote. The thought of this period, taken as a whole, seems to me characterised, as I have said, by a feeling of languor after conflict and perhaps some little disappointment at the results of the Glorious Revolution. The end so vehemently sought has been reached: the reign of law is established and monarchy brought decisively within the control of Parliament in legislation and taxation: the "balance" of the constitution seems tolerably secure. But the pride Englishmen feel in their balanced constitution is somewhat tempered by an uneasy conviction that Parliament actually is a nest of oligarchical factions, brought into precarious and unstable concord with the Crown by corruption.

Then in 1748 Montesquieu's *Esprit des Lois* appears: and Englishmen suddenly find their constitution idealised and set on a pedestal for the admiration of cultivated Europe, as one framed for securing liberty more completely than even the democratic republics of ancient fame. And Montesquieu's subtle, thorough, and highly eulogistic analysis of the English constitution not only directed the attention of foreign observers to it, but led Englishmen themselves both to feel greater pride in it and to take a somewhat new view of its characteristics.[1]

§ 3. We may observe as we pass, just before the middle of the century, from English writers to French—as the tide of pre-revolutionary thought begins to rise—the different

[1] The statement of this view most familiar to Englishmen is that found in Blackstone (Book I. chap. ii.), the first volume of whose famous commentaries was published in 1765. Blackstone was professionally expounding the laws of England and not any political theory: but in order to meet the taste of cultivated readers and attain the very remarkable success which his exposition achieved, it was necessary that his account of legal details should be rounded off in a setting of political theories: and the material of this was very largely taken from Montesquieu — though, after the fashion of the time, it was taken without acknowledgment.

relation of theory to fact as between the English and French revolutions. Neither Hobbes nor Locke was directly an important cause of political effects; Hobbes's book anticipated but hardly influenced the reaction from the rebellion; Locke's work justified a revolution that was over. The French writers prepared the way for one that was to come. Open a French history of political ideas:—I can recommend Janet's *Histoire de la Politique* as a work of solid value, though not free from serious errors—open Janet and you will find the *Esprit des Lois* of Montesquieu, which Janet regards as "undoubtedly the greatest work of the eighteenth century," classed with Rousseau's *Contrat Social* as forming together the literary source and spring of the revolutionary movement.

It is true that an English reader of the former work finds now some difficulty in understanding how it could aid a movement of which the ideal aim was to realise a political order based on eternal, immutable, and universally applicable principles of natural right. For the originality and interest of Montesquieu for us lies largely in the fact that he represents the first great systematic introduction of the historical method into modern jurisprudence and politics: and the historical method, we think, is as hostile to the *a priori* method of Rousseau, and his assumption of universally applicable principles of political construction, as water is to fire. Hence I am not surprised that Maine[1] regards Montesquieu's influence as opposed to and overborne by Rousseau's. I think this is a misleading view, and that Janet's is much truer: but I am not surprised at Maine's mistake, for in fact Montesquieu's fundamental doctrine is that laws and forms of government cannot properly be judged to be good or bad abstractly and universally, but only historically and relatively. He maintained firstly that in judging of the goodness and badness of particular laws and political institutions, they have to be considered in relation to the form of government of the society in which they are established—a law that is expedient and

[1] *Ancient Law*, chap. iv.

good for a monarchy or an aristocracy may be bad for a democracy and *vice versa*. And he maintained secondly that the goodness of forms of government should be considered not abstractly but in relation to the varying nature, habits, circumstances, of the particular portions of the human race in which these different forms have actually been established. The question whether a people should have a democratic government is one, according to Montesquieu, which we cannot answer without knowing that people, if I may so say, within and without: its morality may be too feeble to maintain the strain of republican institutions; or its climate may be so hot that it falls inevitably into despotism.

These two main theses, on the relativity of laws to government, and of government to conditions internal and external, are enforced and illustrated with a great wealth of learning, much originality and insight, and even more ingenuity and suggestiveness: and it is easy to understand how the book had a brilliant literary success. But how could it be a source of the revolutionary movement? The explanation is that Montesquieu's historical impartiality is limited, and does not exclude very decided preferences for one form of government over another. He is concerned to point out that the three forms of government which he recognises as fundamentally distinct in their natures and principles—republic, monarchy, and despotism—are suited to different peoples and require respectively different kinds of laws to keep them going: but he does not therefore stand neutral as regards their principles: on the contrary, the principles as he presents them differ as light, twilight, and darkness.

The principle of a republic—the spring of action which it requires to keep it going and which, as long as republican government really flourishes, it maintains in effective operation—is Political Virtue, *i.e.* patriotism and public spirit and the readiness to perform public duty at any sacrifice of private interest. And this virtue, he says, is more characteristic of the democratic

republic than of the aristocratic: the latter is indeed more perfect the more it approaches to the former.[1] Such virtue is not similarly needed in a monarchy—and by monarchy you are to understand the West European monarchy of his time, of which France was the most splendid example—; it does not need political virtue as a republic does, and this is fortunate, as it certainly does not foster such virtue and therefore would not have it to draw on in any adequate degree if it did require it. The mainspring by which monarchy works is Honour: the sense of honour of privileged classes—especially nobles and heads of the legal profession—occupying an intermediate position between the monarch and the mass of his subjects. This sense of honour is, he says, at once a source of strength to monarchy, as producing a more devoted and energetic obedience on the part of these privileged persons, so long as the monarch respects their traditional privileges and rules; at the same time it is a source of an elastic resistance, if he tries to override them. I call it elastic resistance, because it is a resistance which the monarch's undisputed authority can overbear at any point on which he concentrates his will: but it is in practice an effective check, and, as I said before,[2] constitutes in Montesquieu's view a fundamental distinction between West European monarchy and Oriental despotism, where all are equal in slavery and the mainspring by which government works is pure Fear.

Well, you see what Montesquieu's historical impartiality comes to! It is true that he does not recommend democracy as a practical ideal to his fellow-countrymen: his practical aim is rather to save the French monarchy from the dangerous tendency he sees in it to decline into despotism, and he hopes to do this by laying stress on the value to both monarch and people of the sense of honour of the nobles and *esprit de corps* of the lawyers, as at

[1] This subordination of the difference between aristocracy and democracy is peculiar to Montesquieu.

[2] Lecture XXIII. pp. 338, 339.

once supplying the monarch with better instruments for governmental work than mere slaves can ever be, and imposing an elastic but real check on his arbitrary caprice. But though Montesquieu does not recommend the democratic republic, he employs his stores of historical knowledge and the whole force of his rhetoric to spread a reasoned admiration of it as the form of government that at once requires and fosters patriotism and public spirit. This idea that republics are pre-eminent in—we may almost say have a monopoly of—political virtue, may be called the main historical element of French revolutionary thought: and perhaps it did as much even as the idea of natural liberty and equality, and the idea of the inalienable and indivisible sovereignty of the people, to rouse the fire of revolutionary ardour.

§ 4. But this is not Montesquieu's only contribution to the "ideas of 1789," nor is it that which has in the long run been of most effect in the constitution-making to which the revolution of 1789 gave the first impulse. In the long run, it is not the democratic republic of the Graeco-Roman world which has furnished the pattern for modern popular government: but rather that other constitution which Montesquieu singles out for admiration—the English constitution as settled by the revolution of 1688.

The importance of Montesquieu's account of the British constitution lies in his clear perception—in spite of his admiration for democratic republics—that a democratic constitution is not necessarily the freest, *i.e.* not necessarily constructed so as to give the *maximum* of protection to the reasonable liberty of individuals. He knew, indeed, from history, that a democratic majority might be as tyrannical, in the way of unjust coercion of individuals, as any despot could be. On the other hand, he finds that political liberty is, in a unique and remarkable degree, the aim of the complex arrangements of English constitutional monarchy. If we examine it, he says, we shall find that "liberty appears in it as in a mirror." [1]

[1] *Esprit des Lois*, Book xi. chap. v.

The fundamental principle in Montesquieu's view on which a government adapted for realising liberty must be constructed is that of separation of the fundamental powers of government, and a balanced distribution of them among different organs, differently appointed bodies or individuals, so that by the natural play of the whole organisation, any tendency to oppression on the part of any one organ of government may be checked by another. Thus he follows Locke in advocating the separation of the legislative from the executive power. The legislature should only have the power of making general laws, not of decreeing any particular act of administration, though it may with advantage control by criticism the acts of the executive. The assent of the head of the executive should be required for laws,—to prevent any undue encroachment of the legislature —but he should not be able to make laws.

But he lays down further—a point Locke had not noticed—that the judicial power should be also separated from either of the other two: if the judge was also the legislator, it would be difficult to keep him to the single-minded aim of interpreting established law. If the executive and judicial power were in the same hands, the danger of the combined power being used oppressively to private persons would be great. Moreover, Montesquieu holds that the "terrible power" of awarding punishment for crime should be given, as in England, not to a permanent magistrate, but to juries drawn from time to time from the people at large; and he lays stress on the security given by the Habeas Corpus Act in England, by which the power of the executive to imprison citizens before trial is severely limited.

Legislation and taxation should be entrusted, as in England, to an assembly chosen by the whole body of really independent citizens divided in local divisions; but this assembly, again, should be checked by a body of nobles, to prevent oppression of the minority of rich and distinguished persons.

It is only by such a constitution as this, a carefully

balanced system of mutually checking powers, that we can effectively secure political liberty :—secure that is, that " no one can be either constrained to do what he is not legally bound to do, or prevented from doing anything legally permissible." [1] Montesquieu's ideal therefore—his practicable ideal—is the British constitution idealised.

This principle of the separation of the three fundamental powers of government forms a distinct and important element of the revolutionary programme. Thus in the famous declaration of rights of November 1789, we find it emphatically stated that " every society, in which . . . the separation of powers is not definitely determined, has really no constitution (*n'a point de constitution*)." And another clause lays stress on the need of strictly limiting by law the power of the executive to arrest and imprison private citizens. These are Montesquieu's ideas: and his ideas as supported by the example of the British constitution—or perhaps we should rather say the arrangements of the British constitution as explained and interpreted by Montesquieu—have on the whole been a factor second to none in importance in the constitution-making of the century that followed the publication of the *Esprit des Lois*.

Still, in the movement of thought finally summed up in the Declaration of Rights that I have quoted, his influence is quite subordinate to Rousseau's. Indeed, if you want to have expressed in the form of summary resolutions the fundamental doctrines of Rousseau's *Contrat Social*, you have only to read one after another the earlier clauses of this declaration.

[1] *Esprit des Lois*, Book xi. chap. iv.

LECTURE XXVI

POLITICAL THOUGHT: THE INFLUENCE OF ROUSSEAU

§ 1. I DREW attention in the last lecture to the double point of view from which we have to regard Montesquieu—a doubleness expressed in the striking contrast between the aspects in which he is presented by Janet and Maine respectively.

Janet, commencing his chapter on Montesquieu,[1] refers to the series of revolutions through which France has passed since 1789, and says, "How can we dismiss these memories from our minds, when we turn our thoughts to the books which have been the first source of all these changes (*la première origine de tous ces mouvements*), *l'Esprit des Lois* and *le Contrat Social?*" Perhaps in this phrase Janet attributes, or may seem to attribute, too much to the influence of political ideas and literature and too little to the influence of political facts in the causation of the French Revolution and its consequences. But if we confine ourselves to the influence of ideas—the literary source of the revolutionary movement—Janet's statement is as true as so brief a statement can be, and certainly expresses the prevalent French opinion.

On the other hand, Maine, in the interesting fourth chapter of *Ancient Law*, expresses an entirely different and apparently conflicting opinion. So far from regarding Montesquieu and Rousseau as co-operating to bring about the Revolution, he regards them as diametrically opposed. After describing the important part played by jurists in

[1] *Histoire de la Politique*, vol. ii. Book IV. chap. v.

French history, the "enormous advantage" gained by the French kings in their struggle with the nobles and the Church by their alliance with the lawyers, and the strong position they occupied as a privileged order, side by side with the feudal aristocracy, distributed over France in great chartered corporations,—he goes on to describe how they came to reconcile their speculative opinions and intellectual bias with their professional interests and habits by what I may call an enthusiastic Platonic love for the Law of Nature. France, he says, was actually subject to the "curse of an anomalous and dissonant jurisprudence"—a diversity and confusion of local laws, in spite of the political and social unity of the nation—"beyond every other country in Europe": and the lawyers had a keen sense "of those perfections of jurisprudence which consist in simplicity and uniformity." But "they believed, or seemed to believe, that the vices which actually invested French law were ineradicable; and in practice they often resisted the reformation of abuses with an obstinacy which was not shown by many among their less enlightened countrymen. But there was a way to reconcile these contradictions. They became passionate enthusiasts for Natural Law. The Law of Nature overleapt all provincial and municipal boundaries; it disregarded all distinctions between noble and burgess, between burgess and peasant; it gave the most exalted place to lucidity, simplicity, and system; but it committed its devotees to no specific improvement, and did not directly threaten any venerable or lucrative technicality." [1]

It is easy to understand how this fervid admiration for the Law of Nature would aid a revolutionary movement, if ever an ardent and wide-reaching demand for political change became strong enough to overbear the interested conservatism of the legal profession; and Maine goes on to describe how this flame of revolutionary enthusiasm was spread by Rousseau. But he speaks of Montesquieu's ideas as working entirely, though on the whole ineffectively, in

[1] Maine, *Ancient Law*, p. 85 (3rd ed.).

the opposite direction. Montesquieu, he says, "proceeded on that Historical Method before which the Law of Nature has never maintained its footing for an instant." Why then did he not stem the revolutionary movement towards the realisation of the birthright of man? Because, Maine says, his work "was never allowed time" to put forth its influence on thought, "for the counter-hypothesis which it seemed destined to destroy passed suddenly from the forum to the street," launched by Rousseau, "that remarkable man who, without learning, with few virtues, and with no strength of character, has nevertheless stamped himself ineffaceably on history by the force of a vivid imagination, and by the help of a genuine and burning love for his fellow-men, for which much will always have to be forgiven him." [1]

In this conflict of authorities, I have no doubt of the truth of the statements on both sides. The influence of the *Esprit des Lois* certainly aided the revolutionary movement, as Janet says. At the same time there is no doubt that Montesquieu's ideas are, as Maine observes, essentially opposed to the fundamental assumption of Rousseau that there are immutable and universally applicable rules of Natural Right, in which alone man can find a legitimate basis for government.

To turn the Platonic admiration for the Law of Nature as an ideal into a practical ardour for its realisation, and to extend it from the civil relations, with which alone the lawyers were concerned, to political or constitutional relations, was in France the work of Rousseau and his school. At the root of the revolutionary Utopias of the age we find the old time-honoured and accepted propositions of the Law of Nature, 'that all men are naturally free,' and 'that all men are naturally equal'—only held with a quite novel heat of conviction, and used in a quite novel way as premisses to justify the most startling and far-reaching political demolition and reconstruction.

§ 2. It is a commonplace that the absolute monarchy in

[1] *Op. cit.* pp. 86, 87.

France had prepared the way for revolution; but it was not only the absoluteness of the monarchy, it was also the manner in which it had grown out of feudalism. The monarchy, intent on its aim of concentrating all power in its own hands, had gone on the principle of bargaining with the other elements in the old feudal society which might have held it in check. Thus, by taking from the nobility their political and all their most important social functions, it had rendered them largely useless incumbrances; and in order to induce them to acquiesce with a good grace in this political extinction it had left them pecuniary privileges to such an extent as to render them an intolerably expensive incumbrance. At the same time, in order to prevent them more effectually from ever taking up an attitude of rivalry or antagonism to the Crown, and gaining influence enough to do this, it had completed the severance of the leading nobility from the social functions naturally devolving on large landed proprietors by forming them into a large and splendid court, on which royal favour descended in the substantial form of gilded showers from the treasury, yet still was hardly lavish enough to make up for the expenditure entailed by the splendour.

Politically and administratively the system of Louis XIV. was in many respects a success. The splendour of Versailles seemed at once to represent fitly and to enhance the glory that France gained under his rule. The nobility, on the whole, were fully content with the share they took in this splendour; and the centralised administration secured to the people generally many advantages—some protection from lawless personal oppression, some diffusion of enlightened procedure, etc. But financially it was fatally weak; and its financial weakness riveted and aggravated crying social inequalities and misery, which were in some respects all the worse because they were old, legal, consecrated by custom and history.

Let us examine in detail these two mutually dependent facts—a radically vicious system of governmental finance, and flagrant social inequality and oppression. We have to

go back to the fatal time when the course of development of feudal into modern France definitely separated itself from the corresponding course of development in England; when Charles VII. was allowed in A.D. 1439 to establish a *taille perpétuelle*, without the consent of the estates-general. Under the feudal system, as we have seen, the king, like any other feudal lord, provided his ordinary expenditure out of the revenues of his domains, while extraordinary expenses were provided for by voted contributions in which different classes naturally took their fair share. But from the time that the shameful bargain was concluded under Charles VII. by which the nobles sacrificed constitutional liberty by allowing the power of the purse to be given up—"letting the people be taxed without their consent, provided only the nobles themselves were exempted" [1]—inequality was established which the utmost efforts of enlightened ministers, Sully, Richelieu, Colbert, were unable permanently to mitigate. The *taille* (from which in feudal times the gentry were exempt, as a compensation for their being bound to military service) became the regular royal tax.

Tocqueville describes all the evils that come from this taxing of, "not those most able to pay, but those least able to resist." [2] As I have just said, continual efforts were made to mitigate them, but—the government must have money, and when new direct taxes were imposed, which nominally fell equally on all, the vicious practice of conciliating the rich and powerful by mitigations was still kept up. The clergy, organised and having assemblies, obtained avowed remissions, and the nobles in their private capacity obtained remissions in a less regular way. Again, the *corvée royale*—forced labour at a low salary, originally for roads, but gradually extended to other public works—was maintained, and made worse owing to the necessities of government; while from this, too, the noble and his "gens" were exempted.

Throughout the generation preceding the Revolution we

[1] Tocqueville, *L'Ancien Régime et la Révolution*, Book II. chap. x. p. 169.
[2] *Op. cit.* Book II. chap. x. p. 171.

see the Government trying more and more to act paternally, but unable to do so from want of money and from this vicious system of taxation.[1] Thus we have a Government needy, financially shifty, legally and illegally oppressive; and landed nobility, landed clergy, exempt from taxation legally and illegally.

But to oppressive exemptions we must add oppressive privileges. The peculiarity of the decay of feudalism in France, which rendered it the most appropriate soil for the Revolution, is that—the general characteristic of feudalism being the blending of government and landed property in an elaborately graduated hierarchy—in France in the eighteenth century all share in government had, as I have said, passed from the nobles; while a whole system of dues and exemptions which originally belonged to them *qua* administrators, and which could only be justified on this score, remained as sources of profit to individuals who were now no more than "premiers habitants." Of all the special rights of the nobility, "the political part had disappeared; the pecuniary part alone remained and had sometimes been much increased." [2] Thus feudalism, having from a political become a purely civil institution, had become a simple nuisance—especially to peasants who had become proprietors.[3] The poor peasant not only saw the rich noble exempt while he was himself burdened with taxation, forced to labour, forced to military service; he also found himself forced to pay to the same noble in his private capacity a number of oppressive taxes. Had the peasant not been proprietor, he would not have felt many of them. Had he been governed by the seigneur, they would have seemed to him natural incidents of government. As it was, they galled him at

[1] See Tocqueville's *Ancien Régime*, Book II. chap. x., for other shameless expedients of the Government to obtain money.

[2] *Op. cit.* Book II. chap. i. pp. 60, 62.

[3] Peasant proprietors were very numerous. Though the nobles and clergy each owned about one-fifth of the soil of France, the number of proprietors does not seem to have been much increased by the sale of all the estates of the latter and a great part of the former at the Revolution. Cf. Tocqueville, *op. cit.* Book II. chap. i. p. 58.

every turn; while the burden of expenditure imposed on the noble by custom rendered it difficult for him to abandon them. To all this we must add the old feudal right of administering justice—much restricted and decaying, but yet an abuse of real importance, often made a source of pecuniary profit by needy gentry; and must also note the absenteeism of rich and great proprietors, and the poverty, isolation, and social uselessness of smaller ones, which rendered their rights practically more oppressive than they would otherwise have been.

This state of things offered an exceptionally favourable soil for the growth of the sentiment of liberty and equality preached by Rousseau.

§ 3. There are two main aspects in which the work of Rousseau is commonly regarded by well-informed persons, on each of which it is important to dwell in order to get a full view of the whole of his extraordinary influence. He is regarded (1) as the apostle of Nature, in contrast with the artificiality and frivolity of "so-called civilised existence," and (2) as the apostle of the inalienable sovereignty of the people, a doctrine established by giving a new and striking turn to the old doctrine of the social contract. But I think Maine misunderstands the relation between the two aspects.

He attributes to Rousseau the belief that a "perfect social order could be evolved from the unassisted consideration of the natural state"; and by the natural state Maine means the original state, previous to the formation of civil society—as no doubt Hobbes and Locke would have meant. He tells us that in Rousseau's view "every transformation of society which would give it a closer resemblance to the world over which the creature of nature reigned, is admirable and worthy to be effected at any apparent cost." "Every law or institution which would misbeseem this imaginary being under these ideal circumstances is to be condemned as having lapsed from an original perfection." [1]

Now, this view of Rousseau's aims in the *Contrat Social* is rather widespread; but though the mistake is—if I may

[1] *Ancient Law*, chap. iv. pp. 88, 89.

use the treacherous word—very "natural," it is very complete. It is weak to say that Rousseau does not hold the view that Maine attributes to him: he does not hold anything of the kind.

Rousseau's work seized hold of the public mind at a time when—according to the almost unanimous agreement of French historical writers—the critical and negative work, of which Voltaire was the leader, was seriously demoralising the educated world. It co-operated with and aided the tendency of the political conditions, due to the deliberate policy of the monarchy, to produce a luxurious and frivolous aristocratic society, of which the court was the centre.

A wealthy and polite society from which the monarchy had, as we have seen, withdrawn almost all the steadying and ennobling influence exercised by the responsibilities of political power, the performance of serious and important social services to their fellow-men—such a society might yet be partially saved from mere frivolity by strong religious convictions having the support of thoughtful opinion and the prestige of eloquent expositors, as it had in the great days of the seventeenth-century monarchy. But when the hold of Catholic orthodoxy on the minds of most educated persons had been shattered by the unrivalled literary skill of Voltaire; and the talkers in salons and at dinner-parties talked—to use Berkeley's phrase—"as if atheism was established by law, and religion only tolerated"; when philosophy, following the new impulse to learn from England, had abandoned Descartes for Locke, and developed Locke's teaching in the direction of materialism and sensationalism in metaphysics, and naked egoism in morals; then the chief intellectual barrier against luxurious frivolity and artificiality was removed.

"The feudal aristocracy," says Taine,[1] became a "société de salon,"—absorbed in the life of the salon to an unparalleled extent, to the subordination of other interests and duties, to the loss not merely of all deep patriotic concern for public affairs, but of all real force and vitality in the

[1] *Origines de la France contemporaine. L'Ancien Régime.* L. II. ch. i.

domestic affections. Intellectual interests, indeed, remain; the salons follow, with sympathy and applause, the great enterprise of Diderot, d'Alembert, and their colleagues, to instruct mankind; but the interest in serious topics is only on condition that the serious topics become a means of entertainment, and a source of richness and variety in conversation. So far as they believe in anything, these denizens of the salon believe in progress, progress of the species, progress of the arts and sciences—the spread of what the Germans call "Aufklärung," enlightenment in all directions. But the sole business of good society is to talk about this progress in the intervals of fêtes, *bon mots*, and badinage, and to employ the superfluous wealth of the nation in talking about it amid the utmost artificiality of costly grace and splendour.

It was such a society as this that Rousseau startled, and to a remarkable extent passionately moved, by his preaching of the superiority of the natural life of man to the artificial product of civilisation.

The first work that brought him into notice was a prize-essay, which not only won the prize of the Academy at Dijon, but the applause of the metropolis. The question was whether the restoration (*i.e.* after the Middle Ages) of the sciences and arts has contributed to purify or corrupt manners. But Rousseau—inspired in a manner which, as he describes it, is almost ecstatic with the great theme of the superiority of Nature to Art—looks beyond restoration to the original establishment of sciences and arts, and maintains that rude, natural man, with his happy ignorance, transparent manners, and simple virtues, has lost far more than he has gained from the suspicion and treacheries, the arrogance and vanity, the pompous impostures, the useless speculations which the pursuit of knowledge has brought with it, and the vain luxury that has attended progress in the arts. And the thesis was maintained, in various forms and manners, through a series of treatises, in which we ought not to attempt to find complete consistency of view, but in which there certainly appears a unity of tone and sentiment.

It is not within the limits of my present task to go further into this side of Rousseau's work; but, briefly, he is certainly an admirer of the "noble savage" as he existed prior to political society; and it is natural to suppose that his object in the *Contrat Social* is to imitate this state of nature as far as possible, and that he thinks this may be perfectly done by the social contract. But, as I say, it is a complete mistake. The mistake is due to the fact that the old profound and inveterate fusion in the word "natural" of the idea of "what originally was" and of "what ought to be" has to an important extent disappeared from Rousseau's political ideas, while it still remains in his language. Rousseau's practical aim, in political construction, is to have a constitution in which justice is realised, and he considers that justice can only be realised in a constitution based on the principles of what he still, with others, calls Natural Right (*droit naturel*), *i.e.* the principle of which, as Maine says, the dignity and claims were admitted with unqualified eulogy by the pre-revolutionary jurists, not in France only, but in continental Europe generally.

But, in the jurist's conception of Natural Law (*droit naturel*), the prominent and important content of the notion had always been—not the application of the rules, so-called, to a supposed original condition of man, prior to the formation of political societies, but—the universality of their application to man as man, as contrasted with the restricted application of the laws of any particular political society to the members of that society. And with this, as we have seen, was joined a conception of the permanence and immutability of Natural Law, applicable to man as a rational being, and discoverable by abstract reason, as compared with the mutable character of the laws of any particular state.

That political and social order should be in harmony with Natural Right was a common-place; and that by Natural Right was meant certain external and immutable principles, even Montesquieu had not expressly disputed. This conception of Natural Right Rousseau maintained: it

is fundamental in his political reasoning. So far, Maine is doubtless not misleading.

The mistake is to suppose that Rousseau regards *droit naturel* as realised in the original state of man—the state of savage nature which in his *Discourse on Inequality*[1] he begins by describing: what he calls the "veritable state of nature." On this point Rousseau's language is quite explicit and unmistakable. Original man, in the veritable state of nature, does not live by *jus naturae*, *droit naturel*, because he has no notion of *jus* or *droit* at all,—"not the least notion," says Rousseau, "of mine and thine, no true idea of justice . . . no vices or virtues . . . unless we use these terms in the sense of qualities conducive to his own conservation." This is almost like Hobbes: but Rousseau considers that Hobbes errs in attributing to original man passions leading to conflict which would not really be found in him in the state of nature. Rousseau's man is a more isolated and self-sufficient being, "without need of his fellows or desire to harm them"; and hence though he "reasonably attributes to himself a right to all things of which he has need," the danger to other men from this predominance of the impulse to self-preservation was at its minimum—besides which each one's self-love is moderated by pity, which in this primitive condition "takes the place of laws, manners, and virtue."

The original state of nature, then, though it is, if not perhaps the happiest, at any rate the freest from inequality, is certainly not a state in which *jus naturae* is realised. And though in the later state—on the whole the happiest—that Rousseau afterwards describes, in which a certain amount of sociability has begun, he supposes a sort of property in dwellings—huts of branches and clay—he is careful to represent the respect for this property as due less to a sense of the right of property than a sense of the inexpediency of trying to appropriate one's neighbour's hut. He tells us that as—in this new situation—domestic affections, arts of manufacture, and especially social life with

[1] *Discours sur l'Origine de l'Inégalité parmi les Hommes.*

song and dance, developed, the desire of consideration led to a sense of injury. But the "first rules of justice" do not come in till property is recognised, and property does not come in till the fatal arts of metallurgy and agriculture have produced the great revolution which destroyed this second, happiest state, when families were domestic and social, but independent.

It is evident, therefore, that in desiring to construct a political order founded on *droit naturel*, Rousseau has no notion of even imitating, much less perfectly realising, the *véritable état de nature*. That has gone for ever. Natural man had the advantage of independence: in the true state of nature (unlike Hobbes') he has at once no need of others, and no inclination to hurt them: but Rousseau is as far as any man from the wish to transform society in a way which would make it resemble as closely as possible this original condition of independence. This man has lost: his best substitute for it is complete dependence on a general will, of which his own will is merely an element. Indeed, Rousseau is so far from thinking that—to use Maine's words—a "perfect social order could be evolved from the unassisted consideration of the natural state," that he expressly says that *no* social order can be perfect, just because it is not natural. "Everything that is not in nature has its inconveniences, and civil society more than all else (*plusque tout le reste*)." [1]

Indeed, I may almost say—paradoxical as it will sound—that Rousseau resembles Hobbes more than any other writer, certainly comes next to Hobbes, in the extent of the difference that he conceives between natural and social man: and hence the resemblance which we find between the social contracts of Rousseau and Hobbes, in spite of the great contrast between them. With Rousseau as with Hobbes the natural man in his primitive condition was absolutely independent of others: the difference is that with Rousseau he was not at war with others: he had no need of their aid, but neither had he any need of hurting them. But this

[1] *Du Contrat Social*, Book III. chap. XV.

independence, he holds, ceased in the very early stages of the process of civilisation; and "from the moment that one man had need of the help of another, as soon as it was perceived to be profitable for one man to have provisions for two," [1] the equality and happiness of the early state was lost, and mankind went rapidly down into a state of war resembling Hobbes'. But from this there is no restoring them to their original independence, according to Rousseau: to save man from slavery, our only resource lies in a contract which places him in complete dependence on others,—complete, though mutual and equal. The individual, in Rousseau's political system, surrenders his own will to the will of the body of which he becomes a member, as completely and unconditionally as he does in Hobbes' system, save in the one point of the revocability of the contract. The natural man is in idea at least annihilated, to live again as the civic man or citizen, the member or part of a corporate whole.

§ 4. The movement of thought which culminates in the revolutionary doctrine is, as we have seen, merely the last stage of a process which carries us back beyond the beginning of modern history. It is an attempt to determine the structure and powers of government on principles of abstract justice; and the source of these principles is distinctly to be traced back to the "Law of Nature" as conceived and applied by Roman lawyers under the influence of later Greek philosophy. This process of development I will now briefly sum up. The characteristic of the revolutionary doctrine is that it rests on two or three very simple principles: (1) that men are by nature free and equal; (2) that the rights of government must be based on some compact freely entered into by these equal and independent individuals; (3) that the only compact at once just to the individuals and sufficient for social union is one in which each individual becomes an indivisible part of a body that retains an inalienable right of determining its own internal constitution and legislation—a sovereign people. These are

[1] *Discours sur l'Origine de l'Inégalité.*

the three main points of Rousseau's charter of liberation issued to mankind. And we may briefly give the historical origin of the three thus: (1) belongs to the Law of Nature of the Roman jurists; by them only conceived as an ideal code for civil relations. It was left for later medieval and modern thought to apply it to constitutional and international relations. (2) is an inference connected with this Law of Nature, conceived as the only law subsisting in a state of nature, prior to political society: and is generally accepted at the outset of modern thought. But the compact is very variously conceived: it may be interpreted in favour of order and despotism, as by Hobbes, or in favour of liberty and constitutional government, as by Locke. (3) is Rousseau's; arrived at by an original combination of the lines of thought of Hobbes and Locke.

Rousseau agrees with Locke that the fundamental social compact ought to have for its end and object the better preservation of the person and goods of every individual who enters into it. But whereas Locke holds that this necessarily imposes limits on governmental authority, and especially makes it illegitimate for government to tax the governed without their consent, Rousseau holds that the only compact which can produce this effect is one which involves, as completely as that of Hobbes, the total surrender of the individual with all his rights to the community, and the complete submission of his will to the governing will that results from the social union. But whereas Hobbes takes the view that this governing will is simply the will of whatever government—whether of one, few, or all—the contracting individuals agree to obey, Rousseau maintains that it must be the will of the whole, the truly general will. The Whole formed by the social union is essentially and permanently and inalienably sovereign. The different powers of government commonly recognised—legislative, executive, etc.—are not properly, he says, parts of sovereignty, but emanations from it: and the sovereign must retain always and inalienably the supreme legislative power. The different so-called forms of govern-

ment—monarchy, oligarchy, etc.—cannot legitimately be more than forms of executive government; their business must be to carry out the sovereign people's will. If any one idea, any one principle, can be said to be in itself the intellectual source of the great Revolution of 1789, it is this principle of the perpetual and inalienable sovereignty of the people.

The conditions of the social union being the same for all, no one has any interest in making them onerous for others: hence Rousseau, unlike Locke, places no limit on the absolute power of the whole over its members—except the one very important restriction that the general will must be expressed in general laws that affect all citizens alike. There is no limitation of its legislative competence by pre-existing individual rights: the surrender of the individual to the community is unlimited and complete: but it is conditional on an equal mutual surrender by all others: therefore the will of the sovereign whole must be a truly general will.[1]

§ 5. It is interesting to contrast this view—that the one thing needful to secure just government is to secure that laws are made by the general will of the whole people, of which all individuals are equal parts, and that this general will is always expressed in general laws:—it is interesting to compare this with the opposite view of a school whose influence in 1789 was hardly perceptible, but which cannot be passed over in the history of eighteenth-century political ideas, as their subsequent influence was indirectly very great. I mean the *Physiocrates* or *Economistes*—the precursors of Adam Smith and the original authors of the system

[1] Observe that in this latest form of the doctrine of a social compact, all questions as to the historical fact of a compact have become irrelevant. The compact is transmuted into an ideal conception: it states the relations that ought to exist in a justly ordered State—the relations, on the one hand, between the individuals and the community they form; on the other hand, between the community and its organs of government. It may be noted that if we want a summary comparison of the *idée mère* of 1688 with the *idée mère* of 1789, we cannot have it better than in Locke's *Civil Government*, chap. xiii. § 149, and Rousseau's *Contrat Social*, Book I. chap. vi.

See Appendix, Note G, as to Rousseau's idea of the general will.

of natural liberty or *laisser faire*. I am not now concerned with their peculiar theories of production and taxation, but merely with their view of the political order required to realise natural liberty and common good. It was curiously opposite to Rousseau's, though still a part of the general movement, in French thought of the age, towards reorganisation of society in harmony with natural equity—the establishment of a social order which should at once realise the natural rights of individuals and obtain the maximum of utility for the community. While the school of Rousseau held that the essential thing was to alter the basis of the structure of government by establishing the sovereignty of the people, in the view of the economists the important point was, not how government ought to be constituted, but what government ought to do. While Rousseau and his followers had no conception of a need of limiting the scope of legislation, the *Physiocrates* held that the one duty of government was to get out of its head that it had to make laws. What it had to do was to ascertain and protect from encroachment the simple, eternal, and immutable laws of nature; to protect the natural freedom of each to labour in the way that seemed to him best, so long as he did not injure others,—abolishing all industrial privileges, restraints, and prohibitions; and to protect the fruits of his labour. This simple task they seem to have thought could best be performed by an absolute monarch;—at least they were willing, for the most part, to leave the absolute monarchy as it was; in fact, they opposed that separation of powers which Montesquieu admired in the English constitution as tending to complicate and enfeeble the action of government.[1]

[1] This fundamental difference of method in aiming at, broadly speaking, the same ultimate end—protection of the individual from oppression—is all the more interesting for us, as it still exists in the popular liberalism of the present day. Civil and constitutional freedom—the one, being left alone by the government, and the other, having control over government—are very different things. They coincide practically as regards the majority of the electoral body, since the majority will prevent government from interfering with them disagreeably, but they may not coincide as regards the minority. For example, a man who likes a glass of beer and to go to the theatre on

But the drift against absolutism was too strong for this school to have much permanent direct influence in France before 1789. A great part of what the *Physiocrates* urged [1] was undeniably useful and needed: the removal of restrictions and restraints on industrial processes, the release from compulsory labour, the suppression of monopolies, etc. If introduced with due care, due regard for expectations and habits formed by a long *régime* of governmental tutelage, and due compensation for legitimate vested interests that had grown up in connexion with this *régime*, such reforms might have made it possible to restore order to the embarrassed finances of France. But the attempt made by Turgot, the most eminent member of the school, when he was for a brief space (A.D. 1774–1776) controller-general, conspicuously failed in the necessary care and circumspection: his reforms, pressed on with the uncompromising rigidity of a doctrinaire, alienated public opinion, and brought him into conflict with the *parlement*, which, being the only traditional constitutional check on royal authority, had strong support in the growing popular sentiment for freedom. And when Turgot fell, it was evident that the lead of the movement towards organic change had passed from the *Physiocrates*, and that the tendency under the influence of Rousseau to seek national prosperity by a renovation of the structure of government, instead of a limitation of its functions, would irresistibly dominate the coming revolution.

Sundays may feel personally freer under an absolute government where he is allowed these indulgences, than in a country with universal suffrage, where the majority prevents him.

[1] Apart from the unhappy *impôt unique*.

LECTURE XXVII

DEVELOPMENT OF ENGLISH POLITY SINCE 1688

§ 1. ENGLAND and France took the leading part, in fundamentally different ways, in bringing about the last great change in West European polity—the establishment of the form of government which we call "constitutional monarchy"; the form which now prevails all but universally in Europe outside Russia, France being not essentially an exception though it might at first sight seem so. France, it is true, is a republic, not a monarchy: but the West European constitutional monarchy is not, paradoxical as it may seem, essentially monarchical in the ordinary sense: *i.e.* a permanent hereditary king is not essential to it. In many cases—I do not say in all—if the functions performed by the hereditary monarch were transferred to a President elected for a term of years, the difference resulting would certainly not be so fundamental as to lead us to regard it as an essentially different form of government.

You will observe that it is this general change in West European polity which I wish to characterise and explain, and not the particular striking phenomenon which we call the French Revolution. I have had to direct special attention to the movement of pre-revolutionary thought in France: but in doing so I have always had in view its effect in causing the general change in Western Europe, and not its effect in causing a particular series of events in France. If I had been trying to explain the particular phenomenon of the French Revolution, I should have had to bring into view other causes which I have felt justified

in ignoring. For—as Professor Seeley once impressively expounded in a course of lectures delivered here—"the evil which most visibly and indisputably brought on the French Revolution was the bankruptcy of the French Government. It was in despair of dealing alone with the deficit that the banker Necker determined to strengthen himself by summoning the States-General." And if we go further back and inquire into the causes of this bankruptcy, we must not be content to refer to the radically bad system of finance, the inequalities of taxation, of which I spoke in the last lecture. For these inequalities, though they were partly the cause of the bankruptcy, were not the sole cause. The bankruptcy, as Seeley says, was caused by war: and if we inquire further, we may come to the conclusion that it was caused by the ambition of Louis XIV.; that it was a consequence of the European wars kindled by him, and the position in Europe which his policy gave to France, and which debarred it from the policy of non-intervention which could alone have lightened the financial burdens. But this interesting line of thought I leave to the student of French history. What we are now concerned with are the general types of polity tending to prevail at different stages of the political development of Europe, and the causes of transition from one prevalent type to another; and from this point of view the bankruptcy of France and its causes become of subordinate interest.

I have referred to this now, because I am proposing in this lecture to direct special attention to the facts of English history: and my justification for doing this is, that when we are trying to explain the form of government which, by the end of the third quarter of the nineteenth century, had become all but universal in Western Europe, the state of things in England is certainly a more obvious and indisputable element of the explanation than the state of things in France. I do not say that it is a more important element: if I had thought this, I should not have claimed so much of your attention for the development of political ideas in the eighteenth century. I do regard the overflow of the tide

of revolutionary thought and feeling — of the movement in favour of Liberty, Equality, and Sovereignty of the People—from France into the neighbouring countries, where, since the splendid times of Louis XIV., the cultivated world had been accustomed to read French literature, and to look to France as the source of new ideas, new culture, new ways of living, —I do regard this as a factor really second to none in importance as a cause of the general transition. At the same time, this French share of the causation is more obscure, and more difficult precisely to measure: the English share is more clear and unquestionable. For, however much these neighbouring lands were influenced by French thought, they have not tried to imitate any of the peculiar constitutions to which the constructive ingenuity of the French mind, together with the rapidly recurring crises of revolutionary change, has given birth,—neither the constitution of 1791, nor the constitution of the year III., nor the constitution of the year VIII., nor, returning to the Christian era, the constitution of 1848, nor that of 1870, nor that of 1875. What they have imitated has been obviously and palpably the English constitution, just as in France it was imitated in 1814 and 1830.

§ 2. To the English constitution, then, I now turn. I must begin by observing that its imitators have not always known what it was or how different it was at different stages: they have not thoroughly grasped the process of change that had gone on in it between the Revolution of 1688 and the constitution-making period of the nineteenth century. This imperfect apprehension has continued till very recent times, and even now still lingers in some quarters. Indeed, we may say that there are two forms of misapprehension. Sometimes the nineteenth-century constitution is too much assimilated to what really existed in the eighteenth; sometimes *vice versa*.

To illustrate the first, I may direct attention to Bluntschli's[1] treatment of the subject. In examining this, we must bear in mind that Bluntschli is a man of wide in-

[1] *Theory of the State*, Book VI. chaps. XIV.-XVI. (English translation).

formation as a politician, of liberal aims, and though not a penetrating thinker, he is not a loose or careless one. In his book you have an instructive account, from a modern German point of view, of the movement by which constitutional monarchy has become the prevalent type in the West European states. According to Bluntschli, certain "results" were arrived at by the Revolution of 1688. Absolute monarchy was rejected, and limited or constitutional monarchy established, based on principles which the Hanoverian kings, he says, found it difficult to understand, but which—"circumstances being too strong for them"—they could not refuse to recognise; and in our own day the "royal family" in England has become unreservedly constitutional, while the monarchy has "lost neither respect nor power" thereby, observe, "not lost power." [1] He then describes briefly how a constitution broadly resembling the English has been—in the nineteenth century—established in the Romance states (omitting France), in Belgium and Holland, and in Scandinavian and Teutonic countries. I say "broadly resembling the English," because everywhere supreme legislative power is in the hands of the monarch, the representative assembly, and a senate or council, while executive power is in the hands of a king and responsible ministers.

But this last phrase leads us to the delicate question, *how* the executive power is divided between the king and his responsible ministers: and it is here that Bluntschli shows the misapprehension of which I am speaking. For he proceeds to contrast "true" and "false" ideas of constitutional monarchy; and in this contrast it is clearly English constitutional monarchy—as much as any other—of which he means to give the "true idea." When he says that it is a "false idea of constitutional monarchy" to suppose that the real power has passed from the king to his ministers, he means that it is a false idea of English constitutional monarchy no less than of any other. When he says that the principle of constitutional monarchy is

[1] *Op. cit.* pp. 373, 374.

inconsistent with the idea "that the monarch is subordinate to the national representatives or to his ministers, and that he may be compelled by them to express a will other than his own" [1]; that "constitutional monarchy does not transfer the centre of gravity in the government either to the chambers or to the ministers" [2]; that the constitutional "monarch has a share in legislation which is usually decisive as regards the substance of a law" [3]; that the "whole government"—*i.e.* the whole function of governing within the limits laid down by law—is really and not formally "concentrated in the monarch" [4]; he apparently believes all this to be true of English as well as continental specimens. He is, indeed, aware of differences in the extent of limitations imposed on the royal rights, and he recognises that the English constitution "imposes more limitations upon the royal rights than have been found tolerable by most of the continental monarchies." [5] But he regards this as merely a difference in degree; he does not regard it as going so far as to render the propositions above quoted inapplicable to England.

Now, so far as Bluntschli—and I have taken him as the representative of a school of thought widely extended in Germany—intended these statements to be true of the facts of English polity when he published his book in 1852, and still more in 1875 when he published the fifth edition, I do not think any duly instructed Englishman will doubt that he was wrong. And he certainly did in part so intend them: but partly, in his talk of "true and false" ideas, he mixes up the question of fact with a question of what ought to be, and partly with a merely verbal question. And as both these kinds of confusion are commonly made in discussing topics of this kind, I will spend a minute or two in making them clear.

Partly, Bluntschli argues that if the power of the nominal head of the government is reduced to the point to which the "false ideas" would reduce it, this nominal head should not

[1] *Op. cit.* p. 405. [2] *Op. cit.* p. 406. [3] *Op. cit.* p. 408.
[4] *Op. cit.* p. 408. [5] *Op. cit.* p. 407.

be called a monarch. Well, that is a mere question of words: let us call this form of government—as Tennyson—a "crowned republic"; the name does not matter, the practical question is whether it is a good thing or not. But again, Bluntschli no doubt means to argue that it is not a good thing: that we shall get better government on the whole if the monarch is allowed to have a will of his own and to carry out his own ideas—within the limits laid down by law and imposed by the need of ministerial co-operation. This, again, is a tenable view as to what ought to be, but it should not be mixed up with a view of what actually exists in England or any other country. At the same time, this mixture is very common when we are considering any point in a constitution which depends not solely or strictly on law, but largely on custom and convention, on the general opinion as to what any member of a government ought to do, and the general approval which would be given to systematic resistance if he tried to do anything else. And that is the case with the division of power between the monarch and his ministers.

There is, in fact, a wide difference between the English and the German species of constitutional monarchy. But it is not, in the main, a legal difference: in both types alike every governmental act of the monarch requires the co-operation of a responsible minister: while in England no more than in Germany is there any legal requirement that the prime minister should be the recognised leader of a majority of the house of representatives. The difference is, that if the Queen of England were now (1899) to dismiss Lord Salisbury, as the Emperor William dismissed Bismarck, simply because she did not agree with his policy, her act would meet with almost unanimous disapproval, which would take effect in a refusal of supplies by an overwhelming majority of the House of Commons, and so would rapidly and certainly end in the humiliation and submission of the monarch. This would undoubtedly happen in England: and therefore it would seem absurd in England to say that this practical impossibility of dismissing a prime

minister who has the confidence of the majority of the House of Commons is due to a "false idea" of the functions of a constitutional monarch: and if any one did say this, he would be clearly understood to be expressing an opinion as to conventions and expectations that ought to prevail, not that he supposed to be actually prevalent.

But if the case were otherwise—as it doubtless was in Germany when Bluntschli wrote—if opinion were divided as to the proper normal extent of the power left by the constitution to the monarch, any expression by a writer of individual opinion as to what ought to be might have an important effect in modifying the general opinion. There would thus be a strong temptation to say the "true idea" of constitutional government is so and so, in the hope of aiding in establishing it as the prevalent idea.

And, as I before said, I think that some English writers on our history after 1688 have been influenced by the same temptation to which Bluntschli has yielded, but have been led by it in an opposite direction. They seem to have vaguely believed, or at least to have been willing that their readers should believe, that the Victorian phase of English polity,—the system by which the monarch regularly and normally accepts as prime minister the leader of the party that has the majority in the House of Commons, allows him the selection of his colleagues, and allows the Cabinet so formed to determine the action of the Crown in most important matters,—that this system dates from the Revolution of 1688, or at any rate from the disuse of the royal veto which began in William III.'s reign. This I hold to be a complete mistake. Constitutional monarchy, in the sense in which Locke's treatise aims at establishing it, *i.e.* in the sense of the undisputed supremacy of law only capable of being modified by King, Lords, and Commons, over the so-called sovereign—this was both aimed at and established in 1688. But the transfer of executive power, of governmental power within these limits, from the king to a set of ministers of whom the head is practically chosen by the parliamentary majority—this was not aimed at, and there was scarcely even

a germ of it for some time. There is no manifest symptom of a decline in royal power till about the middle of George II.'s reign, and after this the substantial power of the king revived under George III.

§ 3. The Victorian polity is only discoverable in germ in the eighteenth century, and has taken its present shape in the main since the first Reform Bill. The established eighteenth-century view was that the prime minister, and other ministers, were chosen by the monarch. One or other of them had, no doubt, to keep a majority in the House of Commons; but that was conceived as a part of the business on which the Crown employed them. The fact that if they could not do this business they had to go, did not present itself as a restriction on royal power, any more than the fact that a general who cannot maintain military discipline would have to go, under the most absolute monarch who wanted his armies to win battles.

But it may be said, a minister who has to make and keep a majority must be dependent on the House of Commons, and must ultimately be practically chosen by it. Not so, for the fact that he was the minister of the Crown helped him a considerable way towards a majority. Here I may observe that if the effect of 1688 is commonly overrated, the change that took place after 1660 is—as Seeley points out—underrated.[1] The method by which the English

[1] Cf. Seeley, *Introduction to Political Science*, p. 253.

[On the outside of this lecture Mr. Sidgwick made the note "Borrowed in part from Seeley; this must be carefully looked to in case of publication." And it will be found by any one who compares, that from this point onwards the lecture is in fact largely taken from Seeley's *Introduction to Political Science* (Lectures III. and IV. of the second series in the volume), though the writers are by no means in complete agreement. Not only are pieces quoted, but in other passages, not exactly quotations, the ideas and phraseology are used. This book of Sir John Seeley's was published posthumously in 1896, and was prepared for publication by Mr. Sidgwick; and I believe that it was while he was editing it that the present lecture assumed, broadly speaking, the form it now has. To what extent it would have been altered, had he lived to put these lectures into book form, I cannot of course say.

It is interesting to observe that these lectures of Sir John Seeley's were not altogether new to Mr. Sidgwick when he edited them. He had read them previously in manuscript, and there are rather full notes on them

sovereign deals with Parliament in the eighteenth century dates from the Restoration or soon after. Influence became an important factor soon after the Restoration—influence being a term including all the different means of persuasion which the Crown, partly by its prestige, partly by its wealth and patronage, could exert upon individuals.[1] For the permanence of Parliament dates from the Restoration, and, as Seeley says, "When Parliament became permanent, the Crown had this compensation, that Parliament also came within its reach and so became subject to its influence."[2]

Thus conflict between monarchical and parliamentary power in the executive government is, we may say, doubly veiled in the eighteenth century. Parliament preserves all the legal forms of a monarchy exercising, within the law, real executive power and having a share in legislation: but in the background it has the power of the purse and of refusing the Mutiny Act. The king knows this, and does not attempt open fight with Parliament. He lets the veto become obsolete: but in the background he too has a formidable force—influence. The king retired from view and ceased to be an impressive figure in internal politics: but those who lived in the eighteenth century under these historically unimpressive kings always complain of their having too much power. In the middle of George III.'s reign—nearly a hundred years after the Glorious Revolution—a resolution was proposed in the House of Commons "that the power of the Crown has increased, is increasing, and ought to be diminished." It is only for a comparatively brief period in the middle of the eighteenth century that it goes under an eclipse.

Let us briefly pass in review the monarchs after 1689. William III. no one regards as merely ceremonial. Anne by

among his papers, evidently written for discussion with Seeley, and expressing points of agreement and disagreement; and it appears that at the same time Seeley was reading the lectures or some of them which have developed into the present book, and doubtless criticising them. The object apparently was to secure, so far as possible, agreement and harmony of treatment.—ED.]

[1] Cf. Seeley, *op. cit.* p. 261. [2] *Op. cit.* p. 261.

her own will made and unmade ministers; her will was a main factor in determining important changes of policy.[1] When we come to George I. and George II., it certainly seems as if power had passed to Walpole for a long time; but so under the French kings, even after Louis XIV., the power often seems concentrated in the hands of ministers. In both cases it is essentially because the king's favour is secured to the minister.[2] And this is how the matter is regarded by Walpole's contemporaries. For half a century after 1689 there is no indication that the House of Commons even desires to use its control over legislation and taxation to force the monarch to appoint the minister selected by it. A minister supported by a majority of the House of Commons, such as Walpole, is powerful no doubt, but there is no idea that he is "powerful *against* the sovereign."[3] The sovereign never tries to dismiss him and fails —there is no trial of strength,—but there is no idea that there is anything to prevent his doing so, except his conviction that Walpole does his business better than any one else could do it, gets him the money he wants, etc. And granting that the Minister has his way to a great extent,—that may happen in a despotism. No doubt when the coalition against Walpole has grown strong he can no longer do the king's business; he has to be dropped; but this does not imply any new constraint on the king's choice. "Very far back in our history the Parliament has occasionally dictated to" the king "what Ministers he shall *not* consult."[4] That is a very different thing from taking the choice out of his hands.

[1] Cf. Seeley, *op. cit.* p. 274.

[2] The parallel between Walpole and *e.g.* Richelieu or Mazarin is, however, incomplete, in that the latter did not derive their power from any source but the Crown, whereas Walpole derived his partly from his capacity of managing the House of Commons. I think the *tendency* to parliamentary ministers was established when Parliament became permanent, with the power of the purse. If a king is led to choose his first minister for his capacity of managing Parliament, the step is not great to the position in which he will find it necessary to take the minister whom the leaders of the majority want.

[3] *Op. cit.* p. 276.

[4] *Op. cit.* p. 276.

Still, causes tending to make the minister independent of the sovereign did no doubt begin to operate when the Hanoverian kings came in: though I think, with Seeley, that the first clear indications of the growth of this system appeared in the last fifteen years of George II.'s reign. In any case they are due not to the Revolution, but to "the working of the very peculiar system of party that came in with the House of Hanover." [1] This is, briefly, the system of having the Whigs always in office, which the Hanoverian kings have to accept until, in the course of time, Toryism runs itself clear of Jacobitism. This practically threw the king into the hands of the Whigs: who could, therefore, by holding together, force their choice on him. Thus the Pelhams were forced on him in 1745: probably not from any deep-laid "intention of carrying the Revolution further, and reducing to a lower point the power of the Crown." [2] Still it did have this effect: and it appears that George II. "was conscious of a paralysis creeping upon the monarchy. When some one praised the English constitution in his hearing, he said it was . . . not a good one for the king." [3]

But when we come to George III., there is a revival. In fact, a note in Bluntschli shows that it is the constitution in George III.'s reign that he has in view when he extends his "true idea" of constitutional monarchy even to the English constitution: his mistake is in supposing the Victorian constitution to be practically identical with the Georgian. But English writers often seem to fall into the opposite mistake of representing George III. as struggling against the polity established by the Revolution. George III. has no idea of reviving any of the struggle of James II.: he has no idea of suspending, or dispensing from, or in any way violating or evading the obligation of any law, or of disputing or limiting the legislative power of Parliament. What he struggles against is the new usurpation of the Whig party introduced in 1745, facilitated, as I have said, by the fact that, an important part of the old

[1] Seeley, *op. cit.* p. 278. [2] Cf. *op. cit.* pp. 278-281.
[3] *Op. cit.* p. 283.

royalist party being still actively or passively attached to the Stuarts, George II. could not trust a Tory government.

With George III. this inevitable subserviency to the Whigs ceases: and he struggles on the whole successfully against the "new usurpation" by which the Pelhams were forced on George II. As Seeley says, "Throughout his reign you find him steadily insisting . . . that the minister shall be *his* minister": and "on the whole he is successful. The disturbed period before 1770 ends in the ministry of Lord North, who is emphatically the king's own minister, and who holds office for twelve years; the second short period of disturbance ends in the ministry of the younger Pitt, also agreeable to the king, which lasts eighteen years; and after Pitt's death the other side can only hold office about a year." [1]

It is sometimes supposed that Pitt, having the support of the country, was really independent of the Crown; and that in choosing him the king had in fact put himself under a master. I recommend any one who thinks so to read a paper from which an extract is published by Lord Rosebery—an unimpeachable authority on such a point. It is "an analysis of the House of Commons, dated May 1, 1788, which has been recently discovered among the papers of one of Pitt's private secretaries. In it the 'party of the Crown' is estimated at 185 members. 'This party includes all those who would probably support His Majesty's Government under any minister not peculiarly unpopular.' 'The independent or unconnected members of the House' are calculated at 108; Fox's party at 138; and that of Pitt at 52. Even this unflattering computation is further discounted by the remark that 'of this party, were there a new Parliament and Mr. P. no longer to continue minister, not above twenty would be returned.'" [2] Well, through the powerful influence to which this document gives such striking testimony, "the party that had humiliated his predecessor is held by George III. at arm's length. The

[1] Seeley, *op. cit.* p. 283.
[2] Lord Rosebery's *Pitt*, p. 78.

party of the Pelhams, directed after the retirement of Newcastle by Rockingham and after Rockingham's time by Fox, and known in this reign simply as the Whig party, can only at long intervals during this reign force its way into power. The king will tolerate them for a moment if he sees no alternative, but always under protest. They are not his ministers, and it is his fixed opinion that he has the right to appoint ministers at his pleasure. Accordingly he receives them sullenly, watches them narrowly, and struggles, if he cannot appoint the whole Cabinet, at least to have representatives on it, some Thurlow or Ellenborough. And then he waits for his opportunity, which commonly arrives in about a year, dismisses them, and once more chooses a ministry for himself."

"'For about half a century George III. was able to keep our system at this point. But under George IV. and William IV. the" dependence of the minister on Parliament "grows again rapidly. Canning forces himself on George IV., and if it cannot exactly be said that Earl Grey forced himself on William, it is at least true that the share of the king in his appointment, compared to the share of the people, was as one to a hundred." [1]

§ 4. After the Reform Bill in 1834 the power of appointing the minister is found to have gone. "William IV., tired of the Reform Ministry, seized the opportunity of Lord Althorp being called to the upper house to make, as he said, 'a new arrangement,' dismissed his ministers, and sent for Sir Robert Peel. Then it appeared how our constitution had insensibly altered. The problem proposed to Sir Robert was insoluble. . . . The House did not dispute the king's right to appoint his own minister, they treated that minister with all due respect; still when he unfolded his policy to the House it failed to obtain the approbation of the majority." [2]

It is interesting to note the details of the struggle. There is no suggestion of refusing the supplies: even a

[1] Seeley, *op. cit.* pp. 283-4.
[2] *Op. cit.* pp. 284-5.

motion of Hume's to limit them to three months is dropped: nor is there a motion of want of confidence. What would have happened if Peel had taken the line of confining himself to executive functions and leaving the Houses to legislate, we cannot say with certainty, but probably he would have been forced to resign. However, he thought it necessary to have a policy, that is, to propose legislative measures, to "offer improvements in civil jurisprudence, reform of ecclesiastical law, the settlement of the tithe question in Ireland, the commutation of tithe in England, the removal of any real abuse in the Church, the redress of the grievances of which the Dissenters have any just ground to complain." He thus took up a position which rendered it necessary for him to resign when the majority would not have his policy.

Now what precisely was the alteration that had taken place? Suppose that "a similar appointment had been made in George II.'s reign, . . . in what way would the minister have avoided the same fate"? The answer is that "in the eighteenth century a minister had a majority because he was minister."[1] This was not necessarily by bribery; compare the elder Pitt's speech on the repeal of the Stamp Act—"The gentleman must not tell us that we passed the Act ourselves, and are therefore as much responsible for it as he is. No! we took it on his credit as minister. . . . I wish the House had not this habit: but so it is. Even that chair, Mr. Speaker, looks too often towards St. James's'." But the influence of places and pensions was a solid support of this "habit."[2] The Houses knew that they were responsible for legislation: and Pitt's is here an advocate's speech. To say, as Seeley does, that

[1] Seeley, *op. cit.* p. 285.

[2] Compare Hume, Essay VI., on the *Independency of Parliament* (published 1742), "The Crown has so many offices at its disposal, that, when assisted by the honest and disinterested part of the house, it will always command the resolutions of the whole so far, at least, as to preserve the antient constitution from danger. We may, therefore, give to this influence what name we please; we may call it by the invidious appellations of *corruption* and *dependence*: but some degree and some kind of it are inseparable from the very nature of the constitution, and necessary to the preservation of our mixed government." Compare also Paley (A.D. 1785).

"it had not yet entered the mind of the representatives that they were entrusted with the government of the country"—if in government we include legislation—seems to me a great exaggeration. Still, "they were in the habit of thinking that it was the business of the king to govern the country. When therefore he was pleased through his ministers to explain" that he held certain measures needful for executive government, they considered that they were entitled, as regards their general expediency, to take "them on the king's credit; only they held themselves bound to consider these measures as they affected the people, their constituents." [1]

And this is very near the relation of the Emperor William to the Reichstag; an instance which shows that the maintenance of this form of constitutional monarchy does not necessarily depend on corruption, though actually worked by corruption in England in the eighteenth century. In Germany this is not used. But there are other supports besides parliamentary opinion favourable to the king's free choice:—the idea that, owing to the traditions of the monarchy and the loyalty in the army, the king could, if pressed too hard, defy Parliament and win. The future of this species of constitutional monarchy, apparently firm in Germany, struggling in the Scandinavian States, is an interesting speculation; but prophecy is neither my duty nor my pleasure.

Of the change in England we may recognise several causes. Firstly, there had been a gradual decay of royal influence in George III.'s reign, against which the king had struggled with characteristic firmness, but against which, naturally, George IV. was powerless. The Rockingham Whigs had reduced the Crown patronage, and probably the great growth of the nation in wealth and population had diminished the relative importance of the Court.[2] "In the crowded, commercial, manufacturing England of George IV." members of Parliament "ceased to be courtiers." [3]

[1] Seeley, *op. cit.* p. 287.

[2] Cf. *op. cit.* pp. 288-9.

[3] *Op. cit.* p. 289.

The growth of the legislative business of Parliament was another cause. Thus, when it had become "the main business of a minister to legislate, to legislate not on the succession to the Crown, or on the Pretender, or on tests and abjuration oaths, or other matters in which the king was interested, but on workhouses and factories, and banks and tariffs and navigation laws,—questions on which"[1] the traditions of the Crown did not dispose it to active intervention,—there was a natural tendency for the minister to become the minister of Parliament: to resist which it would have required a monarch quite different from George IV. or even William IV. Again, the personal unpopularity and disreputableness of these sons of George III., especially George IV., were a not unimportant factor in dispelling the element of personal loyalty in the "king's friends" of George III.'s reign. And, finally, the movement of ideas, and the absence of any clear perception of the difference between the later polity and the earlier, facilitated the change. This cannot occur again. If a Hohenzollern monarch submits to take a parliamentary prime minister, he will know what he is doing.

[1] Seeley, *op. cit.* p. 290.

LECTURE XXVIII

CONSTITUTION-MAKING OF THE NINETEENTH CENTURY

§ 1. In preceding lectures we saw how in the formation of the modern state as we agree in conceiving it—especially in contrast with the mediæval state—the first stage was naturally accompanied by the tendency to absolute monarchy which we find in the seventeenth and eighteenth centuries. It appeared to be essential to the modern notion of the state that there should be somewhere a power capable of making laws, and which, accordingly, being the source of law, could not be bound by any laws: and it was essential to the ideal of the modern state—in a normal and not anarchical condition—that this power should be supreme; that it should receive the complete obedience of an overwhelming majority of the citizens, and through their obedience be able to bring the organised force of the community to crush any open resistance of individuals or groups. And I pointed out that the easiest way of arriving at a fairly approximate realisation of this ideal was to establish this power on a monarchical basis, concentrating all supreme authority in the hands of one individual; and that hence we have an important body—both of thinkers and practical men—maintaining from the sixteenth to the eighteenth century that the advantage of order thus obtained, the exclusion of the evils of anarchy, altogether outweighed the admitted drawbacks of absolute monarchy.

Nor was the opinion in favour of absolute monarchy necessarily affected by the progress of ideas which, as I previously said, gradually modernised the king from the old

quasi-feudal conception as having a sort of property in the country. Indeed, even on the very eve of the Revolution in France, in 1787, the keeper of the royal seal affirmed to the judicial body called the *Parlement* of Paris—"The sovereign power in France resides in the king alone: he is responsible to God alone for the use of it: the right of making laws is in his sole hands independent and indivisible." But the keeper of the royal seal had not moved with his times. In the age of Louis XIV. this proposition expressed the overwhelmingly prevalent opinion. But as time went on, and free criticism was developed in France and diffused its influence over other parts of Europe —criticism first of ecclesiastical and then of secular rule— there was, as we have seen, a strong drift of educated opinion the other way. And though we are not, of course, to suppose that this drift of political thought was the only cause of the revolution which led to a new form of polity — I have noticed the specially financial reasons, due to the manner in which France had grown out of feudalism, which importantly co-operated—still, the drift of opinion was, I cannot doubt, a really important factor.

It is to be observed that there are two different kinds of defects in absolute monarchy. It is not only a defect that the supreme power of law-making is in the hands of an individual, who may not use it in the interests of the community: it is a further defect that the *execution* of the laws being under the supreme control of the same person, there is no sufficient guarantee that he will observe even his own laws, if passion or favour urge him to break them. The distinction between the two is important, because, as G. C. Lewis has said, "There is a great difference between deliberate, universal, and avowed, and unpremeditated, particular, and casual rapacity and injustice. Many governments which habitually act towards their subjects in the most oppressive manner would be ashamed to reduce the maxims by which they are in fact guided into the form of a law, and to publish it to their subjects and the whole civilised world." [1]

[1] *Government of Dependencies, Preliminary Inquiry*, p. 30.

Thus, even if the same individual is supreme both in legislation and in the execution of the laws, it would be an important gain to his subjects if he could, at any rate, be relied on to keep his own laws. This leads us to see that, apart from the question of sovereignty, there is an obvious gain in separating legislative from executive and judicial functions in such a way that those who execute the law are as much bound to obey it as those on whom they execute it: and that the question whether they have obeyed it or not may always be brought before impartial judges for decision. And observe, even when sovereignty is placed in the hands of a people—or of an assembly representing the people—this division of functions is no less necessary for the security of minorities. A supreme assembly may be tyrannical no less than an individual: the only sense in which democratic institutions can be strictly called "freer" than a monarchy is that under a monarchy a majority may be oppressed, while under a democracy it can only be a minority.[1]

The general recognition of these truths in the first part of the century of constitution-making that we have just gone through, was mainly due to Montesquieu. He found, as I have said, this separation of powers realised in a striking degree in the British constitution of his time, and his influence caused the eyes of the world to be fixed on it as a pattern. Briefly stated, the chief feature of Montesquieu's eulogy of the British constitution, was that by giving the three functions of government—legislative, executive, and judicial—to differently constituted organs, and, in the main, separate and independent organs, it secured the liberty of the individual from illegal oppression: while, by making an assembly which was representative of the people an essential constituent of the legislature, it approximately secured that no law was passed, and especially no tax imposed, without the approval of at any rate an important part of the people.

In the English constitution of Montesquieu's time, indeed—and for eighty years after the publication of *l'Esprit*

[1] Cf. *Elements of Politics*, chap. xx. § 2.

des Lois—the principle of representation was very imperfectly carried out. But suppose this imperfect representation rectified by an extended and properly distributed suffrage, and we get a constitution in which, if the ideal of popular sovereignty is not completely realised, it is at any rate realised to a considerable extent—though in an indirect way—by the control of the representative assembly over legislation and taxation, and the check exercised on the executive government through the necessity of obtaining supplies from that assembly. At the same time, the independence of the judicature—including the jury—and the strict limitation on the power of the executive to arrest and imprison before trial, secure the reign of law, and the effective protection of the liberty of the individual citizen.

Here we have, summarily stated, the last result of political development in the majority of the states of Western Europe. It is a type varying, as I have pointed out, very widely, and realising the ideal just sketched in varying degrees: England and Germany being the two poles within which the variation, speaking broadly, occurs: and it is not confined to the monarchical form: its most essential features being found in the present government of republican France.[1]

In such a constitution we may say the ideal of Montesquieu and the ideal of Rousseau are both realised to a considerable extent. But I ought to add that Rousseau would have repudiated this view: regarding it as essential that the sovereignty of the people should be directly exercised, and not indirectly through representatives. "The English people," he says, "are only free at the moments of parliamentary elections."[2] I mention this because two modern nations, in which democratic ideas have had fullest development, have taken important steps in the direction of Rousseau's ideal—the United States of America, by constitutions limiting ordinary legislation; Switzerland further,

[1] Cf. my *Elements of Politics*, chap. xxii. § 5.

[2] 'Le peuple Anglais pense être libre, il se trompe fort; il ne l'est que durant l'élection des membres du parlement."—*Contrat Social*, Bk. III. ch. xv.

by the Referendum—reference to all vote-possessing citizens of laws framed by their representatives.

These are both Federal States, and for the present I am only concerned with the constitution-making of what may be called Unitary, as distinct from Federal states. I shall not describe it in detail; that would, in my limits, tend to an unprofitable array of dates and dry summaries. But I may note that France takes the lead, and till the middle of the nineteenth century is at once the most daring in her experiments, and the most widely influential on other states—that is, the party of reform and revolution gets its impulse from France. And even after the series of short-lived constitutional experiments which belong to the revolutionary crisis, the lapse into military despotism, the reaction in Europe against that despotism, and the restoration—compelled by Europe—of the monarchy in France: after all this France again becomes a leading centre of influence in the region of political ideas, in the second quarter of the century, until, after the second republic (1848) has led to the second empire, a general distrust of the French methods of arriving at the desired union of freedom and order spreads through Western Europe: and the third republic (1870–1875), founded on disaster, has hitherto been watched with cold curiosity rather than admiring sympathy by neighbouring nations.

§ 2. The relation of England to the movement has been fundamentally different. As I have said, England supplied the chief pattern for the form of government in which, after struggle and conflict, the change ultimately results, and, as we have had occasion to observe, the English constitution, before it comes to be used as a pattern, has had a place in that movement of ideas of which France is the focus; because an important factor in this movement is the contrast that certain influential French writers—first Voltaire and then Montesquieu—drew between the liberty that they actually saw in England in the middle of the eighteenth century and the absence of liberty in France. Indeed we may say that—under the influence especially of Montes-

quieu—the British constitution was transmuted from a fact into an idea. But the idea thus formed did not exactly represent the fact at the time; and, as we saw in the last lecture, was fundamentally unlike what the fact is now; the ultimate result of our revolution in 1688 was very different from its immediate aim.

The ultimate result has come to be the system of what Bagehot calls "Cabinet Government": in which the executive powers are practically in the hands of a committee of the two Houses of Parliament, selected by their head, the prime minister, who, in his turn, is practically determined —in ordinary cases—by the majority of the House of Commons, which can at any time dismiss him and his colleagues, subject to an appeal to the electorate: he is protected from complete subserviency to the House by the power of dissolution. The power of the hereditary monarch and that of the House of Lords are both of a subordinate kind, though not unimportant. The nobility can check legislation through the House of Lords; but they practically do not claim to resist the House of Commons on the main features of any question on which its opinion is manifestly in stable harmony with the opinion of a decisive majority of the constituencies; they only claim to enforce delay and reconsideration and an appeal to the electorate. The monarch has a right to know everything, to have everything discussed with him, and by means of this discussion can influence critical decisions; also he has the important power of dissolving the House of Commons, and ascertaining whether the Cabinet or the majority of the House of Commons is really supported by the people [1]; but the direction of policy is with the prime minister and Cabinet. All this is admitted in current controversy.

[1] ["That is, the monarch would not act unconstitutionally by dismissing his ministers, even though they had the confidence of a majority in the representative assembly, and appointing others, who would then dissolve the assembly, in hopes of changing the balance of parties in parliament by a new election." See the author's *Elements of Politics*, chap. xxii. p. 439, 2nd edition This chapter may be consulted for a further treatment of the subject of this paragraph and of other parts of this lecture.—ED.]

But, as we saw, this is quite a different form of government from that which the Revolution of 1688 was intended to bring about: and for a long time the process by which it was gradually being brought about was imperfectly apprehended even by acute observers. The Revolution was intended to make Parliament supreme in *legislation*: but it was not intended to give a majority of the House of Commons the power of practically nominating the executive, nor even to enable it to force legislation on the monarch, whose assent was still formally necessary to bills. This is evidently the view of Locke, whose work on civil government was, as I said, considered to give the theory of the Revolution of 1688. The monarch is, for Locke, the real head of the executive, really supreme in administration, and really a member of the complex organ which lays down the laws. Locke's whole point is that he is not supreme in legislation: that his duty is to conform to the law laid down by Parliament: that his suspending or dispensing from such law is a violation of his trust.

And if you look at the official account of the rights of the monarch in Blackstone (A.D. 1765), you will see that he is not only supposed to direct foreign affairs by his "sole prerogative of making war and peace, treaties and alliances," but even in domestic affairs, as a constituent part of the legislature, generalissimo of the army, the fountain of justice and honour, the head of the Church, his range of power is very great. The House of Commons is understood by Blackstone to be able to prevent the abuse of these powers by impeachment of ministers: but no reader of Blackstone would dream that the substance of these powers had passed to a committee selected by a chief practically chosen by a majority of that House; and in fact, as we saw in the last lecture, this change had not been accomplished in Blackstone's time. But what still enabled the monarch to hold the House of Commons balanced was not the power of veto on legislation, which was practically obsolete, but the influence exercised on members of the House by the

Crown, partly through the survival—especially in the Tory party—of an opinion favourable to real monarchical rule, within the law, but largely through the solid inducements of places and pensions. The indispensability of the latter was, as I said, clear to the cool but somewhat cynical observation of Hume, who told the declaimers against corruption that they were attacking the force that maintained the balance of the constitution: and that if corruption were put an end to, the tendency of the English constitution to become a republic must be irresistible.[1] But it was not clear to Montesquieu: the constitution which Montesquieu admires was the constitution officially recognised, not that which was practically working. Its chief merit was supposed to lie in the separation of powers by which the tyrannic preponderance of either, dangerous to individual liberty, was prevented: whereas in Cabinet government, as we now know it, the intimate practical union of legislative and executive functions in a small committee of Parliament, enjoying the confidence of the majority of the House of Commons, is the most marked characteristic. The strong mutual check actually exercised, under the system of Cabinet government, by the legislature on the executive and *vice versa*, is unlike anything conceived by Montesquieu.

This misapprehension is historically important, because it is the British constitution as conceived by Blackstone and Montesquieu which the founders of the American constitution had before them, not exactly as a pattern, but as a type of which they might copy the merits while avoiding the defects: and in fact if we compare the American constitution with our own at various stages, we see that this result has been to a great extent attained. The American president really has the power of veto,[2] which the English king has long only formally retained: the president really does appoint and dismiss his own ministers; the decisions of the executive are really his decisions and not theirs: and in order that he may not use this power to control the House

[1] Hume, *Essay VI.*

[2] Liable, however, to be over-ridden by two-thirds of Congress.

of Representatives or the Senate, his ministers are prevented from sitting in either House.

But in the West European states, in which constitutional government is mostly the product of the nineteenth century, it is the later stage of development—Cabinet government—which has in most cases been adopted: though owing to the want of clear distinction between the two, the power of the monarch has been left somewhat indefinite and varying. In fact, as I have said, constitutional monarchy fluctuates between two types broadly corresponding to what Bluntschli calls "true" and "false," but which it seems more impartial to call German and English (or new English, since the German is very like the old English): one in which the hereditary monarch is really head of the executive, though the consent of the representative assembly is necessary for legislation and taxation; the other in which the main part of the executive power has passed to a Cabinet presided over by the leader of the party holding a majority in the representative assembly.

Observe that, since the difference depends mainly on custom and opinion and not on law, it is not always possible to say to which type a particular polity at a particular time approximates. For if the king's confidence is given to a prime minister who has also the confidence of the country [1] and the support of an assured majority in the representative assembly, there is no clear indication on which side power lies. The question is, what would happen if the monarch tried to dismiss the minister; and that we can only tell when the time comes.[2] The point is not whether at any particular time the monarch is a nonentity and the minister all-powerful: for this is often the case in an absolute monarchy under a weak king. The question is, whether if the monarch wished to dismiss the minister he would find him too strong.

[1] This was the case with William Pitt (the younger) in George III.'s reign, and with Bismarck in Germany in our own time.

[2] Besides, even if this were tried and failed once, it might succeed another time if the opportunity were better taken: thus the balance of power might oscillate.

§ 3. In saying that the English type is the prevalent one, I ignore minor differences which are not unimportant. For instance, there is a difference as to the second chamber, whose continued resistance to legislation approved by the lower house can be overcome in England by the creation of peers, whereas this is not the case in most Continental states. But I do not think that this makes as much practical difference as it might seem to do, since the Continental aristocracies have not much resisting force; the main struggle is between monarchy and democracy.

But speaking broadly, what I have called the English type has been practically imitated in Belgium, which has given for more than sixty years a particularly regular and precise example of the working of the English kind of constitutional monarchy: and in Holland also, since 1848, this type has been adopted. Portugal, after a stormy period in the second quarter of the century, with revolutions backward and forward, has had since 1852 — as I understand — peaceful parliamentary government, in which the principle that the leader of the parliamentary majority is to be prime minister has been practically accepted: and the Sardinian constitution of 1848 — extended between 1860 and 1870 to the rest of Italy — has been also worked on the same principle. The same may be said, since 1876, of Spain — which, however, has had a remarkably disturbed and unstable political development during the first three-quarters of the nineteenth century.

In the Romance countries generally, then, we have parliamentary government unmistakably prevalent, and in all cases, except France, in a monarchical form: the Parliament being constructed everywhere on the two-chamber system, though it is the majority in the representative — or the more directly or simply representative — chamber which is understood to give the indispensable support to the ministers in power.

I say "the representative, or the more directly or simply representative," because in almost all these cases — Italy is the only exception — the members of the senate, or upper

chamber, are appointed in whole or in part by election. The election takes various forms. In Belgium, for the most part, the senators are chosen by the same electors as elect the primary representative chamber, but only a comparatively well-to-do minority are eligible. In Spain, where half the senate is elected, the eligibility is also partly determined by income, but it is also necessary that the senator should have fulfilled some one of a number of functions—civil, military, and professional—of which the holding of a university professorship is one. Here, however, the electors to the senate are not the electors to the house of representatives, but electoral bodies which include, along with others, members of provincial councils. In France the election of senators is similarly given to members or delegates of local governing bodies: but eligibility is unrestricted by income. In Holland, too, provincial governments elect, but eligibility is limited to the comparatively wealthy. In Italy the senators are nominated for life.

I fear these details may be bewildering, but I have given them to bring out two points:—first, that the imitation of the English model does not extend to the House of Lords except, so far as the Romance countries are concerned, in the one case of Spain to a partial extent; secondly, that the schemes of the different nations are very diverse—so diverse that we may perhaps infer that no nation has solved with conspicuous success the problem of constructing a second chamber. Perhaps we may say that there is a tendency to prefer the principle of election by persons themselves elected, especially by elected provincial organs of government. And this principle, in a more decided form, may now be regarded as normally applied in federal legislatures constructed on the two-chamber plan.[1] We find it also—when we turn to the Scandinavian states—in Sweden. In Norway, alone of West European states, the second chamber is elected by and out of the first. But it is noteworthy that in both Sweden and Norway, but specially

[1] [The author did not live to see the establishment of the Australian Commonwealth.—ED.]

Norway, the separation into two chambers is less complete than elsewhere. Thus in Norway the two bodies are united for the final vote on any law on which they disagree; and in Sweden this method is adopted for preventing a deadlock in financial matters.

As regards extent of the franchise, again, the pattern of England has not been followed. England has rather been dragged after the Continental movement than led it; the tendency being almost everywhere in the direction of universal suffrage.

§ 4. On the other hand, there has been a very important imitation of the judicial system of England. First in the jury. Here, however, a distinction has to be taken between civil and criminal trials. So far as I know, outside the United Kingdom the jury in civil trials has only been adopted in Portugal; but in criminal trials it has spread to most West European countries as an important element of the securities for freedom, for which, largely, 'constitutional' government has been demanded.

Also, in varying forms or degrees, the judicial protection afforded amply in England against encroachments by the executive on the liberty of the individual citizen has been more or less imitated. But here we must note a remarkable difference — even diametrical opposition — in the interpretation of the principle of 'separation of powers' in different countries, especially England and France, and it is curious that the two opposite views should both arise from a *bona fide* application of the same principle, and both be in a manner derived from Montesquieu, who was historically the first to draw attention to the fundamental importance of the principle for the security of the private citizen.[1]

The English interpretation of Montesquieu's principle

[1] I may say that Montesquieu's view seems to me quite obscure on the particular point at issue: in fact he does not expressly treat of it in his famous chapter on the British Constitution, Book XI. chap. vi. Also his definitions of 'executive' and 'judicial' are not clear. But his general idea is certainly 'To prevent arbitrary oppression, put the powers of government in different hands.'

I may begin by remarking that much German learning and subtlety has been applied to distinguishing the conception of a "Federal State" (*Bundes-Staat*) from that of a "Confederation of States" (*Staatenbund*). I think that perhaps undue importance has been attached to the aim of getting a clear and sharp distinction. I do not, at any rate, propose to discuss the various possible lines that may be drawn: or determine exactly when communities forming a union designed to be permanent cease to be individually sovereign —especially as federality in Switzerland has a long career before any sovereignty is claimed. It is more important from our point of view to observe that when a federal community is formed by the union of communities previously independent—I shall presently observe that this is not the only way, though it has been the most important way, of introducing federality—the union tends to get closer and the conditions more definite and stable as time goes on; so that the two notions—confederation of states, federal state —represent two stages in the development of federality. Here I will confine myself to the examination of such unions in a comparatively stable condition, to which the term "Federal State" may in a broad sense be applied.

I may begin by pointing out that a federal state is only one kind of composite state. As I said in my *Elements of Politics*,[1] a state including parts that have, from any cause, a high degree of political separateness may be called composite; even if the governments of its parts are controlled regularly by one supreme legislature, so that its constitution still remains formally unitary. If a state thus constituted is under popular government, and its supreme legislature is elected only by, or consists only of, the citizens who reside in a portion of its territory, the other parts of the state are commonly said to be "dependencies" of the portion to which the legislature is formally responsible: and a similar difference may practically exist under other forms of government, although the formal constitutional rights of the great majority of the inhabitants may be the same throughout

[1] Cf. *Elements of Politics*, ch. xxvi. § 1.

the territory of the state. For example, under absolute monarchy, though no part of the state can be formally a dependency of any other part, it may be so practically; the monarch may choose his leading subordinates exclusively or mainly from a portion of his dominions, and be practically under the exclusive influence of its public opinion. This position of dependence, whether formal or only practical, is calculated to cause discontent: and it is not likely to be permanently acquiesced in by communities habituated to popular government and feeling themselves on a level in civilisation with the dominant community; unless, indeed, they are very unequal in size, or unless their exclusion from political rights is compensated by economic advantages, which, again, will be likely to excite the jealousy of the inhabitants of the dominant portion of the state. Hence, unless one portion of such a composite state is overwhelmingly superior in size and strength, there will be a tendency to an approximate equalisation of political privileges among the parts; and if at the same time there is a general desire to secure the political separateness of the parts as well as their union in the larger whole, there will be a further tendency to demand that the division of functions between the government of the whole and the government of the parts shall be determined by a constitution which the common legislature of the whole is not competent to change—at any rate by the ordinary process of legislation.

These, I think, are essential characteristics of the modern idea of a federal state:—a whole made up of parts, with approximate equality of political position among the parts, and a clear and precise as well as balanced and stable constitutional division of governmental functions between the government of the whole and the government of the parts. Historically, however, this latter characteristic is attained *late*: in the leading instances of historical federations, we find for a long time no such clear and precise constitutional division of powers, although practically the parts retain their independence, while effectively united in a whole. A certain balance of power is therefore more

essential than clearness and precision in the division of power. But, no doubt, if there is no such clear division there seems an obvious danger of friction and conflict between the governments of the parts and the government of the whole, and a difficulty of maintaining the balance of power which is characteristic of a federal state. In the nineteenth century, therefore, when constitutional ideas are well developed, the maintenance of this division naturally carries with it some distinction between the ordinary central legislature, that makes laws on the matters not reserved to the part-states according to the constitutional division of powers—and the extraordinary legislature, as Austin calls it, that has the power of altering the fundamental constitution. This distinction may exist in a unitary state, but it is a natural security of an orderly and harmonious federal constitution.

From this comes a curiously mingled result as regards the stability of a federal state. On the one hand, the greater independence of the parts tends to make it less coherent than a unitary state: so that if discord arises the parts break off more easily and smoothly, so to say. This was illustrated by the civil war in North America (1861–1864). If the United States had been a unitary state, with slavery in one part, there might no doubt have been a civil war: but the rebels could hardly have cut themselves adrift in solid aggregates, in the apparently orderly and business-like way in which the Southern States voted themselves out of the Union one after another, while the Northern States looked on. On the other hand, so long as disorder and disruption are prevented, the constitution tends to be unusually stable: as again is illustrated by the United States, where the consent of three-fourths of the federated states is required for a change in the constitution—which has practically prevented almost any change for a hundred years, except the momentous change in enfranchising the negroes, due to the civil war.

The division of functions between the common government of the whole and the separate governments of the

parts naturally varies. The general idea is that the federation is to be a whole for external relations, while each part is to be independent in internal affairs. But (1) this principle does not settle how matters external to the parts but internal to the whole are to be determined—that is, matters that concern the relations of the parts as, for instance, free trade among them. And (2) some matters *prima facie* internal to the parts may expediently be left to the government of the whole, on account of the mischief or inconvenience that would be caused by want of uniformity. To this class belong (*e.g.*) the regulation of currency, bankruptcy, patents and generally commercial law, criminal law, etc. Matters belonging to both these classes are to a considerable though varying extent left, in modern federal states, to the common government.

§ 5. Let us now consider the conditions under which the federal form of polity is suitable and naturally tends to arise. Of these by far the most important—throughout the period of history that we have traced until comparatively recent times, and even now more important than any other—is the need of strength in external relations. Where there are adjacent communities, anxious to preserve a real independence, but afraid of proving too weak in isolation to hold their own with powerful states in their neighbourhood, a federal union is an obvious resource. This, as we saw, is exemplified by the part played by federalism throughout Greek history: and it is no less exemplified by the various—either abortive or successful—attempts at federal union which appear in later medieval and early modern history.

Thus, to refer to instances above given, the league of the "Hanse" towns of Northern Germany was formed to maintain their commercial interests, and so was the league of the cities of the Rhine; the more permanent federal union of the Swiss cantons originated in the effort of small peasant communities of mountaineers to maintain their independence; and the union of the provinces of Holland was formed in the terrible heroic struggle against the persecuting

armies of Spain in the last quarter of the sixteenth century. In all these cases it is clear that nothing but the need of greater strength in external relations would have brought about a union of so durable a kind among the federating communities. Hence the varied efforts of partial federation which distinguish the Romano-Germanic Empire from the thirteenth century onward are largely due to the weakness of the central government.

Even in the more recent case of the United States of America, this motive seems to have been on the whole the decisive one in overcoming the mutual jealousies and love of independence of the originally separate colonies of England who threw off the yoke of the mother-country. In the case, however, of the United States, though the first federal union was due to the War of Independence, commercial considerations seem to have had an important share in bringing about the second and more stable union of 1789. And considerations of this kind are likely to be important in the future, so long as states endeavour by elaborately arranged tariffs to exclude or hamper the competition of foreign producers in their markets: it will generally be an advantage to the aggregate of the members of a large state that they enjoy a comparatively large area of unrestricted trade—assuming that internal trade *is* unrestricted. When the case of the United States is quoted as an instance of the prosperity derived from protection, it is a fair answer that the United States present the largest area of unrestricted free trade that the world has yet seen.

§ 6. I now turn to the aspect of federalism—in which it presents itself as more in harmony with the ideal of modern democracy than a unitary polity—as a means of realising the maximum of liberty compatible with order.

The doctrine of popular sovereignty as spread by Rousseau was cosmopolitan, and the theoretical determination of the limits of the sovereign people, when once Rousseau's idea of direct democracy is abandoned, was left somewhat obscure. So when, immediately after the great crisis of change in France, the revolutionary propaganda was com-

menced from France as centre, it easily blended with the old desire for national aggrandisement; and thus the transition from the enthusiastic issue in the name of republican theory of a charter of liberties to Europe, to the Napoleonic efforts to establish France in an imperial position in Europe, was not a sharp or abrupt transition. The movement of "nationality"—as characteristic of the nineteenth century as constitution-making—was as much a reaction against, as a continuation of, the French revolutionary movement: and the clear apprehension of the danger of a "tyranny of the majority"—which Rousseau had overlooked—on which writers like Tocqueville laid stress, drew attention to the important guarantee of liberty furnished by local self-government.

There are, no doubt, important considerations on the other side: and it may be observed that they grow stronger, the more highly civilised and densely populated a country becomes. Average statesmanship must be expected to be less enlightened in local legislatures, and the danger of mischievous legislation in the interest of a predominant class is greater—since such predominance has many more chances in one or other of a number of districts than in the whole country. But what I am concerned to point out now is that we have here, as I before noticed, another way—distinct from union of communities previously independent—in which, in modern times, federality has come to be developed: namely by the establishment of secured local liberties, mainly under the influence of the sentiment of nationality, in states that were previously of the unitary type. It may be observed that such states have often had a kind of federality, only obscured by the predominance of the monarchical common government. The formation of states, in the feudal period and that of transition from feudalism, by marriage of hereditary lords with heiresses, naturally tended to this. Austria is a conspicuous surviving instance, but many other states were in this condition, only the decay of medieval representative institutions and the development of monarchical power gradually obliterated federality.

§ 7. The future of constitutional monarchy I was unwilling to prophesy: but I feel more disposed to predict a development of federality, partly from the operation of the democratic tendency just noticed, partly from the tendency shown throughout the history of civilisation to form continually larger political societies—as Spencer would say, to "integration"—which seems to accompany the growth of civilisation. This tendency we traced in the early history of the Græco-Italian city-states; Rome and Athens were obviously formed by the aggregation of elements between which a state of hostility had previously existed. We noticed also that the history of the German tribes showed them gradually combining in larger and larger aggregates. And especially we noticed how, in the third century B.C., after the Greek cities had been for forty years tossed helpless in the strife among the successors of Alexander—against whose armies they were, from mere size, unable effectively to contend—the revival and extension of the Achæan league, uniting several important city-states into one body with the old, comparatively insignificant Achæan towns, gave them a brief interval of real independence. We have seen the same tendency in recent times in the formation of Germany and Italy: and we have in North America an impressive example of a political society maintaining internal peace over a region larger than Western Europe. I therefore think it not beyond the limits of a sober forecast to conjecture that some further integration may take place in the West European states: and if it should take place, it seems probable that the example of America will be followed, and that the new political aggregate will be formed on the basis of a federal polity.[1]

When we turn our gaze from the past to the future, an extension of federalism seems to me the most probable of the political prophecies relative to the form of government.

[1] Cf. *Elements of Politics*, ch. xiv. § 1.

APPENDIX

NOTE A—to page 80

DECLINE IN THE NUMBER OF SPARTANS

THE decline in the number of Spartans is phenomenal. Herodotus (vii. 234) reckons about 8000 Spartans when Thermopylae was fought (480 B.C.); Gilbert (*Griechischen Staatsalterthümer*, vol. i. p. 41, 2nd ed.) calculates that there were hardly more than 1500 in 371 B.C.; Aristotle, "not even 1000" in say 330–322 B.C.; Plutarch (*Ag.* 5), only 700 in 243 B.C., of whom 100 only γῆν κεκτημένοι καὶ κλῆρον, the rest ὁ δ' ἄλλος ὄχλος ἄπορος καὶ ἄτιμος ἐν τῇ πόλει παρεκάθητο. On this it is to be remarked that (1) the remarkable decline in Spartan population is in the years 480 to 371, and (2) the remarkable decline in fully qualified citizens is in the years 330 to 243, because one may infer from the language of Aristotle that the exclusion on the ground of poverty had not gone very far. If so, the law of Epitadeus cannot be the explanation of (1) unless Epitadeus lived earlier than Plutarch thinks (*Ag.* 5). I am disposed to agree with Curtius (Bk. II. ch. i.) that citizenship was granted to trained non-citizens—sometimes illegitimate children of Spartans, sometimes μόθακες (cf. Phylarch, *ap.* Ath. vi. 271 E), *i.e.* Helots or strangers (ξένοι τῶν τροφίμων, Xen. *Hell.* v. iii. 9) brought up and educated with Spartans. I think the numbers were kept up in this way by adoption with the king's approval. But the mere cessation of this will hardly explain the paucity of Spartans in the Peloponnesian war compared with Thermopylae. Is it possible that the class afterwards called νεοδαμώδεις were confounded by Herodotus with Spartans, and served along with them; and that afterwards the separation was made more strict?

Busolt (*Griechischen Staatsalterthümer*, § 101) attributes the rapid depopulation of Sparta (1) partly to the losses in the con-

tinual wars, (2) partly to "das gestörte Familienleben und die Üppigkeit." But (1) from Lycurgus to the Persian war the Spartans had had as much fighting; (2) this cause could hardly operate much in the fourth century, according to Busolt's account of its causes and operation, and the great decline is from 480 to 371 B.C. Busolt, however, holds, without, I think, adequate grounds, that there were 6000 Spartans at Mantinea in 418 B.C. (*op. cit.* § 98). This would surely make the depopulation from B.C. 418 to 371 quite inexplicable.

NOTE B—to page 84

CAVALRY AND OLIGARCHY

I think we must take Aristotle's generalisation about "the first polity after the kings being ἐκ τῶν ἱππέων" (Pol. vi. (iv.) 13) as having a substantial and general value as a historical generalisation, rather than as being formally and universally true. It may have been true that the ἱππεῖς in many states were coextensive with the members of the general assembly, and that this had some political functions. But in the only case in which we hear definitely of such a constitution—Kyme in Aeolis—it is not the original constitution but an enlargement. There is no reason to suppose that the oligarchy—or group of oligarchies—in Thessaly, which seems to have lasted an indefinite time under the probably slight control of the common king—was an oligarchy of this kind: or that the Thessalian cavalry consisted entirely of persons who had, as such, political rights. In the fourth century Demosthenes (κατ' Ἀριστ. 687 and περὶ Συνταξ. 173) speaks of Menon of Pharsalus joining an army with 200 or 300 "ἱππεῦσι, πενέσταις ἰδίοις," and I do not see why the cavalry of the fifth century or earlier should not have been largely constituted in this way.

NOTE C—to page 89

EARLY OLIGARCHY AND TRADE

There is a danger of antedating the sentiment against traders. I see no adequate evidence that it was felt in the times of early aristocracy or oligarchy.

In the Odyssey (i. 180) the character assumed by Athena is that of a "ruler of the oar-loving Taphians" sailing on a mercantile expedition "to Temese to purchase brass, carrying bright iron as his freight." This passage seems to me to have more importance than the expression of contempt for merchants as unathletic in Od. viii. 156. Again, Sappho's brother, who appears to have been of good family, carried wine as a merchant from Lesbos to Naucratis (Strabo xvii. 808). Solon, again, is not represented as having lost caste by taking to commerce (Plut. *Sol.* ii.).

Certainly in what we hear of the great Euboean cities in the eighth and seventh centuries there is no sign of any such jealousy between commercial and agricultural wealth. After they have been colonising and commercial for nearly a century, under the Hippobotae, Chalcis fights with Eretria in an antique chivalrous manner about a fertile plain. So again in Megara—after more than a century of commercial enterprise, in which Megara has been competing somewhat with Corinth in Sicily and more effectually with Miletus for the trade of the Euxine, and founding successful colonies in both places, especially in the Propontis—we find that about 630 B.C. the disturbance which gives the opportunity for Tyrannis is a quarrel about the encroachments of the rich on public pasture-land (Ar. *Pol.* VIII. (v.) ch. v.). A century later the jealousy of "new wealth" is bitterly expressed by Theognis, but this is after the Tyrannis: and the bitterness is directed against low-born people, not against traders as such.

It is noteworthy that in the disputes between debtors and creditors, of which we catch a glimpse in Athens as leading to the Solonian legislation, and in Megara not long afterwards (Plut. *Quaest. Graec.* 18), there is no hint that the creditors are a different class from the wealthy landowners of old family: the whole account (Plut. *Sol.* cf. also 'Aθ. πολ.) suggests that it was these ἀρχαιόπλουτοι—at any rate no less than any *nouveaux riches* who had acquired land—who oppressed the poor farmer. I agree with Busolt (*Staatsalterthümer*, § 34) that all this conflict was probably, partly at least, due to the change from "Naturalwirthschaft" to "Geldwirthschaft," when the coining of gold and silver came in about the beginning of the seventh century; and doubtless one consequence of this was the intrusion of new wealth into the circle of old families—the barter of wealth for birth in marriage which causes the bitter complaint of Theognis that "men take care of race in their horses but not in their wives, and that women are as bad." (Theog. Eleg. 34. This

indicates, by the way, a somewhat unexpected freedom of matrimonial choice on the part of women in Megara). The changes such as those in the Solonian constitution by which wealth and not old family was made the ground of the fullest political privileges would also be a consequence.

We may note that the exclusion of handicrafts and retail trades does not imply exclusion of merchants. For instance, the practice in Thebes (Ar. *Pol.* VII. (VI.) ch. vii.) that political privileges were only given ἀποσχομένοις χρόνον τινὰ τῶν βαναύσων ἔργων, would not, I conceive, apply to large commerce.

These abstainers for a time from mean employ-

NOTE D—to page 94

PRIORITY OF GREEK COLONIES IN CIVILISATION

Nothing is more remarkable than the priority of the Greek colonies in civilisation. For instance, philosophy remains for two centuries colonial: it begins and for some time is concentrated in Asia Minor, then the historic interest of it passes, in the main, to Italy and Sicily. It is not till near the middle of the fifth century, in the predominance of Athens after the Persian war, that it finds its natural home there.

This priority of civilisation is doubtless partly due to greater natural advantages, namely:—(1) fertility of soil, notably in Italy (Magna Graecia), where, consequently, the wealth and luxury of Sybaris in the sixth century became and remains proverbial; and (2) greater power of expansion: the natives being in too low a state of civilisation to be formidable—at least for the first two centuries, from 735 B.C., when colonisation mainly begins, to the end of the sixth century. (Afterwards Samnites, Lucanians, Bruttians, become more formidable in war, and restrict the Italic Greeks to the coast). Probably moreover, colonies then, as now, tended to contain a larger proportion of the energy and enterprise of the mother-state: and to start with political institutions free from certain elements of antiquity that impeded progress. Their danger would be that, cut adrift from old political habits, their progress would be rapid, but lead to less stable and satisfactory results. And this seems to be the case—comparing Athens (*e.g.*) with Syracuse.

NOTE E—to page 183

CONTRADICTION BETWEEN *JUS GENTIUM* AND *JUS NATURAE* RESPECTING SLAVERY

Slavery, says Florentinus, "is a *constitutio* of the *jus gentium* by which a man is subjected to the mastery of another *contra naturam*" (*Dig.* i. 5, 4)—"contrary to *jus naturae*," is said still more explicitly in the Justinian *Institutes* (I. iii. 2).

The placid recognition by the jurists of contrariety between the *jus naturae* and institutions universal in the actual communities which they knew is rather remarkable, considering the strong language in which the Stoics and Cicero and even later jurisconsults affirm the immutable validity of the law of nature, being as they conceive it the law of eternal reason. It was actually a charge brought by Plutarch against the Stoics that they recognised no validity in any positive laws of any states except so far as identical with the true law of nature and reason —and certainly Cicero's phrases about the Law of Nature bear this out. But it is more surprising to find Gaius (*Dig.* vii. 5) saying that an argument of natural right (*naturalis ratio*) cannot be affected by the *auctoritas senatus*, and that "no consideration of civil right can affect the force of natural right" (*Dig.* iv. 5, 8); and Celsus affirming that "no law can render legitimate what nature forbids" (*Dig.* l. 17).

NOTE F—to page 280

GRADUAL RESTRICTION OF THE POWER OF THE DOGE

Venice—like Sparta in the earlier evolution of city-states—is interesting to the modern student of politics, because it shows the gradual reduction of monarchical power. For though the Venetian Doge was elective—and not elective in one family —he was, as Sismondi says, (vol. III. ch. XX.), irremovable, supreme judge, general of all the forces of the state, honoured with ceremonial of something like oriental magnificence, and often authorised to transmit his dignity to his children. Hence the gradual process by which his powers were restricted may be called a process from monarchy to oligarchy.

After the first appointment of a Duke or Doge in A.D. 697 there were three Doges and then the dukedom was abolished

and a yearly presidency tried: but this was found inadequate, and in A.D. 747 the Doge was returned to. During the next three centuries the Doges struggle for heredity but unsuccessfully. Then, as Sismondi tells us, in A.D. 1032, two counsellors were given him, whose assent was requisite to any governmental action: he was prohibited from sharing his power with a son, and obliged to take counsel, on important occasions, with leading citizens "invited" (*pregadi*) to advise him. A hundred and forty years later—without abolishing the general assemblies of the people, which continued to be summoned on important occasions until the fourteenth century—an annual council of 480 citizens was formed, to which were entrusted all the powers not exercised by the Doge, and, jointly with him, the sovereignty of the republic. But in the case of this council, as in other Italian elections, the choice was not directly made by the people. Twelve tribunes—two from each quarter—had each to select forty members of the council, being prohibited from choosing more than four of one family. These tribunes, in the twelfth century, seem to have been elected by the people; afterwards the election fell into the hands of the council, which then further claimed the right of confirming or rejecting the selection made by the tribunes, before resigning its annual office. Thus in the thirteenth century, the annually elected — apparently representative — council had become a practically co-optative body. The Venetian nobles, however, were kept from the ordinary ὕβρις of oligarchs, between the Doge on the one hand, and the people on the other: since, in any struggle of physical force with the people, they could count on no advantage similar to that possessed by the Lombard nobles when it came to fighting in the plain. Hence, whereas elsewhere in Italian cities the administration of justice against nobles is a matter of such difficulty that it has to be placed in the hands of a single man armed with dangerous power, in Venice, on the contrary, in A.D. 1179, criminal justice is taken away from the Doge, and entrusted to a "*quarantia vecchia*" composed of forty members of the Great Council.

Then in A.D. 1229, the council of *pregadi*—corresponding to the *consiglio di credenza* elsewhere—was fixed in number at sixty, and made elective by the Grand Council, to which it became "probouleutic," having for its special charge the supervision of trade and foreign affairs. At the same time were appointed five *correttori della promissione ducale* and three *inquisitori del doge defunto*. The duty of the latter was to examine complaints of his conduct, and in case of condemnation, to exact reparation from his heirs. The industry of the "correctors of the ducal

oath " led to a large collection of *promissioni ducali* from A.D. 1240 onward, continued during the thirteenth century. The " promise," as Sismondi says, comes to be a resignation of sovereign rights. The Doge promises not only to observe the laws and execute the decrees of the councils, but not to correspond with foreign powers; not to open letters addressed to him by his subjects, except in the presence of one of his councillors; to hold no property outside the state of Venice; not to intervene in any judgment either of right or in fact; never to try to increase his power in the state; never to let any of his relations hold from him any office civil, military, or ecclesiastical, within the republic or outside; never to let a citizen kiss his hand or kneel before him. This list is oddly unlike the retention of show without substance, which usually characterises the transition to oligarchy under monarchical forms. The explanation doubtless is that after all the Venetians did not want the Doge to become a mere ceremonial and symbol.

NOTE G—to page 392

ROUSSEAU'S VIEW OF THE GENERAL WILL

We must distinguish according to Rousseau (*Contrat Social*, bk. II. chap. iii.) between *la volonté de tous*—which is a *somme de volontés particulières* and has regard to private interests—and *la volonté générale*, which concerns only *l'intérêt commun;* but if we strike out of account the mutually neutralising elements in the will of individuals, what remains will be the *volonté générale*. The *volonté générale* alone can legitimately guide the forces of the state according to the end of the institution, which is *ce qu'il y a de commun dans les différents intérêts* (bk. II. chap. i.). But for this will to be really general, it must express itself in laws which *obligent ou favorisent également tous les citoyens;* not in privileges or decisions directed to particular cases (bk. II. chap. iv.). Rousseau's mistake lies (1) in not seeing that the decision of an aggregate must actually be the decision of the majority; and (2) that a law cannot be certain to affect all equally, unless they are absolutely similar in condition and circumstances.

In book IV. chap. i., he explains that in a well-constituted state, in which *plusieurs hommes réunis se considérent comme un seul corps*, legislation is a simple matter: *le bien commun se montre partout avec évidence et ne demande que du bon sens pour être aperçu.* But when *les intérêts particuliers commencent à se faire sentir et les*

petites sociétés à influer sur la grande, the *volonté générale* is not destroyed or corrupted, but subordinated: *elle est toujours constante, inaltérable et pure*, but individuals prefer their private interests to the general. Even the bribed voter has in him unextinguished the *volonté générale ;* but what he expresses is a *volonté particulière.* His vote answers a wrong question—not "whether it is important to the state," but "whether it is important to me and my party," etc. *La loi de l'ordre public dans les assemblées est . . . de faire que la volonté générale soit toujours interrogée et qu'elle reponde toujours.* We may remark on this that it seems surprising that Rousseau could think that the end he has in view could be attained by any *loi d'ordre public.* The real difficulty lies in the opposition between sectional interests. And further it is a psychological error to suppose that the abstract distinction which Rousseau draws between the *volonté particulière* and the *volonté générale* is actually realised in the minds of individuals. The commoner case is that the individual's perception of the common interest is really perverted by his strong desire of his own.

INDEX

Achaea, 63, 64, 72, 80, 94; Achaean League, 88, 119, 134 *seq.*
Aesymnetes, 90, 130
Aids (feudal), (see *Taxation*)
Alexander, limits to his powers, 38; liberator of Ionian cities, 101
America, United States of, 168, 319; their constitution, 418; federalism of, 430, 435, 437
Anne, Queen, 403
Aragon, 309, 337
Arcadia, 72, 91, 92, 94, 101, 137, 138
Archons at Athens, 73 *seq.*
Areopagus, council of, 104
Argos, 72, 80, 94, 112, 117, 137
Aristocracy, aristocratic; in Aristotle's classification, 110; in ideal states, 123, 126, 127; Roman, 151; feudal, 205 *seq.*; in France before Revolution, 385 *seq.* (see *Oligarchy*)
Aristophanes, 115
Aristotle; on Carthage, 12 (note); his idea of state as *city*, 68, 125; on oligarchy and democracy in Sparta, 79 *seq.*; on Crete, 80; on cavalry and oligarchy, 84, 442; on tyrannis, 88; on Aesymnetes, 90; on democracy and on duration of governments, 101; on oligarchies, 102; on democracies, 105; his classification of governments, 107 *seq.*; his ideal state, 120 *seq.*, 347; his practical ideal, 127 *seq.*; on monarchy, 129 *seq.*, 188; his analysis applied to Rome, 142 *seq.*; influence on Christian conceptions of government, 230; silent on taxation, 302
Arti (see *Crafts*)
Artisans; Greek, 123, 125; medieval (see *Crafts*)
Ashley, Professor, on craft-gilds, 251 *seq.*
Assembly, primitive, 29 *seq.*; early Greek, 75, 76, 80 *seq.*; Spartan, 77 *seq.*; in oligarchies, 102; Athenian, payment for attendance in, 104; its functions, etc., 105; of Achaean League, 139; different kinds in Rome, 143 *seq.* (see *Estates*, *Parliamentary Government*)
Athens, imitated, 23; as a type, 61, 103; early changes, 73, 75; formed by integration, 82; favours democracies, 97, 99; constitution of, 103 *seq.*; law-making in, 106, 175, 176; religion in, 219 *seq.*
Augustus, 166 *seq.*, 184 *seq.*
Austria, 318; federation of, 427 *seq.*, 438

"Babylonian captivity," the, 231
Basileus (see *Monarchy*)
Bishops in medieval states, 224, 267
Blackstone, 371 (note); 417 *seq.*
Bluntschli, 320 *seq.*, 397 *seq.*, 419
Bodin, 328
Bolingbroke, 369 *seq.*
Boniface VIII., 227
Boule (see *Council*)
Brienne, Walter de, in Florence, 298
Buoni Uomini in Florence, 289 *seq.*

Cabinet Government, 361, 416 (see *Ministers*)
Cæsar on early Germans, 32, 45
Capitano del Popolo, 288 *seq.*
Castellani in Italy, 270 *seq.*, 288
Castile, 309, 310, 337
Catalonia, 337
Cavalry, 84, 289, 442
Chalcis, a commercial centre, 72, 85; Hippobotae in, 75, App. 443
Charles the Great, empire of, 192, 209, 224, 245, 317
Charles VIII. of France, 279
Christianity (see *Church*)
Church in relation to State, 7, 170, 196, 216, 220, 222 *seq.*; early Christian, 221; its influence in favour of and against monarchy, 193, 330 *seq.*;

relation to cities in Germany, 246; in Italy, 261, 267 *seq.* (see *Theocracy*)
Ciompi, revolution of the, 300
Cities, Greek, 75-141 *passim*; medieval in general, 232-243; English, 237 *seq.*, French, 242, 243, 307; Spanish, 241; German, 244-258; Lombard, 259-276; Italian and Greek compared, 277-285; Tuscan (especially Florence), 286-301; their representation in assemblies, 302-315 *passim*
City-State distinguished from Country-State, 66 *seq.*, 134, 148, 186 *seq.*, 194 *seq.*, 278
Cives sine suffragio, 153
Cleisthenes of Athens, 104
Clergy (see *Church*)
Climate as affecting political development, 13, 14
Code, codifier, 89 *seq.*, 177
Colonies, Greek, 60, 81, 87, 93, 94, App. 444; Roman, 151 *seq.*
Comitia curiata, 145; *centuriata*, 143 *seq.*
Commons, House of (see *Parliament*)
Compact (see *Social Compact*)
Concilium plebis, 144
Constance, Treaty of, 270
Constantine, Emperor, 187, 222; donation of, 229
"Constitutional Government" (Polity) in Aristotle's system, 110, 127 *seq.*; modern (see *Parliamentary Government*)
Consuls, Roman, 160 *seq.*; medieval municipal, 243, 268, 287; of *arti*, 292, 297
Corinth, a commercial and colonising state, 72, 85; tyrants of, 96, 97, 133, 138
Cortes (see *Estates*)
Council (*Boule*) of 500 at Athens, 105; of Achaean League, 139 (note); of medieval cities, from 232 *passim*
Country State distinguished from City-State, 66 *seq.*, 134, 148, 186 *seq.*, 194 *seq.*, 278
Crafts and craft-gilds, 208 *seq.*, 250, 251 *seq.*, 281, 287, 288, 290 *seq.*, 297, 299
Crete, constitutions of, 80 *seq.*
Croatia, 428
Crown (see *Monarchy*)
Curiae, the Roman, 50
Cyclopean family, 54
Cypselos of Corinth, 96

Dante, 228
Democracy, democratic: in Greek States, 62 *seq.*, 100-119, 120 *seq.*; in Aristotle's ideal state, 126; in medieval towns, 240, 253 *seq.*, 260, 283, 300 *seq.*; in medieval assemblies, 304; movement to federalism, 439 (see *England*, *France*, etc.)
Denmark, feudalism extending to, 211; *coup d'état* in, 189, 310, 322
Despotism (see *Monarchy* and *Tyranny*)
Dicey, Mr. A. V., 423
Diocletian, Emperor, 187
Divine right of kings, 368
Dorians, results of their conquest, 81 (see also *Sparta*)
Droit administratif, 442 *seq.*

Empire, beginning of, in Rome, 165 *seq.*; Roman, 184 *seq.*; Eastern, 261 *seq.* (see *Rome*; *Holy Roman Empire*)
England, feudalism in, 206, 211; early monarchy in, 212; cities in, 237 *seq.*, 306; parliamentary development in, 310 *seq.*, 341 *seq.*; nobility of, 312; Montesquieu on its constitution, 375 *seq.*, 413; its constitutional development since 1688, 395-410; constitutional type for nineteenth century, 415 *seq.*
Ephialtes, 104
Ephors in Sparta, 78 *seq.*
Estates, Assemblies of, 302 *seq.*, 327
Ethnos distinguished from *polis*, 135
Exarch of Ravenna, 262
Executive, in relation to legislative and judicial, 171, 376 *seq.*, 413 *seq.*; in England, 396 *seq.* (see *Ministers*)

False Decretals, the, 229
Federalism in Greece, 119, 134 *seq.*; modern, 426-439; modern tendencies to, 439
Feudalism, 195, 201, 202-216; in relation to Assemblies of Estates, 304; in England, 311 *seq.*; decline of, in France, 383 *seq.*
Filmer, controversy with Locke, 44
Florence, 265; polity of, 286-301
France, municipal development in, 242; estates (general and provincial) of, 306 *seq.*, 337; part of, in European changes, 395; later constitutions of, 397, 415, 438
Franchise, Roman, 147; in nineteenth century, 422
Frankish monarchy, 199 *seq.*, 204 (note)
Frederick Barbarossa, 270, 288
Freeman, E. A., on primitive polity,

15, 29, 30, 76 (note); on imitation in politics, 21 (note); on Homeric polity, 35; on Achaean League, 137 *seq.*; on city communities, 244, 260

Gelo of Syracuse, 97
Genoa, 264
Gens, the Roman, 49, 57 *seq.*
George I., II., III. (see *Monarchy, Hanoverian*)
Germany, earliest polity, 33 *seq.*, 45, 66, 67; kingdom of, in relation to Empire, 196 *seq.*; cities of, 235 *seq.*, 244-258; estates of, 305 *seq.*, 335; Roman law in, 335. 336; constitution of, compared with English, 400 *seq.*, 419; federalism of, 427
Gervinus quoted, 7 (note)
Ghibelins, 278, 281 *seq.*, 288, 290, 300
Gilds (see *Crafts*)
Gladstone on Homeric polity, 35
Gonfalonier of Justice in Florence, 295 *seq.*
Gracchi, Tib. and C., 150, 153, 154, 158, 163
Græco-Roman politics, how differing from modern, 7
Gregory VII. (see *Hildebrand*)
Grote, on Homeric polity, 35; on origin of Greek oligarchy, 71 *seq.*; on Xenophon, 112
Grotius, 359
Guelfs, 278, 281 *seq.*, 288 *seq.*, 297, 300
Guizot on Third Estate, 307

Hadrian, Emperor, 185
Hanseatic League, 236, 249, 256, 305, 431, 436 *seq.*
Helots in Sparta, 76 *seq.*, 207 (note)
Henry IV., Emperor, 227, 248
Herodotus on number of Spartan warriors, 76, and App. 441; on Spartan kings, 77 (note); on Periander and Thrasybulus, 96; on democracy of Mantinea, 103 (note)
Hildebrand, 225 *seq.*, 332
Hindoo family, 55
History, its unity, its relation to ultimate ends, 4; to practical politics, 5, 6; as furnishing analogies, 6, 7
Hobbes, 210, 329, 349-367 *passim*, 389 *seq.*
Holland (United Netherlands), 340, 341; federation of, 432
Holy Roman Empire and Romano-Germanic Empire, 196 *seq.*, 225, 235, 256, 267, 317, 318, 325, 336, 431
Homer, Homeric; his descriptions how far historic, 31, 32; polity, 34 *seq.*, 65, 75, 83, 173
Hungary, 427 *seq.*
Hutcheson, 368

Iceland, constitution of, 46
Ideal states, 120 *seq.*
Imitation affecting polity, 20 *seq.*
Industry, mechanic (see *Cities, Mediæval*)
Innocent III., 227 *seq.*
Integration, Aggregation; forming polities, 44 *seq.*, 82, 85, 92, 131, 135, 439
Isocrates on democracy, 112, 117, 120
Italy, medieval cities in, 236 *seq.*, 259 *seq.*; constitution of, 420, 421; unity of, 439

Janet, 372
Jews, their theocracy, 221
Judicature (Judicial, Judge, Jury, Justice) in earliest polities, 40, 59, 173; in Athens, 106; feudal, 207, 208, 213, 225, 243; in England before and after the Conquest, 212, 214, 312; independence of, 376, 413, 414, 422 *seq.*
Jus civile, 180
Jus gentium, 179 *seq.*; App. 445
Jus naturale (see *Nature, Law of*)
Justinian, Emperor, 186, 222, 348

King, kingship (see *Monarchy*)
Kinship (see *Patriarchal Theory*)

Law; in relation to government, ancient, 168-383; Roman, development of, 176-186; its influence on monarchy, 192, 335 *seq.*; on revolutionary doctrine, 390; Roman in Italian cities, 253
Lawyers, in France, 307, 339, 379
Legislative, 171, 376, 410, 413, 417 *seq.* (and see *Law*)
Liberum veto in Poland, 341
Licinio-Sextian Laws, 143, 149, 161
Locke, 44, 302, 357-369, 391, 417
Lombardy, cities of, 259 *seq.*
London in Middle Ages, 239
Lords, House of, 416; not imitated in new constitutions, 421
Lot, appointments made by, 105, 128, 295 *seq.*
Louis XIV., 189, 321 *seq.*, 334, 381, 396 *seq.*, 412
Lycurgus (see *Sparta*)

Macedonia, its monarchy and assembly 38; supremacy of, 132, 138

M'Lennan on Primitive Marriage, 52 *seq.*, 58
Madwig, 176
Magistrates, appointment of, in Greek oligarchies, 102 *seq.* (see *Consuls, Executive*)
Maine, Sir Henry, his Patriarchal Theory, 47 *seq.*; *Ancient Law* and *Early History of Institutions*, 172 *seq.*, 177 *seq.*, 180 *seq.*; on Montesquieu and Rousseau, 372, 378 *seq.*, 384 *seq.*
Mantinea, democracy of, 103 (note)
Marius, C., 165
Matilda, Countess of Tuscany, 286, 287
Medici in Florence, 301
Megalopolis, 92, 138
Megara, 116, 138, 283; App. 443
Milan, 270 *seq.*
Mill, John Stuart, 114
Ministers, relation of, to Crown and Parliament, 401 *seq.*, 416 *seq.*
Modern history, whence dated, 320 *seq.*
Mommsen on original Roman constitution, 30, 41; on urban concentration of Rome, 147 (note); on Roman offices, 150
Monarchy (kingship, royalty), absolute, defined, 10, why common, 10, 11; movement to, in German primitive community, 32, 33; in Homeric descriptions, 34 *seq.*; in early Greece, 62 *seq.*, 72 *seq.*; in Aristotle's system, 110, 129, 130; beginning of medieval, 191; absolute in Western Europe, 194; German in connection with empire, 196 *seq.*; feudal, 209 *seq.*; in England, 212, 312 *seq.*; absolute, movement to, in Europe, 316-344; Hanoverian 369 *seq.*, 404 *seq.*; French, 382 *seq.*; defects of absolute, 412
Montesquieu, 338, 371 *seq.*, 380 *seq.*, 413 *seq.*

Napoleon, 319
Nation defined, 26, 27
Nature, law of (*jus naturale*), 180 *seq.*, 328 (note 3), 350, 357 *seq.*, 379 *seq.*; Rousseau on, 387 *seq.*; App. 445
Nature, state of, according to Hobbes and Locke, 354-361; Rousseau on, 388 *seq.*
Nomothetae, 106
Norman kings (see *Monarchy in England*)
Norway, 318, 421, 428
Numa, King, 56, 220

Oligarchy, early form of government in Greece, 62 *seq.*, 71; movement against, 89, 90, 93-95; Aristotle's classification of oligarchies, 102; in Aristotle's system, 110; in German cities, 249, 250, 256, 257; in Italian, 270 *seq.*, 283; disruptive, feudal, 317; in England, etc., 318, 371; Greek in relation to cavalry, App. 442; and to trade, App. 442, 443
"Ordinances of Justice" in Florence, 294 *seq.*
Otto, Emperor, 196 *seq.*, 229, 248, 265

Papacy, Pope (see *Church, Theocracy*)
Papal States, States of the Church, 261-264
Parlamento in Italian cities, 274, 279, 287
Parlements in France, 339, 394, 424
Parliament (see under *Estates* and *England*)
Parliamentary government, types of, in nineteenth century, 420 *seq.* (see also *Ministers*
Patriarchal Theory, the, 43 *seq.*
Patricians in Rome, 143 *seq.*; Frankish, 262
Periander of Corinth, 96, 97
Pericles, 104, 114
Philip the Fair, 227
Philip II. of Spain, 322, 334
Phratriae at Athens, 50
Physiocrates, 392 *seq.*
Pisa, 264
Pisistratus, 96
Pitt, William, the elder, 408
Pitt, William, the younger, 371, 406
Plato, his idea of the state as *city*, 68, 125; on governments, 107 *seq.*; on degeneration of states, 113 *seq.*; his ideal state, 120 *seq.*, 169, 346, 347
Plebeians in Rome, 143 *seq.*
Plutarch, 116
Podestà, the, 243, 273, 288 *seq.*
Poland, 341
Polis, 135, and *passim*
Political Science distinguished from Political Philosophy and Political History, 2
Political Society defined, 1, 25 (see *State*)
Political thought, relation to facts, 345-349
Polity defined, 1
Polybius on successive forms of government, 62 *seq.*; on overthrow of Achaean monarchy, 72; on democracy of Mantinea, 103 (note

2); on Achaean League, 139 (note); on Roman constitution, 157
Polycrates of Samos, 96
Praetor, Praetor Peregrinus, 159, 161, 162, 166, 180 (note), 181
Praetorian Edict, 178 *seq.*
Prime Minister (see *Ministers*)
Primitive Polity, 29-42, 60, 62
Priori in Florence, 293 *seq.*
Private war, 208, 214, 237
Proconsul, proconsular, 158, 162, 165, 166
Provinces, Roman, 161

Referendum, 415
Reformation, 323, 333
Responsa prudentium, 185
Revolution, English, of 1688, 343, 356, 364, 401 *seq.*
Revolution, the French, the intellectual source of, 392, 394; caused by bankruptcy of France, 395 *seq.*
Rhodes, 116, 139 (note)
Robertson's *Charles V.* quoted, 338, 339
Rome, portions of its Empire broken up and reconstituted to form modern states, 8; its early constitution, 30, 41; early law, 48 *seq.*; its polity, 141-167; development of law in, 176-186; Empire of, 192, 209 *seq.* and *passim*; religion in ancient, 220; Roman derivation of craft-gilds, 251 (see also *Holy Roman Empire*)
Rousseau, J. J., 372, 378-394, 414, 438; idea of the General Will, App. 447 *seq.*

Salisbury, Council of, 206
Scandinavia, 213 (note), 310, 421; federalism of, 428
Schism, the Great, 231
Second Chamber, 420 *seq.*
Seeley, Prof. Sir J., 396, 402 *seq.*
Senate, Roman, 146, 150, 154, 155, 159 *seq.*, 162 *seq.*, 166
Separation of Powers, 376, 377, 413, 422 *seq.* (and see *Executive* and *Legislative*)
Serfs (see *Slaves*)
Servius Tullius, 143
Sicyon, tyranny in, 87
Slaves, slavery, serfs, 7, 76, 80, 106, 114, 125, 126, 183, 207, 240, 253, 324, 445
Social compact, 352 *seq.*, 357 *seq.*, 368 *seq.*, 384 *seq.*, 390 *seq.*
Solon, his constitution, 83, 90
Sovereignty according to Hobbes, 350 *seq.*; of the people, 392
Spain, municipal development in, 241; assemblies in, 306; growth of monarchical power in, 322; limitation of monarchy by Cortes, 322, 337; disruption of Christendom strengthens monarchy in, 333; modern constitution, 420, 421
Sparta, its constitution, 38, 76 *seq.*; in favour of oligarchies, 97, 99, 100; its stability, 117; against Achaean League, 138; its control over citizens, 169; Spartans and Helots compared to feudal lords and vassals, 207 (note); note on decline in number of Spartans, App. 441, 442
Spencer, Herbert, on origin of Government, 41-45; on the Medicine Man, 56
Stasis in city-states, 121
State defined, 1, 25-28; country and city, 7, 16, 18, 67 *seq.*, 134, 148, 194; and Church, 7, 170
States, general (see *Estates, assemblies of*)
Stoics, their influence on Roman law, 181, 390, App. 445
Stubbs, Dr. W., on absence of royalty among early Germans, 32, 33; on English feudalism, 206; on early English monarchy, 212; on papal supremacy, 228
Sulla, L. Cornelius, 161, 165
Sweden, 318, 421, 428 (see *Scandinavia*)
Switzerland, 340; federalism of, 428 *seq.*
Synoikism in Arcadia, etc., 92, 135

Tacitus on early Germans, 30 *seq.*, 45; on mixed government, 128
Taille (see *Taxation*)
Taine, 385
Taxation, Taxes, Greek, 114; ancient and modern views on, 302; medieval, 205, 303, 304, 308 *seq.*, 314; absolute monarchy and, 321, 322, 336, 337; Locke on, 302, 357, 361; Montesquieu and, 376, 413; vicious system of, in the *Ancien Régime*, 381 *seq.*, 396
Teutonic (see *German*)
Thebes, its early oligarchical government, 81; democracy in, 101
Theocracy, medieval, 215 *seq.*
Thessaly, nobles of, 81, 142
Third estate (see *Estates*)

Thrasybulus of Miletus, 96
Timocracy, 102
Tocqueville, A. de, 382 *seq.*
Tories, 370 *seq.*, 405 *seq.*
Towns alien to feudalism, 216, 217 (see *Cities*, also *Germany*, *Italy*, etc.)
Tribunes, Tribunate, Roman, 144, 161, 167
Turgot, 394
Twelve Tables, the, 177 *seq.*
Tylor quoted, 13, 60
Tyrannis, the Greek, 16, 85, 86-99, 132; the medieval Italian, 272, 275, 276, 284, 285

United Netherlands (see *Holland*)
United States (see *America*)

Venice, its Council of Ten compared to Spartan Ephors, 78, 280; early development, 238, 264; stable oligarchy of, 280, 340; restriction of power of Doge in, App. 445 *seq.*

Walpole, 369
Warde Fowler, 104 (note), 120
Whigs, 370 *seq.*, 405 *seq.*
William II., Emperor of Germany, 409, 427
William III. of England, 403
William IV. of England, 407
Wilson, Woodrow, 168 (note)

Xenophon, 108, 112

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