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MERCANTILISM

MERCANTILISM

by

ELI F. HECKSCHER

Authorized Translation

by

MENDEL SHAPIRO

VOLUME ONE

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ERRATA

P. 29 (footnote, line 4), for Cuningham *read* Cunningham.
P. 314, line 31, for Maddox *read* Morgan.

The calendar years corresponding to English regnal years have been somewhat incorrectly given in some cases. Thus 39 Eliz. is 1596/7 (not 1597/8, as is said in several places: Vol. I, pp. 258 n. 43, 264 n. 48, 265 n.49).

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"The Kingdom of Heaven is compared, not to any great Kernel or Nut, but to a Grain of Mustard -seed; which is one of the least Grains, but hath in it a Property and Spirit, hastily to get up and spread. So are there States, great in Territory, yet not apt to Enlarge or Command; and some, that have but a small Dimension of Stem, and yet apt to be the Foundations of Great Monarchies."

BACON, *Of the true Greatnesse of Kingdomes and Estates* (1625)

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PREFACE

At one time I felt greatly tempted to imitate Dr. J. H. Clapham, in his *Economic History of Modern Britain,* by dedicating the English edition of the present book to the memories of Alfred Marshall and William Cunningham. But as I felt quite sure that they would have had many objections to the book, I gave up the idea, in order to prevent them from turning in their graves. I do not, however, foresee that calamity as a consequence of my expressing the great debt I owe to both of them. Particularly Marshall, for although my personal contact with him was slight, his *Principles* were not only the starting-point of my theoretical studies, but have also profoundly influenced my approach to economic history.

The present book is intended as a contribution to the history of economic policy as a common European problem. But this does not at all mean that a uniform treatment has been accorded to all countries. Britain and France have come to the forefront in most of the chapters, for the reason that the developments studied originated with them during the period under consideration. Were we concerned with the Middle Ages, quite different parts of the European community would have had to be studied; and I do not attempt to deny that, even as it is, the number of facts to be marshalled may have tempted me to push Germany, Italy and the Scandinavian countries more into the background than has been altogether satisfactory. At all events, the reader must not expect a description of mercantilist policy in each country separately, except in so far as that has been found necessary for the understanding of common European developments.

For the book is meant to be read as a whole, not as a collection of facts. For that reason the fundamental features have been given only in their outlines and have afterwards been illustrated by a detailed treatment in some chosen fields. Among these fields, I am afraid that an English reader will miss that of colonial policy, which has not received separate treatment, though there are numerous contributions to it in different parts of the book. But upon mature consideration I have, regretfully, come to the conclusion that such a treatment would not have given a harvest at all comparable to the very great space it would have required. Another serious limitation is the sketchy treatment accorded to the 18th century in many places. The reason is that its peculiar character appears to me to come out better when studied as the battle-ground between mercantilism and what came after

it; and I have some hopes that this will be done with regard to economic ideas, where I have drawn the line by 1720 more sharply than in the rest of the book.

While the book is meant as a whole, its component parts have been rounded off, so that they may be studied separately, though something is of course always lost by so doing. The first Part, which covers the first volume, is occupied principally with external facts, what was done and omitted in actual policy. The remaining four Parts, dividing the second volume between themselves, are more concerned with the conceptions underlying the policy pursued. Throughout it has been attempted to bring the facts into connection with general developments, analysing them theoretically at the same time. With rather insignificant exceptions, original sources have been used, though previous works have of course often showed the way to them. A detailed Table of Contents will, it is hoped, give a general synopsis of the book, and the remarks introducing and concluding the chapters have the same object in view. An extensive Index, which is the work of my wife, is meant to give easy access to the particular facts.

Though I have tried to give my reasons for every conclusion reached, the views of other scholars have not as a rule been discussed. Exigencies of space have a great deal to do with this, but also a feeling that polemics have rather been overdone in economics and economic history. In a general way it may be said in this place, that the method of treating all sorts of disconnected tendencies, paving the way to modern economic conditions, under the common name of "modern capitalism" appears to me confusing and a thing to be shunned; to some extent it appears to be the outcome of an insufficient attention to economic theory.

Even if that were not so, the present book would have comparatively little to say about the growth of capital or "capitalism". For it is mainly concerned with the attempts on the part of political bodies to influence economic developments, not with these developments in themselves. Economic changes as a whole and their component parts are considered only in connection with economic policy, though from that point of view they are treated at some length.

The first edition of the present book was published in Swedish by P. A. Norstedt & Söner in Stockholm in the spring of 1931. A German edition, from which the present translation has mainly been made, was issued by Gustav Fischer in Jena in the autumn of 1932. A not inconsiderable amount of new material has been

worked up for each edition. In particular, by visits to the British Museum, the Goldsmiths' Library and the Bibliotheque nationale, I was able to study some writings inaccessible in Sweden, and part of them has been utilized for the first time in the present edition. The changes from the first edition are not very important, however, being mostly confined to the footnotes.

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March, 1934

NOTE

The only purpose of the references in the footnotes is to support the text. They do not aim to give either a survey of all the material studied, or a complete bibliography. The number and length of the footnotes have been cut down often by incorporating references to long sections in the text in the same footnote, in so far as this could be reconciled with a full documentation.

Large Roman numerals (e.g. XVIII) in the footnotes denote volume and part of a volume respectively; small Roman numerals (e.g. xviii) denote the Roman pagination in the work quoted; and Arabic numerals alone, without any letter in front, stand for the Arabic pagination. No attempt has been made to change the often confused pagination of early works. In book titles, the language of the original is retained, while in quotations it has, in most cases, been modernized.

The references given indicate which edition of any work is used. The choice of edition has, in the majority of cases, been determined by the works available in Swedish libraries, but to facilitate the use of other editions, the particular section in the source quoted is, where necessary and wherever possible, also given. In several cases, the number of the edition has been added to the number of the volume (e.g. II , i.e. third edition of the second volume). In first referring to a work, the title is given in full, and is generally abbreviated in later references.

When in doubt as to the meaning of a reference, the reader will often find the Index useful. It is so arranged as to furnish an independent list of the works employed, and pains have been taken to render it as complete and as useful as possible.

INTRODUCTION

THE ARGUMENT

Mercantilism never existed in the sense that Colbert or Cromwell existed. It is only an instrumental concept which, if aptly chosen, should enable us to understand a particular historical period more clearly than we otherwise might. Thus everybody must be free to give the term mercantilism the meaning and more particularly the scope that best harmonize with the special tasks he assigns himself. To this degree there can be no question of the right or wrong use of the word, but only of its greater or less appropriateness. It is certainly of little use to give the expression a significance deviating widely from that which it has come to receive in the course of time. This criticism partly applies to the way in which the term has been employed in historical works during the last fifty years. Without in any way desiring to abandon the positions gained in the advance that recent research has undoubtedly made, the following exposition constitutes a return to the original meaning of the word—not in place of, but in addition to, the meaning that recent historians have wanted to give it.

What mercantilism should be taken to stand for in this book may be stated in a few words: it is a phase in the history of economic policy. However, it seems appropriate to summarize and comment briefly on the meaning of this formula at the outset.

The first implication is that it is the *economic* aspect alone which is to be treated. Obviously such treatment entails abstraction, but without some selective principle, historical phenomena cannot be elucidated at all, except as a conglomeration of data—and no mere conglomeration of data is intended here. Doubtless the political actions dealt with in this book can be profitably studied from other angles: it is for example particularly interesting to discover their importance purely from the administrative point of view, to investigate the public bodies which carried out the actions. In the same way, their intellectual importance may be profitably investigated from the point of view not of economics but e.g. of political philosophy. While perfectly conscious of this, I have attempted nothing of this kind here, limiting myself strictly to the economic aspect. It is precisely because works describing themselves as economic deal so frequently with non-economic aspects of historical development that it has appeared to

me necessary to hold so rigidly to this limitation of the subject-matter.

In the second place, the expression "history of economic policy", implies another and no less vital demarcation. Economic *policy,* not economic development as such, is what is aimed at; or, to put it another way, I shall deal not with the economic system in itself but with the attempts to influence or mould it consciously in one way or another. In other words I have neither intended nor achieved a description of the development of economic conditions as a whole/ Economic conditions are determined by a host of other phenomena in addition to and even before economic policy, and this in its turn has experienced various influences other than those arising from the economic conditions of the time. It is therefore an inescapable precondition for a correct understanding of the subject that the distinction between economic policy and external economic conditions be kept well to the fore. The description of the economic policy pursued in a particular period should never be regarded as a sufficient explanation of the economic circumstances of the time; nor should economic policy be viewed simply as the outcome and result of the actual economic situation. Of course this does not detract from the fact that economic conditions and economic policy in every period are inextricably bound up, as they necessarily must be. In the following work, I shall do my best always to regard economic policy in view of its twofold relationship with actual economic conditions, and to set it forth both as a cause and as a result of the latter. At the same time the reader should be warned against losing sight of the relationship of economic policy with other than external economic phenomena. This will not of course prevent very important aspects of the prevailing economic situation as such from coming within the range of my survey.

The above explanation makes clear what the concentration on economic policy is intended to imply. The next question is what is the particular phase in the development of economic policy that is here given the name of mercantilism.

This question may be answered very simply as far as approximate dates are concerned. It deals with the economic policy of the time between the Middle Ages and the age of *laissez-faire.* Even though this period begins and ends at quite different dates in the various countries and regions concerned, it presents the time factor with sufficient clarity.

However, it was held for a long time that mercantilist policy did not merely denote that there was a certain agreement in time

between the economic measures in question, but that there existed in addition an inner harmony between the different parts of this policy—a fundamental outlook, uniform in essence, which was expressed in all its measures. But during the last fifty years the meaning of the term has in some respects undergone a change at the hands of historians, with the result that this uniformity appears much more doubtful than was previously supposed. The facts of the case—whether such uniformity actually prevailed and if so what it signified—emerge only under closer examination. To my mind the uniformity does exist, though certainly never without inconsistencies and not always clear even to the people involved. It exists at any rate to a degree enough to make the instrumental concept of a uniform economic policy essential, not to say indispensable, to an understanding of the existing order of events. In my opinion, that rigidity of treatment which is inevitable in the making of any synthesis, brings out the essentials in the development of economic policy, if mercantilism is treated as a uniform, coherent system and not merely as a chronologically determined period. The proof of the accuracy of this assertion lies in the whole of the following exposition; but for the sake of clarity, the actual underlying idea behind the division of the present work is set out at this point.

It is possible to determine *a priori* the connection with a certain group of political phenomena, i.e. the rise and consolidation of states, limited in territory and influence though sovereign within their own borders, which grew up on the ruins of the universal Roman Empire. Henceforth the state stood at the centre of mercantilist endeavours as they developed historically: the state was both the subject and the object of mercantilist economic, policy.

The state had to assert itself in two opposing directions. On the one hand, the demands of the social institutions of the confined territories had to be defended against the universalism characteristic of the Middle Ages. Almost everywhere nation states split up and took to themselves the authority previously exercised over the Christian world by the unified medieval Church and by the second, and feebler, heritage of the Roman Empire, the universal monarchy, in the form of the Holy Roman Empire. But this aspect was altogether of lesser importance, for in most practical matters the Middle Ages were cast in the mould of particularism rather than in that of universalism. For this reason, undoubtedly the greater power of mercantilism was directed inwards and not outwards, against the still more narrowly con-

fined social institutions, cities, provinces and corporations which had dominated medieval social activity. In both directions it was thus a question of making room for the constructive work of the state in a field of activity which—regarded from the mercantilist point of view—had been usurped by super- and "infra"-state institutions.

Considered in this light, mercantilism is primarily an *agent of unification.*" Its adversary was the medieval combination of universalism and particularism, and its first object was to make the state's purposes decisive in a uniform economic sphere and to make all economic activity subservient to considerations corresponding to the requirements of the state and to the state's domain regarded as uniform in nature. The extent to which this presented an important but not insoluble problem obviously depended of necessity on the difference in political and administrative make-up of the different states. On the one hand a state which was already consolidated in the Middle Ages did not present the same demand for unification as was needed by a state disintegrated and disrupted from the start; but on the other hand, a state with a certain degree of disintegration, could not achieve very much of importance in the way of unification during the period under consideration. This distinction between the various states is of supreme importance in that part of the work of unification which referred to the more or less haphazard disintegration, as expressed most typically in the toll system but with numerous parallels, too, in other spheres. But in addition to this kind of disintegration—which for want of a better term I have called feudal—there was another and in many respects more important kind, that which was based on medieval municipal policy. It is a striking proof of the strength of the achievement of medieval towns that neither the actual existence of this second kind of disintegration nor the ability to overcome it was influenced at all deeply by the dissimilarity in the political structure of the states. Every state occupied a roughly similar position in relation to medieval municipal policy.

At this point the difference between the economic and administrative point of view becomes very prominent. If one concentrates on the economic aspect, the problem is to present the content of the work of unification and not its form. The bodies which carried out the policy will then be a matter of indifference; the only important question will be the spirit animating these bodies, whoever they might have been. That central officials took over the work previously done by local or provincial corporations

therefore is not in itself an occurrence which concerns our problem. It does not concern us, that is, in so far as the new bodies pursued or allowed others to pursue the same ends as did the old. In previous treatments of the subject, this distinction has far too often been overlooked. Certainly it is natural to assume that a change in the executive officials was followed by a change in the ends pursued. But the assumption is not always confirmed by fact, first because of the great influence of inertia in the development of economic policy and secondly because the subordinate executive officials could rarely be changed even when nominal leadership was transferred to the state. Here we are concerned with the nature of economic policy—how far particularism, and likewise, though to a lesser extent, univcrsalism, was overcome by economic policy as carried out in practice.

Whether a success or a failure, this policy played a great part in economic development as a whole; and it was largely dependent on this development whether economic policy obstructed or encouraged economic development in a direction that took it away from medieval forms of society. This side of mercantilism is of particular importance from the point of view of the relationship of politics and economics. It is a question of the degree to which institutions, originating either in the haphazard decay of the state or in municipal interests systematically applied, could be transformed into tools of the state's economic policy, and of the degree to which the state thereby encouraged or hindered the new tendencies which ultimately gave rise to modern forms of society. Obviously this is not even approximately equivalent to the problem of the rise of modern forms of society and the genesis of the "industrial revolution" or of "modern capitalism", but it is the problem of the contribution of economic policy to the same end; and to investigate that is, in itself, to undertake a sufficiently great task. The following work deals with this by selecting typical aspects in the economic policy of typical countries, and thus attempts to illustrate the achievements of economic policy as a whole. Since that problem is far less concerned with the depth or originality of actual ideas than with the possibility of their application in practice, this part of the subject has taken up comparatively a great deal of space; for as Schiller says, "thoughts dwell easily together, but things in a confined space press hard against one another". For this reason, the first part of the present work, which is devoted to this task, has become roughly as long as the whole of the rest put together.

It might have made an enormous difference to economic

mobility in all its forms, if mercantilism had really succeeded in forming states into economic units. Consequently the extent to which mercantilist policy did succeed or fail in so doing was especially important from the positive or negative point of view. At the same time unification in itself is a somewhat abstract notion. In other words it says little with regard to the kind of economic policy to be pursued within the unified state. The conclusion follows spontaneously that this cannot exhaust the content of mercantilism, and in fact it does not even exhaust its relation to the state.

Without deviating from the relationship of mercantilist policy to the state, we may ask further, what was the object of mercantilism in using economic forces in the interests of the state? The answer is primarily that it wanted to make use of them not directly in the interests of the subject but to strengthen the state authority itself; it concentrated on the *power* of the state. I refer primarily to the state's external power, in relation to other states. Internally, i.e. as far as the state in relation to its subjects was concerned, there was far less cause for discussion. The necessity for a particular interference by the state to attain the intended end is then left out of consideration, and the efforts to strengthen the state's internal power is considered as a branch of the work of unification. But even this is enough to show that those two aspects of mercantilism, unification and power, were well suited to each other and gave it a consistent character. It is perhaps more important to draw attention to the opposite point, that the two were not inseparable. That there were two separate aspects becomes clear in considering *laissez-faire,* for this policy usually combined a unification which was almost complete in every respect with a remarkable indifference to considerations of power. Thus the combination of the two was typical of mercantilism; and its characteristics as a system of power forms the second part of the book.

Both the work of unification and the striving after power were clear results of mercantilism in its capacity as the economic system of the new sovereign state. Both were given to a high degree in the environment, and in fact we may go so far as to say that every state must aim at a certain minimum of both economic unity and external power. In the work of unification the actual idea was obvious, and only the success or failure of its application remains to be examined. The endeavours to gain in power are again interesting in connection with the degree of their strength and still more with regard to the idea of how to make economic

life serviceable to this power. The latter point of view is particularly well calculated to afford an insight into the subject.

It follows that mercantilism cannot be understood without investigating in addition, and perhaps even primarily, something other than the ends which the policy had in view. It is indispensable to study with particular attention the means that were considered practicable for the attainment of these ends. From the economic point of view, it is necessary that even the central problem must revolve round this point. For, after all, economics means the adaptation to given non-economic ends and the apportionment of means to such ends. And so we cannot even begin to understand the economic aspects of mercantilism without thoroughly investigating the means which it regarded as best suited to the attainment of its ends; and this becomes perfectly clear in the comparison between mercantilism and *laissez-faire.*

It is true that one important difference between mercantilism and *laissez-faire* referred to ends, in so far as mercantilism was concerned with wealth simply as a basis for state power, while *laissez-faire* regarded it as valuable to the individual and worth striving for on that account. But in actual fact this difference meant much less than might have been expected, for wealth as such was the centre of interest and dominated economic thought and dealings to an equal degree in both, far more in fact than the question of its ultimate application. To this extent mercantilism and *laissez-faire* were in agreement on the question of ends.

A striking illustration of this point may be obtained from comparing the titles of two works, one from each school of thought. Johann Joachim Becher, by far the most important German mercantilist, called his *magnum opus* (1667) *Politische Discurs von den eigentlichen Ursachen des Auff- und Abnehmens der Stadt, Lander und Republicken;* Adam Smith's work was called (1776) *An Inquiry into the Nature and Causes of the Wealth of Nations.* Even apart from the great differences in the verbal elegance and "modernness" of the two titles, it is true that there were some shades of difference between the two titles. Becher speaks of organized social groups, Adam Smith, with less emphasis on the state, only of nations. Becher is concerned with increase and decline in general, Smith only with the causes of wealth or well-being. But it must be admitted that the problems set out in both books differ only in small matters, especially since Becher, just as much as Adam Smith, actually stopped short at the factors working for or against an increase in wealth.

However, to conclude from this that mercantilists and *laissez-faire* economists in general, or Becher and Adam Smith in particular, looked at economic phenomena through the same spectacles is to fall into as hopeless a mistake as possible. And the fact that they represented essentially different, if not directly opposed, opinions in matters of economic policy was due to the wide gap between their views as to the proper means. Mercantilists and *laissez-faire* politicians or economists agreed in directing their attention primarily to such questions as "How does a state become powerful?" "What should one do to bring it to prosperity and well-being?" "What is it that creates the 'increase and decline[5] of countries,' the 'wealth of nations'?" But to tackle these problems, they offered quite different if not entirely opposite solutions.

The view that the problem of the relationship of means to ends must be placed at the centre of every work on mercantilism that wishes to probe the subject thoroughly is fortified by another line of argument. On this point, the arrangement of means to ends, mercantilism represented a conception which not only diverged as much as possible from what preceded it but obtained also a hold over ideas on economic policy after mercantilism, far more so than any other idea emanating from mercantilist ideology. Even to-day—or perhaps one should say once again to-day—popular ideas in *this* respect are in the main mercantilistic. To study this special aspect of mercantilism is thus to deal with the rise of an outlook which is still prevalent, at least among laymen.

I now refer primarily to the attitude of mercantilism towards the means for supplying the wants of human beings, i.e. towards commodities. In other words, what I have in mind is the theory that the danger from which economic policy was chiefly to protect a country lay in having too much goods. In this way mercantilism becomes a *protectionist* system. This is treated in the third part of the present work.

Mercantilism as a protectionist system has an important complement in the monetary sphere, a sphere of economic life which has almost always touched people's imagination far more than its more obvious sides. The connection between money and goods in the mercantilst conception of economics was represented in the balance of trade theory which has often been regarded as that which was most specifically mercantilist in its whole theoretical structure. Ideas on the balance of trade and the significance of money undoubtedly occupy a central position in mercantilism, but at any rate it is characteristic that they have diminished in

importance in people's minds far more than have mercantilist ideas with regard to goods. From other points of view, too, it seems to me that the monetary aspect has had less importance in economic policy than the commodity aspect, though it has none the less exercised an enormous influence. Mercantilism as a *monetary system,* thus including the balance of trade theory, constitutes the fourth part.

It has often been discussed whether mercantilism comprised a theoretical system or not, but this question is badly stated. For everybody has certain ideas, whether he is conscious of them or not, as a basis for his actions, and mercantilists were plentifully provided with economic theories on how the economic-system was created and how it could be influenced in the manner desired. As a proof that there was no uniform outlook, many writers have pointed to the undeniable fact that different mercantilists put forward mutually antagonistic demands; but this is proof of the uniformity rather than the contrary. For to the extent that contrary demands emanated from the same or closely related principles, this disunity on matters of practice indicates that the premises themselves did not rest on practical interests but on more or less generally recognized principles. And in fact this was so, and to a degree which one can scarcely imagine unless one has studied the matter itself. To this extent there was undoubtedly a uniform body of doctrine in the same sense as it is to be found at present among statesmen, journalists and people taking part in public discussions.

There is another and much more difficult question, which is whether mercantilism produced any scientific theory and consequently an economic science. The answer must be arbitrary to the extent that there is no objective standard for deciding when a view has become clear enough to be called scientific. The first attempt to portray the workings of economic life as a consistent whole was probably that of the physiocrats, and no mercantilist arrived at such an outlook before their time. But another criterion of the existence or absence of a scientific outlook can be found, in reply to the question whether discussions were intellectually "autonomous", i.e. whether the theories enunciated really aimed at objectively accurate solutions, irrespective of their practical outcome. It seems difficult to deny that in fact some part of 17th-century economic thought fulfils these requirements. And so it cannot be gainsaid that even at that time there was really a scientific mercantilist theory if only of a rudimentary kind—whether it was right or wrong is at the moment beside the point.

In conclusion, there can be no doubt at all that mercantilist dispussion was of importance to the final rise of economic science in the 18th century.

Finally mercantilism revealed a fairly uniform conception of general social phenomena in the field of economics and this, too, reacted in many ways on the nature of economic policy. This side of mercantilism also deserves far more attention than it has so far been given, especially because it is related to the outlook of later times in a way different from that of the purely economic doctrines; therein moreover mercantilism provides what is to some extent an almost paradoxical contrast to its other aspects. Mercantilism as a *conception of society* forms the fifth and last part.

It may be said, without attempting to delimit the subject too rigidly, that of the five aspects of mercantilism, the first and the second, as well as the third and fourth together, have found their own special investigators and exponents; only the fifth has been almost entirely overlooked.

Mercantilism as a system of unification was first propounded by Gustav Schmoller, in his essay, famous in his own day, *Das Merkantilsystem in seiner historischen Bedeutung* (in his *Jahrbuch* 1884). He states in one passage, which cannot be said to be free from obscurity, that mercantilism "at its very core is nothing other than state-formation (Staatsbildung)4-but not state-formation in itself but simultaneously the building up of the state and the economic system—state-formation in the modern sense of the word, to make the community that forms the state into an economic society and so to give it increased importance'\ The essence of mercantilist policy he defines in much clearer terms as consisting "in the total reconstruction of society and its organization, as well as of the state and its institutions, by substituting for the local and provincial economic policy that of the state and the nation".

Mercantilism as a system of power; was expounded primarily by William Cunningham in *The Growth of English Industry and Commerce,* which first appeared in 1882 but went through many later editions. "The politicians of the sixteenth, seventeenth and greater part of the eighteenth century were agreed in trying to regulate all commerce and industry, so that the power of England relatively to other nations might be promoted." "On every hand private tastes and personal convenience had to give way to the patriotic duty of strengthening the nation." A somewhat sarcastic critic (W. A. S. Hewins in the *Economic Journal* of 1892) went so

far as to suggest that Cunningham thus presented as abstract a type as that creation of the classical economists, the much-reviled "economic man" who was entirely dominated by enlightened self-interest. "The mercantile system is concerned with man solely as a being who pursues national power."[1]

Under the stimulus partly of Schmoller and partly of Cunningham, the nature of mercantilism as a protectionist.and monetary system was, whether consciously or unconsciously, neglected. To find a theorist who deals with such vital themes in mercantilism, it is necessary to go back much further, in fact to Adam Smith. From other points of view, too, he is the last person that should be omitted in taking stock of the treatment of mercantilism. This is not merely because the name mercantile system first acquired significance at his hands, although that too expresses how significant has been his treatment of the subject. He adopted the term presumably from the physiocrats, who employed it sporadically, and he stamped it ineffaceably on the popular consciousness.[2] Eight of the nine chapters in the fourth book, or almost a quarter of the whole *Wealth of Nations,* is devoted to an exposition and scathing criticism of that which Adam Smith conceived mercantilism to be—in other words, its position as a protectionist and monetary system. Adam Smith began his analysis of mercantilism with a treatment of its attitude towards money, but at the end of the very first chapter he went over to a treatment of general protectionist policy, illustrating it with a wealth of data, especially since his position of Commissioner of Customs in Scotland enabled him to penetrate the mysteries of the English Customs system; the effects of this came out in the third (1784) edition of his book.

Clearly an author cannot remain unbiassed in treating of an economic policy which he deems it his principal task to uproot. For this reason, to seek a final evaluation of the achievements and faults of mercantilism in Adam Smith is to seek in vain. But as a critic he has at least this advantage that he could hardly be more frank and outspoken than he is. On the other hand, the

Schmoller's essay is reprinted in his *Umiisse und Untersuchungen iur Verfassungs-, Verwaltungs- und Wirtschaftsgeschichte* (Lpz. 1898); Quotation: 37. It has been translated into English by Sir William Ashley in the series *Economic Classics* (N.Y.i 895). Cuningham, Quotation from *Growth of English Industry and Commerce during the Early and Middle Ages* §136 (4th edn., Lond. 1905, 479, 481).

[2] See A. Oncken, Article on Quesnay in the *Handworterbuch der Staatswissenschaften,* 2nd edn. (not the later editions) VI 280 note 2; cp. his *Geschichte der Nationaŀokonomie* I (Lpz. 1902) 148, 153.

undeniable sympathy with mercantilism generally dominating members of the historical school provided no guarantee of impartiality. The personal reactions of the various students of the subject to the ends of economic policy of a time gone by are of little account, since nothing they could do would make any difference. The vital point is the extent to which they have been able to grasp the real significance of the tenets in question. *A priori* it is impossible to decide whether those who were biassed in favour of the system saw farther than those who were biassed against it.

On the other hand, there are one or two points on which the possible value of one attitude or the other can be determined. Adam Smith has one chief advantage over all later writers on mercantilism—his insight into economic theory. It is no exaggeration—though no doubt it seems so—to say that his work occupies a special position in the whole literature of mercantilism by reason of his theoretical schooling. This naturally enabled him to see problems and interpret phenomena which remained a closed book to all the later investigators of the historical school. On the other hand it is equally obvious wherein his weakness consisted—his defective sense of the relativity of things. This however happens to constitute the principal general merit of the historical school, and an appreciation of the relativity of things is therefore necessarily to be found to a much greater extent among historians who deal with mercantilism than with Adam Smith. The conclusion is thus that the contributions of both sides may be valuable, and that neither should be ignored. Our exposition of mercantilism treated as a whole endeavours to evaluate the two.

PART I

MERCANTILISM AS A UNIFYING SYSTEM

I

THE HISTORICAL BACKGROUND

From the modern point of view, the political history of the West begins with the world-wide dominion of the Roman Empire. Among the institutions inherited from the latter the two most prominent and best organized were the medieval Holy Roman Empire and, much more important, the medieval Church. But alongside of these and existing in more or less close connection with them, were a host of other universal institutions, which from the practical, and particularly the economic, point of view were of greater significance.

It was not merely the fact of external agreement, but in particular the feeling of spiritual unity in Western Europe which set its stamp on all classes of medieval society—apart from, perhaps, the peasantry—and, with few exceptions, on all streams of culture. That this applies to the Church and to the intellectual world is too well known to need special mention. The secular priesthood and the monastic orders, the universities attended by students from all over the West, and the common language, Latin, gave rise in this sphere to such a spiritual community as finds no worthy counterpart in later times. The same applies also to chivalry, which, from Sicily to Scandinavia, was subject to a common code of honour and had common ceremonies. It is of particular importance from the economic aspect that these common characteristics also apply to the new economic forces in medieval society—the towns and the handicraft organizations. The Gild System and the merchant corporations, the privileges and the administration of the towns were the same over the whole of the West often down to small details, and were, what is undoubtedly significant, an expression of the feeling of spiritual community. This certainly did not mean that a harmony among all individuals of the same calling or of the same social position prevailed throughout the West. Still less did it mean the existence of universal co-operation and fraternal goodwill transcending social boundaries. But from the point of view of our argument it is sufficiently important that there did exist a kind of unity disregarding territorial boundaries, so that the inhabitants of two cities, geographically far from each other, and politically under different rulers, could be more closely bound to one another and might be prepared to concede

one another greater privileges than was the case with the citizens of cities not so far apart and politically more closely allied. There were, in addition, universal economic institutions specially influencing merchants of all Western Europe. Thus in connection with the international fairs there arose a system of common legal procedure for all merchants—in England applied by what was aptly named the Court of Piepowder *(Cour des pieds poudrés)* —and a common law of commerce and exchange, which became the starting-point for all later legal development in this most important commercial sphere. Added to this came the influence of Roman law in its entirety as it spread across Europe, and especially canonic law, universal by its very nature.

All these factors helped the social life of the West to retain something of a universal character even after the Holy Roman Empire had become the merest shadow of a shadow and the extremely real bond of *he Church had been burst asunder by the Reformation. Thus began a line of development which can be followed more or less clearly from medieval times, through the period of independent and sovereign states right up to the liberalism and cosmopolitanism of the 18th century and the attempts at the revival of that "European unity which had never wholly been eradicated", to quote Harald Hjärne, beginning in the Holy Alliance and eventually finding expression in the League of Nations.[1]

The above is interesting from many points of view, especially from that of the philosophy of history. It refutes, in fact, the conception that economic factors are the only ones in history. In the Middle Ages all these factors pointed in the direction of local isolation and they were difficult obstacles in the way of any kind of general agreement over wide areas. It is not this fact, however, which must be emphasized here, but something rather different.tUniversalism was one of the two factors which stood in conflict with the claims of the state on the

[1] H. HJÄRNE, "Det västerländska statssystemets uppkomst," Introduction to the Swedish edition of Pflugk-Harttung's *Weltgeschichte,* ed. H. Hildebrand, H. Hjärne and J. von Pflugk-Harttung, IV (Sthlm. 1916).—The development of the continental postal system was extremely characteristic of this unity. The Taxis Post founded about 1500 attained, especially in the 16th century, a universality approaching that of a world postal system, and it might have been an easy matter to unite, on this basis, at least most of the countries of the Continent into one permanent international organization. On the contrary, however, the Taxis Post gradually lost its basis through the measures of the national states, until in 1867 it was finally liquidated—seven years prior to the establishment of the world postal union.

individual, and opposed the state in its endeavour to express itself.

The other factor exercising the same effect in this special connection was, however, the exact antithesis to universalism, in fact, particularism. The outstanding characteristic of medieval society was just this peculiar blending of these two ideas. The daily work of the corporations was governed by the narrowest parochial considerations, but they had, at the same time, a lively consciousness of belonging to an organization embracing the whole of Western Christendom. But whereas universalism had to overcome economic forces, particularism was actually and even intensely supported by them. It is not surprising, therefore, that particularism developed much greater strength than universalism, and that the difficulties which states found in eradicating the universal features from social and economic life were almost negligible, while in general they found particularism too strong for them. The reason for this is partly and perhaps largely that economic forces benefited the latter enormously, but were antagonistic to the former; for even though the economic factor may not be the only effective social force, there can be no doubt that it is one of the most powerful. A second important cause of the rapid break-up of universalism lay in the fact that it was so very firmly anchored in a purely religious unity. For when secularization came on the heels of the Reformation, it destroyed, without further ado, whatever inter-state organizations there existed. For this reason, the whole of the first part of the present book will deal in the main only with the struggle against particularism and will hardly touch on universalism, which is mentioned only to avoid painting a false background and over-estimating the achievements of mercantilism.

The disintegration of the state which particularism brought in its train was far more a factual than a legal change. For, so far as purely formal, juristic powers are concerned, it was, in the main, clear that they were invested in the state even though they were transferred to each and everyone and were exercised without any thought of a common interest.[2] This, in itself, is

[2] See in particular G. von Below, *Der deutsche Stoat des Mittelalters* I (Lpz. 1914), 275 f., 292-6, 301 f., 305, 309, and other parts; Chap. 5 §6 deals with Feudalism.—In **a** book with exactly the same title, published somewhat later (Jena 1918), F. Keutgen has endorsed Below's point of view, that in fact **the** functions relinquished by the state retained their legal **character** as **public functions; but he could not but admit that in practice they were treated as private (see particularly 136 ff., 143).**

an indication that economic factors must have played an important role in leading to the disintegration of the state, and in reality they did create obstacles, surmounted only with great difficulty, in the way of every attempt to make the state in the Middle Ages an entity in anything more than name. Only where conditions happened to be particularly favourable were matters different.

One of the two main economic causes of this situation was the existing condition of communication facilities, in particular land communications, which, under primitive technical conditions, always offered greater difficulties before the great inventions than inland waterways or coastwise transport. A country such as England, with its remarkably long coast line in proportion to its land area, had, for this reason, far greater possibilities of achieving political union than continental states, and of these none was worse than Germany. In spite of this fact, the condition in Germany and the other continental countries would not have been so unfavourable if the large rivers had been allowed to fulfil their natural functions. But while on land long distances, in the backward state of technical knowledge, formed a natural obstacle in the way of intercourse, on the rivers there were also artificial hindrances, themselves a result of disintegration, namely, the countless river-tolls dealt with in the next chapter. So it came about that disintegration once begun continued to increase.

The second of the economic phenomena which were the chief causes of particularism was the prevailing natural economy, which, in turn, was closely bound up with the means of communication. It is certainly true, as has been pointed out, that what is known as Feudalism existed even without a natural economy, but this is no reason for doubting that the prevalence of this economy substantially assisted the disruption of the state.[3] The fact that the state receives its revenue in kind and not in money or other universal purchasing power means that that revenue must be consumed on the spot or, at least, that its transport is rendered difficult; and the worse the facilities for transport, the more difficult does this become. As a result, again, the revenues from each particular area form an isolated "fund" which is, of necessity, separately administered and cannot be paid into a common purse. Agents nominated by the state are remunerated by means of concessions, that is, rent or revenue from Crown property, or are given the power of disposal over

[3] A. Dopsch, *Naturalwirtschaft und Geldwirtschaft in der Weltgeschichte* (Vienna 1930) Chap. 10. See in addition my paper on "Natural- und Geldwirtschaft in der Geschichtc" *(Vierteljahrschriftf. Soz. u. Wirtsch. gesch.* XXIII, 1930, 466).

royal privileges, tolls, coinage rights, etc., and in return for these payments are expected to perform public duties.

Control under these circumstances—where local representatives of the state disposed of revenues in kind on the spot, in exchange for expenditure in kind—was undoubtedly most difficult. The fact that a private person had the right to collect public incomes, which resembled private incomes in every respect, led to a confusion of both, and eventually matters arrived at a point where the duty of performing some service in exchange for income of, legally, a public character, gradually disappeared. In other words, in practice, public revenues passed into private hands. How far this transference to private individuals of obligations to the state went, may be gauged from this instance. There was in Germany, in the Middle Ages, a ceded privilege *de non impignorando* or *de non alienando ab imperio,* consisting in security for its owner against the sale, hire or pledging of one's obligations to the state. And as late as the beginning of the 17th century, Charles IX of Sweden granted this favour to Dutch immigrants, who were to found Göteborg, because they considered it necessary, although their request for it in a country like Sweden was pointless. Under the prevailing conditions of natural economy, the central authority could not govern from a capital; in fact, capitals could not really exist at all, for there was not enough income in kind for the maintenance of the Court at any single place. Instead, the prince and his Court were obliged constantly to travel about the country in order to utilize whatever had accumulated at various places. The constant travelling also served the purpose of keeping local rulers under observation, but there is no doubt that ruling under these circumstances was not the lightest of tasks.[4]

It should, however, by no means be imagined that natural economy and poor transport facilities led of necessity to the disintegration of the state. Sweden happens to be a striking example to the contrary, for Gustavus Vasa succeeded in building up a state with an unusually strong central authority on the foundation of a natural economy which owed its existence not only to the governing force of circumstances but also to his conscious intention. Transport conditions do not provide the explanation in this case, for Sweden, at that time, certainly had none worth boasting about. All that can be said is that these factors, in general, only aggravated the difficulty of holding a kingdom together

[4] Heckscher, *Ekonomi och historia* (Sthlm. 1922) Paper 3: "Naturahushållning."—Below, *op. cit.* 282 f.—H. Almquist, *Goteborgs historia, grundlaggningen och de forsta hundra aren* I (Gbg. 1929) 36.

securely and, in the majority of cases, the obstacles gained the upper hand. To what extent the Carolingian Empire formed an exception depends on the question, so difficult to decide, of how far it preserved the money economy and other features of the economic system of the ancients.[5] Later in the Middle Ages it was chiefly countries which were not too large and which were provided with exceptionally good communications, such as Burgundy, Aragon and England, that escaped disruption. In France, the growing royal power was fortunate, eventually, in gradually becoming master in the land, but in Germany disintegration had gone so far that the original unity could not be re-established when towards the end of the Middle Ages, natural economy was superseded and a salaried officialdom created. Instead, towns and territorial states had grown up on the ruins, as social entities of smaller magnitude.

From the point of view of our argument it appears appropriate to consider the disintegration of the power of the state which came about in this way as a twofold phenomenon.

The one aspect of disruption which is fairly thoroughly explained by what has been said consisted in the transference of the power of the state to spiritual and temporal vassals. It led to the independence of large and small territories, which were indifferent as to whether their authority was legally grounded on ceded state powers or whether it was, legally speaking, usurpation—a distinction of rather small moment from an economic point of view. In the economic sphere, the result of this tendency was essentially negative—the enrichment of the lords, tyranny and lawlessness—without any positive economic policy worth mentioning. In the disintegration of the customs system, the coinage system and the system of weights and measures, to be dealt with in the two following chapters, the innumerable measures were not, in the majority of cases, part of a system with positive economic and political aims. They had as their sole object merely the production of the largest possible yield for the possessors of

*** The "modern" character of the Carolingian period is a thesis which has been advocated by A. Dopsch and his pupils for some twenty years; it is perhaps best presented in Dopsch's *Die Wirtschaftsentwicklung der Karolingerzeit* (Weimar 1913), while the connection with ancient times is demonstrated in his *Wirtschaftliche und Soziale Grundlagen der europäischen Kulturentwicklung* (Vienna 1918, 1920). On the other side, H. Pirenne has energetically asserted the contention that there was a gap in the cultural development directly before the time of the Carolingians, and that this signified the beginning of medieval natural economy and the period of feudalism (see e.g. his small work *Les villes du moyen Age*, Brux. 1927).**

the respective powers in these fields. However devastating an effect this had on trade and other peaceable activities, it cannot be taken to be an economic system competing against the power of the state, but merely anarchy built up on the disintegration of the state. Although the expression "feudal" is very ambiguous and easily misunderstood, yet I venture to define this aspect of disintegration as feudal, without implying more by this word than follows from what has just been stated.

Side by side with this kind of aimless plundering, however, there existed a far more serious form of disintegration based, as it was, on ideas, and consciously and consistently striving to direct economic life along a definite line. The economic policy thus created did produce a competing system in conflict with the power of the state. (The policy referred to is that of the towns and it follows from what has been said, that it cannot be explained by merely negative influences, such as natural economy and poor means of intercommunication. It must have had its basis far more in the rise of those new social structures, the growing towns, which represented almost everything that was really new in the economic life of the early Middle Ages. That the new economic policy originated in these active, new, social structures was only to be expected, and, in fact, the policy of the towns in the Middle Ages was probably the first attempt in Western Europe, after the decline of the ancient world, to regulate society on its economic side according to consistent principles. The attempt was crowned with unusual success, for we should have to search long in the period before and after before finding anything comparable with the policy of the towns in its consistent pursuit of a definite object. Economic liberalism or *laissez-faire,* at the time of its unchallenged supremacy, is, perhaps, such an instance, but in regard to duration, liberalism was a small, evanescent episode in comparison with the persistent tenacity of the policy of the towns.

The growth of the power of the towns was thus, on the whole, synonymous with the decline of the power of the state, and from the time of the Crusades onwards, when a money economy once again grew up, it was the towns rather than the territorial states which profited by it, especially where the power of the state was already in decline. In North Italy, the Eldorado of independent towns, the result was often an absolutely sovereign city—Venice, for example, *Ia citta dominante,* the ruling city, whose character was outspoken, consistent, municipal egoism survived the French revolution and was only broken down by

Napoleon. In other cases, territorial states certainly arose in Italy, but developed around the most powerful city as their centre, as, for example, in Milan.and Florence-Tuscany. Germany had nothing comparable, and the difference is due to the fact that in very few instances did German territorial states develop out of independent cities or around them. They were, on the contrary, a form of organization rivalling the towns and, eventually, politically superior to them. Most German cities were obliged to submit to territorial authority. Even the free imperial cities, which were directly and solely under the emperor, never obtained political power comparable with that of the Italian cities. To this extent the break-up of the central power in Germany was due less to the cities than to the territorial states. However, this is a purely external, political aspect. On the economic side, the territorial power in Germany, too, was of fleeting significance in comparison with the consistent policy of the towns. In France, the king and the towns were, to some extent, in alliance against the big vassals, but there, too, economic policy was essentially the work of the towns. The country in which towns mattered least was probably England. And if foreign merchants enjoyed there unusually extensive privileges it was not an expression of the weakness of the royal power, but, on the contrary, of its capacity to express itself in the face of the commercial enviousness and the exclusiveness of the native burghers. Even there, however, the economic policy of the towns exerted a determining influence for a considerable period.

There were also, in addition to these two principal tendencies, other disrupting forces, more difficult of adequate explanation. They are, perhaps, soonest comprehended if considered in this wise—transport difficulties produced local differences, which, thanks to inertia and absence of rational thinking, persisted without any logical cause other than that they already existed. The confusion in the system of weights and measures certainly owed its origin to such unintentional planlessness, even though the "feudal" disintegrating forces were simultaneously at work. Economic policy in the Middle Ages offers sufficient examples of conservatism, but one of the best that I know is that the Florentines retained for 85 years, that is, from 1406 to 1491, the tolls against their own textile industry, set up by Pisa before its incorporation in the Florentine state.[6] We shall come across many other examples in later chapters.

6 R. Pohlmann, *Die Wirtschaftspolitik der florentiner Renaissance und das Prinzip der Verkchrsfreiheit* (Preisschr. d. Jablonowskischen Ges. X X I , Lpz. 1878) 122.

In all these spheres, the new states had awaiting them great problems of decisive importance for the development of economic life. Before the state could be united it was necessary to cleanse the Augean stables; the question was only whether it would be done successfully, according to tradition, in the Herculean manner, or whether it would prove a Sisyphean labour, an insoluble or, at least, a recurringly unsuccessful undertaking.

At first sight it might appear that the task of the reorganized state was an easy one, at least, so far as the haphazard flinging away of state rights and powers to any lord or local authority was concerned. Here was something which, in principle, could hardly be defended from any point of view and, it might be assumed, would fall to pieces at the lightest onslaught. But in reality circumstances were quite different. For there existed, in the first place, very strong interests deeply concerned that the power of the state should not be unified, and the state consequently had to overcome correspondingly powerful forces. Nor was this all. So long as the state could not rid itself of the social institutions which had created disruption, it lacked the authority necessary to overcome it, and from what follows it will be seen that, in many instances, instead of overcoming them, it sought far more to make a profit out of the existing disruption. On the other hand, victory over feudal particularism, by reason of the absence of principle or plan, demanded a creative imagination in the agents of the state—a capacity to set up something positive where nothing before existed. Such imagination is altogether rare in the history of mankind, and was perhaps particularly so in the period under consideration.

The other side of the problem, the transformation of the system of town policy into an economic order dictated by the interests of the state, required in the agents of the state a far smaller measure of independent, political imagination, since the old methods could simply be made to serve new purposes. But the danger here was that the transferred institutions might simply preserve their old spirit, under a more or less apparent guise of purely external changes.

In order to understand clearly the reconstruction of the states after their dissolution in the Middle Ages, it is best to ask what might have happened, had this renascence never occurred. It is, undoubtedly, a severe mental test to try to remould history in this fashion. But to form a conception of what part one of many contributing factors played in historical development, it is necessary, in every such attempt, to make the tacit or explicit

assumption that one or the other of these factors was absent and then to ask what the result might have been.

The history of the Middle Ages certainly proves that people can live in much more restricted units of society, held together and tied to a larger cultural circle by means of one chiefly spiritual bond. Not only is such a life physically possible, but, in it, human problems can be truly perceived which in larger social structures must more or less necessarily be sacrificed. It is really the confinement of medieval society which is the basis for all the beautiful things said about it in recent times, not only from the Catholic side, but also from the half ethical, half aesthetic point of view, withi ts principal seat in England—originated by Carlyle and Ruskin, continued by William Morris, the disciple of the latter, and to be found also, to a certain extent, in the writings of the modern "Gild Socialists". Alongside of all the anarchy and even barbarity of the times, people were conscious of what can be named serenity or dignity of human nature. Human dignity was protected and sheltered by the fact that one belonged to a corporation which guided its members through the whole of their lives, and lifted up its everyday activity, its religious ideas and its other aspects of life into a higher unity. Therein lay a freedom from mechanization which had a special appeal for an altruistic, artistic nature such as Morris. No later period can hold up to it anything equivalent—certainly not the one immediately following, which considered the individual merely as raw material on which the state was built.

It would serve no useful purpose trying to weigh these positive aspects against other typical features of medieval society, which were just as much the result of local it?strictedness, but which, perhaps, do not rouse such warm sentiments. The result could not but be subjective. There is, however, a possibility of arriving at some sort of definite and objective results, in answer to the question of what occurred in the economic sphere, and what was impeded, through the overcoming of particularism. It is true that economic life does not exhaust itself in quantitatively measurable things, since it deals with the possibilities of satisfying human wants, where wants are anything that men at different times consider them to be.The difference between medieval and modern conditions lies, to a large extent, in the fact that wants and demand have altered their direction, in other words, it lies in a sphere that evades every attempt at quantitative measurement of purpose. Nevertheless, the satisfaction of wants, or, if you will, human life, has certain natural, necessary, physio-

logically indispensable assumptions affecting subsistence in the narrower sense, and here it is possible to initiate quantitative comparisons. From this point of view, the changes that have taken place may be expressed as follows. Thanks to economic development, there lives to-day a far larger population than has ever lived before; it lives, in a material sense—food, clothing and shelter—in a far wealthier state than ever before; and lastly, there is a far greater differentiation of demands for the satisfaction of human wants than in any previous period, that is, there are to-day, satisfied by material means, a host of wants altogether unknown in previous centuries.

Apart from the question of good or bad, however, all this had the overcoming of medieval particularism as its first postulate. The present economic system would be a pure impossibility at a time when goods and travellers were held up by customs barriers at about every 6 miles on the best of routes; when—as the governor of the Imperial Mint in Germany said (1426)[7]—the currency changed with every day's journey; when industrial activity was confined to the handicraftsmen of the locality, and agricultural production was subordinated to the interest of the neighbouring little municipality, and every little community governed as it thought best. The expansion of production was hampered, even more, by the particular attitude of mind insolubly bound up with particularism, whose ideal was a static one, firmly anchored in a religious system and believing in "subsistence" according to rank; with a technique which was certainly often artistically high but unalterable in principle; and in which economic activity was considered to a very great extent as an end in itself. It is difficult to say, with any degree of precision, how big a population might live under these conditions; but to state that Sweden, within its present-day boundaries, could feed a single million, instead of supporting its present population of six millions, is to put the figure too high rather than. too low. It necessarily remains to everybody to draw his own conclusions from this. But if the facts themselves and their consequences are to be kept clearly in mind, there is little doubt that the destruction of medieval particularism was one of the indispensable, fundamental conditions for making life physically possible for the mass of people of the present time. That a smaller population, living under medieval conditions, is preferable, is thereby neither proved

[7] A. Luschin von Ebengreuth, *Allgemeine Munżkunde und Geldgeschichte des Mittelalters und der neueren Zeit* (Handbuch der ma. u. neu. Gesch., ed. von Below and Meineckc, Miinchcn u. Berlin 1904), 242.

nor refuted, for that is a question of purely subjective valuation.

In the following chapters I shall first deal with policy in the sphere of feudal disintegration in the narrower sense, that is, simply with the circumstances of disruption, without considering its special economic import. I shall then go on to the attempts made to nationalize the consciously designed and firmly co-ordinated policy of the towns. The fact that feudal disruption was so inorganic in character, makes the treatment of the work of mercantilist unification comparatively easy. I have decided to illustrate this work in detail in only one sphere, namely that of the tolls and customs system, supplementing the facts, where necessary, in other spheres. The work of the town economy, on the other hand, is at the core of the economic policy of the period and demands a quite different and more exhaustive examination. In spite of this, I could not think of enumerating, either here or at any other point, all the fields in which similar efforts have repeated themselves. In connection with the treatment of the policy of the towns, there is a long chapter devoted to the field in which the newly created practice of mercantilism was most important, namely, foreign trade and entrepreneur organizations, the latter being, in the main, the trading companies, and their counterparts in other spheres of activity. Lastly, the question of the success or failure of all these efforts will be discussed. This constitutes the first part of the present book.

II

THE DISINTEGRATION OF THE TOLL SYSTEM AND THE EFFORTS TO OVERCOME THE CONFUSION

I. INTRODUCTION

In the Middle Ages the greatest obstacles to trade were the tolls. The main reason for this was indicated in the previous chapter, namely that the tolls, more than any other measure of economic policy, affected the most valuable part of trade, that moving along the chief rivers, which constituted almost the only long-distance natural means of communication before the invention of the compass. Consequently, medieval trade was much more restricted than was warranted by purely technical difficulties; and, as a result, the importance of the natural trade routes was rendered no greater, or even less, than that of the artificial ones, the unsatisfactory character of which depended on the existing state of technical knowledge. But in time, this obstructive policy was also applied to the artificial routes.

(It is evident that, before proceeding further, we must clearly distinguish between the general system of medieval tariffs and those of modern times. In the Middle Ages, tariffs were not duties imposed at the boundary between two different political territories, but far rather charges levelled on internal trade along land and water routes, in markets and towns. In time, tolls were levelled at inter-state boundaries, too, but this was a much later development. In Germany, cut up as it was into numerous small states and lacking any sense of geographical unity even within the separate territories, this distinction was, moreover, not very significant, since political boundaries were met with at very short intervals. In general, the principle was simply to set up tolls at those points which trade could least easily avoid.| They were thus concentrated at particular places or géographical points, in a manner wholly foreign to the modern customs system The system consequently suffered from a complete lack of guiding principles—in fact, it was this chaos which had become the system. We see that we are dealing here primarily with a "feudal" phenomenon, the first group of factors which determined the process of social disintegration; and only secondarily with a piece of conscious town policy, although the latter was not wholly insignificant. Of course the general character of the times left

its impress on tariff measures just as on all other features of the period, as will be seen in the third part of this work, which deals with Mercantilism as a protectionist system. But on the whole, tolls received this impress unconsciously; their primary function, overshadowing all their other aspects, was to provide revenue for those who wielded them.

It is very instructive to draw a comparison between the toll systems in England, France and Germany. More than in any other sphere, England here represented a type clearly distinguishable from that of the other countries, while, on the other hand, conditions in France and Germany were largely similar at the beginning of the Middle Ages. Differences in the later development of both countries can, therefore, to some extent, supply a standard for comparing the effectiveness of mercantilism; in the one case under the most favourable, and in the other under the least favourable, political conditions.

2. ENGLAND

In no other country was the task of establishing a uniform toll system relatively so easy as in England, and two factors were, in the main, responsible for this. The first, as in all other spheres, was the united and unbroken strength of the English monarchy, and the second was the overwhelming importance of sea transport, making land routes and inland waterways far less important than was the case in such compact geographical blocks as Germany and France. English development cannot be explained without taking both of these influences into consideration.

But taxes on internal trade were not lacking. There were, in fact, two groups of such taxes—road, bridge and river tolls on the one hand, and, on the other, town tolls; and each of the two groups had an entirely different development and outcome.

Road and river tolls

As has been mentioned, the first of these two groups consisted of road and similar tolls. In England their distinguishing feature was the general preservation of that characteristic which in all territories had been the main reason for their origin, namely, a payment for the use of a means of communication, or, perhaps more accurately, a compensation for its construction or maintenance, or both. Such a function cannot be fulfilled by a modern customs system; but when, as in the Middle Ages, tolls were set up along the roads, it was very easy for them to be used for

financing the construction and upkeep of the roads themselves, and even to-day this system has not entirely vanished. Thus, in actual fact, the taxes became a "normal price" for the use of the means of communication, an amount paid by the users who benefited, to cover the "cost of production". But, in spite of this, a payment for this economic service was much more injurious than prices usually are. For such means of communication can generally bear a much greater volume of traffic than that actually using them (they are "intermittent free goods") and if some part of the potential traffic is driven away through fixing a price for their use, they are prevented from yielding their full service. Even irrespective of this, the method of fixing a price by means of road and bridge tolls is particularly obstructive.[1] However, there must have been an enormous difference between such a system and the continental one, where the sole aim of road, bridge and river tolls was to extract as much as possible from the users of the routes, without the obligation to render any service in return. To all appearances this difference was due mainly to the strength of the English monarchy.

So we find that in medieval England, the state consistently, and to an astonishing degree, opposed all attempts to level charges without a *quid pro quo* of service, or for an indefinite period. In the year 1290, for instance, the king refused a request to allow a toll to be imposed for improving a road. In many other cases (1302, 1304, 1306, 1315, 1346, 1353, 1410 and so on) such requests were certainly granted, but always only for a limited period—two, three or five years and in one exceptional case, seven years. In fact, it was not rare for permission to be given for a shorter period than was asked for and only on condition that a scale of charges was to be conformed to, and with the express understanding that the revenue was to be used only for the agreed purpose. As an illustration of how seriously all this was taken was the fact that the inhabitants of a particular locality could ask for auditors to examine the accounts relating to the use of the new revenue, if the stipulated improvement had not taken place, and that such an investigation could also be ordered (1330)—an inconceivable measure on the continent. It is only natural that abuses

[1] I have dealt with this question on several occasions, and most fully in my paper "Intermittent Freie Guter" *(Archiv fur Sozialwissenschaft und Sozialpolitik,* 1928). By this term I mean to express a very important fact, i.e., that some results of human efforts, though "scarce" at the beginning and at the end, may still intermittently take on the character of free gifts of nature. It is the same trend of thought underlying Marshall's quasi-rent and J. M. Clark's treatment of overhead costs.

of the toll privileges were not entirely lacking, but the meagre results of repeated investigations of this kind seem to indicate that, from the beginning, they generally had the desired effect. No less illustrative was the fact that in the petitions in which permission was sought to level tolls, the reason stated was always the damage caused by the condition of the existing road or bridge, and never the need for revenue on the part of the petitioner.

In addition to this kind of toll used as payment for services rendered (legally termed tolls-thorough) there were, of course, others, based on the rights of private property and completely at the disposal of the owner (tolls-traverse), or on privileges and ancient traditions; and this seems to have been the case particularly with the river tolls, for which in the majority of instances no *quid pro quo* was made. But it is striking that few traces of this were left behind in the general development, at least if one reckons by medieval standards. The not infrequent complaints against the hindrances to river traffic were concerned much more frequently with the material obstructions caused by impalements and mills and with the encroachments of monopolistic shipowners than with illegal tolls. The conclusion that internal trade in England during the Middle Ages was, to a remarkable extent, free from hindrances is also strengthened by the material which Thorold Rogers has collected in his *History of Agriculture and Prices in England.* In his comprehensive data on costs of transport the figures for toll charges rarely occur, and the lowness of the freight costs, which he shows in detail with the aid of documents, points in the same direction.[2]

[2] The data are based mainly on the petitions in and from Parliament and the resolutions concerning them *(Rotuli Parliamentorum)* I 48, 154, 160, 165, 193, 199, 314, 340, 424, 468, II 32, 169, 370, 387, III 30, 330, 641, 663, 665, I V 332, 351 , 364, 379 and also on the material in the inexhaustible collection of sources, compiled by Th. Rymer at the beginning of the 18th century—*Foedera, Convent tones, Literae et Cujuscunque Generis Acta Public a* (ed. Record Commission, Lond. 1816ff, I l l : 1 86. 269. I l l : 11 651 f.; first edition, Lond. 1704 ff., VIII 634 f.)—An English statute of 1503/4, 19 Hen. V I I c. 18, proves the existence of legal and illegal river tolls.—See in addition: F. Clifford, *A History of Private Bill Legislation* II (Lond. 1887) 3f., 26 ff.—Th. Rogers, *History of Agriculture and Prices in England* (Oxford 1866 ff.) I 657 f., 661, 664, II 600 ff, I I I 664 ff, IV 712.—J. J. Jusserand, *English Wayfaring Life in the Middle Ages* (Lond. 1889) gives a good picture of the general conditions of travel (e.g. 53 note, 59 ff, 79 f., 84, 129 f., 416 f.).—*The Laws of England,* ed. Lord Halsbury, X V I (Lond. 1911) 15, 62 f.—G. Brodnitz, *Englische Wirtschaftsgeschichte* I (Jena 1918) 120.—S. and B. Webb, *English Local Governrnent:* (IV) *Statutory Authorities for Special Purposes* (Lond. 1922) 157, (V) *The Story of the King's Highway* (Lond. 1913) 147. In the following only the title of the separate parts of this work will be quoted.

The various kinds of road charges in existence during the Middle Ages seem to have disappeared except in rare instances, in the course of the following centuries, without leaving any trace to show whether the disappearance was due to state interference. Later—to be more exact, about 1660, though in general from the middle of the 18th century onwards—there arose an entirely new situation, which made the system of road charges a characteristic feature of English internal trade, to a greater extent than in any continental country. This was the rise of the so-called "turnpike roads", taking their name from the turnpike or turnstile at which the tolls were collected, and they eventually formed a fifth, and by far the best fifth, of the network of roads in England. This system, with the users paying tolls to private corporations, the turnpike trusts as they were called, created by Acts of Parliament, brought about a thorough reform in the hitherto unusually bad road system. Daniel Defoe, an optimist in matters of economic progress, devotes a really lyrical description to the system in his account of England in the seventeen-twenties (1725). He gives the following picture of it: "The benefit of these turnpikes appears now to be so great, and the people in all places begin to be so sensible of it, that it is incredible what effect it has already had upon trade in the countries where it is more compleatly finish'd."

The turnpike trusts could not, of course, overcome the fundamental weakness of this method of fixing prices for the users of the roads, and an added confusion arose as a result of the absence of any system in dividing up the roads among the various trusts, the expensive and inefficient administration, and, not infrequently, the actual abuses. They existed long enough to become the cause, as late as the beginning of the i84o's, of the Rebecca Riots, and even towards the end of the century there were 160 of them in the neighbourhood of London alone. But in spite of all this, they gave England, for the first time, so good and orderly a system of roads, that in France, which was ahead of her time in matters of roads, they were cause for admiration. And apart from the cultural development which spread with the increase of post-chaises, they were certainly indispensable as the basis for the Industrial Revolution.[3] Undoubtedly an enormous difference

[3] On turnpike roads see in particular Webb, *Statutory Authorities* 152 ff., and the *Story of the King's Highway* 114 ff.—Defoe, *A Tour Through the Whole Island of Great Britain* (ed. Everyman's Library with the title: *A Tour Through England and Wales,* Lond., undated, II 129).—Rebecca Riots: C. L. Graves, *Mr. Punch's History of Modern England* (Lond. 1921) I 57.

existed between this highly commercialized road system and the feudal system of road and river tolls on the continent.

Town dues

Freedom from local municipal tolls in England was not so prevalent as freedom from road, bridge and river tolls, and this is highly indicative of the comparative strength of feudal as against municipal disintegration. The state was generally powerful enough to check the expression of purely private desire but it bowed, in important matters, before the policy of the cities.

To some extent the town dues were also in the nature of payments for certain special services rendered by the town, as, for instance, "murage" for the improvement of the walls, "quayage" for keeping the quays in good condition, "pavage" for the paving of the streets and so on. Nor did the state fail to interfere if these revenues were not applied to the ends for which they were raised. But the difference between the town charges and the road tolls was that the former were paid by traders, who often gained little or nothing from the services of the town to which the money went. Charges even of this kind when the state, in various cases, authorized them, became a kind of tax on trade for commercial municipal purposes or for the general needs of the country. The taxing of trade for local needs was, however, much more remarkable in the large number of cases where the dues found their way directly into the coffers of the town, or were used for purposes entirely unconnected with trade and navigation. In this form there existed a varied collection of dues in English towns, not only in the corporate but also in other towns, principally those on the coast but also up-country towns, especially in connection with markets and fairs.

This system—if we can call it a system—showed no tendency to disappear towards the end of the Middle Ages, as was the case with the road and river tolls. Of course, many of the town and market tolls gradually lapsed, but others grew up instead as large sources of revenue, especially in towns such as London and Liverpool. They were the cause of serious protests in Parliament as late as 1830, especially as their legality was not beyond reproach. In London there are examples of them twenty years later, too, and in other places even as late as the latter part of the 19th century. In other cases as, for instance, in Hull, the tolls were expressly sanctioned by Acts of Parliament of the 16th century. Tolls formed a portion of the rights pertaining to the members of the privileged municipal "corporations"—the so-called freemen or burgesses who possessed civic rights, and in whose hands lay

the administration of the town; and so these people were generally exempt from the tolls in their own city. The exemption which the burgesses of one city enjoyed was frequently extended to include the tolls of other cities and in some cases even the local tolls of the whole country, thus obviously limiting, to an appreciable extent, the obstructive effects of local tolls. But on the other hand, they formed a new hindrance to trade in that they lacked consistency and were quite arbitrary in their treatment not only of the burgesses of different towns but also, and in particular, of inhabitants as opposed to freemen within the same town. The town tolls did not, however, create an obstruction comparable with that of the feudal road toll regime. Moreover, their importance was limited by the fact that every city had to consider the possibility that trade and commerce by land or sea would seek other routes, that is, it was limited by the peculiar geographical position of England. Nevertheless, they represented, in all cases, the only enduring element of medieval toll confusion in English commerce. It was the influence of town policy breaking through.[4]

National customs system

The uniformity of the English customs system was manifest not merely in the fact that forces leading to disintegration were absent or were of minor importance, but also in a positive way; England occupied a unique position not only through the insignificance of her road and river tolls. She was also able to evolve a national customs system, entirely independent of the municipal tolls and completely in the hands of the state, the customs being neither farmed out nor modified by numerous exemptions. It may be typified by the fact that tolls relating to foreign trade

[4] For the system in its older form; H. Hall, *A History of the Custom-Revenue of England* (Lond. 1885) II 159 ff. (with the tariffs of various cities and different periods); N. S. B. Gras, *The Early English Customs System* (Harvard Economic Studies XVIII, Cambridge, Mass. 1918—also with tariffs); also, by the same writer, "The Origins of the National Customs-Revenue of England" *(Quarterly Journal of Economics* XXXVII, 1912/13, 123 ff.), as well as E. Lipson, *An Introduction to tfie Economic History of England* I (Lond. 1915) 252 if.; see also several translated documents in *English Economic History, Select Documents,* ed. A. E. Bland, P. A. Brown, R. H. Tawney (4th Imp., Lond. 1920) 133 ff.—For the later period (1689-1835) there is the very exhaustive work by the Webbs, *English Local Government* (II-III) *The Manor and the Borough* (Lond. 1908), e.g. 4f., 123, 139, 144, 147, 150, 183 note, 237, 255, 284 ff., 316, 409, 411, 424, 509, 526, 583 f., 687 note 1, 701 f., 731 f.; W. Smart, *Economic Annals of the 19th Century* (II) *1821–1830* (Lond. 1917) 393 f.; *Extracts from tfie Records of the Merchant Adventurers of Neivcastle-upon-Tyne* (ed. J. R. Boyle and F. Dendy) I (Publications of the Surtees Society **XCIII**, Durham 1895) xlviii.—Hull: **Statutes** 33 **Hen.** VIII c. 33 (1541/2), 5 Eliz. c. 5 §3 (1562/3).

were separated from all the other tolls; and were subjected, by the state, to uniform treatment. For this national system of duties imposed upon foreign trade the word "customs" came to be used in England, "toll" being retained for duties upon inland trade; the Teutonic languages on the continent had only one word (Zoll, *Told, Tull,* etc.) for both. Already at so early a period as the reign of John one finds national customs such as, for instance, the Great Winchester Assize of Customs of 1203; and although this example was certainly an isolated one, yet under the three Edwards, or more precisely, between 1275 and 1350, a national customs system was evolved under the guidance of the state, without being ever abandoned afterwards. It occurred at a time for which the available facts are too few to warrant an opinion as to the way in which it was brought about—but the fact that it occurred at all is remarkable enough in itself. It was, moreover, characteristic that not only were the customs in the hands of the state, but they showed a precocious distinction between foreign and domestic trade. We find mentioned as early as the first half of the 12th century, in a list of privileges granted to Newcastle, a right to export grain from the mother country *(patria)*—a conception which was, at that time, completely unknown in continental economic policy. Similarly, the Winchester Assize of 1203 drew a very careful distinction (§3) between the transport of goods from one place to another within the country and their export from one country to another.[5]

In this system the authority of the state in English economic affairs created a monument which was destined to endure. To establish a customs system which did not have to rely on the existing local social organization was to surpass the attempts, let alone the achievements, even of the Carolingian monarchy. The remarkable thing here—as throughout the *ancien régime*—is not so much the idea itself as the ability to execute it; in other words, the fact that the central authority possessed the organization for starting the system and keeping it functioning.

But still it was hardly possible immediately to construct in England a complete national customs unity, if, by the term England, we understand the territory taken as whole, ruled by the king. Sir William Petty, in every respect one of the most prominent of mercantilist writers, dealt with the lack of uniformity

[5] Gras, *Early English Customs System* (see previous footnote) is devoted chiefly to this question; his book is a large collection of documents with an introduction. With reference to the facts mentioned above in the text see, in particular, **88, 107 f., 132, 218.**

in English administration in his *Political Arithmetick* (written about 1676 and published in 1690) in a separate chapter entitled "That the Impediments of England's greatness are but contingent and removable". In particular, he attacked the customs barriers by which England, Scotland and Ireland hindered trade with each other and the fact that they regarded each other not merely as foreign countries but, at times, as actual enemies. Petty was also concerned with the treatment given to the colonies, and another contemporary work (published 1683) pointed out the peculiar position of the Channel Islands and the Isle of Man. It was a considerable time before these hindrances to trade within the British Empire were to be finally overcome—in many ways they had never been overcome at all.[6]

The customs barriers between England and Scotland were the first to disappear. Thanks to his origin, James I was already awake to the significance of the problem and, in 1607, speaking in Parliament, pointed out how much more it would profit the whole kingdom to remove the customs barriers, than it would cause loss to individual merchants. A kind of customs freedom was practised for a few years but no longer. The Act of Union brought about the final change in 1707, and complete freedom in trade, communication and shipping was established. In this connection we may add, as a curious exception to the general rule, that even after this date there remained a small formal remnant of medieval conditions. The boundary town, Bcrwick-on-Twecd, which previously belonged sometimes to the one country and sometimes to the other, but in 1482 definitely became English, had to be mentioned explicitly until 1747 in the English statute book so as to make the statutes applicable to the town; the same applied to Wales. The Isle of Man was a fief separated from the English Crown from the time of Henry IV, that is, from the beginning of the 15th century. But when, in 1765, it was eventually bought back, it was not automatically incorporated within the English customs territory but obtained a complicated position of its own. Measures were taken against the flourishing smuggling trade between the island and the mainland, the customs administration was transferred to the mainland, and, at the same time, the little island received the right to export freely to Great Britain such products as could by extremely

[6] Petty, *Political Arithmetick,* Chap. 5 (Economic Writings cd. C. H. Hull, Cambr. 1899, I 298 ff.), as well as his various writings on Ireland.—*England's Guide to Industry,* quoted by G. L. Beer, *The Old Colonial System, 1660-1754* Part 1 (N . Y 1912): I III note 2.

detailed declarations of origin be proved to have been made from native raw materials, as well as flax and hemp. The customs autonomy thus established holds good, on the whole, even at the present day. The Channel Islands even to-day are not included in England for purposes of customs duties and taxation and, in general, they are the best example of the persistence of feudal conditions within the British Empire.[7]

The relationship with Ireland and the colonies was, however, of much more practical importance. Ireland's position was peculiar in so far as her separation from England was not medieval in origin—on the contrary, English legislation of the 14th and 15th centuries put Irish goods throughout on the same footing as English. Not until the Restoration did any change take place. Ireland was then, for the first time, treated as a foreign country for the purpose of customs duties, as a result of the fundamental fiscal law of 1660 (Subsidy of Tunnage and Poundage). After this date, more and more stringent measures were directed against the competition of Irish cattle (1663 and 1666) and more especially that of the Irish woollen industry (particularly 1699). She was consequently cut off from direct contact with the colonies and was compelled to trade with them only via England as the staple (1663, and more effectively 1670 and 1671); in other words, she was treated as a colony, but without that consideration for her economic life which was, in many cases, a major feature of the treatment of the colonies proper. This state of affairs continued down to the year 1800, when the Act of Union established free trade between the two countries except for a few explicitly mentioned goods subject to customs duties. Not until then was the work of uniting the three kingdoms of the British Isles fiscally, finally complete.

The colonies themselves stood in that peculiar relationship to the mother country which grew out of the so-called Old Colonial System. The view that the colonies were created as a special complement to the mother country led inevitably to special treatment of them, and the customs barriers which the mother

[7] Scotland: Speech of James I printed in the *Journals of the House of Commons* I (Lond. 1803) 361; cp. Astrid Friis, *Alderman Cockayne's Project and the Cloth Trade* (Copenhagen 1927) 143 f.;—W. R. Scott, *The Constitution and Finance of English, Scottish and Irish Joint Stock Companies to 1720,* I (Cambr. 1912) 132.—Act of Union (5 and 6 Anne c. 11, in *Record Commission, Statutes of the Realm,* otherwise often quoted as 5 and 6 c. 8) §4.—Berwick-upon-Tweed; 20 Geo. II c. 42 §3; cp. Webb, *The Manor and the Borough* II 504 note 3.—Isle of Man: 5 Geo. I l l c. 26, c. 30, c. 39, and especially c. 43 §§11-13.—Channel Islands: see below Chapter 8, note 10.

country set up were not removed until free trade triumphed in England, while those set up by the colonies still exist and are becoming more and more widespread.[8]

Results

The remains in England of the disintegrated customs system are interesting as evidence of the difficulties encountered even under the most favourable political conditions in the surmounting of medieval conditions. But on the whole the result was fairly uniform and complete. Sweden was one of the few other countries which could boast of an even more complete customs unity.[9] In Adam Smith we have an impartial and well-informed witness in support of the thorough uniformity in England, especially compared with the continent. His great work is, in all other respects, a scathing criticism throughout of English mercantilism in particular, and of the *ancien régime* on its economic side in general, so that he appears particularly reliable when his judgment happens to be favourable, especially as his position of Commissioner of Customs in Scotland allowed him ample opportunity of intimate acquaintance with customs administration. Adam Smith's judgment on customs conditions in England, followed by his criticism of corresponding conditions in France and advice on reforming the latter on English lines, thus forms an appropriate ending to the foregoing description. It reads,

[8] Ireland: A. E. Murray, *A History of the Commercial and Financial Relations between England and Ireland from the Period of the Restoration* (Lond, 1903) 6 f., 25, 31,41 ff., 47, 59, 79, 80, 85, 332.—Colonies : The chief works are those of G. L. Beer, one of which is quoted above in note 6. The two others in the same uncompleted series are: *The Origins of the British Colonial System, 1578-1660* (N.Y. 1908) and *British Colonial Policy, 1754-1765* (N.Y. 1907). See, in addition, the able survey of J. F. Rees, *Mercantilism and the Colonies,* in the *Cambridge History of the British Empire,* ed. J. H. Rose, A. P. Newton, E. H. Benians (I, Cambr. 1929, 561-602).

[9] It was characteristic of Sweden that she soon incorporated her acquired territories within the customs area. Where the customs unity was incomplete was chiefly in the so-called petty tolls of the towns, which arose as sources of income for the state, not as a result of the policy of the towns themselves. Their effect, however, was roughly the same as that of the town tolls on the continent, with their altogether different origin and function. The question has hardly been treated at all in the literature on the subject and cannot be investigated at this point. It must suffice to give a general indication to the *Samling Utaf K. Bref . . . Ang. Sweriges Rikes Commerce, Politie och Oeconomie,* ed. A. A. von Stiernman (Sthlm. 1747 ff.), and the shipping regulations, regulations concerning customs duties, and instructions to the general customs administrators for 1636, 1640, 1646, 1668, etc., which are printed therein, although this material is far from being perfectly clear on every point.

'The inland trade is almost perfectly free, the greater part of goods may be carried from one end of the kingdom to the other, without requiring any permit or let-pass, without being subject to question, visit or examination from the revenue officers. There are a few exceptions, but they are such as can give no interruptions to any important branch of inland commerce of the country. Goods carried coastwise, indeed, require certificates or coast cockets. If you except coals, however, the rest are almost all duty-free. This freedom of interior commerce, the effect of the uniformity of the system of taxation, is perhaps one of the principal causes of the prosperity of Great Britain; every great country being necessarily the best and most extensive market for the greater part of the production of its own industry. If the same freedom, in consequence of the same uniformity, could be extended to Ireland and the plantations, both the grandeur of the state, and the prosperity of every part of the empire, would probably be still greater than at present."[10]

3. GERMANY

The contrast with England

In drawing a contrast from the foregoing between continental and English conditions, we may appropriately show, from an English description of the period, how the German customs system appeared to the eyes of an English observer. Thomas Wykes, the chronicler, *à propos* of some action of Richard of Cornwall in his capacity as German Emperor in 1269, presents a raging diatribe against the tolls on the Rhine, calling them the "raving lunacy of the Germans" *(furiosa Teutonicorum insania):*

"Supported by impregnable fortresses on the Rhine it [the lunacy] was intolerable to all peaceable persons, and so eager was it to demand payments or to oppress honest folk that it did not stop at any kind of crime. Any boat which carried food or goods of any sort on this river was forced by these castles, unless it could avoid them, to cast anchor. Not deterred by the fear of God or king, they [the lords of the castles] constantly extorted from each and everyone new and intolerable payments, generally called tolls, as a result of which the goods had be sold at shamefully high prices."[11]

[10] *Wealth of Nations,* Book 5, Ch. II, Part II, Art. IV (ed. E. Cannan, Lond. 1904, II 384, cp. 389).

[11] *Chronicum vulgo dictum Chronicon Thomae Wykes (Rerum Britannicarum Medii Ævi Scriptores: Annales Monastici* IV, ed. H. R. Luard, Lond. 1869—Rolls Series) 222 f.; the translation is rather contracted. (The meaning of the words *vili pretio* at the end of the original becomes clear from their contrast to *faciliori pretio.)*

In Germany itself complaints against "unfair tolls" *(injusta thelonea)* were hardly less bitter, and a more detailed description will show how fully they were justified.[12]

The medieval situation

The most important trade route of Central Europe, the Rhine, had nineteen toll stations towards the end of the 12th century, to which about twenty-five were added in the 13th century and about twenty in the 14th, so that at the end of the Middle Ages the total had reached the enormous figure of sixty-two or sixty-four. This may be considered an exaggeration, since it is unknown whether some of the stations lapsed during the period; but, in fact, a toll once established was never given up unless great pressure was brought to bear. Besides, there is ample positive evidence of their great number. For example, Andreas Ryff, a merchant of Basle, records in his travel-diary during the second half of the 16th century that toll had to be paid at thirty-one points along the route from Basle to Cologne alone—roughly one for every 15 kilometres. The toll stations were no less frequent on the middle and lower Rhine than they were in the upper reaches, and the toll-owners of the middle Rhine are recorded as the worst offenders. They were no lesser personages than two of the three ecclesiastical Electors of the German Empire, the Archbishop of Mainz and the Archbishop of Cologne, especially the latter, who was notorious for extorting more at his seven toll stations, averaging one for every 15 kilometres, than any other owner. As to actual numbers, the small more northerly situated Duchy of Cleves surpassed all other territories, and, at least at the end of the 17th century, its Rhine tolls, averaging one for every 12 kilometres, proved to be her "treasure", as they called it. The talons of the monstrous system extended from the main river to its larger tributaries, of which the Main, in its lower reaches, belonged to the Archbishop of Mainz. On the Rhine itself the toll stations were so placed as to include as much traffic from the tributaries as possible, e.g. at Mannheim, Mainz, Bingen, Oberwesel, St. Goar, Lahnstein, Coblenz, Sinzig, Linz and Remagen, as well as at Bonn.

The Rhine tolls were obviously more profitable to their owners

[12] **The political disintegration of Germany under the *ancien régime* makes the treatment of her economic policy as a whole very difficult. In particular, original sources, which in countries with a happier development give us the framework of our knowledge of its main policy, are lacking here. For this reason, the following description of Germany has had to be constructed principally from secondary sources.**

than any others, but there is nothing to show that tolls were relatively fewer in number on other rivers. The number of seventy-seven tolls, although perhaps exaggerated, is recorded for lower Austria in the middle of the 13th century, most of them, naturally, on the Danube. At an early date, the Elbe already had thirty-five, and later obtained considerably more. The Weser appears to have had a larger number proportionately than any other river, having thirty-three stations, or one for every 12 kilometres of its whole length.

Finally there were the vast number of land tolls. We may quote Ansbach-Bayreuth in what is, to-day, North Bavaria, as one instance of their prevalence. According to the statements of the government of the country itself, there were, at the end of the 17th century, twenty-nine tolls along the important trade routes which crossed the territory. The land tolls were always relatively ineffective since it was difficult to prevent traffic from passing round the toll stations. But this very fact brought into being one of the worst possible measures—the so-called compulsory routes, which compelled trade along routes different from those which the merchants would have normally have preferred to take.

The clearest conception of the significance of this development may be obtained from an examination of the normal tourist trip along the Rhine between Mainz and Cologne. Few of the innumerable castles, whose ruins one admires, were not employed in extracting tolls from the river traffic. In the middle section of this stretch of the river, Bingen-Coblenz, the sailor scarcely left one toll station behind before, so it was said, he caught sight of the next. Ehrenfels with its famous *Mäuseturm* was built between 1208 and 1220 because of its useful position for supporting the toll of the Archbishop of Mainz, and Rheinfels (1245) in support of the toll of the city of St. Goar. The brigand castle of Rhcinstein was demolished by Rudolf of Hapsburg in 1282 because an illegal toll had been erected there, and Sternberg, on the opposite side of the river to Boppard, was similarly treated for the same reason in 1249, and her toll was said to have been held in check by Marxburg at Braubach, which was established in 1252 and still had a toll as late as 1545. Falkenburg was attacked in 1252 because it was used in support of an illegal toll, but was rebuilt —and so on. The feelings of the merchants who had to run the gauntlet of these two rows of well-fortified toll stations may well be imagined—"a grievous annoyance and extortion of goods" Ryff calls it—but they naturally recouped themselves in the long run. In the last instance, it was the material part of the

civilization which suffered most from these oppressions. A chronicler records of the Moselle how the Count of Luxembourg had a castle erected in 1300 on an island in the middle of the river, and "there set up toll officials and robbers *[sic]* who robbed indiscriminately priests, foreign merchants and everybody else who travelled along the Moselle", until the citizens of Trier destroyed the robber's nest. As for the land tolls, it will suffice to mention an official Brandenburg description of the year 1509, according to which merchants were held up at all points along the road to the Brandenburg enclave, Kottbus, in the Niederlausitz and were compelled to journey to Leipzig, Dresden, Beeskow and various other cities, merely in order that they should be forced to pay tolls.[13]

The multiplicity of toll stations was not the only trouble—their administration was the cause of even greater robbery and theft. The scale of charges was not always universally known, and it was impossible to escape the overcharges of toll officials even when one knew the rights of the case. Further confusion was caused by the fact that toll privileges were very widely diffused among various people as a result of extensive mortgaging. It was not at all unusual for twelfth parts of a toll to pass from one hand to another, and when in addition several people with toll rights attempted to take part in the administration, the disorder may well be imagined to have reached its zenith. The numerous exemptions also added to the confusion as they did in England, although it should not be overlooked that they sometimes meant, on the other hand, a considerable reduction of the burden of the tolls.

The devastating effect of the tolls on river trade may, perhaps, best be inferred from the fact that traffic was driven away from the best trade routes in Europe and forced on to the unsatisfactory land routes. Reports to this effect are particularly numerous

[13] **The chief work on the Rhine is that of Th. Sommerlad, *Die Rheinzolle im Mittelalter* (Halle 1894); references in the text are to 49-55, 60 f., 88, 92, 94, 141, 164; in addition, Art. "Binnnzolle," by the same writer *Handworterbuch der Staatswissenschaften,* 3rd e*dn.* Ill, Jena 1909, 44); E. Gothein. "Zur Geschichte der Rheinschiffahrt" *(Westdeutche Zeitschr. f. Gesch. u. Kunst* XIV, 1895, 254); K. Lamprecht, *Deutsches Wirtschaftsleben im Mittelalter* II (Lpz. 1885) 284; H. Rachel, *Handels, Zoll, und Akzisepolitik Brandenburg-Preussens bis 1713* (Acta Borussica, Handels- etc. -politik I, Berl. 1911) 466. Ryff: T. Geering, *Handel und Industrie der Stadt Basel* (Basel 1886) 190.-- Austria: J. Falke, *Geschichte des deutschen Zollwesens* (Lpz. 1869) 66.—Weser: Rachel 487 note I.—Ansbach-Bayreuth: Falke 235 f— The 1300 example: Lamprecht, *op. cit.* II 277. —The 1509 example: Falke 120f.**

concerning the Rhine territory of the Archbishop of Cologne, and to counteract the development, the Rhine princes united in 1408 to introduce so-called protective tolls on land, of the same height as those on the river. But even after they had done so, it was still said to be cheaper to travel by the *longer* land road across the Hunsrück rather than in a straight line down the Moselle into the Rhine and up the Lahn on the other side of the Rhine. At the beginning of the 16th century, the Margrave of Baden warned the Palatinate princes not to destroy the toll freedom for the transportation of timber by river, which it had hitherto enjoyed, or the same would happen to it as had happened with Alsatian wine which—according to this probably exaggerated account—could not use the Rhine at all. The same development occurred on the lower Rhine, and towards the end of the 15th century we find goods making long detours by land, via Miinster in Westphalia, down to Deventer in Overijssel, although it is true that the compulsory staple had a large share in determining the latter route.[14]

The full significance of the fact that goods made these detours by land, especially when the land routes, as in the instances given, were more roundabout, can only be appreciated if we remember how infinitely more convenient it was, under medieval conditions, to send goods by river. Trains have reduced the cost of conveyance by land to a much larger degree than steamships have been able to reduce the cost of water transport. All that steamships have done is to create a new motive power and, to some extent, a new medium for water traffic; but on land, trains have, in addition, revolutionized the road itself, and enormously reduced the technical expenditure of force necessary to transport a certain quantity over a given distance. Nevertheless, in spite of the great developments making land routes more favourable to trade in comparison with their condition in earlier times, river traffic in central Europe to the present day is still capable of competing fairly well with the railways. The following extreme case dates from about the end of the last century—soda could be conveyed from Heilbroun on the Neckar down the Neckar, along the Rhine to Rotterdam, thence to Hamburg and finally

[14] Cp. on all this, the works mentioned in the previous note.—Instances in the text: Falke 47; Lamprecht, *op. cit.* II 279-84; Sommerlad, *Rheinzolle 11*8-37; 141; Gothein, *op. cit.* 247 f.; B. Kuske, "Handel und Handelspolitik am Niederrhein" (*Hansische Geschichtsbl.* 1909 318 f.).—Cp. the review of the Swedish edition of the present book by W. Vogel *(Hansische Geschichtsbl.* 1931 232).

up the Elbe to Tetschen in Bohemia, with two unloadings *en route,* more cheaply than by the direct land route without any unloading, straight across Germany, no more than a third of the distance of the water route.[16] The obvious conclusion follows that if in the Middle Ages goods were forced to use the land routes, where they by no means escaped taxation, the effect of the river tolls must have been terrific. It is an even more convincing proof than the innumerable complaints.

Public measures

To what extent, let us now ask, did public bodies exert themselves to master the confusion and with what success were their efforts attended? Considerations of this kind are far too rarely discussed owing to the preponderance of legal, and particularly constitutional, history as distinct from economic history; and we must beware of drawing conclusions of an economic nature from the abundant information concerning the capacity of the organs of the state to vindicate their formal rights.

The break-up of the German Empire continued steadily without interruption, and for this reason we must examine in proper sequence the separate "state authorities" which competed for the existing power, or at least, attempted to exploit the power for their own ends. Let us first consider the nominally highest power.

Imperial authorities

The state of affairs outlined above was chiefly due to the continuous and progressive decay of the German Empire. German tolls, too, were largely conceived as payments levied for particular services which pertained to them, such as the maintenance of roads and bridges as well as armed protection against attack. But the fact that there gradually appeared, in addition to the toll, a separate tax for the protection afforded by an accompanying guard *(Geleit, conductus),* levied irrespective of whether the merchant desired its assistance or not, proves how quickly this conception was forgotten. And the new tax slowly and inevitably went the same way as the old and became merely a burden without any service in return. In such encroachments on the commercial and social life of the country, feudalism manifested itself as a practical reality, in contrast to its legal form. It is obvious that, legally, tolls originated as royal privileges and a part of the royal prerogative, and they never lost this character; but the practical outcome of this was limited essentially to the fact that the emperor

[15] See e.g. W. Lotz, *Verkehrsentwicklung in Deutschland, 1800-1900* (2nd edn., Lpz. 1906) 107f.

could, if he wished, farm out or mortgage the tolls in exchange for ready money or political services. Later, especially from the beginning of the 13th century onwards, when the widely scattered, public privileges gradually grouped themselves around new centres of power, namely the local spiritual and temporal princes, the prerogative of the tolls became an important ingredient in the authority of the new "landed sovereignty" *{Landesherrlichkeit* or *Landeshoheit)* which constituted the territorial power. The emperors had to undertake, by means of general privileges, not to exercise their right of disposal over the tolls or the *Geleit* within the princes' territory, or to prevent any tolls other than those belonging to the princes from being imposed. Two well-known charters of the Hohenstaufen emperor, Frederick II, *Confoederatio cum principibus ecclesiasticis* of 1220 and *Statutum in favorem principum* of 1232 (the latter based on the corresponding charter of 1231) were particularly responsible for this development. Similarly, towards the end of the Middle Ages, the imperial cities also obtained control over their own tolls. For all practical purposes, the emperor's power was really confined to the fact that new tolls could not be imposed, nor old ones increased, without his consent.[16]

What could be done according to law and what occurred in practice were two distinct matters; and the legal development was by no means as important as the continuous diffusion of new illegal tolls and increased toll-charges, which were none the less oppressive on account of their illegal nature. From Frederick Barbarossa onward, one emperor after another endeavoured to eradicate illegal tolls, but not one met with more than a transient success. The chronicler quoted at the beginning of the description of German conditions *(v.s.* note 11), certainly retails how, to the great and unfeigned joy of all Germany, his lord abolished all the Rhine tolls with only two exceptions; but the results that were achieved at that time were very short-lived. Thirty years later, about the year 1300, Albrecht of Hapsburg

[16] Of the plentiful literature on this subject, it may be sufficient, on the subject of tolls themselves, to indicate: Dopsch, *Karolingerzeit* (cf. previous chap, note 5) II 329 f.; E. Wetzel, *Das Zollrecht der deutschen Konige von den dltesten Zeiten bis zur goldenen Bulle* (Untersuchungen z. deutsch. Staats- u. Rechtsgesch., ed. O. Gierke, XLIII, Breslau 1893).—On *Geleit;* Falke 135 ff.; Rachel, *op. cit.,* 11, and the references given therein.—For the rest, cp. the works already quoted in the previous chapter, note 2.—Frederick II's two charters (§2 of the first, §14 of the second) are printed in *Monumenta Germaniae historica, Leges* I V : *Constitutiones et acta publica imperatorum et regum* I I, ed. L. Weiland (Hanover 1896) 86-91, 418 ff.

did indeed oppose, not merely with words but also with action, the extortions of the Rhine princes and with armed force compelled them to surrender to his wishes—but this, too, was only an ephemeral episode. Thus ten lines after the so-called Greater Kolmar annals had declared that due to Albrecht's efforts the Rhine was open to all traffic without charge, the annalist was forced to state that the lords *(milites terrae)* had again blocked up the river, and that merchants did not venture to show themselves on it. In addition, illegal tolls were regularly legalized by means of privileges, newly created by impecunious emperors, while still more tolls were mortgaged through financial necessity, and this always meant further increases in toll charges. The task was apparently an impossible one for so powerless an organization as the German Empire, especially in the face of the political decay which manifested itself from the 13th century onward.

Despite its powerlessness, however, the imperial authority as such did not altogether capitulate, and its efforts about the beginning of the 16th century, in the time of Maximilian I, to overcome the anarchy in the different territories, were stronger than ever before, although they came to naught, partly because of the "estates"—synonymous in this connection with the half-sovereign internal states—and their claims to participate in the government. A solution with a dual basis of this nature might have been conceivable. Thus between 1521 and 1522 quite a drastic proposal was put forward for a general system of tolls at the frontier, for the sake of the Empire as a whole. Charles V as well as the majority of princes approved of the plan, but it foundered on the opposition of the imperial free cities. Apart from their opposition, however, it may safely be asserted that the scheme could never have been translated into practice without fundamental changes in the existing anarchy of the imperial constitution.[17]

There was one series of developments, bound up with the Electors, which promised rather greater success. The college of Electors *(Kurfürstenkollegium)* had attained, during the last century and a half of the Middle Ages, the position of an imperial body, with the recognized right—granted mainly through Charles V's imperial capitulation *(Wahlkapitulation)* of 1519—to the effect

[17] **For the general description: Falke 31-62.—Albrecht of Hapsburg: A. Schulte,** ***Geschichte des mittelalterlichen Handels und Verkehrs zwischen Westdeutschland und Italien*** **I (Lpz. 1900) 203 ff.; for the following period 511, 673 f;** ***et passim.—Annates Colmarienses maiores;*** **printed in** ***Monumenta Germaniae historua, Srriptores*** XVII, **ed. G. H. Pertz (Hanov. 1861) 227 f.**

that no new tolls were to be made valid without their formal consent. Until the close of the 16th century, this was a real political force, submitting every petition for introducing and increasing toll charges to a systematic and highly critical examination before giving permission, and rejecting a large percentage. The nature of the manifold requests gives an inkling of the extent to which tolls were considered as purely private sources of income. The petitions usually laid stress either on the personal merits of the prince concerned or, at least as often, on the size of his family or some other proof of his need and lack of means of support—never, apparently, on the interests of the country. Hans Georg, count of the Palatinate at Veldenz, who was one of the most obstinate petitioners, for example, wrote in 1579 describing what effects a rejection would have, ending up with, "God have mercy and help us and our six poor uneducated children and our wife with her heavy belly big with child."[18]

With this as the prevailing conception, the possibility of introducing reforms was quite small and the strictness which the Electors showed at the outset could effect very little. Certainly new toll stations did not grow in very large numbers, but the reason, as somebody has correctly asserted, was that there was hardly room for any more. Increases in the established toll dues were, nevertheless, extensively made, and the poor opportunities of opposing them that existed in the anarchical state of the Empire were still further diminished by the fact that the Emperor was seldom in sympathy with the strictness of the Electors. He himself disobeyed them and never replied to their subsequent remonstrances, and all manner of people, both great and small, followed suit—especially the strongest non-electoral power of Bavaria. And after the Thirty Years War the Electors themselves systematically threw all scruples overboard. Saxony, for example, doubled its toll charges in 1628 without authorization, and Brandenburg did likewise in 1632, and, in fact, in many cases they increased the dues three and fourfold, although it must be admitted that the fall in the value of money no doubt played a large part in this development. For the rest, the Electors soon discovered a method whereby they could, without inconvenience to themselves, allow other princes to introduce or raise tolls. The princes were to sign an undertaking which provided that the new privilege should not be exercised against the subjects of the Electors, and this typical misuse of public rights soon became an invariable

[18] **"So erbarme es Gott und heIf uns und unseren armen unerzogenen sechs Kindern und unserer Gemahlin schweren und schwangeren Leibes."**

rule, which appreciably cooled the Electors' ardour in their struggle with the toll confusion.

The course of events outlined above, together with the chaos brought about by the Thirty Years War, rendered the imperial bodies largely ineffective. The association of Electors of 1630 and the imperial capitulation of 1658 arranged that, before a new toll be authorized, the particular states affected, whether neighbouring or otherwise, be allowed to state their case, and the imperial capitulation of 1711 extended the arrangement to include a statement from the "circles" (*Kreise)* of the Empire affected—but it was all of little avail. After the Peace of Westphalia, which still further strengthened the independence of the imperial vassals, although the old regulations and injunctions did not cease to be valid, they were—even more than hitherto—simply a temptation for an endless output of absurd and aimless tomes.[19]

Private action

Even in the Middle Ages people sometimes sought to achieve their purpose without the aid of the useless central authority. An attempt to find support in the pope at the beginning of the 14th century is interesting only as a matter of curiosity; but the agreements made by those chiefly affected, from the middle of the 13th century onwards, are not altogether insignificant. These so-called unions for the peace of the land *{Landfriedensverbände)* were of some importance particularly along the Rhine where the cities predominated; but the territorial princes also co-operated. They achieved some short-lived results by means of special "police" ships and by spoliating and destroying the robbers' centres. Unfortunately, they knew of no other means of defraying their expenses than by raising new tolls, and so we find a whole series of "peace tolls" (*Landfriedenszolle)* set up as a result of the measures to check the toll confusion. Negotiations between toll owners along all the big rivers dragged on from the beginning of the Middle Ages throughout the following centuries, without, as a rule, accomplishing more than the veriest shadow of anything definite. The lower reaches of the Elbe really were opened out partly, as a result of a union of 1574, but even in the

[19] For the later period, Falke relies on unpublished Saxon material, and his description is all the more valuable Tor that reason; Period 1523-1648: 147-229; Count of the Palatinate at Veldenz: 172; the "customary reciprocal agreement" concerning the exemption of the Electors' subjects, e.g., 160, 207, 211 f.—Rachel, *op. cit.16,* 32 f., 186 ff., confirms Falke's treatment and enlarges on it.

18th century, conditions there were found to have deteriorated. Private attempts at self-help thus arrived at no greater success than did the action of the imperial bodies.[20]

The territorial states

The territorial states, the new forms of society which grew up on the ruins of a consolidated empire, were the last remaining resort, and our first inquiry must be whether they could create order along the great trade routes. Their ultimate success in this direction, it can easily be proved, must have been small even in the few cases where serious attempts were made. For built up, as they were, on the basis of feudal disintegration, these states were confined in extent and political power and possessed very limited possibilities of exercising anything like the widespread influence necessary to reform the German toll system as a whole. They consisted, with few exceptions, of widely scattered fragments torn apart from one another and inset with similar enclaves of other states. A glance at an ordinary historical map, showing the partition of Germany before the great unification movement at the beginning of the 19th century, amply proves what little unifying work could be expected from the territorial states of the time.

There might nevertheless have been a different shaping of events, if the larger and more powerful states had employed their superior position to compel their numerous neighbours of the smallest size, petty principalities and cities to obey the imperial regulations which, on paper, held good for all the "estates". Instead of doing this, they contented themselves with lodging no end of fruitless complaints with the powerless and indifferent imperial officials and, in addition, replying with exactly similar actions against which they complained. Consequently, nothing more than additional difficulties for trade was achieved. To give only one example—in the year 1705, Wolf, "Court Jew" of Anhalt, took it upon himself without any legal authorization to increase the tolls of the little principality fourfold, to the great injury of such comparatively mighty neighbours as Saxony, Prussia and Hanover (later, Hanover-England). When the latter protested, the prince of Anhalt replied "rudely and forcibly" (*heftig und grob)* and the change remained in force for forty-two years. The reason for the complaisance on the part of the more powerful is, undoubtedly, that all the princes recognized that it

[20] Sommerlad, *Rheinzblle* 147-61.—Schmoller, "Die brandenburgisch-preussische Elbschiffahtspolitik" 1666-1740 (his *Jahrbuch* VIII, 1884, 1053, 1071 *et passim),*—Rachel, *op. cit.* 101 ff., 284, 469 f., 474 ff, 481 f.

was in their common interest to respect their own sovereignty, and they preferred to suffer great inconveniences rather than take any action which could be interpreted as an attack on the very order which guaranteed their existence. The sovereignty of every separate state was thus a common foundation for all the territorial princes, including the most powerful. But the chances of effecting general reforms of any significance outside the province of a particular state were thus vitiated.[21]

We therefore find the trade routes, which were under the control of several masters—and these formed the majority—abandoned to everyone's will. The wars, in particular, were the cause of special war-tolls or *Lizenten* as they were called; some of these belonged to Sweden in her capacity of a German state. They were an important item in the Swedish budget in the 17th century and—from the opposite point of view—they served to increase the confusion in North Germany. Sweden herself, in contrast to Germany, did not suffer from a disorganized toll system, but it never occurred to any Swedish statesman that this might be a reason for creating similar conditions in her German provinces. The idea was that Sweden must emulate all the other powers in drawing some profit from the ever-increasing economic chaos of the German Empire. The war-tolls first appeared about the year 1570 on the Rhine, but the new, really great disorder dated, as was to be expected, from the time of the Thirty Years War and did not cease at its conclusion.

The development *on* the Rhine was most important for, given but a minimum of toleration, the trade potentialities were greater there than elsewhere. But toleration was lacking and the possibilities of trade were not developed. On the Upper Rhine Karl Ludwig, the Elector of the Palatinate, certainly endeavoured, throughout his reign which occupied a great part of the 17th century, to facilitate trade on the river. One result of his efforts was the exemption from tolls which he granted to the citizens of Mannheim and kept to from the time of the rebuilding of the city after the Thirty Years War (1652). But the ecclesiastical princes of the Rhine persisted in their policy and rendered the whole improvement illusory. Actually shipping on the Upper Rhine shrank into insignificance, and timber became almost the only product that could profitably be transported down to Holland; this was probably as a rule floated down the river. An inquiry made after the Thirty Years War showed that wine

[21] Falke 235 f.—For the negotiations between territorial states *vide* the indications in the previous note.

and wheat were trebled in price when sent from Mannheim to the Dutch frontier, even without reckoning the local Palatinate charges, thus placing the trans-shipment of these commodities out of the question. French rule in Alsace brought no improvement. That arch-enemy of French internal tolls, Colbert, regarded the matter in much the same way as, for instance, the Swedish statesman Axel Oxenstierna did in his time. In 1682 Colbert informed the Intendant at Strasbourg of Louis XIV's firm resolve to allow no reduction of Alsatian tariffs. In fact, no change was made until the French Revolution or, more exactly, until the resolution of the French National Constituent Assembly of 1790 *(v.i.* 107). On the Lower Rhine conditions were never quite so bad, although there, too, traffic took to using land routes to an ever-increasing extent, in spite of the land tolls which were charged as of old. The numerous staple restrictions were closely connected with the tolls and the result was that trade came to be carried on only within small sections of the river and to be confined to those parts.

Although the Rhine stands out most prominently in this description, the toll confusion was certainly as great in other parts of Germany. On the Elbe, for instance, it is noted that in the year 1606, forty-two planks of timber went as toll payment in kind out of a total of sixty, the corresponding figure in 1667 being thirty-six, and this had increased in 1685 to no less than fifty-four, of which twenty-one went to the tolls of Brandenburg and Ltineburg alone. So that in all, a total of six planks, or one-tenth of the consignment from Saxony, would reach its destination in Hamburg. In addition there would be dues for floating the timber. The loss of time was so great that according to the well-known writer on commerce, Marperger (1712-14), a boat would have to spend four weeks over the journey from Dresden to Hamburg, whereas, without stopping for toll payments, it could complete the same journey in eight days. As a result, corn sent from Magdeburg to the Low Countries, in the time of the Great Elector, followed the land route via Brunswick and Celle to Bremen, instead of the direct, continuous water route to Hamburg, and similarly with goods transported in the opposite direction. Thus, so far, the work of unification on the part of the territorial princes was insignificant.[22]

[22] *Lizenten:* for a particularly comprehensive account, also for the part played by Sweden; Rachel, *op. cit.* 17, 35 f., 73, 84, 175, 178, 185, 217, 330-6, 467 ff., etc. From the Swedish side, part of this question has been investigated by E. Wendt, Det *svenska licentvasendet i Preussen 1627-1635* (Upsala, 1933).—For

But we have still to examine the work of the princes within their own territories. In one respect, they were in a favourable position with regard to that work, since feudalism, in the sphere of the tolls, had, to a certain extent, called a halt in the face of the power of the princes. Tolls of the nobility were certainly levied but, as we see chiefly in Brandenburg, they were at any rate not the rule. Town tolls were of far greater importance, since they formed a part of the systematic town policy. The following example will serve to illustrate the position.

Travelling downstream along on the Elbe, after the Thirty Years War, one would find the following tolls in regular sequence. Nine in Bohemia, of which five were territorial, three municipal, and one of the nobility; eleven in the Electorate of Saxony, of which seven were territorial, two noble, and two municipal; three in Anhalt; two in the county of Barby (later Sachsen-Weissenfels); another in the Electorate of Saxony; one belonging to the Chapter of Magdeburg, four to the Archbishopric of Magdeburg, and two to the city of Magdeburg (!); two belonging to the Electorate of Brandenburg; four tolls of the nobles; three belonging to Brunswick-Ltineburg; one each to the states of Mecklenburg-Schwerin, Mecklenburg-Güstrow, and Sachsen-Lauenburg; and finally three to the city of Hamburg—a total of forty-eight, of which thirty were territorial (reckoning the Archbishopric of Magdeburg, but not the Chapter, as a state), ten were municipal, and seven were owned by feudal lords. Even if this is not exact, since apart from other reasons, different institutions often had shares in the same toll, at least it gives some idea of the proportions.[23]

Austria

The size of Austria and the compactness of her possessions with only a small number of enclaves, gave her, of all the German states, the greatest geographical capacity for tariff unity, and there is no doubt that she did make greater progress towards unity than any other German state. The comparatively scanty information available on the development of the Austrian toll system indicates that she was the first German state to arrive at a system of frontier tariffs—a great advance on medieval

the Rhine, apart from Rachel, in particular Gothein's paper, quoted above, note 13, and his "Mannheim im ersten Jahrh. seines Bestehens" *(£eitschr. f. d. Gesch. d. Oberrheins* XLIII, 1889, esp. 174-B).—For the Elbe: Rachel, particularly 187, and note 3, 270f., 287.—Colbert: *Lettres, instructions et mimoires de Colbert,* ed. P. Clement (Paris 1861-73) V I I 272.

[23] Rachel 182 f., cf. 854 f.—Falke 221 and note 1.

conditions since it facilitated trade. This system of tolls at the frontier really rendered the medieval regulations concerning toll rights largely impracticable, because these applied to particular toll stations and not to a continuous chain of tolls.

The Austrian rulers moreover quietly disregarded the whole body of German regulations of which, as emperors, they should have been the principal guardians. They found support for their calm and consistent policy of ignoring prohibitions on the introduction and raising of tolls in a charter of the 145o's, said to have been agreed to by the Electors and the Free Cities, which gave their hereditary lands a free hand in the matter of tolls. The first great stride towards tariff autonomy was made in 1557 and 1558 when Silesia and Lausitz were shut off from the rest of Germany for the import and export of goods, although, on the other hand, they allowed free trade with the hereditary lands only in particular cases, such as the import of tin and copper. In 1616 a new and decisive tariff regulation came into force which extended the system of frontier tolls much further by abolishing internal tolls on goods in transit, and raising a definite toll barrier against the rest of Germany. This appears to have been the formation of the first regular, uniform, toll system on the part of a German state. There followed an ever-increasing number of prohibitive measures in Austria which grew in severity towards the middle of the century as a result of the struggle with France, this struggle really developing into a war on French luxury goods. It was, consequently, perfectly natural to find the representatives of the predominant tendency in German mercantilism (Bccher, von Hørnigk and von Schrotter) associated, in one way or another, with Austria. But at the same time, the political and ethnographical disintegration of Austria was even greater than in most other states both within and outside Germany, and there was really nothing approaching any kind of economic unity. The toll barriers between different Austrian provinces were not raised at all until 1775 and only completely in 1827, while tariff union between Austria and Hungary was not achieved until the middle of the 19th century.[24]

Brandenburg-Prussia

Austria's position is so exceptional that even those meagre facts which we have of it can have no general application to the rest of Germany. The development of Brandenburg-Prussia, on

[24] **Falke 151 f., 245-53.—A Wolf and H. von Zwiedineck-Sudcnhorst, *Oesterrekh unter Maria Thtresia, Josef II und Leopold II* (Berlin 1884) 195._—J Grunzel, *Handbuch der internationalen Handelspolitik* (Vienna 1898) *1* ff., 7, 9.**

the contrary, may be taken as typical of the extent to which the territorial states succeeded in overcoming the disunity of their internal tolls. To judge by appearances, in fact, the development of this state is a fitting example of the development of Germany as a whole, since Prussia was able, with the aid of her state power, to rise to first place in Germany, at first next to Austria and finally superseding her. Schmoller, too, chose Brandenburg-Prussia as his pattern of mercantilism, since his description of "The Historical Significance of the Mercantile System" is founded mainly on material from Brandenburg-Prussian history. To draw conclusions from it for Europe as a whole, as he does more or less, would certainly be to distort its application, but apparently it applies quite appropriately to Germany. In addition the development of Brandenburg-Prussian conditions have been investigated with unusual care, and so there is every justification for placing her at the centre of a description of the tariff policies of the German states.[25]

As early as 1472 the Elector of Brandenburg endeavoured to unify the tolls within his territory. He himself arranged the tolls in the various cities in such a way that anyone who had paid on goods once, received a permit which freed those same goods from toll payment in any other part of the Electorate.[26] The whole plan was characteristically wrecked on the opposition of the cities, which is an additional proof of how little was achieved by mere ordinances. It is also an indication of how incomparably well developed, in this respect, England was, where, as early as the 13th century, such a measure could not only be suggested but also carried through.

Renewed efforts were made in the 16th century to unify the tolls in the control of the Elector, this time with definite results. An imperial charter of 1456, granting Brandenburg complete

[25] All the essential points in the description that follows are based on Part I of Rachel's work which has been already quoted several times. The editors of the *Acta Borussica* say of this in their Preface: "It presents complete in itself a survey of the chief part of Brandenburg-Prussian economic policy up to 1713, such as docs not exist for any other German state of the 17th century." The justice of this opinion is strengthened rather than weakened by the fact that, as a result of the work, the conception sponsored by Schmoller has to be thoroughly revised, and Schmoller was, up to his death, the leading force in the editing of the *Acta Bortisska.—Vor* the relation of Prussia to the other German states in the sphere of commercial policy cf. Rachel's note at the beginning of **Part II** of his work: *Handels-, Zoll- und Akzisepolitik Preussens 1713-* (Berlin 1922) 5. (The work will be referred to below as Rachel I and II.)

[16] *Codex diplomaticus Brandenburgetisis,* ed. Riedel, I: **X I V** (Berlin 1857) 357, cf. **Schmoller, *Umrisse und Untersuchungen*** 68 **ff.**

autonomy in the matter of tolls, similar to the one granted to the Austrian hereditary lands, was revived in support of these attempts, although Brandenburg's charter was based on weaker legal grounds and was therefore more fiercely contested. An export and transit duty on grain was established at the frontier in 1558, immediately after the same measure was taken in Austria, and gradually the outlying parts of the Electorate (kingdom), East Prussia, Pomerania, Neumark and Silesia, came under a system of frontier tolls. But the results in the centre were small. As early as 1518 a uniform table of charges for the road tolls in the Mark of Brandenburg and in Neumark, and apparently also for the river tolls, was in existence. These charges remained, but actually the extent to which they were uniform and national in scope was extremely restricted. For they were modelled upon those of the city of Berlin, where municipal toll charges remained in existence as part of municipal policy, although the revenue, for seventy years, had been flowing into the coffers of the Elector. The regulations concerning the tariff were so faithfully copied as to become largely absurd.

The causes of the ultimate failure of the attempts at uniformity were even more typical of the times. The scale of charges were not printed, the details were passed on verbally, or private agreements were made with the toll officials. Extortion and increased charges crept in on the heels of local inequalities, and different places developed separate policies. And this state of affairs continued on into the 18th century. The first measures to bring some order into the administrative machinery were those which Frederick William I took, still without actually altering, or even attempting to alter, the basis of the system. But until that time, the old, corrupt system continually recurred along the different trade routes and within the different parts of the country. The toll director of Eastern Prussia, for example, was in 1644 secretly informed of the scale of toll charges, with the strict injunction not to betray the secret to anyone. The endeavours of the Great Elector to print the charges and to make them known by ordering them to be posted up appear to have borne no fruit. The toll officials on the Elbe would allow no ship to pass before they received their "discretions" or respite money, which might take the form of a meal for every man and fees for the commander and scribe. Among other things, they assessed the goods in the absence of the owner, demanded enormous unspecified lump sums, reckoned measures and coinage in an entirely arbitrary manner, and caused the ships deliberate delay. On the other

hand, the interests of the state also suffered just as much, since the toll officials were corrupt and worked hand in glove with the traffickers and since, in addition, a great deal of smuggling took place. In spite of recurrent governmental efforts, the story repeated itself with wearisome regularity, not only on the Elbe, but also on the Rhine, in East Prussia, and almost everywhere else. Confusion reigned supreme.[27]

In conjunction with the innumerable abuses, which in themselves closely resembled a system, and demonstrated the weakness of the governing authority, there must be considered the actual measures of the central authorities which positively or negatively promoted disintegration. In 1536, when the younger brother of the Elector became prince of Neumark, the northern part of the Electorate bordering on Pomerania, the tolls of the place came to resemble those of Pomerania more closely than those of Brandenburg. And even after 1571, when the two territories were reunited under the Elector of Brandenburg, this distinction still remained. The small province of Beeskow and Storkow, annexed to Brandenburg from Saxony as early as the 15th and 16th centuries, remained for toll purposes under Saxon administration until 1818, that is, right through the French Revolution and the Congress of Vienna. The province was in complete alliance with the tolls of the Saxon Niederlausitz, and was separated by a toll barrier from Brandenburg to which, politically, it belonged. A further instance is the Duchy (Archbishopric) of Magdeburg, acquired in 1680. The attempt to unify her toll system was hopelessly unsuccessful, and she retained her seventeen (!) different scales of toll charges on land.

Regarding the river tolls, there appears to be not a single example in which the Electors of Brandenburg ever abrogated a toll. Their endeavours to persuade the other toll owners along the Elbe to reduce their charges were of course doomed to failure unless they reduced their own. The Müllrose Canal, or Neuer Graben as it was called, constructed between the Oder and the Spree in 1669, was certainly a great aid to commerce, since it provided a new and cheap connection between the Upper Oder (Silesia, etc.) and Hamburg, and avoided that great obstacle to trade, Frankfort-on-the-Oder. 'That its existence was to Brandenburg's advantage is also apparent. And yet after its completion,

[27] **Falke 55, 162.- Rachel I 16 ff., 19-23, 28f, *1*94ff., 263, 384, 399, 475, 846 ff., etc.; II 4.-Cf. the review of the German edition of the present book by the last-named scholar, in *Forschungen zur Brandenburgischen utul Preussischen Geuhichte* XLV 1033, 181.**

there were, between Krossen and Hamburg, a distance of roughly 425 kilometres, no less than twenty-five tolls, eighteen of them occurring in the 300 kilometres through Brandenburg, not to mention a new restraint which made it compulsory to trans-ship goods in Berlin.

It is interesting to note that whenever Brandenburg acquired tolls of the nobility or, through the acquisition of land, became the owner of toll rights in other territories, so far from suppressing the existing tolls she allowed additional ones to be imposed on her own account. Thus, after the acquisition of Magdeburg in 1680, the toll at Jerichow was retained, although it was situated almost directly opposite the Brandenburg toll station of Tangermiinde—which, of course, also remained in existence. When in 1708, the "noble" toll at Wittenberge was purchased, not only were the charges increased twofold or more, but the right of inspection, involving additional delay to commerce, was introduced, although previously Brandenburg had denied this right to the tolls of the nobility. The increasingly oppressive burdens on river traffic, which were described above as being a result of political chaos, were, actually, at least as much the effect of the domestic policies of the territorial states. It would be difficult to find important instances of these states abolishing tolls. Greater uniformity can be mentioned only in so far as the princes claimed the right to regulate local tolls; but this did not make for less oppressiveness. Frederick William's policy in the cities of Kcinigsberg and Magdeburg and in the Duchy of Cleves are illustrative instances of this fact.[28]

The particular factor which tended to maintain the artificial hindrances to economic unity within the states in Germany was something over and above what has been shown above. It was the attitude of the princes in the face of the policy of the towns. Some examples, taken once again from Brandenburg, will indicate how this circumstance rendered it impossible to clear up the toll confusion. The princes unreflectingly accepted the same policy towards cities in different territories which their own larger towns had followed—in fact, it became a kind of patriotic duty to perpetuate the feuds and petty jealousies between the cities. The only difference lay in the more powerful authority which now supported the measures and made them effective over a wider area. In North Germany three cities in particular were

[28] Rachel I 53, 63, 132, 220 ff;, 229, 231, 280, 288, 312, 385 f., 403 ff., 468; cf. also the instructive map showing the number of toll stations.—Cf. further, Schmoller, *op. cit.* (note 20, above).

thus enabled to pursue their medieval rivalry more heedlessly than ever before, namely, Leipzig in Saxony, Frankfurt-on-the-Oder in Brandenburg, and Stettin in the still independent duchy of Pomerania. The most notorious quarrel was that which took place between Stettin and Frankfurt-on-the-Oder and led to a trade blockade between Brandenburg and Pomerania. They first attempted the blockade in 1562, and revived it ten years later, and it remained in existence for no less than eighty-one years, that is, until 1653, although in practice it went unheeded after the first few years. The selfish policy of the cities thus became the guiding policy for the territories and it was directed not only against cities in other territories but, from some points of view, even more against their own subjects. To this end, a host of tolls were maintained to direct trade towards the most favoured city, as happened, for example, within the extraordinary confused toll system of the Brandenburg-Prussian duchy (Archbishopric) of Magdeburg. One hears little of a corresponding loss sustained by the less favoured cities through having their tolls abolished, though this would have been the least of the effects to be expected from a policy of unification.[29]

Even the protectionist, mercantilistic, industrial policy which began in Brandenburg under Frederick William introduced no changes, for it was based on a system of excise and not of frontier tolls.[30]

Added to all the enumerated obstacles to trade within each part of the motley crowd of Brandenburg-Prussian states, we must mention, in conclusion, the complete impossibility of connecting the different parts—first the original parts of the state (Altmark, Mittclmark, Uckermark and Neumark), then Magdeburg and Lower Pomerania and also the Rhine territories and finally Prussia, not to mention all the tiny enclaves within other states—and the reason was simply that they were completely cut off from one another by the possessions of others.

One thing, in any case, is certain and that is that before the French Revolution no one in the foremost territorial state of Germany (next to Austria) contemplated the abolition of the medieval toll system. It was left to the famous Prussian tariff of 1818, inspired by the old German liberalism in a bureaucratic

[29] In general: von Below, *Der Untergang der mittelalterlichen Stadtwirtschaft*, republished in his *Probleme der Wirtschaftsgeschichte* (Lpz. 1920) 501-621, particularly 580 f.—Full documentation for Brandenburg-Prussia: Rachel I 115 -19, 128 31, 160.—Trade blockade: Schmoller, *Umrisse und Untersuchungen* 93-103; Rachel I 148-62.

[30] Rachel I 507, cf. 508, 512.

guise, to effect this. The mercantilism of Brandenburg-Prussia made scarcely any attempt in this direction.[31]

Such was the position in the German state which, during the period under consideration, built up one of the most efficient administrative machines in Europe. A few further examples from other territories will complete the picture.

Wtirzburg-Bamberg

Conditions in Franconia, for example, are instructive and, as it happens, they have been very thoroughly investigated, especially as regards the Bishoprics of Wü'rzburg and Bamberg. As late as the first half of the 18th century, the charges for the safe conveyance, with an accompanying guard, of goods in transit *(Geleit)* played so important a role that they led to a "toll-war", lasting until 1742, between the two bishoprics on the one hand and the Mark of Ansbach on the other. The episcopal toll-dragoons forcibly conveyed consignments of goods across Ansbach territory, and the latter retaliated with similar practices. The administration of the episcopal tolls was in such disorder that a shoemaker, who had established himself in a disused toll-house, was able to levy tolls on his own account, without attracting attention. The state of the tolls was hardly any better on the River Main where the officials varied their charges in inverse proportion to the bribes ("perquisites") paid by the traders. No one appears to have contemplated any fundamental reform. The Bishop of Würzburg and Bamberg, Friedrich Karl von Schönborn (1729-46), an exceptionally far-sighted and, for the times, "enlightened" prince, did at least endeavour to create some order out of the chaos by formally lowering the toll charges on the river and by attempting to see that they were levied systematically. But the narrow policy of the small neighbouring states counteracted the effect of his reforms, for they seized the opportunity to aggravate the taxes along their parts of the Main, on goods coming from the two bishoprics. And so the efforts of the bishop to increase the income of the state by providing better transit facilities were frustrated by the complete callousness of his neighbours towards any such new-fangled ideas.[32]

Bavaria

The conservatism behind the toll confusion was even more

[31] Rachel II 4 f.

[32] K. Wild, *Stoat und Wirtschaft in den Bistiimern Wurzburg und Bamberg* (Heidelberger Abhandl. z mittl. u. neu. Gesch. XV, Heidelb. 1906) 116 f., 135 ff. (partly after G. Zoepfl, *Frankischt Handelspolitik im Zeitalter der Aufkldrung,* Lpz. 1894, which however was not available to me).

manifest in the Duchy, later the Electorate, of Bavaria, the most important of Wurzburg-Bamberg's neighbours and the chief of the South German states, where medieval toll conditions survived almost unchanged until 1765. Until then, Bavaria (Old Bavaria and the Upper Palatinate) had 130 to 140 "main toll stations" and 340 to 360 supplementary stations on land and along the river, a total of almost 500. Old Bavaria alone had acquired, since 1608, 31 new toll stations of the first kind and about 150 of the second, a striking proof of how toll conditions had deteriorated since the Middle Ages even in one of the most powerful of territorial states. In theory, goods should not have been taxed at both main and supplementary stations, although they would have to pay at every main station, even if there were a dozen along the route; but in practice, they were taxed at almost every point. Tolls were levied indiscriminately on domestic as well as foreign goods. Each station had its own scale of charges, which did not correspond even approximately to that of the others in either specification or rates. In support of these facts may be cited the evidence of a member of the central tolls authority (1762), according to which the toll officials were so ignorant, dishonest and unscrupulous that no regulations could have been framed clear enough for them not to misunderstand or misuse. In addition to the state tolls, a number of purely private tolls still survived. Just as in Brandenburg, there grew up a so-called excise side by side with this medieval system, and in this case it took the form of a frontier tariff on exports and imports. But it produced no change in the older system. Even the reforms, which did not occur at all until 1765, were incomplete and apparently quite ineffective.[33]

To recapitulate and summarize what has already been described is superfluous. The picture showing the trend of events is clear. In hardly any instance or from any point of view did the territorial powers achieve a unified toll system providing freedom of trade within the territory, nor were existing tolls ever united under the control of the state or the prince. This was partly due to inability to overcome the strength of local interests, vested in and supported by the old inherited order. But, though important, that was not the essential difficulty. The real cause of the toll confusion appears to lie in the fact that the princes, whose increasing power brought them new problems and difficulties,

[33] H. Schmclzle, "Das baycrischc Zolhvesen im 18. Jahrhundert" *(Oberbayerisches Archiv* L V I, 1912) 59 ff.—S. Riezlcr, *Geschichte Baierns V*I (Gotha 1903) 185, note 1, VIII (1914) 480. -Falke 325 f.

found the internal tolls an indispensable source of income. Any government desiring to base its power upon the economic unity of its territory would have to replace these sources of income by other, less obstructive, sources. The German princelings were not in a position to do this, and, in fact, did not once seriously try. In very few respects, consequently, did they progress beyond the chaos of medieval conditions and, even in the few cases in which they did, their progress was small and halting—while in many other matters they intensified the confusion and aggravated the existing difficulties. The toll system is thus no example of unifying work of mercantilism in Germany.

4. FRANCE

Her intermediate position

Turning to France, we find her medieval tolls just as confused as those of Germany, and the differences between the two countries not so great as might have been expected. From one point of view, conditions in France were even less conducive to unification, since the more weakly organized power of the great feudal barons allowed almost every landlord some degree of toll autonomy, whereas in Germany that was practically confined to the imperial vassals. There is nothing which illustrates more clearly the inherent tendency towards disintegration in the Middle Ages than this fact. To subdivide the state's power among the greater vassals was the only guarantee against its partition among the lesser. Nothing could prevent the individual landowners from becoming sovereign within their own spheres other than the power of the great vassals to do the same themselves.[34]

From the point of view of unification on the other hand, France was in a much more favourable position than either the individual German states or the German Empire as a whole. Geographically she was a unified and compact kingdom as early as the first half of the 16th century, almost entirely free from enclaves and overlapping sovereign states. Her monarch had, perhaps, greater power over his country than anyone else in Europe and, finally, her statesmen had from early times followed a conscious economic policy in which tolls had a definite purpose to fulfil. To this extent, the contrast with Germany could scarcely be greater. There was a very great deal that had to be done in France, and the opportunities for doing it were more plentiful

[34] See, for example, E. Levasscur, *Histoire des classes ouvrihes et de l'industrie en France avant 1789* (2nd edn. Paris 1900-1)—quoted below as Levasscur—II8if.

than in any other country. For this reason France provides a kind of rehearsal of mercantilist endeavours towards unification against a background of feudal disintegration.

The persistence of feudal forms of organization really manifested itself only in the river and road tolls, *péages (pedagia),* but in addition, the tolls of the cities survived—here, just as in other countries, relics of the more or less autonomous city economy. The French jurists, trained on Roman law, certainly did not fail to insist that tolls were based on royal grants but that the ownership of a toll always implied the duty of improving or maintaining the trade route to which it pertained. And, in fact, this duty was performed more often than in Germany. Even in the 18th century the work of improvement could still be enforced. But apart from this, the legal character of the tolls did not go far and mattered even less here than in Germany. It will be seen below that the privilege of having a toll was generally invested in every owner as a feudal right, so much so that even the Crown, in such cases, exercised its toll right in its capacity of owner of the royal domains.

Unlike Germany, where such tolls were almost the only ones, there arose or was revived in France, at a comparatively early period, another system of a more clearly public character, and it was in this respect that France occupied a position intermediate between Germany and England. The distinction between Germany and France was at least as much practical and economic as legal. Although non-feudal tolls could sometimes hardly be distinguished from ordinary river tolls in the possession of the state, the former—the public tolls—as a rule belonged to another, and, one may say, higher, type, since they were frontier tolls (or customs duties) levied on goods passing from one territory to another, though not necessarily levied at the frontier itself. When all the great fiefs had been absorbed in the royal possessions, tolls or customs duties of this latter kind were, with few exceptions, in the hands of the Crown—although, as a rule, they were farmed out. There was thus no legal obstacle to unification from this point of view, even though the existence of local "estates" *(etats)* in various provinces, the so-called *pays d'etat,* might undoubtedly have made the task more difficult. To gain some idea therefore of the unifying work of the central government, it will be necessary to discuss separately each of the two types of tolls.

Road and river tolls

From the early Middle Ages road and river tolls had been, with some trifling difference, as burdensome in France as they

were in Germany.[35] The Loire, in many respects the French equivalent to the Rhine, had, both absolutely and relatively, more toll stations according to all available data, than had the chief German river. The only qualification which must be made to this statement is that it is not always possible to ascertain whether for each *peage* there was a separate toll station or whether several were combined in one station. But with this reservation, there were in the 14th century between Roanne and Nantes (about 600 kilometres) 74 toll stations, that is one for every 8 kilometres, and towards the end of the century and in the thirties of the next, the whole river with its tributaries was said to have 130. Between the two latter dates the number is said to have been even higher, and as late as the year 1567, the total was still about 120. Conditions were no better on the other great rivers, particularly on the next in importance, the Rhône and the Seine, and toll charges formed the largest item in the cost of river transport. Instances are cited over and over again showing that the dues paid on salt, grain and other bulky commodities, even over a journey of less than 300 kilometres, equalled, and in many cases exceeded, the total value of the consignment. In the time of Henry IV a hundred *ecus* was paid in toll dues for a load of salt worth only 25 *ecus,* transported from Nantes to Nevcrs (about 450 kilometres)—and a few even more incredible cases could be quoted. The only fact which might lead us to conclude that conditions were any better than in Germany is that we more rarely find goods forsaking the rivers for the land routes, in spite of the incomparably better state of French roads. But, on the other hand, the French road tolls, which were probably except ion-

[35] **River and road tolls before Colbert: A contemporary work by M. de Vauzelles (1550) was not available, but the subject is dealt with fully in an 18th-century legal treatise by E. de Ia Poix de Freminvillc, La *pratique universelle pour Ia renovation des terriers et des droits seigneuriaux,* part four (Paris 1754) I ff., although it deals chiefly with later times.—I was likewise unable to avail myself of a main source of most of the later studies of the subject, Ph. Mantellier. *Histoire de Ia communaute des marchands frequentant Ia riviere de Loire* (Orleans 1863, 1869,.—The ordinances themselves are partly accessible in *Recueil general des anciennes lots francaises,* ed Jourdan, Decrusy, and Isambert (Paris 1822 *ff.).*—For the rest, there is ample material in the literature on France under the *ancien regime,* in particular: Ixvasseur I 208, 371-4, 433, 539 f-, 669 ff., II 81 ff., 373 ; H. Pigeonneau, *Histoire du commerce de Ia France* (I, 2nd ed., Paris 1887, I I, 1889; I 175, 182 f., 384 ff, 408 f., 437 f., II 72 f., 187, 201, 249 f, 277, 372 ; G. Fagniez, L'*economie sociale de Ia France sous Henri IV, 1598-1610* (Paris 1897; 165 ff.; P. Boissonnade, *Essai sur I'organisation du travail en Poitou depuis le XI^e^ siecle jusqu'd Ia revolution* (Paris 1900) II 281 ff., 333, 373 ff.,** 514,544 f.

ally high on account of the toll privileges of every ordinary landowner, must have had a prohibitive effect.

The endeavours of the French monarchy to end the disorder were almost as old as the monarchy itself. They found a strong support, in the 13th century, in Roman law, and from the 14th century onwards a veritable flood of laws and ordinances were issued—some twenty odd in the 15th century alone. During the following century these efforts received an additional impulse through the formation of a special organization of merchants on the Loire which tried to enforce the constantly repeated ordinances. To gain an impression of the results of these endeavours, it will suffice to examine the activities of Colbert and their effects. For Colbert represents the high-water mark of internal reforms under the French monarchy, in the sphere of tolls as well as in other matters.[36]

Colbert's achievements hold a special interest chiefly because he, more than any other mercantilist statesman, formulated his economic programme as a complete whole and realized the connection between measures taken in different spheres. His work consequently indicates with peculiar clarity how the abolition of internal tolls was just one part of the general attempt at economic unity within the state and fitted in with the whole mercantilist system of trade—with its policy of hindering imports, encouraging exports and free trade within the country, attracting the precious metals and having a rapid circulation of money within the country.

A few examples should suffice to illustrate these facts. In his

[36] The description which follows is based on the threat original collection of documents which forms the main source of Colbertian history · see note 22 above). It is quoted below as L*ettres de Colbert.* In this connection, see also: *Correspondance administrative SOILS LOuis XIV,* ed. G. B. Depping, I I I Paris 186-2), and, for the period of Louis XIV's reign after Colbert's death: *Correspondance des contrdleurs generaux avec les intendants des provinces, 1683-1713,* ed. A. M. de Boislisle and P. de Brotonne, I—111 (Paris 1874 9 7·)-. A list of references to these collections regarding the following description of river and road tolls is now given : L*ettres de Colbert* II cclxxii fa memoir of 1664), 49 (1663 memoir), 139, 172, 426 f. (Letter to Marseilles 1664). 548 Bordeaux 1670), 652 note, 788 (edict of 1664 concerning tolls), IV 40 f. an instruction of Sept. 1664), 75 (Riom 1672), 143 (Limousin 1681), 157. 400 ff. (Languedoc Canaly 471, 486, 497, 528, 535, 550, VII 241 ; 1670 memoir. 272 f, *298.—Corresp. adm.* **I I I** 48 f. *Corrresp. d. contr. gen.* I Nos. 29, 68, 170, 201, 289, 776, 844, 985, 1015, 1250 note. 1696, 1843, II pp. 480. 486 (quotation of the deputy for Nantes 1701), **I I I** Nos. 250, 269, 663, 689, 903 note, 946, 1059, 1355 note (quotation of the Loire merchants 1714), tor the doubling of tolls 1708-14: pp. 613, 618, 632. The Loire toll at Ce: L*ettres de Colbert* IV 528, 535 note; *Corresp. d. contr. gen.* I No. 725 Water ami forest law of 1669, heading 29: *Recueil* ***gen.*** *d. anc. lois fr.* (ed. Isambert, etc.) XVIII **294 f.**

greatest work, the famous account of French finances in 1663, which he wrote "in order to help the writing of history", Colbert emphasizes his determination to abolish river tolls as something of great moment. In the following year, he sent the king a memorandum which he drew up in preparation for the first meeting of the new Board of Trade, and in it he mentions, among other measures for the revival of French commerce, the relief of trade along roads and rivers and the suppression of internal tolls. The letter which was issued several days later, in the king's name, to the citizens of Marseilles expressed similar sentiments. Perhaps more important is his treatment, in a subsequent memorandum of 1670, of the question of the connection between financial policy, the store of bullion, and other matters of economic policy—in which the measures against internal tolls are represented as a means of keeping money in the country.

Colbert's aim was no less than the entire suppression of all river and road tolls. His *Mémoires sur les affaires des finances de France pour servir a l'histoire* of 1663, which have already been cited, describe mainly the impossible conditions of two years previously, at the time of Mazarin's death and the beginning of Louis XIV's personal government—in other words, of Colbert's own government—and proceed to declare that the king had already abolished all "tolls on the rivers Garonne, Dordogne, Charente, Loire, Seine, Somme, Marne, Oise, Saône and Rhône which were unlawful *(dont les litres estoient vicieux)".* The official instructions of September of the same year assert even more dogmatically that the king had already abolished all river and road tolls. It lies in the very nature of the matter that these assertions must have been untrue, since century-old abuses do not disappear at a wave of the hand. What Colbert obviously had in mind was nothing more than a decree, drawn up at the beginning of the year, which recapitulated and supplemented the age-old regulations against illegal tolls. In the following year the king, under Colbert's direction, restricted himself to stating that the work of abolishing the tolls on all navigable rivers continued uninterruptedly, and Colbert reasserted this in 1670. The famous tariff of 1664, which we shall shortly discuss in greater detail, states in its preamble that river navigation had been considerably facilitated by the abolition of tolls. In his justly famous water and forest law of August 1669, Colbert devotes a short section *[litre* 29) to river and road tolls, including prohibitions against all tolls introduced without authority during the previous hundred years; only real improvements entitled

one to the continuation of even such tolls as had been legally introduced. It may well be that improvements did take place as a result, but non-partisan or independent witnesses to this effect are remarkably few. The only exception is the success of the 1664 tariff, but we must leave this point for discussion under the heading of "state tolls". On the other hand, there is plentiful proof that Colbert's original assertions were exaggerated and that internal tolls continued to exist, even in those cases where they had no legal foundation. Let us quote some instances in support of these statements.

In the year 1670, the intendant of Bordeaux received a command to make proposals—the matter had not yet developed further than that—for the abolition of the tolls on the Garonne and Lot. Two years later a solitary commodity, corn, was exempted, but only provisionally, from paying toll on the Rhône and Saône. In the main, Colbert really confined his efforts to something much less pretentious than his original aim, namely to the preventing of toll usurpations, and even in this he was usually unsuccessful. In 1672, he wrote in an irritated vein to the intendant at Riom in Auvergne, pointing out that he could give no credence to the official's statement that all *[sic]* landowners raised tolls within their possessions, for that would be far too great an abuse. But in 1679, the intendant at Bordeaux received instructions to prevent such practices in his province *(généralité).* The intendant at Rouen was commanded to investigate conditions in his territory. The abuses in Limousin proved to be particularly deep-rooted, especially about the year 1681. The fact that the encroachments of the tolls were denounced is undoubtedly a proof of the king's activity, but the general impression, nevertheless, is that no positive result was achieved.

Nor were these the only tolls. A large number of new ones were granted for the purpose of road improvement and bridge building, and they frequently remained in existence long after the period for which they were permitted. The Loire toll at Ponts de Cé, for instance, was refused a renewal in 1683, after two years of legal existence, and yet it was still there in 1698 and possibly much later. The almost incredible growth of road tolls may be gauged from the fact that in 1682, at the time when private toll owners were being compensated for giving up the river tolls along the newly constructed Languedoc Canal, landowners were granted the right to tax all vehicles travelling through their possessions. This was an eloquent denial of the assertions which Colbert had made ten years previously in his

indignant retort to a statement on the conditions in Auvergne. The same source of information proves that the Crown similarly levied road tolls in its own domains.

If Colbert had no great success to his credit in the sphere of river and road tolls, the rather troubled thirty odd years of Louis XIV's reign after Colbert's death undoubtedly brought added confusion into the toll chaos. A valuable source of information on this point are the well-stocked letters of the intendants to the finance ministers *(controleurs generaux).* Some of the hardier spirits, such as the intendants of Languedoc and Lyons, continued in vain to repeat their proposals for the abolition of all the Rhône tolls (1686 and again 1691), but the former reported in 1697 that the river was so covered with royal and private toll stations that ships were held up at almost every reach. Again and again came the complaints of the intendants that every petty landowner was presumptuous enough to levy all sorts of taxes, so that a peasant waggon often had to pay toll three or four times (Hainaut 1685). When the duty on grain was expressly forbidden in 1693 on account of the shortage of food, other tolls which were not so strictly banned were demanded, e.g. *barrage* even for empty waggons, or for horses and harness, and *langage* for every boat even if its cargo was exempt from toll (Orléans). In Poitou there were more than 100 road and river tolls at the beginning of the 18th century in the hands of the landowners alone. The state appears to have confined its authority to a continuous repetition of the traditional but pointless examination of their legal titles. Towards the end of Louis XIV's reign, when the financial shortage was most severe, the state went so far as to double all the river and road tolls under its control, and this state of affairs continued until 1714—all of which reveals how little truth there was in the claim that Louis XIV suppressed all these hindrances to commerce within the country.

One particularly fertile source of information on France's economic condition is the memoranda submitted to the Board of Trade *[Conseil de Commerce)* of 1701 by the representatives of the commercial cities. The Lyons and Nantes deputies concentrated specially on river tolls, and the remarks of the latter are worth repeating.

"The special river tolls are also one of the greatest detriments to commerce. They are so numerous that more than 30 may be counted between Roanne and Nantes (600 Km.)—which means as many stations at which ships must stop. Goods are so overcharged that they have been known to pay a total of 30 or 40 *ícus* in toll for a consignment

from Roanne to Nantes, instead of the legally permitted charge of 10 *icus.* The poor sailors are often compelled in addition to make presents to the toll officials or the latter otherwise delay them as long as they please and, by persecuting them in this manner, force the shippers to rob the merchants in order to recoup themselves. Conditions on other rivers are not different."

The plaint in the letter sent by the merchants of the Loire to the minister of finance in 1714, at the time when the toll charges were doubled, is also very impressive, the following being an extract:

"Conditions have led to such excesses by reason of the false declarations made by them (the toll farmers) in their statements of charges that they levy tolls from goods legally exempt from payment and in many districts levy three and four times the legal amount of toll from goods not so exempt. If the shippers refuse to pay more than the amounts quoted in their statements of charges, the officials add 'convoys' to their other extortions and these ruin the shippers since they must, as a result, often maintain 40 or 50 men; and so they are forced to pay the charges demanded of them in order to avoid even greater losses. Many of the officials have so inspired fear because of the offices which they hold, that the injured parties do not dare to take action against them. The abuses have reached their high-water mark through the doubling of the river toll charges; in many places this taxation is in the hands of the Crown's creditors *(gens d'affaires)* and has become the heaviest and most annoying that has ever been placed on trade. Proof of this lies in the rise of the cost of transport—what cost 10 *livres* before, now costs 40, which is one of the causes of the greater dearness of all food. Moreover, merchants are thereby forced to convey their goods by land where the cost is no more than by river and the risk is absent, and the result is that the Loire is almost losing its usefulness for commerce although it flows through practically the whole kingdom."

The conclusion which must admittedly be drawn from the above description is that there was little distinction between German and French conditions, in spite of the fact that the strongest statesman of the French monarchy had devoted his attention to this sphere.

Where Colbert failed, France of the three-quarters of a century between Louis XIV's death and the French Revolution certainly did not succeed.[37] Of some importance was the controlling

[37] La Poix (see above, note 35) 15, 125 f., 128 *passim.*—Investigation of 1775: N. Baudeau, *Nouvelles ephemerides economiques* V (1775) quoted by R. Stourm, *Les finances de l'ancien regime et de Ia revolution* I (Paris 1885) 473 f—

authority which was set up in 1724 and remained in existence. It had the effect of suppressing many local tolls and forcing down the charges of several others—but the change was a very limited one. Thus when the jurist, de Ia Poix de Freminville, in 1752 published his hand-book on the rights of landowners, he had to mention that, according to his own investigations, there existed a huge number of infringements of the law on the lower course of the Rhone, and no fewer than 36 private river tolls, illegally collected at 15 stations, along a stretch of the river, south of Lyons, of only 36 lieues, or some 160 kilometres. To know that there were, besides these, state tolls which just along this stretch of the river were of the heaviest, is to obtain a proper conception of the situation.

Elsewhere the conditions were no better and the remaining years of the *ancien regime* brought no appreciable improvement. In the year 1775, one of the police commissioners of Paris carried out an investigation into the amount paid by wine, conveyed to Paris from Roanne in the middle of the country (north-east of Lyons). He discovered that payments had to be made at 20 different places, in addition to the amounts paid before the wine reached Roanne. There is a thorough description of the conditions in this region, the Rhone valley, in the first volume of the well-known *Encyclopedie Methodique* (1784) from which emerges the fact that between Gray, where the Saone becomes navigable, and Aries near the mouth of the Rhone—a distance of 600 kilometres—river toll was paid at 28 points apart from the six payments which had to be made to the state tolls; which meant as much as 20-35 per cent of the value of the goods. The total number of river tolls in all France was, of course, unknown, but was estimated by one author in the year of the revolution at 1600.

Encyclopedie Methodique: Finances (Paris 1784-87) Art. "Droit" (I 652 f.) and various articles "Peage" (I 309-17)—No. in 1789: Cormere, *Recherches . . . sur les finances* (London 1789) quoted by M. Marion, *Histoire financibre de Ia France depuis 1715* (Paris 1914) I 30. Arret of 1779: printed in *Rec. d. anc. lois fr.* XXVI 147 ff.—Cahiers: Texts in the *Collection de documents sur Vhist. icon, d. I. revolution frang.*, e.g. *Cahiers de dol. d. l. senechaussee de Marseilles* (Dep. Bouches du Rhone, ed. J. Fournier, Marseilles 1908) 310; a synopsis in the uncritical but useful thesis by R. Picard, *Les cahiers de 1789 et les classes ouvrieres* (Paris 1910) 127 ff.—In general: Linguet, *Canaux navigables* (Amsterdam 1769) 333 ff.; Levasseur, *Histoire du commerce de Ia France* I (Paris 1911) 449 f.—An instructive special case (the river toll at Mantes between Paris and Rouen) is dealt with by L. Cahen, "Ce qu'enseigne un peage du XVIII^{e} siecle" *(Annales d'histoire konomique et sociale* III, 1931, 487-97).—Town tolls: see e.g. *Lettres de Colbert.VII* 285 f.

The official view of the state of affairs appears in the preamble to a regulation of 1779. It states, among other things, that "His Majesty desires with all his heart to free the nation from these innumerable tolls both by land and on the navigable rivers. H.M. is aware that they are a hindrance to trade and the cause of its decay; that since they are not regulated by uniform tariffs, their complexity and multiplicity demand careful study on the part of merchants and shippers; that endless difficulties arise from them and numerous petty vexations which even the strictest administration can neither superintend nor punish." The regulation mentions, even at this late date, that the river tolls drive commerce on to the land routes. In other words, it is the identical complaint which drags through all the regulations of the French monarchy during 500 years. The outcome of this regulation, too, was nothing more than a new inquiry—whether the hundredth or more we cannot say—which had not ended by the outbreak of the revolution. It goes almost without saying that the same complaints against river and road tolls were to be found in the *cahiers de doléances,* in which the French nation gave vent to its feelings and wishes as soon as the assembly of the estates was summoned. These *cahiers* also mention the rise of new charges in the immediately preceding period. No fundamental change had taken place since the French people had last voiced its pleas to the previous assembly of the estates in the year 1614, that is since 175 years.

Hitherto, the main discussion has been on the tolls levied on river and road transportation, but there were also a multitudinous host of other charges on goods levied partly at markets and other public places and partly—and this is perhaps the more important division—at the entry of goods into cities *(octrois).* The city tolls were, in general, an important factor in the disintegration of tolls, and in this sphere, the revolution found the medieval system still prevailing without essential modification.

Public tolls

The history of French river and road tolls thus differs from that of the other continental countries only in the one particular —the fact that in France the state undertook, in theory, to abolish them, although the practical result was trifling. But as regards public tolls, especially those levied on goods with a definite destination, as distinct from purely transit tolls, France occupies a special position. It was just this distinction which led to an obscurity and chaos such as exceeded all previous similar

confusion during the *ancien régime*—which is saying a great deal. The river and road tolls were not merely obstructive to the highest degree but were also frequently illegal; but at least, it was generally clear that goods passing toll stations had to pay toll. With the state tolls, on the contrary, this fact was not at all clear and was subject to changes. To ensure the tolls some sort of official footing, some part of trade had to be exempted from them, but on the other hand, uniformity was so utterly absent that the obligation to pay was by no means limited to goods of foreign trade. On the one hand the state was not entirely powerless, but on the other hand it was quite incapable of seriously enforcing a uniform system over the whole country, and as a result there arose the most striking confusion.[38]

An enormous amount of space would be required to depict completely even the main features of the toll system, and such a description would give no more than an impression of complete chaos. But, in fact, an undertaking of this nature is impossible before monographs have been published which are at present lacking, on particular aspects of the subject. The inability to master the whole situation, however, is not confined to the generations of to-day; the same difficulty was experienced by

[38] A very valuable description of the development until 1664 of all tolls which were affected by Colbert's reforms: J. du Frehe de Franchcvillc, *Histoire génerate et particuliere des finances: Histoire du tar if de 1664*-I I I (Paris 1734); I have followed this description as far as it goes.—Chronological data in [Veron de Forbonnais , *Recherches et considerations sur les finances de France, depuis 1595 jusqu'en 1721* I - V I (Lìege 1758).—Much more informative than the last-named work are the well-informed articles in the *Encyclopedie Methodique: Finances;* the articles "Droit", "Foraine", "Douane de Lyon", "Valence" arc particularly good on the account of conditions outside the *cinq grosses fernus* —see below in the text—since they reproduce unprinted reports of the elder Daguesseau of 1688, and a report of Basville printed much later; the article "Traites" reproduces a governmental proposal regarding the abolition of the internal tolls on the occasion of the assembly of the nobles in 1787; further articles which are worth attention arc: "Cinq grosses fcrmes", "Domanialc", "fitrangères", "Franche-Comté", "Patente de Languedoc", and the special articles on various "Traites".—Of the modern descriptions, in particular: A. Callery, "Les douanes avant Colbert" *(Revue historique* X V I I I, 1882, 49-91 ; also a separate publication of the same article, under a somewhat altered title): original and well-informed though one-sided; F. Joubleau, *Etudes sur Colbert* I (Paris 1856) 395-404 on the tolls outside the *cinq grosses fernus*; in addition, the literature already quoted.—Of contemporary sources, there is the *edit* concerning the tariff of 1664, verbose and very propagandist but withal a description of toll conditions within the *cinq grosses fernus* which is, on the whole, correct; most of the special statutes are missing in Isambert's, etc., collection.

people of the time who had to find their way about the intricate network. Necker, for instance, remarked in a famous statement just before the Revolution (1784): "When we make a close study of these tolls, we are really shocked to discover how numerous and widespread they are. Even the legislation on the subject is so confused that there are scarcely one or two persons in each generation who possess a thorough knowledge of it.[5,39] Not only the contemporary descriptions but also the actual texts of the statutes are so contradictory that even vital points in the system remain obscure. The age-old tendency of French legislation to formulate its preambles in a propagandist vein often purposely draws a veil across a great deal of the true content of the statutes, quite apart from the fact that practice rarely followed the strict letter of the law.

For these reasons all that can be attempted here is a general portrait of the system, or rather the absence of system, and not a hand-book on tolls *post festum* for the merchants of the *ancien régime.* The only aim of the description is to indicate, from the actual conditions of the time, how far French mercantilism succeeded in unifying the state toll system.

Our main concern now is principally with those tolls which may be called frontier duties, in so far as they applied to goods crossing various kinds of boundaries, even though the payments may not have been levied actually at the boundaries; and it was these tolls or customs which were at the root of what I have named the state system. Closely connected with them, however, in both administration and general conception were certain others, scarcely distinguishable from river tolls proper \ but since the latter shared the fate of the state tolls, they are more appropriately treated together with them.

Export duties

The French system of frontier tolls orduties developed obviously out of the charges which were made for exemptions from the prohibitions to export. It was customary to date the oldest French frontier duty by an export prohibition of the year 1304, but not until 40 years later do we find information on the existence of definite charges for the conveyance of goods across the frontier —which is really the proper meaning of a toll. Beginning with this, there gradually arose a uniform *ad valorem* duty known as *haut-passage,* levied on most commodities at the rate of 7 *deniers* per l*ivre,* or 2.92 per cent of the official valuation of the

[39] **Necker,** ***De l'administration des finances de Ia France*** **II (Paris 1784) 172.**

goods.[40] Neither as regards the area over which it was valid, nor the different classes of goods was the scope of this duty at all clear. But at least two facts emerge. It was not employed regularly in the south of France, and secondly, it particularly affected textile and iron goods. The *haut-passage* had not yet gained the position of a definite duty before a new duty came into being in 1324, one which merchants paid more or less of their own free will, in order to avoid a new and almost universally applied export prohibition. This *reve (resve),* as the new duty was called, levied 4c!. per /. or 12/3 per cent on all goods, except wine which was assessed at a specific rate. As regards this duty, the extent to which it was applied geographically is known from the outset. It was current in one section of the counties along the coast, and along the land frontier in the northern part of the kingdom. A third duty known as *foraine* soon joined the other two. It is not known when it first originated but certainly not later than 1376; its geographical scope was roughly similar to that of the *reve* (although in contrast to the latter, the *foraine* applied to Anjou, with certain special qualifications, and did not apply to La Rochelle and Saintonge); and it did not hold good for grain, wine or salt. That in the main formed the sum-total of the French system of export duties towards the end of the Middle Ages. It was one or two centuries younger than the English and lacked the national unification of the latter.

These duties were not really high, all three together amounting to only 23d. per /. or 9-6 per cent, and after 1632 they do not appear to have been revised to correspond to the fall in the value of money; and just before the French Revolution (1787) it was asserted that the real value of the toll rates was no more than a third of their formal value.[41] The complaints against them, unlike those against the river and road tolls, were therefore concerned with the fact that they did exist as hindrances to trade and with the large number of abuses of the legal regulations, rather than with the actual legal rates themselves. But in the course of time, the charges were raised and new duties were added to the old. What the total eventually amounted to does

[40] **According to the Carolingian method of reckoning coinage—which is still current in England—the *livre (libra,* pound, £, 1.) contained 20 *sols* or *sous (solidi,* shillings, s.), each having 12 *deniers (denarii,* pence, d.). (It may be noted in this connection that the word *denier* was used in a technical sense in calculating the rate of interest, thus, e.g. *denier vingt* meant "one *denier* in 20" or 5 per cent; *denier seize,* "one *denier* in 16" or 6¼ per cent, etc.).**

[41] **See e.g. *Encyclopidie Mithodique* III 308 (Art. "Patente de Languedoc").**

not appear ever to have been calculated. It probably varied in almost every single case.

As early as the 16th century—in the years 1540-56—the consolidated monarchy undertook the task of co-ordinating the three export duties. The new regulations tried to unite the three rates into two, and thereby to decrease their total from 23 to 2od. per /., that is, to 81/3 per cent. Strangely enough, this attempt which arose out of a regulation of the year 1551 failed, and chiefly because the charge meant an increased duty on those goods which otherwise did not pay *haut-passage,* although it meant an ostensible, and for other goods a real, reduction. The result was not to simplify but on the whole to complicate the system, and the king recanted by issuing another order in 1556 repealing the previous regulation. According to the new arrangements which were thus laid down, and remained unchanged until Colbert's great reforms, Normandy, Picardy, Berry, Bourbonnais and Poitou were not to pay *haut-passage,* and therefore only 16d. per /., Burgundy on the other hand retained the 1551 arrangements and paid 2od., while Champagne continued to pay 23d., the total rate current before 1551. Tinkering with the system thus increased the disorder, greater uniformity, apparently, only coming about, though not by the aid of the 1556 regulation, in the application of the obligation on various goods to pay the charges.[42]

A further complication now arose through the introduction of a fourth, more or less general, export duty, the *traite domaniale,* levied on grain, wine, woad and wool. This was apparently a specific and not an *ad valorem* duty and it was given, at least when formulated on paper, a much wider geographical application than its three predecessors. It was made valid for many of those southern and western provinces in which the others did not apply—Brittany, Lyonnais, Languedoc, Provence, Dauphiné, Messin and Guienne. But even on paper it did not apply everywhere, Anjou having several years later one, or, to be more exact, two special duties which had to be paid on "exports" by her neighbour Brittany, too, although the latter also had the *traite domaniale.* In practice, the new duties did not receive their

[42] **That the result was as stated above can be seen, for instance, from the statute on the 1664 tariff. Whether the explanation is so strange as Du Frène (I 78 f., 82) makes out, I had rather not say. All the texts are to be found in *Edicts et ordonnances des roys de France depuis S. Loys iusques a present,* ed. A. Fontanon (2nd edn., Paris 1585) II 344-85. The collection of Isambert, etc., contains only one of the statutes, that of September 1549: XIII 104-18.**

full, prescribed currency, and this was a cause of even more widespread disruption.

Import duties

Towards the end of the 16th century, the tolls system of the kingdom was extended still further by the introduction of import tolls or duties—a later development than the export tolls, and originating in the "protectionist" conception in policy, dealt with in the third part of the present work. The most important measure was the imposition, in 1581, of a general import duty on the majority of goods. On the whole, the import duties were patterned on the export duties in the form that they had retained from the Middle Ages, and instead of leading to the disappearance of the time-honoured confusion, they extended it to a new sphere. At the same time, an added and very considerable complexity was given to the new system through the disorder caused by a host of independent duties, the reason being, as the historian Callery has pointed out, that each one of these was farmed out. The Crown believed that it could collect a larger income by farming out a new duty more easily than by raising the rates of one already in existence. The confusion was likewise increased by the fact that various cities and provinces could, in a truly feudal manner, buy for themselves freedom from one or another of the duties by paying a lump sum or regular periodic amounts to the Crown. This amounted to their renting the particular duty, which, however, thereby ceased to function in their territory, or at least was supposed to cease. But apart from the way in which the duties worked in isolated instances, it was natural that their multiplicity must have had a thoroughly different effect from that produced by raising the same amount of money through a single rate. Few administrative features of the *ancien régime* have been so unanimously criticized as this, and the statute concerning the tariff of 1664 vigorously supported the complaints when it stated: ". . . We are convinced of the justice of the complaints which we have frequently received from our subjects and from strangers, because it is almost impossible that so large a number of impositions do not lead to confusion and that merchants should know them sufficiently well to find their way through the disorder—let alone their employees, agents and shippers who are always compelled to rely on the good faith of the officials which is often very suspect."

There were, in fact, an incalculable number of these special import duties, some of them universal in their application, the greater number confined to particular provinces or even to par-

ticular trade routes and ports within a province. It is impossible to estimate their sum-total; all that can be given is a number of examples. One of the provincial import tolls which was levied on "drugs and spices" was much older than the general import duty itself, since it was introduced in 1539 and was not included in the general duty. Alum had a duty levied on it for all quantities sent to Normandy by sea and, just as in the previous example, there was the obligation to import it only at definite ports. Another was levied on sugar, wax and tobacco sent to Rouen, a third on lace, textile and leather goods, while others were levied specially on goods paying low duties and partly on larger or smaller groups of commodities to counterbalance other payments, and so on. Finally, in addition to those mentioned and not mentioned—some of which were levied both on import and export—there was a specific charge with the no less specific name *ofparisis, 12 et 6 deniers,* the complications of which are characteristic. It amounted chiefly (= *parisis)* to 5 *sols (sous)* per *livre,* or 25 per cent of the total amount of duties; then there was another (= *12 et 6 deniers) 1½ sol* per *livre or 7½* per cent on the same amount including the *parisis,* consequently two percentage additions to all the duties together, one of them being based upon an amount which included the other.

Local disintegration

The description given so far is incomplete in two respects. The first, and less important, point is the fact that the duties which disappeared before Colbert's reforms of 1664 are left out of account. On this, there is no need to dwell at all. The second and fundamental consideration is the fact that hitherto only the provinces of northern France have been included and local disintegration has been barely touched upon. The local disintegration is the natural focus for all work of unification and so requires thorough investigation, although here, too, there is no possibility of showing more than a bare fraction of the complexity that existed.

At the basis of the whole system was the inability to institute uniform conditions in those territories which stood outside the royal domains from the beginning, or were not originally closely connected with them. In the majority of cases the failure of such attempts towards co-ordination as were made was not due to the fact that the duties were there before the king obtained direct jurisdiction over the provinces, although in many cases this was undoubtedly a contributory cause. The later import duties, as well as the export duties, were, from the outset, also

applied to only a portion of the territory which was under the king's control at the time of their inauguration.

This was generally a common feature of almost every administrative measure during the *ancien regime,* although it manifested itself more prominently in the sphere of tolls and duties than anywhere else. But, in any case, the confused nature of the system was closely connected with the general administrative disorder. It is usually considered that the cause of the differences between the tolls of the north of France and those of the south followed from the refusal of the southern provinces to apply such duties *(les aides)* as were introduced after 1360. How true this is does not matter here, but the fact that the provinces acted independently is fundamental.

The distinction between the north and the south formed the basis of the French administrative system. North of a line drawn roughly equidistant between the present-day north and south boundaries of France, there grew up a comparatively united, uniform, administrative territory, although it did not include so old a province as Brittany, or, of course, the later acquisitions. The provinces with which it was concerned were principally the old Capetian heritage, the lie de France, and a ring of provinces surrounding it, that is, first and foremost, Orléanais, Picardy, Normandy, Champagne and secondly, Maine, Anjou, Poitou and Burgundy, together with Aunis, Berry and Bourbonnais. Incidentally, they form a uniform, geographically compact area, as a glance at the map of France will show, and this fact made possible certain administrative developments. Even among these provinces there were certainly not many, perhaps not even two, where administration was exactly alike, but most of them showed similar administrative tendencies at every point. Thus in the matter of taxation, they had this in common, that they all levied *aides,* and officially their collective name for a long time was "The provinces in which our *aides* are current *(ont cours)".* Their taxes were later farmed out in five parallel sections, each however being common to all, and this piece of farming out was the greatest of its kind, giving rise to the name by which the region was later known in both official and ordinary usage—*les (provinces des) cinq grosses fermes,* including almost three-eighths or a good third of the whole of France of the century before the Revolution. An important difference between, approximately, this area and the remainder of the kingdom was that the north of France possessed no provincial estates and so its provinces were called *pays detection,* in contrast with the rest, which were generally *pays d'etat.*

Most of the duties described hitherto were considered common to all the *cinq grosses fermes,* which levied export and import duties on goods to and from the rest of France, just as they would do on foreign goods, and generally treated the rest of the country as foreign for the purpose of tolls. But the *cinq grosses fermes* by no means formed a unified toll area. The description given above in itself shows that the rates at which the three oldest export duties were levied reached different heights in the different provinces of this part of the country, partly as a result of the failure of the royal efforts in the middle of the 16th century. Additional duties were consequently demanded of trade between the provinces. But much more important were the innumerable special duties in the individual provinces. The conditions in Anjou were, in every respect, worse than those of any other part of this territory, and the reason is, partly, the unusually complicated arrangements under which its taxes were farmed, but more particularly, its position of chief Loire county—adjacent to Brittany which stood outside the *cinq grosses fermes*—making it the inevitable target of every possible imposition on trade. We may profitably pause for a while over the conditions in Anjou, since they are so specially typical of the period, although it should be remembered that the disintegration in other parts of the *cinq grosses fermes* was by no means as great.

The detailed survey devoted to Anjou in the edict on the 1664 tariff begins as follows:

"The confusion in these tolls is even greater in our province Anjou. . . . We have ascertained that the farming of taxes there consists partly of the same tolls as those of other regions and partly of a large number of other, more irregular tolls, the distinctions between which it is troublesome to regard, making it difficult to carry on trade either within or outside the province, except with great trouble and the danger of being taken by surprise by the multiplicity of the tolls and the manner in which they are levied; the export tolls are still levied there under the names of *traites* and *impositions foraines* on all foods and goods, and the *traite domaniale* on only old rags, paper, taroc cards and baking plums, while the import tolls are levied on all named foods and goods; there is also the *tripas de Loire* . . ."

and so on. In fact, Anjou occupied a peculiar position in most matters. Neither *haut-passage* nor *reve* applied there, and instead of the *imposition foraine* and *traite domaniale* there were special tolls, differing more or less from these more customary ones. In addition, there was a *traite* specifically for Anjou, an *imposition par terre,* a *nouvelle imposition d'Anjou,* and finally a charge of

15 *sols* per *pipe* of wine coming from the province of Saumur. Of these, the *nouvelle imposition d'Anjou,* first introduced in 1599 but thereafter continually renewed, applied to various goods imported into Anjou along the Loire or other rivers and evidently also to such goods as came from other parts of the *cinq grosses fermes.* The date of the particular toll on wine from Saumur is unknown and it was levied, in addition to all the other wine tolls, on wine conveyed to and from Saumur and on through traffic, having originated, apparently, as a charge for bridge maintenance. At the same time, a large portion of the general tolls introduced later were also current in Anjou.

But more characteristic than any other toll either in Anjou or generally in the old French toll system was the one mentioned at the end of the above quotation from the edict of 1664—the *trėpas de Loire.* It came into being as a means of raising sufficient money when the famous Bertrand du Guesclin, in the year 1369, wanted to buy off the position of an English commander; and thereafter it simply remained in existence. The last statement must be modified to the effect that the toll had already at one time almost lost its importance when it was renewed in 1554 and extended to the majority of goods. Its wide currency is a striking proof not only of the powerlessncss of the French monarchy to clear away medieval hindrances to unity within the kingdom, but also of the fact that it could not even refrain from reimposing and extending them. After 1554, the *trepas de Loire* was levied on almost every commodity transported up or down the river, or to any particular place across the river, along a stretch of roughly 115 kilometres (between Candes and Ancenis), and had to be imposed at all stations along this reach on all goods which crossed their parish boundary. The 1664 edict therefore says (following on the previous quotation), ". . . that freedom of trade is so restricted among our own subjects of the same province that they cannot supply one another with fruit and food or with the products which they themselves produce, or trade with their neighbours without paying the aforesaid tolls, nor can they convey goods from one place to another without making as many toll payments as there are stations *en route".*

We thus get a conception of the toll system within the *cinq grosses fermes* in the period before Colbert's reform of the tolls. It is much more difficult to form a general impression of conditions elsewhere in France, for an outline of all the existing tolls was never published during the *ancien rigime* and the revolutionists considered that they had more important work than to investigate the past.

One thing is certainly clear—all goods in the *cinq grosses fermes* had to pay toll there when trading with the rest of France, even if they paid again at the other end, that is, in the other provinces. We find this prescription repeated in all the old and later statutes for the northern uniform toll area. Immediately before his reforms, Colbert mentioned in a memorandum, in illustration of this point, that goods sent to Spain had to pay toll at four places, first those payments current in the *cinq grosses fermes* on passing out of Poitou; then *convoy et comptablie de Bordeaux* in the territory of that city; then *traite d'Arzac* in *les Landes;* and finally *coustume de Bayonne* before crossing the boundary.[43] France outside the *cinq grosses fermes* had nothing more in common than its exclusiveness towards that toll area, with the single exception that concessions amounting to half the value of the toll were granted to certain provinces within the *cinq grosses fermes* in their trade with provinces outside—a kind of preferential toll system inside France.

The French monarchy certainly did not remain passive in the face of this state of affairs, but it is difficult to see what it undertook in general to combat it. It is clear enough, however, that it achieved nothing. The decrees, in this connection, which were issued in the previously mentioned statutes of Francis I and Henry II of the years 1540 to 1551 were vague. An exception should be made for one of the earlier ones (1541) ; for that explicitly allowed merchants to carry their goods to the boundaries of the kingdom without paying the *imposition foraine* before arriving there, while no change was made in the rest of the duties. But the important decrees were those of Henry II (1549 and 1551) and they are anything but clear. There seems, however, to be some difficulty in interpreting them otherwise than as an attempt to transfer the levying of all these duties to the frontiers of the kingdom, with the only exception that commodities conveyed from the northern provinces to the south were to pay their duties before leaving the former. On the other hand, it must be admitted that the statutes of Henry II did not expressly abolish the payment of toll between the two groups of provinces, though that appears to have been their intention. The only clear change that it did effect was to apply these same tolls, which hitherto were current in the *cinq grosses fermes,* to the remainder of the kingdom.[44]

[43] *Lettres de Colbert* V I I 285.

[44] The statute of 1549 is very verbose. The following quotations from the first and last sections appear to uphold the interpretation in the text, although their ambiguity cannot be denied. §1. ". . . nosdits droicts d'imposition

If the first-named radical change, the disappearance of the inter-provincial tolls, was intended, it becomes obvious that not even a fraction of the change was actually achieved. It is possible, on the other hand, that the other result, the extension of the tolls to the provinces outside the *cinq grosses fermes,* was effected to some extent, and this possibility was reinforced by the fact that the old export tolls had always been levied at a large portion of the southern boundaries of the kingdom, too, although this was not laid down at their introduction. But then they were paid at least twice.

France of the *ancien regime* is usually divided up into three territories for purposes of toll, not only in the literature on the subject but also in the later statutes. First came the *cinq grosses fermes*; the next group was known as the *provinces reputees etrangeres,* and usually included all the remaining provinces, except *trois-Eveches* (Metz, Toul and Verdun), which were acquired as early as 1552 by Henry II, further Alsace and Lorraine which, on the whole, were acquisitions of Louis XIV, and a few smaller regions. The last-named group was called *provinces a Vinstar de l'etranger effectif* The second group is chiefly notable for the fact that it was separated by tolls from the *cinq grosses fermes* as effectively as from foreign countries proper, while the third group had no connection at all with the rest of the kingdom, being separated

foraine, resve ou domaine forain, et de haut-passage, soient doresnavant levez et cueillis tous ensemble, et par un rnesme moyen et mesmes officiers, aux limites et extrémitez de nostredit royaume, pays, terres et seigneuries de nostre obéissance. N'entendons toutesfois en ce comprendre les marchandises qui seront enlevees et chargees dans nostredit royaume et en une contree ou province ou nos aides ont cours, pour estre menees, conduites et debitees en autre province où nos aides n'ont point cours, auquel cas nosdits droicts seront payez a l'extrémité de Ia contrée où les aides ont cours, et avant que entrer en l'autre contree de nostredit royaume ou nos aides n'ont point de cours." §42. "Et tout ce que nous avons ordonnè estre fait en nostre pays et duché de Normandie" (and the remaining provinces in the northern group) "sur le règlement et nombre desdits officiers, et de Ia forme et manière de lever et cueillir nosdits droicts, et autres choses dessusdites, nous voulons et ordonnons estre entretenu, garde et observe en noz pays de Bretagne" (and the remaining provinces outside the previous group) "à ce que doresnavant toutes les extrémitez et limites de nostredit royaume (etc.) soient gardées, regies et gouvernées d'une mesme sorte, pour les payemens de nosdits droicts . . ."—Du Frène obviously interprets in the same sense when he states regarding the edict of 1551, "I'Imposition Foraine nc devoit plus se percevoir sur les Marchandises transporters dans les Provinces reputees etrangeres, parce qu'il ne devoit y plus avoir de ces Provinces"; unfortunately, however, a sentence to that effect is precisely what is absent from the statutes of Henry II.—For references see note 42 above.

from it by toll barriers, while it traded freely with the rest of the world. Thus as early an acquisition as one of the 1550's was treated as a foreign country.

Even the division given here is, however, far too simple to allow an exact idea of the actual situation, and the *Encyclopédie Mithodique* is correct when it states, presumably in connection with a report of 1688, of Daguesseau the elder, that there was really only one *province reputee etrangere,* namely, Dauphine.[45]

The others referred to in this category had approximately the tolls which were current in the *cinq grosses fermes*; and Lyonnais, one of these provinces, had a certain freedom of trade with the *cinq grosses fermes.* The third group which was supposed to have consisted of regions considered foreign for the purpose of tolls, never had complete uniformity; in proof of this assertion one of the acquisitions of Louis X I V , Franche-Comté, traded with partial freedom with foreign countries and also had some connections with the rest of France.

With regard to the provinces outside the *cinq grosses fermes,* almost everything is obscure, not only to the present-day historian, but also to contemporaries. Most obscure of all was whether and which commodities were to have the imperial tolls proper imposed on them; but their own special tolls, which were generally more important and applied only in various large and small sections of this territory, were no less vague.

With regard to the occurrence of the three old export tolls united in the name *foraine,* and the area to which they applied, I shall confine myself to reproducing an acccount concerning Languedoc, taken from the report of Daguesseau of 1688 mentioned above. It is true that this part of my description deals with the period before Colbert; but from the general tendencies it may be assumed that the conditions of that period remained unchanged in the 1680's; an older survey, moreover, is unknown to me. The following, with several abbreviations, is the account.[46]

"The foraitie is levied on all goods from Languedoc going to Provence, Dauphiné, Comtat, the principality of Orange and abroad. It is levied, with few exceptions, on everything passing the Rhône and into Provence and Comtat, with some exceptions. It is levied on anything going into Dauphiné above Scrrières, the first point in Vivarais. It is levied on all goods transported from Provence abroad by land or by water. It is levied on anything going from Provence and Comtat into

[45] *Encyclopedie Methodique* II 239 (Art. "Foraine").
[46] *lb,* II 242. (The same article.)

Dauphiné. It is levied on everything from Provence into the principality of Orange. It is levied on all goods leaving the ports of Provence and Languedoc to travel round the Straits of Gibraltar even if they return to the kingdom by the Oceanic ports. In every above-mentioned case *foraine* is levied at an *ad valorem* rate of 2od. per /.

"It is not levied on anything from Provence and Comtat going to Languedoc, nor on goods from Dauphiné to Languedoc or those conveyed by land to Comtat and Provence; nor is it levied on goods going directly abroad from Dauphiné without passing through the Rhône or Provence, nor on goods from Languedoc, Provence and Comtat going to Lyonnais.

"It must be mentioned, in connection with the above, that *foraine* is not levied on goods from Languedoc going to Rouergue, Quercy and Auvergne, because tradition and custom have united in regarding these provinces as part of Languedoc from the point of view of the *foraine,* under the control of which it formerly stood.[5']

Following on the above, there is a corresponding summary for Provence, which we shall spare the reader.

It is impossible to give even an approximately complete picture of the special tolls current in the various *provinces reputeés etrangères,* because there is no survey of them. Generally speaking, they were imposed on all goods conveyed from or to the territory where they were valid, to and from all other territories. In other words every province or smaller region was surrounded by special tolls. A few of the best known of these tolls are *Ia patente de Languedoc,* and *Ia traite d'Arzac,* the latter, which applied to *les Landes* in Guienne, being considered as detached parts of the *foraine.* The former was highly praised just before the revolution on account of its clarity and lucidity, and it was thought possible to make it the foundation of a general reform of the French toll system.[47] This applied to a far smaller degree to other tolls, and two of the particularly characteristic and important of them, the *douane de Lyon* and the *douane de Valence,* may be described here. To understand clearly their significance, it must be remembered that they usually fell upon the same goods which had to bear the burden of the innumerable river tolls along the Rhône and Saône and also of *the foraine,* in accordance with the regulations laid down in the previous quotation.

Lyonnais, in particular, occupied a special position in the toll system—we may almost say that every toll grouping in the system had a special position—owing to the fact that the city of Lyons had compounded for its tolls, although on the other hand

[47] *Encyclopedic Mithodique* I I I 308 (Art. "Patente de Languedoc").

this arrangement was not altogether respected. The consequent confusion exceeded even that which was previously described as current in Languedoc. The *douane de Lyon* was a special kind of toll and, presumably, specially burdensome. It arose with the intention of guaranteeing Lyons an unchallenged position within its own territory for silk, gold and silver-ware, in their character of raw materials as well as for finished products. It developed a kind of general compulsory staple for the whole of East France in the interests of Lyons, since all commodities were compelled to follow definitely prescribed routes, varying for every category of goods, and this condition applied, be it noted, not only to goods engaged in foreign trade, but also, following the usual custom of the system, to goods for trade between the various provinces, namely those coming from Languedoc, Provence and Dauphiné, with the exception of that trade which these three provinces themselves controlled. Repeated attempts were naturally made to avoid this compulsion and as a result a cordon of 167 toll stations was eventually required to keep traffic along the prescribed routes.

This system embodied at least some idea of economic policy, though one very much at variance with national unity; but there was no idea at all behind the Valence toll, which stood out as a prominent example of administrative confusion. It was an almost precise parallel to the *trepas de Loire*, with one important distinction. Its origin dates from 1595, at the time of Henry IV's struggle for the French crown. The king wanted to use this duty to raise the means for buying the submission of a French commander —a repetition of Bertrand du Guesclin's move of more than two centuries before, carried out here by one of the founders of modern France. At the time, the toll was imposed at Vienne on the Rhône. It expired later and had practically disappeared when, after an interval of ten years, it was transferred, in 1621, down the Rhône to Valence. After being abolished again in 1624, it was revived a second time in 1626, without ever disappearing again. If the toll had fulfilled any particular function in economic policy, its continuance or renewal would have been only natural; but no mercantilist aims could be furthered by it. All goods conveyed to and from Dauphiné, or to and from provinces in East France passing through Dauphiné or the Rhône at any point in its course, were obliged to pay this toll, and furthermore they were compelled, for this reason, to go to Valence, irrespective of what the shortest route happened to be. To carry the scheme into effect, the whole territory had to be surrounded by not less

than 144 toll stations, which had the task of forcing goods to come within the control of the staple—a kind of French "toll-dyke". It is impossible to discover any other reason for this arrangement than the 600 000 *livres* revenue which it produced at least immediately before the Revolution. It was paid for dearly enough.[48]

It is hoped that this gives a faithful picture of the French toll system, as it appeared before Colbert's régime, although very few of its practical complications have been examined at all thoroughly.

As might be expected, the efforts of the French monarchy to unify the frontier tolls within their territory amounted to neither more nor less than the achievements of Colbert.[49]

Colbert's achievements

Almost all contemporary and later writers on Colbert's reforms appear to agree in the opinion that he achieved only a fraction of his original plan, which was to abolish completely all toll boundaries within the country. Since his preparatory schemes are not extant, they cannot be used to prove or disprove the point, but the other grounds upon which this conclusion has been based are very deficient in material proof. Most authors merely reproduce the customary view, without showing evidence in support. It is self-evident that a man in Colbert's position would never, for a moment, have hesitated to carry out a measure such as the abolition of the tolls if he had had the opportunity to do so. There were century-old demands which such action would satisfy. The vital question was whether he had sufficient confidence in his powers to be able to accomplish the work, and, from our present-day knowledge of sources, the answer cannot possibly be given in the affirmative. In one of the two preparatory plans

[48] The description of the tolls in the *provinces riputées étranghes* is based principally on the corresponding articles in the *Encyclopidie Methodique* (see above, note 38), that is, principally on the reports of Daguesseau. The facts concerning the number of toll stations of the *douane de Lyon* and *de Valence*: Marion (see above, note 37) I 28 f.

[49] The edict of the 18th of September on the tariff of 1664 belongs to the best known of state papers of the time. It is most accessible, perhaps, in *Lettres de Colbert* II 787-95; a reproduction of the original is given in S. Elzinga, "Le tarif de Colbert de 1664 et celui de 1667 et leur signification" *(Economisch-historisch jaarboek* X V , 1929, 249-65).—The tariff itself, which is important also because of its introduction, on the contrary, is seldom reproduced in full. I have made use of a small quarto volume called *Tarif general des droits de sorties et entrées du royaume* . . . (Paris 1678), which contains the toll tariffs of 1664 and 1667, as well as the edict of 1664.—The references in *Lettres de Colbert* are: I I 122 f., I V 24, V I I 241, 264, 266, 282 ff., 284 ff.

of the 1664 tariff which are still in existence, we find Colbert's broadest statement on the point—"Further investigation must be undertaken, to estimate what it would cost the king to abolish all toll stations which divide the kingdom into two parts, and to have them transferred to the frontier of Languedoc, through combining those of the *cinq grosses fermes* with the *patente {de Languedoc)* and *d'Arzac."*[50] What is suggested here as the aim of an inquiry is less than what Henry I I , one hundred years before, had commanded, and the idea behind the suggestion had no known influence on the reforms which later actually took place. Colbert apparently considered that the task he had shouldered was quite big enough for his strength—at least in the early stages of his work.

His task was to create order in the tolls within the *cinq grosses fermes*—this was what he intended and what he largely succeeded in doing, by means of the 1664 tariff. The export duties were consolidated into one and so were the import duties, though the drafting of the scheme left a great deal to be desired in both respects.[51] A long list of charges were declared abolished and new uniform rates took their place and were immediately published. The simplification which was carried out in Anjou, the province of the *cinq grosses fermes* which most needed it, was particularly great, and the fact that differentiation of toll charges—one result of Henry II's unsuccessful efforts—disappeared, was also an important step towards unification. The French tariff of 1664 ranks with Elizabeth's Statute of Artificers as one of the two unquestionable triumphs of mercantilism in the sphere of economic unification.

Certainly unification was never complete. There were several exceptions for particular places and particular kinds of trade. Thus Rouen on market days, Lyons at all times except market days, and Sedan the whole year round with regard to goods

[50] *Lettres de Colbert* V I I 283.

[51] The differences between the edict and the preamble of the tariff are peculiar, but presumably of no practical importance. The edict treats the *traite domaniale* as separate from the rest of the export tolls, and the scale of charges for export tolls does likewise. The preamble of the tariff, on the contrary, draws no such distinction. The import tolls are passed over without comment in the preamble, although the duties on imports followed directly on those on exports. The edict, on the other hand, carefully points out the consolidation of the import tolls. (Elzinga—*v.s.* note 49—221 ff. discusses—though somewhat incompletely—the printed and unprinted texts.) The helplessness of the *ancien regime* in legal, technical matters is often very remarkable and must not be confounded with intentional action.

for home consumption, was allowed each a reduction from the *cinq grosses fermes* amounting to 50 per cent of the export duty. Scotsmen who carried goods back to their native country were excused three-quarters of the toll. But that did not apply to the *traite domaniale,* which was always to be levied in full, and this in itself, together with the fact that the latter toll was specially quoted in the scale of export duties, proves that it was not completely assimilated in the three older ones. More important than these exceptions was the fact that the consolidation of the toll charges on so important a commodity as wine left much to be desired, and this was just one instance of the greatest defect of all—the fact that the fixed toll charges themselves were not really completely assimilated in the various provinces within the *cinq grosses fermes.* Goods crossing into a province which levied higher charges had accordingly to pay the difference, from which it followed that even between the *cinq grosses fermes* the toll boundaries did not disappear altogether. Finally, it was ominous that *inter alia,* the toll called the *trepas de Loire,* the most hated and obstructive of all the tolls in the unified territory, was largely maintained in spite of all efforts to abolish it, because it had been ceded; and the same was true of another of Anjou's tolls, *traite par terre.* Thus Bertrand du Guesclin's handicraft survived even Colbert's efforts at reform.[52]

Colbert's work within the *cinq grosses fermes* was crowned by the great toll statute which was issued four years after his death, i.e. in 1687. It contained nothing new for the toll system as such, but simply confirmed the position of this uniform toll area as a separate realm compared with the rest of France. A deduction was made only on imported drugs and spices, for such amounts as were paid in the other French provinces.[53]

What did Colbert do after 1664 *in the* provinces outside the *cinq grosses fermes?* Very little directly, which again proves that he never intended a general unification. In a letter to the Governor of Brittany, in 1671, he stated that this province would always have to be considered a foreign country in questions of tolls within the *cinq grosses fermes* and that its trade would thereby derive great benefits. It is true that Colbert returned to the question of the other tolls towards the end of his life (1680 and 1681) and observed that a scale of charges must be worked out for them and that work on it was already under way—all of

[52] Cf. du Frêne's comments on this particular: I 86 f.

[53] "Ordonnance sur le fait des cinq grosses fermes": titre 1 §1, titre 3 §2 (printed in *Rec. d. anc. lois fr.* XX 24, 31).

which was certainly a very modest claim, but none the less one never to be realized. Over the unfortunate toll in Valence, Colbert spent rather more time: "It was originally only a river toll on the Rhône on passing from Valence; now it is grown, and is levied on all goods which pass through, or are consumed in, or go to or from the provinces of Languedoc, Vivarais, Vélay, Gévaudan, Provence, Dauphiné, Lyonnais, Forez, Beaujolais, Bresse and Bugey. The farming of this toll demands special attention." Nothing however was done and the toll of Valence, like the major part of the *trépas de Loire,* remained throughout the *ancien regime.*[54]

In one respect, however, Colbert did do something which led to some unification outside the *cinq grosses fermes,* although, from another point of view, it increased the confusion. Like its successors, the new tariff of 1667 was made valid along all the frontiers of the kingdom with the exception of the provinces *a l'instar de l'etranger effectif.* Henceforth, uniform duties (*droits uniformes)* were spoken of in contrast to the older non-uniform duties. For the 1667 tariff did not annul that of 1664, but supplemented it; and as already has been said, the toll statute of 1687, which survived till the end of the *ancien régime,* laid special emphasis on the old distinction between the *cinq grosses fermes* and the remainder of France. A province such as Franche-Comté, for instance, had to pay the 1667 duties and the duties introduced later, belonging for this purpose to the French toll area, although standing completely outside this area and accounted a foreign land for the purpose of "non-uniform" duties. The disharmony of the system cannot be illustrated more clearly.[55] The acquisitions of Henry I I , on the other hand, retained their position as entirely foreign countries down to the Revolution, a period of about two hundred and forty years.

Such results as Colbert did attain were further undermined by that inveterate cancer of all customs administration of early times, the disobedience and dishonesty of the officials. The scales of charges in very many cases remained unprinted and the officials were able to demand more than the amounts to which they were entitled. The whole unity of the toll system was thus in danger. Only four years after Colbert's death, in 1687, the Intendant at Lyons reported to the minister of finance of the time that the officials there extorted payments which they

[54] ***Corresp. adm.* (ed. Depping) I 505. *Lettres de Colbert* II 123.**

[55] **See e.g. *Encyclopddie Mdthodique* I I I 715 (Art. "Traites") and the article on Franche-Comté therein.**

had themselves introduced. A much more exhaustive indictment, which clearly shows up the fate of Colbert's achievements, is to be found in the report of Des Casaux du Halley, the deputy for Nantes, to the Board of Trade in the year 1701. It reads:

"These offices are usually filled with covetous officials . . . they always have means in readiness for humbling the merchants, they distrain on their goods, delay their ships and cause them a thousand and one difficulties in order to obtain an indemnity. They wax rich in very few years at the expense of the king and of commerce. Complaints against the obstacles which are placed in one's way have to be made before special judges *(juges des traites)* whose interests are bound up with the payments which they receive. . . . Honest merchants who are sensible enough to avoid ignoble ways seldom cover their costs, because the toll employees themselves, together with those people whom they have under their control, arrange agreements and buy and sell the goods cheaper. These people are delighted when new tolls are set up, for their profits grow accordingly. Only the smaller portion goes to tax-farmers. . . .

"With regard to the multiplicity of charges, it is known, e.g. among other things, that although a large number was repealed by the 1664 tariff and united into one import and export charge, yet *in the very next year,* during the time of Martineau's farming, the general farmers *(les fermiers généraux)* had higher tolls levied at Ingrande on the Loire under the name of *concédés parisis, 12 et 6 deniers,* similar to the ones which were repealed by the edict. These tolls have remained in existence since; they are so contentious and intricate that no merchant has ever completely grasped them; but have always freely paid them in order to avoid lawsuits. The tolls from Nantes to Orléans have been so extended, that though, according to the intentions of the tariff, only 5 per cent *ad valorem* should have been levied as import duty, it happens that the charges on goods travelling from Nantes to Orléans run up to almost 15 per cent *ad valorem* or 3 *sols* pr. l. of the value. . . . Similarly in the other cases."[56]

Reforms after Colbert

The century after Colbert's death until the French Revolution, as already indicated, brought no important advance in the work of unification. The small country of Beaujolais, between Burgundy and Lyonnais, was incorporated with the uniform toll area in 1717, but this was merely a slight extension of the union. Outside this territory, more important changes took place, but could not bear fruit under the *ancien régime.* The reports of Daguesseau and Basville on the tolls in the south of France in 1688, on which the foregoing description is largely based, indicated that the

[56] *Corresp. de contr. gén.* (ed. Boislisle) I No. 465, II p. 485 f.—My italics.

work did not cease. Repeated attempts were made in the first decade of the 18th century to institute improvements, but they were all fruitless. Finally, a really systematic method of planning the work of reform was arrived at, inspired by one of the finest minds of mercantilist reform, Trudaine, who is said to have worked continuously from 1760 onwards, for seven years, at a uniform customs tariff for all France. An investigation of the financial effects extended down to 1786, and—as far as is known, for the first time—an official proposal for unification was made in 1787. It is said to have been elaborated by the well-known physiocrat, Dupont de Nemours, and was laid before the assembly of nobility in that year.[57] The power of the state in these latter days of the *ancien régime* was, however, too weak to effect anything.

Although everyone was apparently convinced that this part of the old régime, the disintegrated customs system, must collapse, yet it survived the convening of the general estates in 1789. Nevertheless, the old monarchy prepared in its last years a careful work of reform, so that the country was better equipped for the final unification in this sphere than in most others. But the fact remains that the completion of the work outlived the powers of the *ancien régime,* and, from this point of view, the fruitlessness of the reforms is especially symptomatic.

The position in 1789

The *cahiers de doléances* to the estates of 1789 were never so unanimous as in their condemnation of the customs confusion in the kingdom. It was only those provinces, Lorraine in particular, which were treated as foreign for customs purposes, that obstinately defended their privileges according to which they stood outside French customs territory. For the rest, the *cahiers de doléances* received a veritable flood of complaints against the existing order of things. The authors exceeded themselves in forceful expression against the extortioners, as the officials appeared in their eyes; they emphasized, with good cause, the great financial saving that would result from the suppression of the innumerable internal toll stations; and they often linked up their criticism of the condition of the system with patriotic and protectionist sentiments. They desired free trade with their own people, so that the customs weapon might be made effective against the

[57] This exposition follows the proposal to the assembly of nobles in 1787, printed in the *Encyclopedie Methodique* III 710-28. Other articles in the same work have details of reform work; similarly the rest of the literature on the subject.—Beaujolais: *ib.* I 298 (Art. "Cinq grosses fermes").

foreigner.[58] It was revealed, incidentally, that the old order dispensed with the support of any kind of public opinion and in spite of this, it could not be overthrown.

The law of the Constituent Assembly of 1790, which was intended to wipe the slate clean, gives, at last, an outline of the appearance of the system at the time when the last hour of the *ancien regime* had struck. This law is considered to have the completest enumeration of the existing duties, and in spite of being obscurely worded, it serves our purpose admirably. In the first section, all internal tolls are declared abolished. The tolls of the *traite domaniale* in Brittany, those in Poitou, Anjou and Maine, those for the *traite par terre* and the *trepas de Loire* receive special mention, and a third section follows which should obviously have been mainly an enumeration of the tolls outside the *cinq grossesfermes,* but which developed into something else. It deserves to be quoted in detail, although it is largely untranslatable:

"From this day forth, until next December 1st, the following cease to be valid and are abolished: the tariffs of 1664, 1667 and 1671, *douane de Lyon, douane de Valence,* the 4 per cent charge on drugs and *spices, foraine, table de mer,* the 2 per cent duty in Aries, *denier de Saint-André* and *Hard du baron, patente de Languedoc, foraine et traite d'Arzac, gabelle et foraine de Béam, dto. de Ia Comptablie, droit de convoi, traite de Charente, de Ia prevote de Ia Rochelle, courtage a Bordeaux, de Ia prevote de Nantes, de Brieux* and *des ports et havres de Bretagne, traverse et haut conduit, transit et tonlieu* in Lorraine, *le Barrois* and *les Eveches, droit de passage* on Lorraine wines, which are sent to Pays Messin, the river tolls in Alsace which in this province take the place of the usual tolls, the river tolls on the Rhone, Paty and Peronne as well as all royal river tolls; *droits d'abord et de consommation* and all other tariffs which serve to levy charge along the routes between the various parts of the kingdom, as well as between these parts and abroad, and further *droits de courtage et mesurage* in Ia Rochelle, *de premier tonneau de fret, de branches de cyprès, de quillage, de tiers retranché, de parisis, de coutume des ci-devant Seigneurs, de traite domaniale* in export; *acquits et attributions attachés aux Officiers des Maîtrises des ports et autres Juridictions*."[59]

Comparison with Germany

The description of the French toll disintegration and its outcome can give some idea of how far the development in Germany was due to the narrow policy of the smaller states and how far to general impotence in the face of the feudal system, which was inherited from the Middle Ages and taken over in a more or less

[58] Picard (note 37 above) 116-27.

[59] Printed in *Prods-verbal de l'assemblee nationale* XXXV (Paris no date) No. 457, pp. 15 ff.

improved form. French development shows that this inheritance, even when its influence was not felt directly, had at least as strong an indirect effect. It led to the imitation, and thereby to the diffusion or revival, of medieval phenomena of disintegration, which in themselves might not have been difficult to eradicate. But the lack of any creative imagination resulted in the old remedies being used, although they were obviously futile. So far, France had all these points in common with Germany, and to this extent we may safely say that such a development was independent of the existence of petty principalities. On the other hand, however, France was successful in freeing herself, at least to some extent, from the feudal toll system. Colbert's tariff of 1664, in spite of all its shortcomings, really was a great reform; and before the French Revolution there was, with the possible exception of the Austrian tariff of 1775—more than a century later than Colbert—nothing comparable to it in any German state. In addition, France was able to prepare the plans for a new order of things, even though the old monarchy was too weak to carry them into effect. It was thus possible to carry out without friction the final work of reform, one year and a half after the convening of the National Assembly; and it was the fertile influence of this change which eventually turned the thoughts of German statesmen along similar channels. The unification in Germany was thus a direct result of that in France, and we can, in this manner, measure approximately the effects of the small state policy.

THE STRUGGLE AGAINST LOCAL DISINTEGRATION IN OTHER SPHERES

I. INTRODUCTION

To convey an impression of the extent to which the history of the toll system can be used as a general illustration of mercantilist policy directed against feudal disintegration, the description outlined in the previous chapter must be extended to include the development of internal economic administration in other spheres. But it is quite sufficient to confine such a description to the principal points. The following chapter will therefore limit itself to a cursory survey.[1]

The demand for unification in almost every branch of administration quite naturally found its most powerful expression in France, because political conditions there would seem to be favourable, although the goal lay on the far horizon. In this connection three statements, each separated from the other by well over a hundred years, may aptly be quoted as an introduction to the description. They indicate how far people of that time were from the attainment of what is now considered a matter of course.

The demand for unified legislation and a common legal code came strongly to the fore at the assembly of the French general estates in 1560. The representative of the clergy stated, "We want one religion, one law and one king." All over the continent the demand for unification was particularly strong in the sphere of law, and led to the acceptance of Roman law in those countries which had not developed a uniform code upon a national basis, as England had done. Colbert's scheme, as stated in a memorandum to Louis XIV, was even more striking, and as full of importance as most of his statements. In 1665 he spoke of a great project, "to bring the whole of His Majesty's kingdom within the same statutes and within the same system of weights and measures, an undertaking very worthy of our great king . . ." But, he continued, "It must be admitted that whatever His Majesty has done so far is nothing in comparison with this work. His Majesty will derive satisfaction from achieving that which

[1] For the same reason only such sources are quoted as have a direct bearing on the facts given in the text, and even those have been omitted in cases where the facts are to be found in easily accessible hand-books.

hardly any prince before him has even attempted." Although the exaggeration of a courtier is obvious here, yet it shows what a gigantic task people of the time found to be in front of them, before it was possible to create what in our eyes would be an obvious state of affairs. When the defects of the *ancien régime* were finally exposed in the *cahiers* for the general estates of 1789, the same idea recurs continually, "the various parts of the same state appear to be in an eternal state of war with one another, rather than under the guidance of one and the same king and one and the same law"; since "France has one king, it seems but natural that she should have one law", and so on.[2] Germany had more than one sovereign, and so the same argument could not be put forward there.

2. WEIGHTS AND MEASURES

The organizing of weights and measures is a particularly characteristic sphere, as suggested by Colbert in the above quotation. The confusion therein was perfectly natural in so far as a system of weights and measures demanded a mind capable of exact quantitative measurement, and nothing was more alien to people in the Middle Ages.

Apart from any deeper causes, unification came up against the difficulty that weights and measures which were supposed to be made alike, were not alike. A description given by Hans Forssell of Sweden in the 16th century shows the confusion existing there, and this condition may be considered typical of the times. As a parallel, we may quote the fact that even late in the 17th century, no two examples of the dry measure *boisseau* in Poitiers were to be found of the same size. A more fundamental difficulty, however, lay in the fact that a workable system of this sort stipulates a regular mathematical train of mind, without which every weight and every measure becomes an isolated instance, unconnected with weights and measures for other purposes. This kind of disintegration naturally fell in line with the local confusion, because those centres where trade in particular goods was all-important—grain in agrarian districts, wine in vine-growing districts, silk at the centres of the silk industry, etc. —built up their own weights and measures for these goods. Sometimes they were accepted over a larger area, sometimes

[2] 1560: F. W. Maitland, *English Law and the Renaissance* (Cambr. 1901) 75 (note 48); cf. G. Picot, *Histoire des etats generaux* **II** (Paris 1872) 210 **ff.** *et passim.—Lettres de Colbert* VI 14 f. (my italics).—*Cahiers :* Picard (prev. **chap., note 37) 122, 142.**

they remained confined as a peculiarity of the place where they arose. In Sweden, a somewhat parallel course of events took place. A distinction was made there between the unit of weight for copper and iron in the so-called staple cities, along the coasts, on the one hand, and the unit employed in the cities farther inland as well as in the mining districts, on the other. The latter had a 10 per cent advantage over the former on "account of the heavy transportation costs from the mining districts and inland cities ... so that they may be thereby better placed from the point of view of freight and costs". It was thus considered preferable to alter the unit of weight itself, rather than have a common unit and add to the price for transport costs from the pit or the works to the coast.[3]

The whole confusion, however, is not explained merely by the above; there were also very powerful private interests supporting disintegration. Those who had customary claims on the delivery of goods, had everything to gain by an increase in the unit of measurement or weight, while those under obligation to them had correspondingly contrary interests. Thus, in the absence of uniform administration, the party with greater political and social power could assert its will, and that party usually consisted of the feudal lords, And so there arose the tendency for the unit of measurement continually to increase in size, and as a result the measurement for the grain claimed by the feudal lords gradually grew to perhaps double the size of the usual grain measure. A French statement of 1557 mentions that the tax collectors and stewards of the royal domains, as well as those of every vassal, collected payments in kind amounting to much more than what they were entitled to, and they afterwards kept their accounts according* to a smaller measure and sold the residue for their own benefit. Even as late as 1666, an intendant informed Colbert that the landowners in his province consciously and deliberately confused the system of weights and measures to their own advantage. It is also known that in the 16th century Gustavus Vasa, the founder of modern Sweden, himself instructed his bailiffs to manipulate measures for his own ends.[4]

[3] H. Forssell, *Sveriges inre historia frdn Gustaf den förste* I I : 11 (Sthlm. 1875) 93-127.—Boissonnade (prev. chap., note 35) II 316 note 2.—1665: published in *Samling Utaf K. Bref. . . . Ang. Sw. R:s Commerce* (ed. Stiernman) I I I 314.

[4] Lamprecht, *D. Wirtschaftsleben* (prev. chap., note 13) II 486 ff.—France printed in *Edicts et ordonnances* (ed. Fontanon, prev. chap., note 42) I 780; *Corresp. adm.* (ed. Depping, prev. chap., note 36) I I I 156.—Heckscher, "Det äldre Vasakonungadömets ekonomiska politik och idéer" *(Historiska studier tillagnade L. Stavenow,* Sthlm. 1924) 72.

For these reasons we find dissimilarities between different localities far in excess of anything comparable under the *ancien régime.* The lack of agreement was so great that even prominent historians of the Middle Ages have assumed that weights and measures, from the very beginning, were under the regulation of the village laws and not under those of the king—a very doubtful point, to say the least. But it does show how difficult it is to find any other explanation for the disruption even within a politically homogeneous territory. In actual fact, however, the system of weights and measures probably never was an outcome of legal ordinances; the idea that it was can only be explained by a bias from which institutional historians can never entirely free themselves.[5] To some extent, one may say that contracts were based on certain special measures, better known and better kept than the rest; and for this reason we may call that sort of measure a "standard means of measurement", analogous to a standard coinage. In particular cases, the customary measures were then converted into this "standard measure", but it was probably much more difficult and impracticable than with coinage, whose content could be more easily verified.

The confusion on this point has an overwhelming amount of material to illustrate it. To convey an idea of the position in an economically developed country, I shall give an extract from the description of Jacques Savary in his famous Hand-book for Merchants, *Le parfait négotiant* (1675), where he has to devote six chapters to an outline of the weights and measures within and outside France, of course without being able, however, to describe individual cases or abuses. In the following, some part of the legal differences that existed within France is revealed:

"The measure for liquids is known in Paris as *muid;* In Orléans, Montargis and Champagne, *queue,* and *demi-queue;* in Burgundy *feuillettes,* in Braisons and Touraine *poinson,* in Poitou and Anjou, *pipes,* in Lyonnais *asnees,* in Bordeaux *tonneau* (at the rate of 4 *bariques* == 3 m*uids).* 'All these measures have more or less varying amounts in them and so have their divisions which are proportional to *quart, quint* and other subdivisions.'

"The dry measure for grain is called in Prévôté and Vicomté de Paris, as well as almost everywhere in the kingdom, *boisseau* of which twelve go to make one *septier* and twelve *septiers* one *muid.* In particular places, as e.g. in Anjou, the measure is, however, called *fourniture,* to

[5] Von Below, *Ursprung der deutschen Stadtverfassung* (Düsseldorf 1892) 59.—G. Kuntzel, U*ber die Verwaltung des Mass- und Gewichtswesens in Deutschland wdhrend des Mittelalters* (Schmollers Forschungen XIII: 11, Lpz. 1894), e.g. 59ff.

21 *septiers,* and in Lyonnais *charge* to 21 *bichets,* but both *boisseau* and *septier* are bigger in one place than in another, 'according to the custom of the locality'.

"Similarly with the units of long measure. In Avignon, Provence and Montpellier, one *canne* is equivalent to one and two-thirds of a Parisian *aune,* in Toulouse and Languedoc to one and a half ditto, in Troyes, Arc en Barrois and several other [unnamed] cities in Picardy and Burgundy, two-thirds; in Lyons ninety-nine hundredths, in St. Genou one *aune* and eight *lines.* We see then, that the *canne* could be twice as long in one part of France as in another.

"For weight, the pound *(livre)* was generally employed. But beside the *poids de marc,* there was a special weight for a small number of expensive articles. The *poids de marc,* moreover, varied in size in different places. In Paris it was 16 ozs. In Lyons the city weight was 14 ozs. or 86 per cent of the Parisian pound (the percentage shows that an ounce in Lyons was also a little smaller than that in Paris) for the majority of goods, but the weight for silk was 15 ozs. In Rouen, the pound, which corresponded apparently to the Parisian pound, was current, but there was also a special weight called *poids de Vicomté,* corresponding to 104 per cent of the Parisian pound—but quantities below 13 lbs. were always weighed with *poids de marc.* In Avignon, Provence and Languedoc, the pound was 13 ozs. 'or thereabouts', which corresponded to 81 per cent of the Parisian pound, and so on."[6]

This state of affairs was by no means the outcome of the indifference of the state towards unification. On the contrary, it happens that in the matter of weights and measures, there are older and more assiduous attempts to bring about unification than in any other sphere.

A Congress of Papal Legates, as early as the year 786, ordered uniform weights and measures to be made so as to prevent buying and selling according to varying measures. In the 9th century, the Carolingian rulers repeatedly ordered that measures be reproduced from attested standards which were kept at the Court. King Edgar of England prescribed a measure (and a weight) which was to correspond to the one current in London and Winchester. But the actual result achieved on the continent becomes manifest from the fact that even on their own domains, the Carolingian kings never had uniform measures.[7]

[6] Savary, *Le parfait négotiant* (Paris 1675) Chapters 8-13, in later editions Book 2 Chapters 3-8.

[7] Dopsch, *Wirtschaftsentwicklung der Karolingerzeit* II 325 ff. and the papers and charters quoted there.—Edgar's Law: printed in *Gesetze der Angelsachsen,* ed. F. Liebermann (Halle 1898-1916) I 204 ff., III 134, 137 (the words given in parenthesis in the text are left out in the oldest text of the law) and also the index, under the heading "Mass und Gewicht."

As usual, England was the pioneer of unification. From the end of the 12th century onwards, then in Magna Charta (§35) and especially from the beginning of the 14th century onwards, a veritable host of ordinances was issued. The statute of 1824 had to repeal no less than 67 previous statutes which were then, consequently, still in force. This, in itself, was certainly no proof that very much had been effected, it is perhaps even proof of the contrary. It should not be assumed that even an approximately complete unity had been attained even in England. As an example we may mention *The Description of England* published in the 1570's by William Harrison, the cleric; and his treatment did not show any essential difference between the conditions of that time and those of the Middle Ages. He enlarged on the corruption of the Clerks of the Market—these local functionaries and the courts over which they presided having the particular task of supervising weights and measures. They had, apparently, neither more nor less power, however, than the English local administration generally.

Nevertheless, some degree of unification was achieved in England and possibly the transference of control to paid officials, which was made later, encouraged success. But its most important cause was a factor which must never be omitted in describing English development, that is the ease of communications which no government, however bad, was able to obliterate altogether. It is very significant that Postlethwayt, in his Commercial Dictionary of 1774, never even mentions the existence of local weights and measures in the country. French reformers immediately before the French Revolution also looked up to England as a model on this matter, and so we can definitely say that England was well ahead of the continent. Nevertheless, there was no question of complete uniformity in England. Local weights and measures were not abolished until the statute of 1835. Some of the original local measures had at that time received currency for certain goods over the whole country, particularly the Winchester bushel for grain and other dry goods.

But the general prevalence of variations can be seen in the fact that the English dry measure, including the gallon as a subdivision of the bushel, was rather smaller than the corresponding measure for coal and a little smaller than that for malt liquor, while somewhat larger than that for wine and still larger than the so-called Guildhall bushel (or gallon respectively). Local differences were thus caused by various places using one or the other of these measures. Arthur Young, for instance,

complained in 1790 of the difficulty of ascertaining bread prices, since corporate cities reckoned in troy weight and all other places in avoirdupois. A memorandum of 1834, written in the period of liberal reform, sets out in detail the confusion in weights and measures for corn that had persisted until then. It was said that Staffordshire, for example, had weights and measures varying in every little town, some having perhaps two or three different systems. Recently it has been shown, too, that the value of the remarkably long series of corn prices for Exeter, between 1316 and 1820, is vitiated by the three changes that had been made in the unit of measurement, the last and most important change having taken place as late as 1670. This is therefore a case where the measure changed even in one and the same place.

The Winchester bushel was abolished in 1835, but even to the present day a host of peculiarities have survived in English weights and measures, particularly on the same point as Arthur Young complained, in so far as avoirdupois is used in weighing heavier goods, while goldsmiths and chemists use troy weight. We can judge what little progress was made in other countries from the fact that England, a foremost country in comparison with others of former times, has perhaps a more complicated system than any other country at the present day.[8]

On the continent, confusion in these matters, as in others, proceeded at double the speed after the decay of the Carolingian Empire, and a long time elapsed before the monarchy took any steps at all towards unification. In France, nothing was done until 1321, at the time of Philip V. Even as late as the beginning of the 16th century, in 1510, all that had been ventured on was the attempt to provide systematic conditions in one solitary province,

[8] Statutes: 5 Geo. IV c. 74 §23; 5 & 6 Will. IV c. 63 §6.—*English Economic History: Select Documents,* ed. Bland, Brown & Tawney, 154 f., 214, 248, 388.—Harrison's *Description of England in Shakespeare's youth,* ed. F. J. Furnivall (New Shakespere Society Ser. VI: 1, London 1877) 300 f.; himself the author of a book on weights and measures (see *ib.* v note 1), Harrison may be considered as a particularly reliable witness in this connection.—*The Universal Dictionary of Trade and Commerce,* ed. M. Postlethwayt (London 1774), Art. "Measures and Weights of England".—*Encyclopedic Mithodique: Jurisprudence* VI (Paris 1786) 20.—Young, *Annals of Agriculture* XIV (London 1790) 275, quoted in S. & B. Webb, "The Assize of Bread" *(Economic Journal* XIV, 1904, 207). Memorandum of 1834: J. H. Clapham. *An Economic History of Modern Britain: The Early Railway Age,* 229. Prices of Exeter: W. Beveridge, "A Statistical Crime in the Seventeenth Century" *(Journal of Economic and Business History* I, 1929, 503-30).—In general: *Select Tracts and Table Books relating to English Weights and Measures (1100-1742),* ed. H. Hall & F. J. Nichols (Camden Miscellany, 1929).—See also Brodnitz, *Englische Wirtschaftsgeschichte* I 122 ff., and below 249 f.

Auvergne, and even here, no fewer than three separate regions were allowed to remain, each having its own corn measure. Francis I was more daring. He endeavoured to impose a uniform unit length measurement, called l'*aulne du roi,* throughout the kingdom and, in 1540, commanded that it be used to the exclusion of any other and that infringements of this regulation would be penalized by heavy fines. Every city was to have tested measures to enable the regulation to be carried into effect. But it was all in vain. Further efforts were made in 1558 and 1575 to provide uniformity throughout the system of weights and measures, but the only result was a possibly rather more rigid ratio to the Parisian measure, which could not have meant much, since there were contemporary complaints against the large number of differing measures in Paris itself and its environs. The reign of Louis X I V brought fewer movements towards unification in this sphere than in most others, the only matter that was successfully undertaken being co-ordination within the naval arsenals. The general outcome, as was very customary under the French monarchy, was a new state tax, called in this case *poids du roi* (or *poids le roi),* paid at weighing—similar to the one already in existence as part of the municipal revenues. The latest general decree on weights and measures dated before the Revolution (1766) is highly characteristic of the incapacity of the French monarchy to achieve any practical result. It states frankly that the numerous attempts which had previously been made had failed and had, contrary to intentions, aroused a feeling of mistrust, but that something might be done by new endeavours. To this end, the decree confined itself to the mild and unpretentious task of publishing a table showing the relationship between the different weights and measures in various parts of the country. This, then, was the final achievement after 450 years' work. The *cahiers* are as full of complaints against the chaos in this field as they are against the toll system. One of them has the exclamation, " I f only we had a single weight and a single measure in the whole kingdom! Oh, for what a number of years we have longed for this and how many lawsuits and arguments it would prevent!" Also that principal cause of confusion, the landowners' authority to control and "test" weights and measures and to derive an income from this feudal privilege, remained in its essentials until the Revolution.[9]

[9] Statutes: printed *Edicts et ord.* (ed. Fontanon) I 778 ff.; *Rec. d. anc. lois franc,* (ed. Isambert, etc.) II 288, XI 606 ff., X I I 672 ff., X I I I 117, 497 ff., 513 f., X I V 275, X V I I I 436, X X I I 449 f.—*Corresp. d. contr. gén.* (ed. Boislisle,

Sweden made more progress, particularly from the time of Charles IX (1605), although the first fundamental reforms only took place in the so-called Era of Liberty, or, to be more exact, about 1730. Germany, on the other hand, was as usual completely incapable of mastering the confusion. There was no possible question of unification over the whole country, although at the time of the peasant wars in the 16th century, the peasants' demands included unity of weights and measures. From that time onward, the territorial princes applied themselves regularly to the problem, with insignificant results, however, until fairly late in the 19th century. When reforms were carried out in Baden in 1810, earlier than in other places, there were found within that small territory, 112 different measurements of length, 92 different square measures, 65 different dry measures, 163 different measures for cereals, 123 different liquid measures, 63 different measures for liquor and 80 different pound weights. This was certainly a record which was difficult to beat.[10]

3. COINAGE

A higher degree of unification was achieved in the coinage system than in that of weights and measures and, as far as I am able to see, the reason for this lay in the fact that there were certain universal and specific factors, easily explained by monetary theory, which often co-operated to support the unifying efforts, although the same factors, under other conditions, worked in exactly the opposite direction. In any case, the success achieved in unifying the coinage system was incomparably greater than that in the system of weights and measures and this holds good not only in England, but particularly in France. The German system of coinage for trade and commerce, on the other hand, proved even more confusing and obstructive than any of the other factors in German disintegration which have already been considered.[11]

prev. chap., note 36) II No. 986 *et passim.*—See also: Pigeonneau (prev. chap., note 35) I 2946°., 424, II 94, 179 note, 220 f.; Boissonnade II 273 f., 312 flf., 332, 381 f., 412, 448.—Picard 139-42.

[10] L. B. Falkman, *Om mått och vigt i Sverige* II (Sthlm. 1885) iii f., etc.—von Below, *Prohleme der Wirtschaftsgeschichte* 580.—K. Th. von Inama-Sternegg, *Deutsche Wirtschaftsgeschichte* I I I : 11 (Lpz. 1901) 353 ff. *et passim.*—Hauschild, *Z. Gesch. d. deutsch. Mass- u. Munzwesens in den letzten 60 Jahren* (1861), quoted by Schmoller, *Grundriss der allgemeinen Volkswirtschaftslehre* II (Lpz. 1904) 64.

[11] On what follows, see in particular A. Luschin von Ebengreuth, *Allgemeine Münzkunde und Geldgeschichte* §§11, 26-30.

With regard to England there is very little information on this matter, and the old saw that no nation is so happy as the one without a history may be aptly applied. England never lost sight of the principle of a unified coinage under the control of the king, and it was carried through completely under Henry II, in the second half of the 12th century.[12] The depreciation of the coinage then ceased during the middle of the 16th century, in the reign of Henry VIII, and so England escaped the confusion in her coinage which almost every other country experienced in theirs.

French rulers, on the other hand, evinced an outstanding talent for manipulating the coinage to their own profit and to the loss of almost everyone else, and the local disintegration in the system was also very far gone. The Carolingian monarchs had endeavoured to make the royal coinage current throughout the land and had refrained from farming out coinage rights. With the decay of their Empire, these rights devolved upon all the large fiefs (the so-called *'etats féodaux)* and on some of the smaller, whose owners thereupon farmed them out to others.) There must have been hundreds of different kinds of coinage, each, in addition, varying from place to place. The confusion was thorough.

Nevertheless, a very powerful reaction set in against this development in France, especially under St-Louis in the middle of the 13th century, less than a hundred years later than in England. The remarkable thing is that the efforts at unification were actually successful. A decree of 1262 gave exclusive currency to royal coinage in territories without private coinage rights; and wherever these rights were farmed out, the royal coinage was given validity concurrent with that of the feudal coinage. A few years later, in 1271, the royal coinage was extended to the whole of the royal domains, i.e. the area directly under the Crown. St-Louis' policy was forcibly imitated and continued by his grandson, Philip le Bel, the "royal counterfeiter", as well as by the latter's eldest son (1305, 1313, 1316). As far as I can see, the work of unification found support in one of the best-known universal axioms of monetary theory, Gresham's Law, which states that if two means of payment are current, both with equal legal authority, the worse will always drive the better out of circulation, for the simple reason that everyone prefers to spend the coins of smaller rather than those of higher value. This "law" must have stood the royal coinage in good stead in its

[12] **Brodnitz I 125 ff.**

competition with feudal currency. Philip le Bel had ordered the vassals to accept the king's bad coins and had prohibited them from circulating equally bad coins of their own; and this action of his, although the opposite of altruistic, received its reward. At the same time, the vassals' right of circulating coinage became more and more limited and, particularly within the royal domains, many sold the right to the Crown, so that before the end of the 14th century, unification seemed to be achieved. Then when the independent fiefs disappeared towards the end of the Middle Ages and at the beginning of the 16th century, the feudal coinage systems did not survive, as most other feudal institutions did, leaving the royal coinage the unchallenged victor.

The royal coinage, however, also suffered from dualism, since two different units of reckoning were used, *tournois* and *parisis*, deriving their names respectively from Tours and Paris. The *parisis* unit was equivalent to one and a quarter *tournois*. It is noteworthy that the provincial unit and not that of the capital carried the day, which was an unusual occurrence, and an additional proof that coins of smaller value drive out those of greater value. In the reign of Louis XIV, in 1667, it was definitely forbidden to reckon in the *parisis* unit. Even if this unit did not disappear at once, its abolition completed the formal coinage unity of France—and, it may be added, almost the only unity which the country possessed.[13]

In Germany, coinage conditions resembled toll conditions and, if anything, were even worse. The right to issue coinage was an almost unchallenged privilege of the Empire, but already in the early Middle Ages, it had become illusory since rights were farmed out and imperial money was at the same time prohibited. There followed the farming out of the right to strike coins and then, after the nth century, the similar farming out of other rights connected with coinage, the right to determine the content of coins, the right to dispose of coinage at will, such as the right to re-mortgage or re-dispose of acquired coinage privileges. The eagerness of the more important princes to obtain coinage rights was as unbounded as their desire for tolls. The only condition limiting the privileges was the fact that, like the

[18] Statutes: printed in *Rec. d.anc. loisfr.* (ed. Isambert, etc.) I 296, II 646, 649 f., 830, III 39, 129, IV 530 ff.—A Luchaire, *Manuel des institutions frangaises: Periode des Capetiens directs* (Paris 1892) 270 f., 591 ff.—E. Boutaric, *La France sous Philippe le Bel* (Paris 1861) 323 f.—Pigeonneau I 79 f., 259 ff., 272 ff., II 219.—G. Martin and M. Bezancon, L'*histoire du credit en France sous le rbgne de Louis XIV* I (Paris 1913) 56 f.—*Dictionnaire universel du commerce*, ed. J. Savary des Bruslons (Paris 1723) Art. "Livre" (1748 edn., III 164 f.).

tolls, they were confined to particular places, but this limitation disappeared by degrees after the beginning of the 14th century; and apart from certain powers, largely of a symbolic nature, the Empire ceded to the territories unlimited authority over coinage. The same authority was then extended by different methods not only to the imperial cities, but also to many under the control of the princes. And to complete the story, the emperor had to undertake (in the 1220's and 1230's) not to coin money himself nor to allow anybody besides the princes the coinage of money within their territories. Germany thus arrived at the stage from which France set out. In the former country, imperial coinage was excluded from all large independent regions and in the latter, the vassals, instead, had to give up first, their original, monopolistic right of coinage and then, their coinage rights altogether.

The German princes were even powerful enough to impede that development which, in France, by the operation of Gresham's Law, allowed the competition of the royal coins to become all-powerful. This fact is particularly noticeable in the two great charters which Frederick II granted respectively to the spiritual and temporal princes in 1220 and 1231-32. The first promised (§2) to allow no new coinage to be introduced into the territories and to protect the coinage privileges already granted. It adds, "We shall neither do nor allow to be done anything that will injure it, in the way that coinage is usually confused and depreciated through the imitation of coins *(similitudinibus ymaginum)*—which we shall rigidly prevent." In the later charter, the emperor correspondingly undertakes (§17) not to allow any coins to pass current within the territories of the temporal princes "by means of which the coinage of the particular prince is depreciated". And so, while Philip le Bel and his successors were carrying out the policy of coinage depreciation and thereby gaining universal currency for royal coinage, the German princes were receiving guarantees against the encroachment of money worse than their own. The guarantees obviously held good against the imperial coinage, though not against that of the numerous small territories who emulated the others in the art of depreciation. The small neighbours of the large principalities saw their way to introducing their money, through the "imitation of coins" as much as by any other means, into those places where the coinage standard was not as far gone; while the authorities in these places then attempted to emulate them. And so things went on until people were at their wit's end.

It was the cities, naturally enough, who led the reaction against this course of events, for the people who suffered most from the chaos were the merchants. The extension of coinage rights to the cities may therefore be considered as a certain counteraction against the disorder, although the reforms on the whole were rather short-lived. By forming unions, the cities achieved some reform, and particularly in the Rhine area and generally in western Germany, several of the coinage unions attained considerable results. One of them, the so-called *Rappenmünzerbund,* was in existence from 1403 onward for a century and a half. But the disorder within the states was nevertheless so great that the results must have been very limited. It is significant enough that one of the earlier of these unions, formed in 1387, extended across a region smaller than present-day Saxony and yet included eleven territorial lords and seventeen cities.

The imperial authority did not altogether close its eyes to this confusion. In fact, it has been rightly said that the imperial coinage regulation must be considered a kind of coinage union of the various independent states. One circumstance, in particular, gave the emperor an opportunity of again exercising influence over the coinage system. The coining of gold was never considered to have been ceded by the Empire, and in the 14th century, when gold began to be used in German coinage, there arose the possibility of creating an imperial coinage. The only German monarch (emperor) who is known to have been successful in his efforts to erect a uniform system on this basis was Sigmund. In the 142o's and 1430's, he adhered obstinately to his plan of circulating imperial gold coins and decreed that they be given universal validity, although the Electors along the Rhine went so far as to prohibit the currency of this imperial money within their territories. Sigmund was supported by the cities and appears to have made headway, but he eventually succumbed by reason of the depreciation of the coinage, in which the princes took the lead. Wherever payment could be made in either coinage, Gresham's Law was found to operate against the imperial coins. New attempts at unification were made from the beginning of the 16th century onwards, and an imperial coinage law of 1559 decreed that imperial coins were to be valid everywhere as means of payment, while local coins only "where they were struck". But the princes' power, as might be expected, was strong enough to prevent the practical application of this ordinance, and the imperial bodies who were to put it into practice were able to do

nothing. Imperial unity in the matter of coinage proved to be unattainable.

On the other hand, the princes naturally employed all the means at their disposal to unify the coinage within their own territories. But trade in Germany was so great even then, that the hundreds of small regions found it impossible to exclude the money of others, and there were incessant complaints that bad money was brought into the state by merchants and carriers and the native coin drained away. In practice, the authorities were even incapable of doing away with the local coinages within their own frontiers. Magdeburg, for example, obtained one of its own even after its incorporation in Brandenburg-Prussia in the year 1680. But the prize must be awarded to the tiny duchy of Oldenburg, which still had four independent coinage systems as late as 1810, when it was incorporated by Napoleon in the French Empire.

Thus the state authorities succumbed in the sphere of coinage. The disorder and decay was so complete that only such a coinage system as could never be corrupted by those in power could help; and the possibility of employing some kind of international coinage for trade would then have arisen. In fact, such a possibility occurred frequently, but even this kind of coinage was liable to be corrupted through imitation. And so, finally, a purely ideal monetary unity was arrived at, based not on tangible coins, but on claims to a certain amount of precious metal. Something similar occurred in Italy in the last century of the Middle Ages. But it proved its signal importance when applied to the hopeless monetary confusion of central and northern Europe, that is, when the Hamburg Girobank began, in 1622, to issue its money—its Hamburg banco rixdollars and marks—which played so important a part in the economic life of Germany and Scandinavia. It was by methods such as these that Germany struggled along during the thousand years that separated the first sound state order in Central Europe from the second—that of Charles the Great from that of Bismarck.[14]

[14] For any facts not given in Luschin von Ebengreuth, see K. Th. Eheberg, *Vber das altere deutsche Munzwesen und die Hausgeriossenschaften* (Schmollers Forschungen I I : v, Lpz. 1879), particularly 24 ff., 38-41, 95 f.—Inama-Sternegg I I I : 11 365 ff.—von Below, *Problems der Wirtschaftsgeschichte* 579 f.—M. Ritter, *Deutsche Geschichte* (Stuttgart 1889, 1895) I 56 f., II 460 ff.—Schmoller, "Erwerbung von Magdeburg-Halberstadt" *(Schmollers Jahrbuch* VIII, 1884, 1017).—The charters of Frederick I I : sec above, chap. 2 note 16.

4. OTHER SPHERES

The description given hitherto really reveals only a small portion of the total task which feudalism left to the unifying efforts of the ruling powers on the continent. The remainder may be dealt with even more briefly, and France is the country on which our attention should be chiefly concentrated, since she was the model state for all mercantilist work of unification.

Taxation was a field in which there was no sign of unification at all. Its absence must undoubtedly have reacted on economic life, since the varying impact of the burden of taxation would affect the location of industry and the concentration of population. But problems of this kind were too profound to interest those who were bent on collecting enough to cover their expenditure of the next twenty-four hours. The effect on the toll system was much more obvious. The distinction, in France, between those provinces in which the *aides* were current and those in which they were not, was one of the principal factors in the toll disintegration, but the local apportioning of taxation farms was an important contributory cause. In any case, the French monarchy soon abandoned any attempt to shape these circumstances into an orderly form. A unified system would certainly have yielded the state a much greater revenue, but the old method of snatching at whatever lay to hand was followed. A radical change would have meant a longer period of waiting before the new results materialized and nobody could afford to wait. The taxation system was very similar to the toll system. In Germany, there was a repetition of all that happened in almost every other sphere of activity. The chance of setting up some system of imperial taxation was lost in the early Middle Ages. The territories did rather more, but as usual the disintegration within them proved a great obstacle. In addition, the distinction between city and country was considerably greater than in France, and the utmost that could be achieved, therefore, was one tax for the country *(Kontribution)* and another *(Akzise)* for the cities, without either of them being applied uniformly. Even less was done in Germany than in France.

In France, the monarchy of the 17th century attained some degree of uniformity by instituting intendants and, in this respect, it was far ahead of all other countries, with the exception of Sweden. The vital point, however, was that the central government had insufficient authority over the various local bodies and so the provincial organizations which survived could obstruct

most important changes. Actually, these organizations were too insignificant to do anything positive, but the fact that no part of the medieval order, or lack of order, was completely uprooted, contributed to the ponderousness and inefficiency which was so characteristic of the administrative machine. More important, perhaps, is the fact that state administration hardly functioned at all in the sphere of finance. Here the private financiers, the tax farmers and their agents ruled supreme and almost entirely uncontrolled. The state could not dispense with them for a single day: it had to have them if it was to obtain payments, advances and loans. On top of this, a further factor was contributing its share—by no means a small one—to the crippling of state administration. The large majority of the ordinary officials and judges had to buy their offices, and they were forced to do so, whether they liked it or not. A large number of offices were passed down by hereditary succession, so that state service, too, was exercised largely in the form of private rights.[15] A new kind of feudalism thus grew out of the financial disorder, and France arrived once again at the starting-point. It is, therefore, rather astonishing that French state officials were nevertheless able to work as efficiently as they did and especially that they were interested enough in their task to support, especially in the 18th century, the ideas of reform. This was due partly to the few remaining offices which had never become objects of commerce and partly to the fact that the holders of these offices, who represented a better educated stratum of society, were more susceptible to new ideas. But when it came to the point, it was found that they were, after all, too firmly rooted in the system which had arisen out of medieval survivals and modern financial confusion, to be capable of carrying out any really thoroughgoing reforms.

The outstanding exception to the general rule was the French Army, for here Louvois, the sworn enemy of Colbert, manifested his administrative talents. Even in Richelieu's time, almost all officers' commissions were purchasable, but Louvois succeeded in abolishing the practice of buying them, in all grades of the services except that of captain and colonel. But since these two grades could be skipped in promotions, it was possible for poor officers like Vauban and Catinat to advance to the rank of Marshal of France. This had no counterpart in any other branch of state service. The army, moreover, was freer than any other state

[15] The selling of offices was apparently inherited from the Church State; see e.g. L. von Ranke, *Die romischen Pdpste in den letzten vier Jahrhunderten* book 4 (8th edn., I 262-67, 304).

organization from traces of local disintegration and was directly subordinate only to the highest authority in the state.

In a totally different field, Louis XIV's monarchy attained an important goal in codifying the law. Colbert's programme on this matter had been largely put into practice, although there remained a good deal more to be done even here. Through the co-operation of the king's representatives, Colbert and his uncle, Pussort, on the one hand, and the "sovereign" law-courts, the Parliaments, on the other, civil law and the law of criminal procedure was codified in two great statutes for the whole realm. In addition to the work in these most important spheres of law, there were the imperial laws pertaining to commercial, colonial, as well as forest and water law—which were elaborated without the help of the parliamentary lawyers. All in all, a whole series of codifications were completed in the short course of eighteen years, that is, from 1667 to 1685. Few countries could have achieved more. The codification carried out during the remaining period before the French Revolution was less important, though not insignificant.

Nevertheless, a great deal remained undone. In the later period as in the earlier France broke up into two regions—a northern, *pays du droit coutumier*, ruled over by the purely local *coutumes* inherited from feudal times, and a southern, *pays du droit e'crit*, where Roman law was the principal code. But the division was never complete, since both kinds of law occurred side by side almost everywhere. The purely local character of the *coutumes* also led to every single little administrative district (*chatellenie)* having its own law, which was frequently the case even in separate cities and estates. On top of all this, came the innumerable royal decrees, also competing with the *coutumes* and Roman law. And that is how things stood even at the end of the *ancien regime.*[16]

Administrative organization and the army were two provinces in which several German states—particularly Brandenburg-Prussia—could show achievements comparable with those of France, and, taken over the whole period of time, perhaps even outstripping them. Purely from the point of view of organization, the Elector Frederick William of Brandenburg and his immediate successors achieved scarcely as much as Richelieu had done in France half or a full century earlier. But in the long run, Prussian bureaucracy proved itself capable of producing the great work of reform which began in the 19th century, while the French

[16] See e.g. J. Declareuil, *Histoire du droit francais des origines d 1789* (Paris 1925) 820-4, 830 ff. *et passim.*

had first to undergo the ordeal of a revolution. The ideas employed by German bureaucracy in the 19th century were certainly gained from France—a fact which can never be too strongly emphasized; but the machinery which translated the ideas into practice was the same as that which had been created by the rulers of the *ancien regime.* During the mercantilist period, or, more precisely, until 1789, German achievements were potential rather than actual, for prior to the French Revolution, no German state, in any branch of activity, had arrived at such national unification as was present in France.

In conclusion, we shall endeavour to answer the question which was put at the commencement of this chapter, namely, how far the evolution of the toll system measures the capacity of mercantilism to overcome the kind of disintegration which, for want of a better term, we have dubbed feudal. The answer appears to be that every sphere of administration of economic importance had exactly the same characteristics as the toll system. The branches on which the ruling authority lavished greater care and affection showed greater results. Unification and service-ableness came about in those fields where the clear interests of the state demanded them or appeared to demand them. But on the whole, the *ancien régime,* although everywhere showing marks of the encroachment of the state, retained the form it had inherited from an earlier period, in which the importance of the state compared with later times was transitory. That was the fate of mercantilism.

There remains to be answered an essentially wider and more interesting question—what developed out of that species of disintegration which was bound up with medieval city policy? What did mercantilism form out of the important, compact body of measures by the aid of which medieval cities endeavoured to guide economic life along roads which led to their own interests and ideals? This question will be dealt with in the next three or four chapters.

IV

THE IMPORTANCE OF THE CHANGE FROM MUNICIPAL TO NATIONAL POLICY

Since medieval town policy was consistent in all its typical aspects, it is not very difficult to describe. Its characteristic features are among the best-known facts in economic history; nevertheless, it is well to outline them here so as to provide a background for mercantilist work in this field. The economic principles of the policy may be summarized in the following five points.

The first aim was abundant supplies for the town, particularly of food and industrial raw materials. For this reason a very strict watch was kept to prevent any part of the provision of goods from being side-tracked on its way to the municipal market. It was decidedly a consumers' point of view and its importance is obvious. The urban population, far more than that of the country, depended on the produce of other classes of society and other regions, and subsisted by the exchange of goods with sellers living outside the city But the principle was also applied to the citizens themselves, especially to the sellers of indispensable necessaries of life—bakers and butchers. In spite of its narrowness and its tendency to diminish rather than increase the supply of goods, the consumers' standpoint, which is in fact older than municipal policy, has supplied the science of economic policy with one of the foundations of its theory. In other words, it has drawn its attention to the satisfaction of human wants as the final aim of economic activity.

In so far fas it was directed against people outside the town, i.e. particularly against the surrounding countryside, consideration for the consumer was unchallenged in municipal policy But to the extent that it affected its own citizens, this was not so, for the point of view of the producers was more important in that sphere. The producers' interests lay in reserving anything in the nature of urban industry, that is all trade, commerce and manufacture, for the native inhabitants. The two points of view harmonized in trade outside the city in those goods which were definitely for the city's needs, principally, that is, food-stuffs. If trade was definitely diverted to the city, there was a guarantee that provisions were really assured, or, in contemporary terminology, rural trading led to forestalling *(Landkauf fuhrte zu Vorkauf).* The producers' standpoint also made itself widely felt,

however, in such cases where the urban consumers might have found themselves better served by those outside the town; but it was specially prominent wherever the interests of the municipal consumers were not at all affected, that is, where the rural craftsmen worked for outside markets. The struggle against rural trading and against rural handicrafts lasted at least seven or eight hundred years. In Germany, in particular, a *Bannmeile (banlieue)* was created around the town consisting of a rural area entirely subordinate to the interests of the city, and within this area all commodities were to go to the city and no handicrafts were allowed to exist. The producers' point of view was the second focus in municipal policy.

In the third place, the regard for the burgher in his capacity of merchant demanded more than merely a concentration of commercial activity on the town itself. Provision had to be made to render trade within the city impossible without the co-operation of the citizens, and the result was the legislation concerning "strangers", "foreigners", or more euphemistically "guests" *(Fremdenrecht, Gdsterecht),* the manifold restrictions placed on all visitors to the city in the exercise of their craft, as well as on merchants of other cities and on peasants, miners and fishermen of the neighbourhood. Foreign merchants were usually subjected to personal supervision in some form or another and were prevented from trading with one another without the intervention of a native burgher. Neither could they take part in retail trade or in a number of other occupations. In particular, their connection with the rural population was cut off as far as possible.

This constant striving to place the native burghers in the position of go-between in all branches of trade was not confined to that trade which came to the city of its own accord, but was also applied to driving as much traffic as possible into the city. This fourth factor was the so-called staple policy, which provided obvious points of contact with the three previous. This, too, was a principal point in the system.

Finally town policy was also determined by certain ethical considerations, and these were not directly connected with the interests of the town as opposed to other social units, but arose from the general social ethic of the Middle Ages—formed by the schoolmen on an Aristotelean foundation; these considerations also finding some support in the economic circumstances of the time. This fifth factor is perhaps that aspect of the whole policy through which the views of producers exercised the strongest influence—every person with a calling was to be assured of

'means of subsistence"according to his social status. Competition was therefore definitely to be ruled out, or at least circumscribed, where it might lead to disparities in the economic position of :raftsmen who were considered social equals, or where it might cause a change in the relative position which it was considered desirable to maintain among the members of different professions. The most complete expression of this policy was the handicraft gilds, and their counterpart in other spheres.

It cannot be denied that the various elements in the system often conflicted with one another, as was only to be expected ; but the remarkable thing is that they nevertheless formed the mcleus of a uniform policy throughout a number of centuries, How far the authorities were capable of enforcing their regulations s an entirely different question, but there is no doubt that the policy was a real one in the sense that it influenced actual events, n other words, the development would have been different if municipalpolicy had not existed. But this is far from asserting hat regulation was, as a rule, effective or attained its numerous ends. It was not even approximately so, although opinions vary widely as regards the degree to which regulation was enforced. The following will indicate to how great an extent this policy remained, throughout the Middle Ages, a programme which was only very incompletely realized. But besides its direct influence, municipal policy became a living reality of exceptional signifi- :ance because of the fact that it determined people's ideas on what ought to be, and this hold on men's minds was retained even down to the 19th century. Through this it also exercised an indirect influence upon the development of economic conditions themselves.

This was the purposeful system with which the organized state authority had to deal, in its endeavour to form an economic unity out of the various disintegrated entities.

Both aspects of municipal policy, the suppression of the rural countryside and the struggle against the competition of foreign cities, were in conflict with the economic aims of the state. If he rulers of the state were actuated by the same spirit as those of the cities, then they would have to concede the same privileged position to the citizens of the state as the town burghers formerly enjoyed; and everything that stood opposed to this end would have to disappear. There could be no further ground for giving city dwellers any advantage over the rural population, for both were alike citizens of the state. Nor was there any reason for preferring the citizens of one city to those of another, if both

were in the same state; all special privileges to those who lived in cities generally, as well as to those of any particular city, would have to disappear. If there was not to be a change in general economic ideas, i.e. if conceptions on the relationship between means and ends in economic matters were not to alter, then the state would have to be made the new unit, to which all local or municipal interests would have to be subordinated. The result would be a city policy extended over a wider area—a kind of municipal policy superimposed on a state basis. Since early times mercantilism has been characterized as the endeavour to exchange local municipal exclusiveness for a national state economy, employing the same means as those which served the old.

Such a policy would undoubtedly have set free many economic forces—greater facility for commerce and increased mobility; it would have paved the way—certainly not everywhere, but at any rate in important matters—for that development which finally won the day at the end of the 18th and in the course of the 19th century.

How far mercantilism developed along these lines in practice will be carefully examined in the following chapters, though I have confined myself mainly to two countries, France and England, because they are by far the most important for the purpose. In this short introductory chapter, a glance at the development in Germany may provide a background for the description of conditions in the other countries; for in this connection, mercantilism achieved least of all in Germany.[1]

[1] The following sketch of German developments touches on such well-known and widely discussed facts, that it is hardly necessary to give references for particular assertions. And so I shall confine myself to a few surveys, which appear to me to provide a good idea of the whole subject.—The best outline, fresh and concrete, although limited geographically, is E. Gothein, *Wirtschaftsgeschichte des Schwarzwaldes* I (Strassburg 1892) esp. ch. 5.—A corresponding outline for northern Germany is, to some extent, H. Rachel, "Die Handelsverfassung der norddeutschen Städte im 15. bis 18. Jahrhundert" *(Schmollers Jahrbuch* XXXIV, 1910, 983-1045).—A general survey is contained in von Below, "Der Untergang der mittelalterlichen Stadtwirtschaft," now republished in his *Probleme der Wirtschaftsgeschichte,* and also other articles in the same collection.—See also E. Arup, *Studier i engelsk og tysk handels historie* (Copenhg. 1907) esp. 349-56.—Schmoller is the exponent of a contrary view and cherishes an unbounded admiration for the work of the Brandenburg-Prussian princes; but especially his well-informed article "Das brandenburgisch-preussische Innungswesen von 1640-1800" in his *Umrisse und Untersuchungen* confirms the conclusion of the previously mentioned authors in all essential points.—Sweden: Heckscher, "Vasakonungadömets ekonomiska politik och idéer" (in *Historiska Studier tillägnade L. Stavenow)* 85-107.

The same influences as brought about the failure of the work of unification in other spheres were present in full force when the object was to substitute for the town policy a political structure with the state as the central force; and linked up with them were other tendencies working in the same direction. For in dealing with the cities, the policy of the Empire was even weaker than it was, for instance, in dealing with the tolls. Nothing else could be expected, since the confusion in the tolls was fought by the cities, acting in unison with the imperial authorities, while the task here was to break down the cities' power. The imperial authorities had no definite, consistent policy towards the towns—they sometimes arrayed themselves on the side of the towns and at others, they supported the territories, never asserting themselves in the interests of imperial unification. Such efforts as were made to oppose municipal exclusiveness, fell entirely to the lot of the territories.

The greatest obstacle was the shape and size of the territories, and one by no means exaggerated example will indicate how little could be achieved in most cases. When the two margravates of the Mark of Baden began to follow the mercantilist policy of unification, they broke off, for example, the links that existed between the craftsmen of Baden-Baden and those of Baden-Durlach. Each of these regions had an area of roughly 750-900 square kilometres, and the degree of unification that could be carried through, where any measures had to be confined to areas of this size, can easily be imagined. Most German states had only one town of any importance, and to overcome the rivalry between towns in such regions would hardly mean anything at all. On the contrary, to put down cities in a neighbouring territory remained, throughout, a patriotic duty and, to this extent, all that territorial policy did was merely to provide a new name for the old municipal policy. No change could be made until Germany's political structure had been revolutionized.

Nevertheless, even in the small territories, the chances of sweeping away the cities' mastery over the countryside did exist. And there were also a number of other territories or states within the Empire large enough to assert themselves to greater purpose than the petty principalities. The question is how far did these larger territories succeed in practice in converting municipal policy into a policy which considered the interests of the state?

Several tendencies may be mentioned which lead to the conclusion that some result was attained, not so much, perhaps, in Brandenburg-Prussia, as in Austria and in the very compact state

of Wtirttemberg. "Territorial gilds" were formed there, that is, gilds stretching across the whole state, and superseding the purely local gilds. The remains of a super-national tendency towards union of handicraft workers across territorial frontiers were vigorously attacked—which gave rise to an additional factor in the disintegration, in support of the exclusiveness of the states. There are also instances in which the laws against "merchant strangers" were tightened up against members of other states, though, it is true, *not* relaxed or abolished at the same time against the burghers of other cities in the same state. And some other illustrations of this tendency could be given.

Looking at the problem quantitatively, however, it is manifest that the practical effect of all these measures must have been of minor importance. They were often the essence of a theoretical programme, but in practical policy, for the most part, they worked out in an entirely different way. The measures taken were not only powerless to break down the towns' authority but often led to exactly contrary results, to anything but unity within the state ; in other words, they led to an intensification and extension of municipal policy under, and by means of, the growing power of the princes.

The explanation is twofold. On the one side, the policy of the towns had by no means lost its hold over the minds of men and on the other, the princes had greater opportunities of asserting their authority than the towns formerly had. With regard to the first point, the new era did not succeed in creating an economic ideal which could hold its own, if only for a short moment, with the consistent and firmly rooted concepts of medieval municipal policy. As for the second point, the princes had the rural districts in their power, in a way which the cities—at least, those north of the Alps—had never had; and at the same time the political weapons at their disposal were far greater all along the line than those of the cities. Thus, a large proportion and, perhaps, the majority of the institutions that have generally passed for medieval are really not medieval at all, or rather they are medieval only in the sense that the ideas on which they were based date from the Middle Ages. Their actual historical evolution belongs to a much later period—in part, even to the 18th century. Several examples, chosen at random from various parts of German development, should illustrate the point.

In Wtirttemburg, the cities' power over the rural countryside grew, with the princes' aid, so that where previously it could only be exercised effectively in the immediate neighbourhood,

it was now diffused over the whole state. The prohibitions against rural trading were likewise tightened up and applied extensively over the whole territory. In Baden-Durlach, the economic boundaries between town and country were reimposed in 1690. The exclusiveness of the gilds became more intense under the new order. In Baden-Durlach again, the local demarcations of the handicraft organizations were made more and more rigid in the 18th century and the gilds were extended into new regions, e.g. Fürstenberg, a principality later incorporated by Baden, introduced gild organization for the first time in 1756. The countryside lost its right to employ their own craftsmen in Baden as late as 1760. Even in the 18th century, competition between craftsmen was limited further and the *numerus clausus* of the craft gilds was applied with greater severity. Any tendency towards large-scale manufacture was suppressed and measures were taken against master-craftsmen even if they kept no more than between four and six journeymen. As late as 1709, gilds were created in Prussia for the manufacturers who had been attracted from abroad. Similarly with the rivalry between the cities. The lawsuits concerning the staple rights between various towns only ended with the dissolution of the German Empire at the commencement of the 19th century. Elbing, apparently, was not granted any staple rights at all until the 18th century, and wherever these rights had been granted from early times, very little was done to limit them in the interests of other cities of the same territory. The princes were never able to subdue those elements in municipal policy which were so contrary to territorial sovereignty, and even in the latter half of the 17th century, agreements on staple rights were made between cities of different territories.

The main cause of this turn in policy is that the territorial lords identified their own interests with those of the cities in general, and with those of one or several cities in particular, and so they supported municipal policy in the manner indicated above (p. 74) in the description of the toll system. A capital or a commercial city was regarded as a symbol of the power and strength of the particular prince or state. And since the state identified its interests with these cities, it simply had to overlook the claims of its other members. Sweden provides a good illustration in the legal position created for Stockholm, and even more, in the position which the Regent, later King Charles IX, wanted to create for it. Two memoranda by him, of the years 1595 and 1607, are evidence to this effect. The first referred explicitly to Germany as the prototype; and according to the proposal

suggested by both, the whole foreign trade of the country was to be concentrated at Stockholm, all the other commercial cities being forced to trade with the capital. This, in a diluted form, was actually carried out. The country was divided up under Gustavus Adolphus (1614 and 1617) into staple and inland cities and this arrangement was strictly adhered to. Foreign trade was then reserved for certain cities which had been granted staple privileges. All the towns on the Gulf of Bothnia were compelled to trade only with Stockholm. The Swedish towns were too weak to carry out any independent municipal policy in the Middle Ages and in the 16th century, and so it fell to the rising Swedish monarchy, at the time of its political ascendancy, to introduce those disintegrating forces which, in Germany, had their roots in the Middle Ages. But even in Germany the full force of municipal economic development was not seen in many cities until the princes came to their aid. Thus the largest city in the Electorate of Saxony, Leipzig, was entrenched in a firm position and developed, by means of severe measures against all its rivals. The same thing occurred in Prussia, in a milder form, in favour of Frankfurt-on-the-Oder; and Königsberg, in the same state, was likewise encouraged to develop its municipal exclusiveness.

The absence of flexibility and the insensitiveness to new tendencies in economic life, implicit in this policy, were far more significant than they had been during the Middle Ages, and not merely because they now had greater authority behind them. For the policy applied to an economic situation that had already undergone changes since medieval times and was about to experience still more incisive changes. In the Middle Ages, the economic life and the political outlook of the town had been largely a product of the conditions of the time and had grown up within the narrow confines of the city walls. The forces that tended to change its technique and structure were still in their infancy. This should not be understood in the sense that medieval regulation of economic affairs were simply the outward expression of a state of affairs already in existence. Had this been so, the numerous decrees and fines would have been unnecessary to enforce obedience to the regulations; nor would the efforts which were made have failed so frequently as, in fact, they did fail. The distinction between the Middle Ages and the later period lay more in the sphere of the economic ideal in social life than in other economic factors; but the distinction is none the less real for this reason. There were considerably fewer influences, in the Middle Ages, which might benefit from a change or revolution

in the existing order, and the belief in the unchangeability of life was all but universal. And this is why municipal policy fitted in with other social forces so much better when it originated, than it did later, when it was taken in hand by the growing power of the princes.

The princes themselves, moreover, had absorbed much of the newer outlook. The contradiction between the different elements of economic policy in the mercantilist period, therefore, became more and more prominent and was, apparently, insurmountable. The early aim, of protecting the ideal of a proper means of subsistence from any internal or external attacks, could not possibly survive under conditions in which the princes attempted to participate, for example, in the new manufactures and in colonial trade.

Mercantilism thus achieved very little in Germany in the field of surmounting municipal policy. The political status of the princes cramped their opportunities for erecting a unified system, and their lack of economic and political foresight gave them little inclination to do anything, even when they had the power. Their activities thus acted as a brake on progress towards that goal which they admired so much in others and to which they aspired because it appeared to bring untold wealth to other countries. From conditions such as these, little could be expected. To see what mercantilism could produce by nationalizing the economic features of town life, one must turn to those countries which were better prepared for the task through their political and economic conditions. This does not mean to say anything about the results that were attained in these more fortunately situated countries. This problem, and the attempt to give an adequate answer to it, provide the subject of the chapters that follow.

V

THE INTERNAL REGULATION OF INDUSTRY IN FRANCE

i. THE LEGAL VICTORY OF THE STATE OVER PARTICULARISM

The regulation of handicraft and of industry in France, together with the measures regarding tolls, is the principal and most typical result of mercantilism in its struggle against the disintegration within the state. As far as external effects are concerned, the regulation of industry must be considered as more important than toll policy, since it became a pattern for all princes and statesmen, great and small, throughout the continent. Towards the close of the 17th and even more in the 18th century, Versailles was the lodestar for their every course of action. But the connection between France and her more or less servile imitators has little general interest—the important problem is the comparison between English and French development.

In examining the practical significance of French industrial policy, it is vital to bear in mind the distinction set out in the Introduction, the distinction, that is, between the formal powers of the state over other political institutions, and the application of these powers in practice.

Purely politically, the French king was the unchallenged ruler of his country since, at least, the beginning of the personal reign of Louis XIV; no one dared to withstand him openly. From the outset, the monarchy considered it one of its chief tasks to gather to itself those powers over handicraft and trade which had fallen into other hands during the confusion of the Middle Ages. It was a question not only of the exercise of independent state authority superseding the industrial policy of the towns, but just as much of the rights which, in the form of feudal powers, had belonged to the secular lords.[1] The fact that the political

[1] The best treatments of this much-discussed subject are the following: R. Eberstadt, *Das franzosische Gewerberecht und Schaffung staatlicher Gesetzgebung und Verwaltung in Frankreich vom dreizehnten Jahrhundert bis 1581* (Schmoller's Staats- und sozialwissenschaftliche Forschungen XVII: 11, Lpz. 1899).—Further, P. Boissonnade, *Le Socialisme d'Etat, L'Industrie et les Classes Industrielles en France . . . 1453-1661* (Paris 1927, *cit. post. Soc. d'Etat).*—Next, the noteworthy, shorter survey in H. Hauser's collection of essays, *Travailleurs et Marchands dans Vancienne France* (Paris 1920), containing the essay "Les pouvoirs

strength of the French cities, when compared with the German, was restricted, meant that the independent powers exercised by the *communes*—that is, those towns which were independent of feudal lords—were considered a kind of feudal sovereignty, of the same character as that which such liege-lords usually possessed. There was not much authority left to the king with regard to towns which he did not govern in his capacity of feudal lord. The French monarchy found that it had a great deal of work to do in this field; but it was seldom at a loss as to how the work of that character was to be approached.

A 1351 proclamation of John the Good, based on an earlier ordinance of 1307, provides an appropriate point of departure for the treatment of this development. This proclamation constitutes the first large-scale attempt to regulate craft organization in the district of Paris.[2]

Just as in England, the effects of the Black Death provided a powerful motive for the first interference on the part of the state. The great pestilence had led to a rise in prices and particularly in wages, and the king took this as a motive for making the local bodies in Paris, above all the gilds, dependent on the royal institutions *(titre* 14). In the second half of the 14th century, the monarchy went further and encroached upon all departments of gild activity, regulated the organizations' right of assembly, made the control of commodities dependent on its consent, and made a special point of drawing up and confirming, on a large scale, the privileges of the gilds. This activity seems to have reached its zenith in the first years of the 15th century.[3]

Developments proceeded on these lines for two centuries, yet they did not lead to uniform legislation for the whole kingdom. This was not brought about until the famous edicts of 1581 and

publics et Torganisation du travail dans l'ancienne France."—Lastly, here, as in every department of French industrial organization, Boissonnade's earlier and most important work is particularly useful: *Essai sur Vorganisation du travail en Poitou depuis le XI^e sikle jusqu'd Ia revolution* I—II (Paris 1900, *cit. post. Org. du tr.),* in this connection, particularly book four.

[2] Like all important sources of the history of French gilds, the 1351 Proclamation is set out in the first part of *Les metiers et corporations de Ia ville de Paris* (Histoire générale de Paris), ed. R. de Lespinasse I (Paris 1886) 2-44; it is reprinted in several other places as well.—The 1307 proclamation, whose importance as a pattern for the later ones was first pointed out by Eberstadt, is now set out in *Documents relatifs d I'histoire de l'Industrie et du commerce en France,* ed. G. Fagniez II (Paris 1900) 8 ff.—The 1351 ordinance has been given very various interpretations, and in this connection reference may be made to a paper by R. Vivier, "La grande ordonnance de fevrier 1351" (*Revue historique* CXXXVIII, 1921, 201 ff.). [3] See Eberstadt 223-43.

1597, the purpose of which was to lay down uniform rules for the organization of handicraft—and, in the latter edict, for trade as well—in all places, and to bind all independent craftsmen to take an oath before the king's representative. At the same time, the king's officials encroached more and more on the preserves of the autonomous feudal or communal bodies. No precise boundary line, however, was fixed between the powers of the various authorities, and this led to constant conflicts between them. The independent local rulers, too, did not by any means submit gracefully. In the independent towns—for example in Poitiers—the communal authorities were often able to retain their rights of disposal over gild privileges, and in 1628 it even happened that Poitiers punished the apothecaries of the town for having had their charter confirmed by the state council; and they were compelled to seek the sanction of the town itself. Similar cases occurred elsewhere, too.[4]

In the reign of Louis X I V the monarchy made a new advance aided by Colbert and his followers. In the first place, the state laid down regulations for the conduct of industry and consequently all marks of local and corporative control were replaced by others of the state. Another important change was the institution of chiefs of police (*lieutenants generaux de police)* which took place in the capital in 1667 and in the other large towns in 1699. In this way, the jurisdiction and administration of industrial law, which was very chaotic locally, came under state supervision. The local rights of sanction for gild privileges for the most part disappeared about the same time—in Poitiers, for instance, they were not to be found after 1695—thus making the formal unification complete in all its essentials; but already the monarchy was also making deep incursions into the very structure of industry.

However, even from the purely legal point of view, it should not be inferred that the monarchy had everything its own way in dealing with the independent jurisdictions which originated in feudal times, whether in the autonomous towns or in the spiritual and temporal feudal possessions. To the very last, all the vassals, great and small—but especially the spiritual vassals —persistently affirmed their formal right to nominate masters of gilds. In spite of everything, the French monarchy was not powerful enough to assert its rights over those matters which, according to modern conceptions, obviously belong to the state. Perhaps the best example of this is the handling of the feudal

[4] Boissonnade, *Org. du tr.*, II 291 f., 411 f.—Hauser, *Travailleurs* 141 ff., 153.

jurisdictions in Paris itself, where, as a result of the persistence of these jurisdictions, the gilds and, in fact, industry in general were to a great extent regulated independently of the state. Again and again the jurisdictions were declared abolished, but the decrees were not put into effect. These exceptions from the state's supervision were formally recognized by the last great regulation of the gilds, Necker's edict of August 1776. When, thirteen years later, on the night of August 4th, 1789, feudal rights were abolished, the privileges of the following parts of Paris were numbered amongst them: the suburb of St-Antoine, the cloister and yard of Notre Dame, together with the surroundings of four other churches, two courts, the Temple and one street (the Rue de l'Oursine).[5] Throughout the 18th century attempts to stop trade in forbidden goods, for example, were frustrated by the fact that the chief of the Paris police did not consider himself authorized to force his way into the secret dens of illicit traffic without previous warning, so that the miscreants always had sufficient time to remove all traces of their guilt.[6] For years, finally, the monarchy had granted particular places the right to regulate their crafts with complete independence—and they were thereby excepted from the general arrangements. This was true particularly of Lyons, one of the largest French industrial towns and the centre of the silk industry.

2. THE GILDS AS THE PRINCIPAL AGENT IN THE REGULATION OF INDUSTRY

The legal development outlined above, on the whole, finally led to all public powers over industry being gathered together under the state's control; but more important than this was the actual development of regulation itself. It remained to be seen to what extent the monarchy, having won back its lost legal rights, would be capable of providing a craft organization common to

[5] See e.g. E. Martin Saint-Leon, *Histoire des corporations de metiers depuis lews origines jusqu'a leur suppression en 1791* (3rd edn., Paris 1922) 401, 442, 509, 550 f., 589-—The edict *of* Aug. 1776, Art. 48, printed, *i.a., Metiers et corporations de Paris* (Lespinasse) 186 f.—In London the circumstances were similar. The reservations there (Minories, etc.) persisted until well into the 19th century and served as refuges for insolvent debtors and others who wished to avoid the arm of the law—which should be well known to readers of Dickens' novels. For examples of their significance in the regulation of crafts: *Index to Remembrancia*—see following chap, note 22—262.

[6] For examples, see E. Depitre, *La toile peinte en France au 17^{e} et au 18^{e} siecles* (Paris 1912) 125, **132.**

the whole country and adapted to its needs. In this connection, we must first consider the relationship between the monarchy and the gilds, through which craft regulation had taken definite shape, in accordance with the ideas of urban policy.

The 1351 decree

A peculiarity is met with at the beginning of this development. The 1351 decree mentioned above, the purpose of which was to remedy the rise in prices, accorded the gilds a very subordinate place in its scheme. This does not indicate any intention of doing away with gild institutions, for in various clauses of this very extensive document their existence is taken for granted. It is also easy to exaggerate the importance of the fact that the decree tended to make it easier for strangers to practise their crafts within the town; it even stipulated *(titre* 50) that any person who was able to practise a craft or introduce a commodity might do so and allow others to do the same *(faire et venir faire)* within the provisions of the law, so long as his craft was a good and honourable one. Even more marked interferences with the authority of the gilds were not infrequent under special conditions,[7] and the state of affairs at that particular time was such as undoubtedly merited the name exceptional. None the less, the fact that this first great incursion of the state into the sphere of industrial policy pushed the gild system to one side might well have led to a uniform policy being built up on foundations other than those of exclusive town policy.

If the French monarchy had had such plans—and the question will probably never be resolved—subsequent French development might have been similar to the English, on which the Statute of Labourers (1351), arising from the same situation, exercised so decisive an influence, as will be shown in the next chapter. However, the tendency expressed in the edict of 1351 was pursued no further. Whatever the reason may have been, the French monarchy, from the middle of the 15th century onwards, decided to allot the gilds a part in the regulation of industry.[8] The earlier activities of the state had paved the way and the very active period that followed proceeded, likewise, to strengthen the tendency. But even this did not necessarily imply that the whole of the national organization of industry would have to model itself on the gilds or that the entire industry of the country had to be placed under the control of a national gild system.

[7] For France, see e.g. Boissonnade, *Org. du tr.* II 31.—Hauser, *Ouvriers du temps passe (XV^e^-XVI^e^ siecles),* 2nd edn. (Paris 1906) 116 note.—Hauser, *Travailleurs,* 171.

[8] Boissonnade, *Soc. d'Etat* 109, 112 f.

The expansion of the gilds

A solution along these lines was all the less necessary, since the gilds were no more the only form of medieval handicraft organization in France, than they were in other countries. To what extent French craftsmen were grouped into associations in earlier times, according to their vocations, is not an easy question to answer, for in all probability a considerable proportion of such unions had neither official character nor any standing in the eyes of the authorities. On the other hand, the limited occurrence of gilds supplied with "offices", i.e. invested with legal personality, may easily be verified. The two types of organization are distinguished, perhaps, more sharply in France than in other countries.

On the one side there were the "free" associations, which usually had only the negative characteristic of not being bound by any oath, and on the other, there were the privileged organizations called *métiers juris, corporations,* or *communautes juries* or *jurandes.* The towns which had these corporate craft organizations were called *villes juries* or *villes de loi.* These non-free organizations were, then, closed bodies which had taken an oath and were directed by wardens, likewise "bound by oath" *(juris, gardes-juris,* or *maitres-gardes).* As far back as the early Middle Ages, formal privileges and recognized by-laws had been granted to them; they had a legal standing in public life through their powers of control over production and their monopoly right of practising crafts; their organization was autonomous and they had to have all three professional grades, apprentices, journeymen and masters; they had precise regulations governing promotions from one grade to the next, and, in particular, carefully worked-out conditions under which the status of master could be acquired, with its concomitant right of practising a craft independently.

These are the kind of bodies that people usually have in mind when speaking of gilds, but recent investigation during the last decade has made it perfectly clear that their occurrence was limited during the Middle Ages. It may be enough to give a few examples.[9]

Their diffusion was undoubtedly greatest in Paris, fitienne

[9] The differences between the two types of closed bodies are explained, e.g. Boissonnade, *Org. du tr. Il* 35 ff., cf. 77, 177 f.; Levasseur I 271, 444, 545, II 90; Hauser, *Ouuriers* ixf. 110ff. (with numerous quotations from the writings of Loyseau of the time of Henry IV; *id., Travailleurs* 130 ff.; *id., Les dtbuts du capitalisme* (Paris 1927) chap. 3; H. See, L'*evolution commerciale et industrielle de Ia France sous l'ancien regime* (Paris 1925) 55 f.

Boileau's *Livre des métiers* of the time of St-Louis, the most important source of information on medieval French gilds, enumerated, even at that time, 100 corporations under as many headings. But even Paris too, not to mention its lawless suburbs, had a number of occupations without gilds, for the tax registers of the 13th century indicate some 130 different crafts, which was a considerably greater number than that of the corporations. Even though in 1300 the gilds did assume control over the greater part of the handicrafts of the capital, in later times they did not hold this position and, in spite of ceaseless efforts, Paris only counted some 60 legalized gilds in 1673. These could scarcely have amounted to half the total crafts of the city, for two consecutive ordinances brought their number up to 127 or 129 in the course of 20 years.[10]

The edict of 1581 was based on the fact that conditions in Paris were not typical of the country as a whole. The preamble stated that "The majority of the craftsmen in our kingdom, particularly in towns, hamlets and other places where there is neither gild master nor warden to test their products, have become so independent that the majority of them [i.e. their products] are not half as good and reliable as they ought to be".[11]

An investigation into the actual conditions is much more conclusive. It reveals a far weaker diffusion of the gilds outside Paris than in Paris itself. It proves, too, that, to the extent that they expanded at all, their growth was not of medieval origin, but largely a later phenomenon. Poitou may be taken in illustration, since the conditions there have been explored most carefully, but there is abundant evidence that conditions were similar almost everywhere else. In Poitiers, the capital of Poitou, and one of the largest towns in the country, no more than eighteen crafts were in any way organized in 1400; and at least three of the eighteen, and perhaps even six, show no evidence of a real gild organization. On the other hand, there may have been a few other organized trades traces of which have been lost. But in any case, it can be seen that the gilds in the Middle Ages proper were by no means extensive. During the Hundred Years War, they encountered a further set-back and it was not until later

[10] See the abstract in Savary des Bruslons, *Dictionnaire universel du commerce*, Art. "Corps et communautés de Paris, érigées par lettres patentes," under "Communauté."—Martin Saint-Léon 220 ff., 446 ff.—Levasseur II 221 f.—It must be added, however, that the estimates of the number of legalized gilds in various places differ quite considerably. I have followed those which seemed most free from objections.

[11] Levasseur II 139 note 1, after Fontanon's collection of sources. The text in *Metiers et corporations de Paris* has left out this passage.

that they developed any strength. In 1708, thirty-five of the sixty-five trades of the town had legalized gilds and during the whole of the subsequent period, this number was only slightly increased. At the same time, Poitiers naturally had a larger number of legalized gilds, both absolutely and relatively, than any other town in Poitou. In the second largest town, the number of gilds amounted to less than a third of the number of trades, while the majority of the towns and the countryside had none at all. Conditions were similar in other regions. It is particularly interesting to note that an important town such as Lyons jealously clung to its right not to be a *villejurée,* and that before the middle of the 16th century it had no legalized gilds worth mentioning. Both Lyons and the other cities which were hostile to the system of gilds justified themselves again and again by the fact that their meagre population and their poverty impelled them to entice craftsmen and workers, who would not come unless they were granted freedom.[12]

Clearly, then, it was not the fact that gilds occurred everywhere that placed the French monarchy under any obligation to base its system of industry on them. It was only through the constant interference on the part of the monarchy that the gilds spread throughout the country and grew steadily in importance from the middle of the 15th until the beginning of the 18th century. It is reversing the truth to say that the medieval gild institutions had more power and importance than the monarchy would have wished; in fact, French sovereigns found that, try as they would, they could not gain for them the currency prescribed in the royal ordinances. Here again, the state displayed its lack of initiative and instead of instituting some new body suited to the demands of state unification and a brisker commerce, they merely extended and, under the regulation of the state, gave more definite shape to what was, perhaps, the most typical creation of medieval municipal policy.

It is significant of the French and, generally, of continental development, that the gilds acquired a central position in the state regulation of trade, firstly in the fact that state measures were directly bound up with the corporations, and further because the methods evolved by the gilds became the keystone of the whole structure of trade regulation. The description that follows

[12] Boissonnade, *Org. du tr.* II 4-15.—Id., *Soc. d'Etat 11*2f., 121, 284f.—J. Godart, L'*ouvrier en sole, monographie du tisseur lyonnais* I (Lyons 1899) 80 ff.—Hauser, *Ouvriers* 112.—Id., *Debuts du capitalisme* chap. 4.—Other instances, Boissonnade, *Colbert* (see below, note 58) 246.

below outlines the development until the attempt to find a new policy, which began about the middle of the 18th century.

The Edicts of 1581, 1597 and 1673

Three famous edicts are particularly characteristic of the position of the gilds with regard to the state regulation of trade: Henry Ill's edict of 1581, Henry IV's edict of 1597, and Louis XIV's, i.e. Colbert's, edict of 1673. Two of these have already been mentioned. The first was the least effective and perhaps less hope was placed upon it; yet it paved the way for all subsequent measures. In 1597, a corresponding regulation of trade followed the regulation of handicrafts which it had initiated. Actually the edict of 1673 introduced nothing new on paper, but it—and also a series of particular ordinances just succeeding it—provided for a closer observation of long-standing rules.[13]

Briefly, the programme consisted in making the gild regime the universal model for the structure of trade not only in the cities, but also in the market towns and even in the country. Loyseau, towards the end of the 16th century, remarked that all the French towns had thus become *juries,* and it may even be said that, on paper, this was the case throughout the state. In the edict of 1581, it was specifically decreed (Art. 1) that all craftsmen and traders—of whom the tax-collectors had to compile lists (Art. 22)—were to take the masters' oath before the official judge of the district or some other authority and be thereby appointed masters (Arts. 2 and 3).

In places where no organization existed craftsmen were to take as their model the nearest town under gild control (Art. 24), and small districts, which had too small a number of craftsmen to form organizations with their own wardens, were to form them by combining together into larger districts (Art. 10). These regulations were further defined in subsequent decrees, and in 1673 the demand for all existing gilds to be confirmed was added to the other requirements.

There is no doubt that unification was contemplated here. It was a clear expression of what we called in the last chapter a town policy locally magnified. Theoretically, it was also a national policy in that districts hitherto unorganized—towns, villages without legalized gilds and the countryside—were not subject to the authority of the town gilds, but were to have their own organizations on the same footing as these. And so what

[13] All these edicts printed in *Metiers et corporations de Paris* I 84 ff, 96 ff., 117 ff., the 1597 and other edicts are also in *Recueil general des anciennes lois francaises,* ed. Jourdan, Decrusy and Isambert, Paris [1822 ff.] XV 135 ff.

was originally essentially a town institution was to be preserved and developed, but not in the sense that the towns were to dominate the country as a whole. Regulation was not to be based upon municipal supremacy; and this very fact constitutes a definite inroad of mercantilism.

But this tendency was outweighed by the opposite one, i.e. the fact that the gild system became the principal form of state control of trade. For this made what was perhaps the most typical of medieval institutions a central part of the whole social structure and gave it such strength that it became almost impossible to dispose of it. It is true that its influence was restricted by the fact that regulation was only applied to a limited extent. Nevertheless, the gilds, especially through the edict of 1673, underwent a marked growth, not only in Paris but also in the provinces and, in a lesser degree, even outside the towns. Their influence became apparent when the government, under the stimulus of new ideas, tried to do away with them altogether.

From the economic standpoint, the question of the individual corporation's sphere of influence is not the most important. Much the more important question is whether the system, through the authority of the state, guaranteed local exclusiveness, or whether it permitted mobility of workers between various districts.

With elegant French logic, the edict of 1581 created a system of concentric circles for the right of practising a craft. Those who had become masters in Paris were to have the right of practising their craft throughout the country by means of simple registration (Art. 6). On the next grade of the hierarchy were the masters in those towns which were seats of the parliaments, the highest courts of law. They enjoyed the same rights in the district which centred round their town, i.e. in the judicial district concerned. In the same way, the process continued down the scale. The masters in the subordinate centres were given corresponding rights for their districts, while masters in small towns could set up in the suburbs (Art. 7). In contrast with the otherwise perfectly logical system, the citizens of Lyons were granted a privilege of greater geographical scope. After their period of apprenticeship they could become masters anywhere, either in Lyons itself or elsewhere. Having become masters in Lyons they were even allowed to practise their craft in the towns of the Parisian parliament, though not in the capital itself (Art. 8). The regulation was certainly intended to make craftsmanship more uniform throughout the country, by giving the craftsmen of more advanced districts the opportunity of propagating their

skill in backward regions. The opposite tendency of allowing migration of craftsmen from smaller to larger districts did only take place in the case of Lyons, and even there only in the case of those craftsmen who were natives of the town.

Some of the later orders regarding specific places, however, went further in allowing movement from smaller to larger districts. According to a *règlement* of 1666, the famous cloth industry of Amiens was open to anyone who could prove that he was a master in any of the gild towns.[14] The edict of 1581 itself was inconsistent on an important point, for it allowed suburban masters to migrate from less to more centralized places. Those who were already masters in suburbs at the time of the edict, whether the suburb had gilds or not, were allowed to enter the legalized gilds of the town, without going through a special masters' examination. The conditions governing future migration of this kind were to be stricter, for three years' practice in the suburb as well as a masters' examination was to be demanded. None the less even after the edict, entry was made possible in principle (Arts. 4 and 5). This detail, too, is very significant of the nature of state regulation, that while on the one hand it undoubtedly broadened the right to exercise a craft locally, on the other, it compelled unwilling craftsmen to join the gilds. Craftsmen who wanted to practise their trades independently of the gilds were to be found chiefly in the suburbs. These men by no means welcomed the right to be admitted into the town gilds; in fact they did everything in their power to avoid incorporation. In Paris it took eight decrees, from 1674 to 1678, to break down the resistance of the suburban craftsmen. The independence of the privileged Parisian districts mentioned above had, finally, to be left intact.[15] This was partly due to the fact that the suburbs already possessed their gild organizations, which were constantly at loggerheads with those of the town proper. But more often the suburban masters wanted to withdraw from the gild regime altogether.

Mobility of labour

In another and probably more important respect, the establishment and expansion of the gilds meant a more sharply defined exclusiveness between different places. Particularly important was the fact that the sons and sons-in-law of masters were favoured in every conceivable way in acquiring masters' rights, so much so that in many cases the free entry into industry

[14] *Recueil des reglemens generaux et particuliers concernant les manufactures et fabriques du royaume* (Paris 1730) II 234, 252 (Arts. 74, 158).

[15] For the texts, see *Metiers et corporations de Paris* I 119 ff., and notes.

was for a long time altogether forbidden to other people. For, when an organization, both on historical grounds and by reason of its inherent tendencies, is inextricably bound up with the business interests of strictly exclusive districts, any expansion or growth of the organization is bound to make migration between different parts of the country more and not less difficult. It appeared, too, that the Parisian masters' right of practising their crafts in the provinces, which was, indeed, a corner-stone of the whole system, could only occasionally be carried out in the face of local opposition.[16]

So much then for the masters' liberty of movement. For the apprentices and journeymen, movement of this kind was evidently of greater importance. The journeymen, in particular, were by tradition and inclination itinerant, and industrial regulation had to decide whether apprenticeship and service as a journeyman —as distinct from a master's certificate—in another place would admit a man to a trade. The determining factor in this connection was the organization of the industry in question. If apprentices and journeymen were all to become masters at some time or other, it was in the interest of each of the three grades—masters, journeymen and apprentices—to stem the tide. Subsequent efforts of the state to influence masters in another direction were met by the united resistance of the local organizations. But the situation was quite different when there existed a continual opposition between the masters on the one hand and the journeymen and apprentices on the other, because the latter could no longer count on being able to settle down independently. For it was then in the interest of the masters to increase the supply of labour, while the journeymen and apprentices still tried to check the influx of outsiders. In cases of this kind, the power of the state was nearly always exerted on the side of the masters, and it usually endeavoured to increase mobility of labour. But even where the state gave the natives of the town preference in getting employment, the condition was often imposed that they should not demand higher wages than the outside workers *(forains* or *regnicoles).* The growing conflict between entrepreneurs and artificers in the 18th century caused the state to redouble its efforts to procure for outside workers entry into the towns. At the same time,

[16] For examples of the treatment accorded to masters' sons and sons-in-law, see: Martin Saint-Leon 430; cf. Boissonnade, *Org. du tr.* II 78 f.—For the application of the policy: Levasseur II 597.—A. des Cilleuls, *Histoire et regime de Ia grande Industrie en France aux XVII^e^ et XVIII^e^ siecles* (Paris 1898) 102 and note 490.

journeymen's wanderings, particularly *le tour de France*, naturally increased local mobility of labour, at any rate since the end of the 16th century.

It is instructive to observe how, in spite of the factors which worked for local mobility of the workers, the strengthening of the corporations furthered local exclusiveness, so that at any rate from the middle of the 16th until the end of the 17th century, it even proved to be on the increase, until at length the distinction between employers and employed led to a change-about. One gild after the other clamoured for a compulsory period of training in the town for apprentices and journeymen, sometimes even for those who had already acquired the status of master in another town. These measures certainly often ran counter to the edict, which, in fact, shows that this was fairly ineffective. In Poitiers (1628) four years' training was demanded of the apothecaries in the town, even if they had had ten years' training elsewhere. Similar examples abound, and the tendency is particularly marked in one industry where both journeymen and masters had long since descended to the rank of wage-earner, that is, in the famous silk industry of Lyons. Its control, it is true, stood slightly apart from the current industrial system, but for that very reason it was under stronger state influence. Local exclusiveness was quite exceptionally strong. From 1702 onwards, Lyons prohibited the establishment of apprentices born outside the town and its suburbs, although later on, the concession was made of admitting apprentices from the surrounding country. According to the *règlement* of 1667, strangers were to work five years in the town in order to be admitted to the status of master, while during the whole of that time they were to work with the same master, a rule which was also frequently enforced elsewhere. The net was drawn more tightly when the *règlement* of 1737 demanded of outside masters the practically prohibitive period of ten years' practice in the town as journeymen. In 1744, the time was reduced to five years, but otherwise the conditions remained unaltered. Strangers who overcame all these obstacles were, even then, not on a par with natives of Lyons, for they could not have apprentices of their own for another ten years. It should be noticed that these restrictive measures followed upon a treatment of outsiders which was originally more lenient.

Generally speaking, it can be said that the tendency towards greater mobility of labour, which set in during the 18th century, must have had causes other than the unifying industrial policy of the state. According to all appearances, the corporations,

strengthened and extended by the monarchy, did more to increase local exclusiveness than the state could do to overcome it by any efforts to establish national uniformity. There is no doubt whatever that the *forains* failed to achieve their purpose. They met with successful resistance when they tried either to settle as independent craftsmen or to secure employment in dependent positions. In this respect, the attempts at unification largely failed.[17]

It is difficult to estimate the mobility of labour in France under the *ancien régime.* For the silk industry of Lyons, however, sufficient statistical material is available from the middle of the 18th century, reliable enough to justify certain conclusions. Out of 3348 journeymen and apprentices in 1739, 45 came from other French places and 22 were foreigners, i.e. 2 per cent altogether. By 1752, the total figure had risen considerably and the proportion of outsiders was greater, probably because the employers had made greater efforts to attract workers. Out of a total of 5964—always excluding masters—there were 207 outsiders, or 3! per cent. Masters should really be included as well, for the large majority of these so-called *maitres ouvriers* were, as mentioned above, even then pure wage-earners in the service of commercial entrepreneurs or *maitres marchands-fabriquants.* If they are included, the proportion of outsiders in the two cases falls to 1 per cent and 2\ per cent respectively. As far as outside masters are concerned, their number was insignificant; in the whole period 1745 to 1776, only 33 were accepted or about 1 per year, which was probably less than 1 per cent of the total. In the case of Poitou, it is established that the non-native masters were insignificant.[18]

The same principle obtained with regard to the possibility of migration from one industry to another. As far as is known, training in one industry never entitled one to admittance to another. The claim to a specific training must therefore quite naturally have rendered it more difficult to migrate to another industry. In certain cases in addition, movement between industries was prevented by practically prohibitive measures. Anyone, for

[17] **Eberstadt 246, 249 ff., 252 ff., 338 f.—Hauser, *Ouvriers* 54 ff.—Des Cilleuls 159 ff.—Levasseur II 388 f., 750.—Boissonnade, *Org. du tr.* II 43 f., 59 f.—Godart I 102, 106, 149 ff.—On the 18th century, further: See, E*v. comm. et ind.* 327, 346, 349, 353-**

[18] **The figures for Lyons are based on a table given in Godart I 26, cf. I 164. Unfortunately they do not indicate whether the figures for the "foreign" masters refer to craftsmen or merchants or both together. The first is the most likely and is assumed here.—On Poitou: Boissonnade, *Org. du tr.* II 79.**

example, who had turned to another industry during the scarcity of labour in the Lyons silk industry lost all the rights to which a laborious training in his original industry had entitled him.[19]

At the same time, the gild institutions became increasingly part and parcel of the system of state regulation. The wardens of the legalized gilds were the first grade of the administrative hierarchy created by the monarchy in its constantly growing policy of industrial regulation. They were charged with more and more troublesome and heavy responsibilities and the organizations became less and less autonomous. When the decrees concerning the general introduction of the gild regime had proved ineffective, the establishment of special *syndics* was ordered in 1691, with a sphere of duties corresponding to that of the wardens in the industries organized in gilds. Formally, this absorption by the state of the gilds' administration led, in the same year, 1691, to the transformation of the warden's functions into a regular state office. But from the point of view of self-government, this was by no means so great a change, for—just like the contemporary establishment of the *syndics*—its purpose was merely to sponge on the craftsmen and to cause them to "redeem" these offices. But actually, the important thing was not this, but the host of tasks which the numerous state regulations imposed on the wardens. The special judges in industrial affairs in the courts of first instance, usually called industrial judges *(juges des manufactures)*, whom Colbert had introduced everywhere, except Paris and Lyons, as part of his great work of industrial reform, they, too, were local authorities—though, it is true, municipal authorities, and did not belong to the legalized craft gilds. The state had thus made it its business to press the local corporations into its service, but it was characteristic that precisely by so doing, it conformed with local and particularistic traditions.[20]

But it would be the reverse of true to say that the French state built up its whole system of industrial regulation on the co-operation of the gilds. Had that been the case, the system of medieval regulation would fairly certainly have broken down, just as it did in England. The strength given to the gild regime, by the fact that the monarchy placed it at the centre of the new regulations, would have been quite inadequate to enable it unaided to supervise in detail the industrial production of a large country. To that end a system of professional civil servants was

[19] Godart l 248f.

[20] The sources in question are printed in: *Recueil des reglemens* I 1 ff., 415 ff. —*Metiers et corporations de Paris* I 123 ff., 128 ff.

required, by means of which the gild functionaries would be fitted into a uniform organization. Only in this manner could they be bound, to a certain extent at any rate, to their heavy and for the most part unwelcome duties. The formation of such an administrative mechanism for the regulation of industry was typical of French development. In the circumstances of the time, this presupposed political strength such as Louis XIV's monarchy alone possessed. It is to this that we now have to turn our attention.

3. THE ADMINISTRATIVE MACHINERY OF THE STATE THE PARLIAMENTS

The most important part of this remarkable, national, administrative mechanism was the institution of *intendants,* through which local government was organized under state control. It was, perhaps, the greatest administrative achievement of the French monarchy, fully developed as it was and spread throughout the kingdom in Louis XIV's reign.

The institution of the intendant was one of the few features of French administration which at all fulfilled its purpose and in which there was no conflict between appearance and reality. This was chiefly due to the fact that these posts were never drawn into the growing system of office-selling. The intendants considered themselves simply and solely officials and not owners of a privilege for which they had paid dearly and from which they expected to extract a good return. They became more and more the unchallenged masters of their administrative districts, and were in constant written communication with the central authorities, especially with the minister of finance, the *contrôleur général,* and also, in the 18th century, with the *conseil de commerce* by means of which industrial policy was centralized. On the other hand, each intendant supervised all the authorities in his particular administrative district, so that he formed the link with the central authority. The intendants' particular care in the industrial field was the privileged industries. From the middle of the 18th century, they were granted special powers over those branches of industry where it was considered necessary—for instance, over the paper and glass industries and mining. More important still was their control over the ordinary administration and jurisdiction of industry. We get an idea of what these organs of local government meant to industrial regulation from the two series of French government correspondence which, together, form seven bulky volumes, and particularly from the exchange of letters between

the minister of finance and the intendants during the fifty-four years' personal reign of Louis XIV, 1661-1715. Without the intendants[5] constant supervision, regulation would have been almost inconceivable.[21] Even in these favourable circumstances it certainly cannot be said that, judged by modern standards, a high degree of orderliness, honesty or lawfulness prevailed. But it can, at any rate, be said that thanks to the intendants, regulation of industry was up to a point a real thing, at least until the ineffective attempts at reform in the decades immediately preceding the French Revolution.[22]

The French government instituted at the same time special posts whose only duties consisted in controlling the internal regulation of industry.[23] These were the so-called industrial inspectors, *inspecteurs,* or *commis, des manufactures.* After some unsuccessful attempts, in the second half of the 16th century, this institution was incorporated in the great Colbertian plan by two edicts of 1669. The inspectors were the gilds' immediate superiors, and although they had no right to obtrude themselves in the case of private industry, a decree in 1691 gave them the right to take part in all sittings which concerned manufactures, even where judicial powers were exercised. Their duties were to superintend everything that went on, and so they were to have

[21] The relevant works have already been quoted frequently in chapters 2 and 3 : *Correspondence administrative sous Ia r̀egne de Louis XIV,* ed. G. B. Depping (I-IV, Paris 1850-55) and *Correspondance des contrôleurs géneraux des finances avec les intendants des provinces,* ed. A. M. de Boislisle and P. de Brotonne (I—III, Paris 1874-97).

[22] As far as I am aware, there is no synoptic study of the part played by the intendants. The general literature is, of course, full of references to their activities, but I shall content myself with referring to the following: J. Declareuil, *Histoire genirale du droit frangais des origines a 1789* (Paris 1925) 566 ff.; the excellent descriptions by Lavisse and Ph. Sagnac in the series published by the first of the two, *Histoire de France* VII: 1 (Paris 1905-06) 166f. and VIII: 1 (Paris 1908) 151 ff.; Hauser, *Travailleurs* 210 ff.; further, the works of Martin (see next footnote).—The best description of the reverse side of the coin—disobedience, confusion and lawlessness—is found, to my knowledge, in E. W. Dahlgren, *Les relations commerciales et maritimes entre Ia France et les côtes de l'ocean pacifique (commencement du XVIII^e siecle)* (Paris 1909); cf. my review of the same in the Swedish *Historisk Tidskrift,* 1912, "Oversikter och granskn." 127 f.

[23] For the texts on this administrative organization, see particularly the first four sections of the *Recueil des reglemens.*—For the period as a whole this is treated in the two works by G. Martin: *La grande industrie sous le rigne de Louis XIV* (Paris 1895, quoted below as Martin I) 103 ff., 259ff., and *La grande industrie en France sous le regne de Louis XV* (Paris 1900, quoted below as Martin II) 11 ff., but cf. next note.

spies in every town (Colbert's Instruction of 1669, Art. 30). If necessary, they had to call together the wardens and all the masters and impress upon them that disobedience "must inevitably cause their ruin" (Art. 11). They were to urge the wardens to perform their duties and "to drive fear into the workers[5] hearts". Needless to say, these activities did not exactly enhance their popularity, and there is no doubt that the inspectors were not liked and often even hated by their non-professional subordinates and colleagues, the gild functionaries and industrial judges. The inspectors, moreover, were by no means always conscientious; they often failed to carry out their duties, or were swayed by partisan bias. Even official letters and decrees referred to their ignorance and dishonesty as if this were a common phenomenon, as we shall see later.

None the less, it would be a mistake to conclude that they were not important and, in fact, it was to a very great extent their presence which caused French industrial development to diverge from the English.

In the first place, it was very important that the inspectors, like their superiors, the intendants, should be nominated by the central authority without having bought their posts. This alone made them better instruments of state authority than most other state organs of the *ancien régime.* Even if their choice often left much to be desired, yet there is no lack of example to show that serious efforts were made by means of examinations and tests to ensure that the inspectors had ability. Particularly towards the end of the 18th century, we find amongst them many notable people. The position was certainly enticing to men with technical talent, on account of the permanent contact with the technique of production which it entailed. Among the special inspectors, for example, we find Vaucanson, the most famous inventor in the silk industry of the time, also the chemist, Hellot, and the metallurgist, Jars. Other inspectors started new undertakings for new products or for a new technique, and even took charge of these enterprises themselves. In this connection the first person that should be mentioned is the English Jacobite, Holker, the general inspector of foreign manufactures and one of the most active organizers of the French cotton industry. Even in the ordinary, non-specialized inspectorate, there were such distinguished men as the two Savarys, father and son, authors respectively of the two works, *Le parfait négotiant* and *Dictionnaire universel du commerce,* our principal sources of knowledge about contemporary trade. Amongst them, too, are many of the most zealous reformers

of the latter part of the *ancien regime,* such as Clicquot-Blervache, Dupont de Nemours, the leading Physiocrat, and last but not least Roland de Ia Platière, author of the remarkable exposition of industry in the *Encyclopédie Méthodique,* later Girondin minister, and chiefly remembered, though quite unjustly, as the husband of his famous wife. It is evident that a government department which could attract such talent was not inferior to, but rather far in advance of, other branches of state service of the *ancien regime.*

The inspectors, by their very existence, were a factor to be reckoned with, and many of them held their positions for a long time. In Poitou, for example, one sat for 49 years, and in 70 years there were only four. There are also instances of whole families devoting themselves to the profession, five or six of them entering the inspectorate simultaneously or consecutively. Most important was their number. Before the beginning of the 18th century, they were not yet to be found in all the provinces, but in 1715 there were already 38 and the number rose to a maximum of 64 in 1754, besides 5 sub-inspectors. Besides the ordinary inspectors there was a host of special inspectors, both for particular industries and for particular places. Especially important was an inspector in Marseilles with dictatorial powers over the cloth exported thence to the Levant. Over the ordinary grades, there were two to five general inspectors, and in certain cases a kind of superior for larger districts, and, occasionally, travelling inspectors. Finally, the central authority dominated the whole system. A complete official hierarchy was thus brought into being to give vigour and effectiveness to industrial regulation in the interests of the French state. Even if we assume frequent neglect of their duties on the part of the inspectors, and we are certainly justified in doing so, an organization of this kind must certainly have had far-reaching effects.[24]

[24] The industrial inspectors have now become the subject of a detailed monograph: F. Bacquié, "Les inspecteurs des manufactures sous Tanden regime, 1669-1792" (*Memoires et documents pour servir a l'histoire du commerce et de l'Industrie en France,* ed. J. Hayem, X I , Paris 1927); the work is well documented, but too apologetic to give a correct impression of the situation. On the other hand, Martin likewise keeps to one aspect, by harping almost exclusively on the defects of the inspectorate. The best conception of the facts is, as usual, to be gained from the *Recueil des reglemens* (in general: I 64 ff., 99 f., 109 ff., III 26 ff., see also the rest of this chapter), *Corresp. d. contr. gen.* and Boissonnade, *Org, du Tr.* (for the text, cf. II 503). It is not very difficult to form a correct opinion of the actual conditions from these materials, provided that they are studied without preconceived views.

This twofold administrative machinery, the gilds and the industrial officials, provided the French monarchy with an instrument for prosecuting an active industrial policy. Besides the administrative bodies, there was another state power whose influence on industry it is easy to under-estimate—that is, the courts of law, and especially the independent and powerful high courts, the parliaments. Their influence was particularly outstanding on account of the hopeless confusion of all sorts of feudal, municipal and state jurisdictions and tribunals. The French courts, just like the English, initiated "judge-made law" and they resembled one branch of English justice, the courts of equity, in not only deciding upon the facts of a case but also prescribing positive action.

The members of the parliaments usually inherited their positions, originally dearly purchased, and they were the nucleus of the new nobility, the *noblesse de robe.* This circumstance in itself tended to make them upholders of the existing order. But the parliaments were in constant conflict on matters of authority with the monarchy and the purely administrative bodies. It was quite usual for the monarchy to take the decision of cases away from the parliaments and to bring it before the state council or a subordinate administrative authority. This arose from, and at the same time contributed to, the fact that the parliaments took care to protect that part of the existing order which had not been created by the monarchy. In other words, they were far readier to defend the medieval and local features of industrial regulation than were the royal bodies. The parliaments preferred to side with the communal authorities and in particular, they backed up the gilds against the inspectors. They were by no means favourably disposed towards a new regulation which emanated from the central authority and a new industrial development which they considered prejudicial to the demand for agricultural labour. As far as can be concluded from the hitherto accessible sources, the parliaments under the old system chiefly supported the medieval aspects of the system. Their aristocratic composition rendered them hostile to every sort of "capitalistic" urge for profit, of the kind which medieval regulation had attempted to prevent. Throughout the long history of French mercantilism, it is certainly rare to find any gesture or statement supporting journeymen and workers against masters and entrepreneurs, but one of the few utterances to that effect is a specially vigorous statement originating in the Parisian parliament of 1540. It laid down a limitation of the number of apprentices because masters

should "content themselves with their customary profits, which are already unreasonable and excessive, and should take proper care of the poor fellows whose sweat and toil they utilize, and uphold them in their rights". Finally it is not inconceivable that the old order was particularly popular with fee-hunting judges, because it provided excellent opportunities for the well-nigh incredible tendency to litigation, so characteristic of the time.

In so far as such reforms were attempted as militated not only against the medieval order but also against its mercantilist superstructure, it goes without saying that they met with the uncompromising hostility of the parliaments. It would be no exaggeration to say that as long as they existed, they stood for the system which they had inherited.

As we shall see in the next chapter, this institution has very remarkable similarities and dissimilarities to that of the courts in England, although its importance can certainly not be compared with that of the English courts.[25]

4. THE CONTENTS OF THE REGULATIONS. THE *RÈGLEMENTS*

The next step will be to investigate the practical policy for which France established its industrial administration, an administration which for perfection had no counterpart anywhere, if not in Sweden, least of all in England; and closely dependent on this is the question whether the state acquired a new system, or one adapted to the new circumstances, or whether it merely confirmed the principles of the gilds. We have just shown that the influence of the parliaments was exerted in the interests of the latter, and the same must have been true, to a still higher degree, of the gild bodies incorporated in the state organization. As for the inspectorate, which was purely a state institution, it could be placed at the service of any policy whatever.

Uniformity

On the question of how far industrial policy was, in fact, successfully unified throughout the country, there is no doubt that the basic principles were applied throughout the kingdom

[25] For the facts, see: Hauser, *Travailleurs* 202 ff.; *id.*, *Ouvriers* 192, 220.—Martin II 34, 85, 95, 259.—Levasseur II 107, 131, 158, 191, 451, 460, 594 f., 627 ff., 640 ff., 786.—*Recueil des reglemens* I 19 ff., 137 ff.—It should, however, be added that my description is based on generalizations from materials that are by no means plentiful and that the question urgently requires monographic treatment, of which there has been nothing so far, at least to my knowledge.

with greater consistency than at any other time or perhaps in any other country. Such uniformity was the aim of the very earliest of the state's incursions into the province of the gilds, and it was principally exemplified by the fact that gild privileges for towns, in every part of the country, were modelled "on the custom of Paris" *(a l'instar de Paris).* The well-developed craft organizations of the capital thus set their stamp on the gild system of the whole country.[26]

At the same time, the originally summary privileges became more and more detailed, and the regulation of the technical side of production became increasingly marked, the more it was taken out of the hands of the local corporations themselves. The culmination of the development was the huge system of *règlements* which Colbert began to build up in 1666—as usual on the model of older and ineffective attempts—and which were further multiplied, completed and extended in the remaining period of mercantilistic regulation. However, at this point it may be sufficient to concentrate on the system in its original form, only touching upon certain later characteristic changes.

The first aim of the *règlements* was precisely to unify the treatment of industry over the whole country, the term industry being, in this connection, principally confined to the various branches and stages of the textile industry. For this purpose, certain general *règlements* were laid down, one concerning the manufactures based upon wool and the mixing of wool with other textiles, no less than two *règlements* and one instruction concerning the dye industry, and finally one less important *règlement* concerning hosiery. The remaining branches were supplied with a host of special *règlements* for various districts, and even the general *règlements* were in this way rounded off—although in practice it rather impaired the uniform working of the general rules. It was not so much perfect uniformity that was aimed at, as strict conformity with the rules which emanated from the central authority, though uniformity was the ideal. When, for instance, an exception was made, in favour of the Rouen dyers, to the extremely detailed provisions of the great instruction of 1671 relating to dyeing, it was stressed (Art. 95) that they must be prepared to conform to the general rules, "so that this practice may gradually stop . . . and uniformity be established throughout the kingdom[55]. But generally speaking, it was sufficient if cloths of the same name were uniform throughout the kingdom, as was emphasized in Colbert's instruction of 1669 to the inspectors

[26] **See a list of instances in Eberstadt 241 note 1.**

(Art. 11). In the general *règlement* of the same year for the cloth industry, the first 29 articles laid down different measures for various kinds of cloth; e.g. Spanish cloth was to have a width of 1½ ells inclusive of selvedges, whose width was to be a maximum of 2 inches, and a length of 21 ells, and so on. It was further laid down, in article 33, that all looms were to conform to these measurements, those not doing so to be taken down and re-assembled according to the required dimensions. Cloth of other specifications was to be sold off within eight months (Art. 38).

Theoretically, no textiles not covered by the *règlements* were to be produced or processed, even for private use, as it was expressly stated on one occasion (1676). According to an edict of 1718 concerning some cheap cloths *(estamines* and *burattes)* produced in the town of Langogne and in other places in the mountainous district of Gévaudan, "His Majesty is informed that no *règlement* specifies from how many threads those cloths are to be composed; a matter which must be attended to without fail" —one almost feels the indignation of the writer at such an omission. The intendant of Alengon calls another similar case (1721) "an intolerable abuse". In conformity with these regulations regarding technique and the equally exhaustive measures of control, certain uniform rules for the exercise of crafts were proclaimed over the whole kingdom. The general cloth *règlement* of 1669, for example, allowed only the masters of the gilds concerned to produce cloth of any kind (Art. 34), which meant a national system of compulsory gild membership (*Zunftzwang).* The two *reglements* relating to the dyeing of cloth, as well as of silk, wool and yarn, both of 1667, laid down corresponding rules (Art. 1 and Art. 1 and 83 resp.). They prescribed, in addition, the years of apprenticeship, masterpieces and various other purely gild matters (Arts. 44-56 and Arts. 83, 90-94 resp.).[27]

Colbert's *règlements,* with the numerous special decrees which follow on them, are an imposing proof of the effectiveness of French mercantilism where it was upheld by its strongest protagonist. They prove that the central authority, in these cases, was not lacking either in consciousness of purpose or in vigour and energy, and that it is not through the absence of these qualities that the weakness of the system can be explained. The *règlements* for the period 1666-1730 are contained in a contemporary

[27] These examples, with two exceptions, are taken from *Recueil des reglemens* in their order in the text: I 448, 70, 283 ff, 288 f., 291, I I I 283, I 289, 343 f., 370 f., 386, 360 ff., 389 ff. They make no attempt at completeness.—1676 example: Boissonnade, *Org. du tr.* II 438.—1721 example: Levasseur II 501.

publication, frequently quoted here, of four quarto volumes and 2200 pages, and there are three supplementary volumes (not accessible to me), all of which, in itself, gives an idea of the scope of the work accomplished. The general cloth *règlement* comprises 59 articles, the two dyeing *règlements* 62 and 98 articles respectively, while the largest of all, the general dyeing instruction, alleged to be the best existing manual on dyeing technique, contains 317 articles. Of the special instructions for various places and specialities, the Amiens instruction of 248 articles was probably the most exhaustive. For the great silk industry of Lyons, known collectively as *Ia grande fabrique,* an instruction of 21 articles was issued in 1554. In the instruction of 1667, the number had risen to 67, in 1737 to 208, and it was only in the 1744 instructions that it fell again to 183.[28] An effort of this magnitude in the realm of industrial regulation could scarcely have been equalled in other periods or countries.

Regulations

In order to gain an idea of what this actually meant, we must get a concrete picture of how the system of regulation worked in practice.

Regulation followed the course of production. In the first place, it contained specifications regarding the handling of raw material, especially wool and the methods of dealing with it and went on to deal with all the subsequent stages of production, the most important of which were weaving and, especially, dyeing. Amongst numberless others, we will single out as an example of the weaving regulations a special *règlement* of 1718 for Burgundy and four neighbouring districts. As the *règlement* itself puts it, these districts produced woollen goods for the use of the soldiers and the general public, so that it was by no means a luxury industry. The dimensions of the cloths were specified in 18 articles for each place separately. We will confine ourselves to quoting the first five rules. The fabrics of Dijon and Selongey were to be put in reeds if ells wide, a warp was to contain 44 X 32 or 1408 threads including the selvedges, and when it came to the fulling-mill, the cloth was to be exactly one ell wide. Semur in Auxois, and Auxerre, Montbard, Avalon and Beaune were to have a warp of 43 X 3^2 or 1376 threads, the same width in the reed, and the same width of cloth when it left the fulling-hammer. Saulieu was to have the same width with 42 X 32 or 1340 (really 1344) threads, but it seems that the white and the more finely spun cloths were to have 74 X 32 or 2368 threads. Châtillon on the

[28] For Lyons, see Godart I 84.

Seine and five other places were to have 1216 threads in a width of if ells with the same variation for white cloths. The *sardis* fabric, which was produced in Bourg en Bresse and various other towns was to have only 576 threads with reeds of one ell and a width of half an ell after fulling, etc., etc.[29]

But as mentioned above, the most thorough regulation was concerned with dyeing, where three categories of dyers were strictly differentiated, each having its own special group of articles for dyeing. There were, first, the piece dyers and then the dyers of silk, wool and yarn, while the first category was further split up between the users of genuine colours *(grand et ton teint)* and the rest *(petit teini).* All three were to belong to different gilds, and just those last two groups were scrupulously kept apart. They were not to live in the same house, and only in exceptional cases were they allowed to have a common workshop, while neither might have in his house or workshop dyestuffs used by the other groups, "for it is necessary not only to prevent false colouring, but to remove from the dyers every possible temptation to falsify". In black dyeing, however, they might work together, the one laying the ground and the other finishing the process. In towns where there was only one dyer it was necessary to allow him to carry on both trades, "provided he is intelligent enough". The handling of various dyestuffs was the object of thorough regulation, in which questions of commercial policy were also involved.[30]

The stretching of cloth also played an important part in the regulation, owing to its influence on the well-regulated measurements; and, of course, exhaustive rules covered fulling an finishing. The prescriptions regarding the bleaching of linen *m* be quoted as a characteristic example. For years, bleaching w; carried out naturally by spreading the fabric on the groun< but even so it was not left unregulated. A proclamation of 171 for Lyonnais, Forest and Beaujolais prescribed that the bleache of Lyons and of these provinces were "bound to spread line on the fields moist, to carry it on their shoulders, to put it throug the water troughs piece by piece, and to carry it in book fori and not in bundles" (? *angeller).* It proceeds, "It is particular forbidden to leave cattle in the meadows while linen is sprea

[29] *Recueil des rtglemens* II 66 ff.

[30] *Ibid.* I 343-519, esp. Arts. 2 and 5 in the statutes for the wool dyers of 1667, Arts. 7 and 79 in the statutes for silk and other dyeing of the same year, as well as Arts. 66-70, 144 and 285 in the dyeing instruction **of 1671.**

there, and (we order) the soaking to be carried out in the old style, without a covering of chalk. Moreover the said bleachers must hold the wash-cloths for the soaking ready on the tub, instead of using for that purpose the linen which they are given to bleach—all this under threat of a 100 *livres* fine.[31] Finally there was, of course, a multitude of rules as to how the various fabrics were to be folded and put up for sale.

Control

The new administration seems to have prided itself on controlling the observance of these and a thousand similar rules, which, for the period 1660-1730, are not even all contained in the collection of texts quoted here, and which went on appearing in large numbers. No measure of control was considered too severe where it served to secure the greatest possible respect for the regulations. Theoretically, the controls for the textile industry, which was always of paramount interest, can be grouped in the following way—though of course there were variations enough for various sections of the industry, for various places and various times.

The gild officials were bound to pay frequent visits to the workshops and to test the quality of the fabrics while they were in the loom, and even to apply a mark there. This duty of visiting the workshops themselves existed, too, for all the subsequent stages of production, such as fulling, cutting, dyeing and finishing, and this applied to traders' warehouses as well.

The workers or manufacturers were to leave sections free at the beginning and end of the piece for the current control, so that there should be room for the control mark and the quality and number of the threads could be checked. In addition, there were to be selvedges of different colours down the whole length of the piece, according to the different weaves, and they were often sewn in with thread of a special colour. The pieces were to bear the name of the worker woven in—not sewn in—as well as a mark showing the place of production. In the great *règlement* of 1666 for the cloth industry *(sayetterie)* of Amiens, these controls were specially strengthened, for every master there had to have a special registered mark. At the same time, his name had to be printed on the face of a lead disc, which was attached to the first piece of the cloth. On the reverse side the wardens were to stamp the town mark during their "ceaseless" visits to the workshops, and they were forbidden to do this if the cloth did not contain the right number of threads. It is understandable that

[31] *Recueil des reglemens* I I I 470 f., cf. 442 f.

the *reglement* itself doubted whether six wardens were sufficient for this purpose.

Following on, apparently, the cloth came to be measured by special "ell-measurers" *(aulneurs* or *auneurs*—as will be seen later, the name was borrowed in England under the form of aulnager), or by ordinary gild officials. When the cloth was cut up, it was to be tested in a special place *(halle* or *bureau)* by the gild officers who then marked it. Occasionally this office control had to proceed in two stages. Expensive cloth which had to satisfy very high standards was in that case to be supplied with a disc bearing on one side the picture or the arms of the King and, perhaps, the words *Louis XIV, Restaurateur des Arts et du Commerce* or *des Manufactures,* and on the other, perhaps, *Draperie Royale de Carcassonne, Cité, Saptes ou Conques* (1666) or *Fabrique de Beauvais* (1667).

Nor was this the end of the matter. The cloth had yet to be dyed and this process was apparently considered the most important. The fine dyers—under no circumstances any other dyers—for the purposes of dye control were to place a rose of the size of a silver coin at the end of the cloth, in blue, yellow or in whatever other colour the background may have been. In addition, the dyers were to attach a disc with their name, address and the words *bon teint* or *petit teint,* whichever was proper, in large lettering. If both groups of dyers had worked upon the cloth, both were to affix their discs. Then the cloth was to go to the control bureau to be examined by the wardens of the cloth weavers and the wardens of the dyers; "and when it is found to be well-dyed and supplied with roses and marks, it should then have the seal of the bureau attached to it, and this last disc should be required as a recognition and affirmation of the others". And until this had been done, the merchant was not to accept the goods. Control was to be kept over the genuineness of the dye, in cases where cloth was seized, by taking a piece of the questionable cloth and a sample of cloth guaranteed by the control office and boiling the two together in alum.

This system, the skeleton of which is seen here in its original form as created by Colbert, was later improved and developed, though we must pass over the later stages. As one of the intendants pointed out, even the most ordinary cloth had to have no fewer than six marks towards the end of the *ancien regime,* while the number of details which had to be placed on the front of the cloth continually increased.

Even in Colbert's time, the control did not cease with the

recognition of the goods by the wardens of the manufacturers and the dyers. For if the cloth was sold outside the place where it was produced, it had to be examined once again by the wardens of the gild in the locality where it was sold. And if it was found to be in order, a *marque for aine* was affixed. Similar measures were taken in the markets. But the strictest of all the arrangements were those concerning cloth intended for sale in the Levant. This was submitted to a further all-powerful control by the previously mentioned inspector in Marseilles (1693). It was not until the goods had run the gauntlet of all these supervisory bodies that they were lawfully entitled to serve the ends for which they were intended.[32]

Penalties

It is plain that a system of this kind necessitated a host of penalties. The commonest were the confiscation of the goods or having them cut to pieces, money fines and the forfeiting of the right to practise the craft for a certain time or for ever. Besides these, there were many other milder and severer punishments. For certain offences, all that was done was to tear away in public the obligatory selvedges. Sometimes the goods were allowed to pass complete, but with an inferior mark, a *marque de grâce,* attached to them, but in other cases the penalties were very much heavier. According to a decree of the year 1670, the piece of cloth to which objection was taken could be placed in front of the inspection office on a pillory nine feet high. Then the name of the offending merchant or worker was posted and the offending object was cut up or torn in pieces, burnt or confiscated. Were the offence repeated three times, the offender himself could be placed on the pillory for two hours, surrounded by the evidence of his guilt. The *auto-da-fes* which Napoleon introduced throughout the land, against goods smuggled in from England during the continental blockade, are incomprehensible unless one remembers that he was merely continuing a practice which had been customary down to the very end of the *ancien regime.* The added severity

[32] The most important of these stipulations are to be found in the following places: General cloth *reglement* of the year 1669, Arts. 36-40, 51 *(Recueil des reglemens* I 290 ff., 297); *reglement* of 1666 for the industry at Amiens, Arts. 102-127 *(op. cit.* II 239 ff.); regulations for the fine dyers of 1667, Arts. 34-37 *(op. cit.* I 354 f.); dyeing instruction of 1671, Arts. 100-102, no *(op. cit.* I 449 ff.); instruction of 1669 for the inspectors of manufactures, Art. 17 *(op. cit.* I 70 f.). See also *op. cit.* I 106 ff., 313 ff., I l l 173 ff., 221.—The enumeration is by no means exhaustive, but the excellent index to this magnificent collection facilitates research.—For a few other facts mentioned in the text: Boissonnade, *Org. du tr.* II 482 ff.—Des Cilleuls 153.

of the punishments, whereby even the manufacturers themselves could be disgraced publicly in person was never, apparently, applied, although till the last it was always used as a threat. The other penalties appear to have been more or less enforced until the Revolution.[33]

Lack of originality

Colbert's influence on the uniform, systematic and universal application of this powerful system of regulation cannot be overestimated, and so far his achievement constituted an imposing attempt at a national, unified regulating control of the whole of French industry. But in order to understand what took place, it is no less necessary to emphasize that what he did was to apply medieval economic and political principles locally on a larger scale. Did this new application of an old system, it may be asked, adapt it to altered circumstances and provide a lead for the new forces? In reply, it must be said that the system did nothing of the kind. The *règlements* came into being after consultation with the craftsmen of various localities. Only a very exhaustive examination of the system would determine the extent to which they codified a technique that had long been customary. But even without such examination, it may be affirmed, from the general character of these industrial codes, that the regulations tended to preserve what was considered best in methods which had long been current. Besides, even if they sometimes did introduce something new, which cannot now be ascertained, the formulation of a definite technique in thousands of industrial regulations must inevitably have rendered more difficult any subsequent progressive changes. *A priori*, Colbert could be expected to have shown greater originality on legal and administrative matters than on technical matters, and that part of the problem is much more easily solved. That he did lack originality in this field can easily be demonstrated. It is seen that surprisingly large sections of the system were taken over completely from medieval conditions; this is illustrated in the following brief account.[34]

Even in the Middle Ages, the number of threads to be woven was usually laid down by rule. In every city only the stipulated

[33] *Recueil des reglemens* I 292, 413, 524 ff.—Levasseur II 604 f.—Martin II 33.—Heckscher, *The Continental System* (Oxf. 1922) 227 ff.

[34] The facts on medieval conditions, chiefly after Eberstadt 197-222.—The most complete account with which I am acquainted of medieval technique and its regulation in France is to be found in G. Espinas, *La vie urbaine de Douai au moyen-dge* II (Paris 1913), on the cloth industry 708-889.

measures were to be used, and the measures of one town were often proscribed in another. A table of measures of 1284 enumerates 47 towns having twenty different measures. Pieces of cloth were required to have selvedges of definite width and colour sewn in with thread of a prescribed colour and in a special order. The penalty for infringement was to unrip the selvedge along one side. Woven fore-pieces, too, were required, sometimes with woven figures as distinctive marks. In addition to these original markings, there was the typical municipal system of 'Viewing" the goods as a control over their proper production, and the affixing of lead seals to affirm their genuineness. Fine-quality goods occasionally had additional seals, while those goods that were not entirely rejected, but had not received complete approval might receive inferior markings. The worst cloths were burnt and, in a few extreme cases, they were cut up and returned and had to be sold in this form. It is obvious that this brief outline merely repeats the account of the mercantilist system of regulation previously given—which shows that no creative imagination was in evidence, even where, in the sphere of the old municipal economic policy, the administrative and organizing achievements of the monarchy was greatest.

5. THE APPLICATION OF THE SYSTEM IN PRACTICE

The description of the mercantilist system given hitherto has been confined solely to statutes and ordinances. But these, at the most, express intentions. To determine their influence on actual economic development it is necessary to go beyond the written ordinances. In thousands of instances, the prescriptions alone must have had no effect whatever when applied throughout a large country with a low standard of social development and with the poor administrative machine of the *ancien régime.* So much could be taken for granted even if no substantial evidence supported it. But, in fact, there is proof in abundance. The preambles to the statutes and ordinances themselves constantly complain of the disregard and abuse of the regulations. As a consequence, we have continual new decrees without any of them being the better observed.

Ineffectiveness of the regulations

Difficulties were inevitable from the very fact that the prescriptions demanded of the subject what he could not comply with. Two decrees (of 1687 and 1693) recognized frankly that masters and working-men who were obliged to append their

names on the fore-pieces of the cloth simply did not know even a single letter of the alphabet. This difficulty, to say the least, could not be solved by requiring still further specifications to be appended to the cloth, even though these were later not to be woven in but sewn on with different colours. A formidable system of legal specifications had been called to life which burdened the workers with such demands as only persons who were both lawyers and technicians might have satisfied. And yet they were intended to guide craftsmen and working men in their daily activities; and, in fact, the supervision was entrusted, in the first instance, to supervisors elected from the workers, whose education was certainly often no better than that of their fellows. Even about the end of the 18th century we occasionally find it stated that they could not read.[35]

It is chiefly the unsatisfactory system of control and its executive organization that has attracted the attention of contemporary and later ages. Practically no gilds existed in the country; and as we have shown, they were not the rule even in the cities, although by the edict of 1581 and later, the monarchy did all that it could to extend them throughout the land. Where they were lacking, there too the other institutions which might have applied the regulations fell into decay, and incredible gaps appeared in the application of the system. The intendant of Languedoc in 1737 asked his subordinate in Tournon who were the industrial judges there, i.e. the industrial court of first instance. The reply received was that the recipient of his letter could not discover the information required and that obviously no one knew anything about it.[36]

The never-ending stream of ordinances (1673, 1685, 1697, 1726, etc.) complained ceaselessly that it was just those judges of first instance who disregarded the *règlements,* and passed judgment of confiscation and money fines practically as they pleased. Merchants, artificers and dyers, especially *[sic]* in Normandy, Champagne, Orléanais, Burgundy, Poitou and Dauphiné—so these official utterances said—consequently daily infringed the regulations regarding length, width, dye and quality, and evaded the penalties by paying the ridiculous sum of f or 1½ *livres,* where the prescribed fine was from 50 to 500 *livres.* In the silk industry at Lyons, the prescriptions concerning the examination and especially the marking of goods at the control office appear to have been a dead letter from a very

[35] *Recueil des reglemens* I 313 ff., I l l 126 ff.—Bacquie (note 24 above) 78.
[36] Martin II 86 f.

early date, partly from an opinion frankly expressed even in Colbert's time that "what is no good for one is good for another, because there are all sorts of people". Moreover the exporting merchants recognized a distinct danger in the markings, since they could bring buyers in direct contact with manufacturers for those goods for which the merchants were intermediaries. In such exceptional cases, regulation was abandoned entirely. To add to the confusion there were also the conflicts, which seemed impossible to overcome during the *ancien régime,* between the different courts.

As for the supervisory bodies, both those belonging to the gilds and those of the state were continually accused of neglecting their duties and of corruption. An ordinance of 1692 stated openly that in many places the inspectors went to the places of production merely to collect the dues on which they had agreed with the gilds, and did not examine the goods at all. The marking was often carried out either by distributing the discs in advance or by transferring them from one piece of goods to another. Frequently the seal itself was left with the merchants or manufacturers, so that they simply became their own controllers. The gilds and their friends, the municipal industrial judges, were at loggerheads with the inspectors. In 1687, the judges of Rheims ordered the inspectors to notify them of their intended visits one day in advance. Thereupon the wardens informed the masters who were to be inspected, so that the latter had time to put away their illegal cloth or to hide themselves altogether, taking with them the keys of their rooms. Especially in the I720's and 173o's, complaints were unceasing regarding the system of regulation which in many places no longer functioned.

Arbitrariness

On top of this, the principle of equality before the law was unknown in the *ancien régime.* One man might be punished for a business practice which the next would carry on with impunity. This would sometimes happen illegally by corruption and personal favouritism, but even within the framework of the law, individual exceptions to any prescription whatever were frequently granted through personal influence. It is instructive, from our present-day standpoint, to adduce examples from a profession which is still under a particular kind of gild discipline, namely the medical profession. The numerous controls regarding compulsory training and examination under the *ancien régime* could not prevent completely untrained quacks from practising far and wide the

business of healing and offering their salves and medicaments to all and sundry. They derived a wealth of support from royal charters, permits from princes, provincial governors and other state authorities, and from legally acquired titles of physicians of the king, or surgeons of the navy and so on. Through this the proceedings which the regularly trained and organized doctors took against outsiders came to grief. Thus at a time when every calling was an "office", the authorities really yielded to quackery much more easily than to-day, although in theory to-day the exercise of a profession is considered a transaction between buyer and seller and even exceptions to this are based upon the principle of equality before the law.[37]

If the decay and inefficiency of the organization was such as has been described, it would seem that the whole system amounted to beating the air and had no effect on economic life. But this conclusion would be entirely unwarranted.

Firstly it is by no means true that the control failed everywhere. Boissonnade's carefully documented survey of Poitou is particularly illustrative of the zeal with which many officials performed their duties, of the importance of proceedings against negligent manufacturers and the penalties imposed upon them. And Poitou, incidentally, was a province whose textile industry had no specially marked peculiarities; and the same applies to many other districts. Certainly the first part of the 18th century saw the regulations gradually lose their uniformity and in many parts they fell into desuetude. But there was a concomitant growth of legislation so that we find more regulations than ever enacted.[38]

Even the numerous evasions from an iron code of regulation did not encourage industrial development, for it was not the most upright and useful craftsmen who were best placed for currying favour with the inspectors, nor for winning over the lackeys,

[37] The ineffectiveness and abuse of French industrial regulation has been treated so often that detailed proof can be considered superfluous. In connection with the general lawlessness and independence invaluable material is to be found in the second part of the *Correspondance administrative* (Depping), which is devoted to legal practice, the police and the galleys.—The examples quoted are to be found in the following: *Recueil des reglemens* I 17 f., 24 ff., 61 ff., 102; Godart I 186 and note; Martin II 32 f.; des Cilleuls 340 (note 766); Boissonnade, *Org. du tr.* I 512 f., II 445, 487 ff.

[38] Conditions in the 18th century, in spite of abundant data, are more difficult to summarize than those in the period immediately preceding, for the two large editions of administrative correspondence extend only to Louis XIV's death and the collection *of reglements* ceases in the year 1730; the supplement to the latter, to which I did not have access, **appeared in 1750.**

valets, mistresses and adventuresses who, in fact, wielded the many favours of the Court and the local potentates, and who procured the coveted and indispensable privileges or reversed legal judgments. For instance, in 1702, a certain adventuress, Madame Bernard de Rosemain, who had been engaged in remarkably multifarious activities, was prisoner in the Bastille. She had developed a flourishing trade in industrial privileges. At the trial she suggested that if everybody who followed this trade were punished, then several Bastilles would fail to contain them. The chief of the Paris police then informed the minister concerned that there was hardly a name at Court which did not figure on her lists. And he therefore suggested hushing up the affair to avoid too great a scandal. In these conditions it was to be expected that only in quite exceptional cases would the favours go to others than parasites.[39]

Nevertheless, exemptions were granted from one *règlement* or another, on the more serious ground of changes in fashion, if the authority's fancy inclined in favour of the fashion. Thus in the eight years between 1754 and 1762, no fewer than 130 exemptions of the kind were granted in the Lyons silk industry. But these very modifications clearly prove how obstructive was the whole system of regulation. The Sedan cloth industry, for instance (1744), could not raise the width of second quality goods by 1/35 of an ell (about 4 cm.) without special permission. The manufacturers of the Poitou town of Saint-Maixent had to negotiate for four years, from 1730 to 1734, before they could secure permission to use black warp, and even then they were not allowed to weave in black weft.[40]. In principle, the regulations were deliberately devised to prevent technical and economic innovations. When the innovations of the 18th century became more and more a leading feature of the industrial development in other countries, particularly England, and the period of enlightenment spread through France, the problem of these regulations assumed greater importance for the whole of French industrial evolution.

Attacks on innovations

Until 1779 itremained forbidden to weave, without special permission, types of cloth other than those specified in the *reglements.* The prohibition was continually repeated until the middle of the 18th century, with frequent exemptions in isolated cases.

A typical example of the manner in which the *règlements* opposed

[39] Martin and Bezançon, *Histoire du credit en France sous Louis XIV* I 228 ff.

[40] See Martin II *passim,* particularly 210 ff., 221 ff.—Levasseur II 471.—*Des* Cilleuls 181.—Boissonnade, *Org. du tr.* II 474 f.

economic innovations was a clause in the famous statute of 1666, for the cloth-weaving of Amiens. It stipulated (Art. 101): "If a cloth-weaver intends to process a piece according to his own invention, he must not set it on the loom but should obtain permission from the judges of the town to employ the number and length of the threads that he desires, after the question has been considered by four of the oldest merchants and four of the oldest weavers of the gild." And one can easily imagine what their opinion, in most cases, would be. Everywhere it came to a conflict between those who would attempt something new and their mistrustful fellow-professionals, often involving endless lawsuits and interference from higher quarters. This petty warfare would occasionally terminate in favour of the innovator, if his connections were powerful, but every opportunity was certainly taken to render it impossible to introduce a novelty without expensive and tedious conflicts with the established order. The system normally penalized innovations. A few famous instances may be cited.

Half-beaver hats were not permitted because various raw materials, which were forbidden on principle, had to be used in their manufacture. Moreover, their production lowered the sales of the colonial fur trade. They were therefore prohibited, under threat of ever-increasing penalties, in the years 1664-73, but apparently without effect. After 70 years, in 1734, the attempt to obstruct their coming into fashion had to be given up as a failure.

Button-making was controlled by various organizations, according to the particular materials that were used, although the most important part of the business belonged to the cord- and button-makers' gild. And so, when tailors and dealers began to produce buttons from the same material as the particular cloth used and even to use woven instead of hand-made buttons, the button-makers raised terrific opposition. The government came to their aid, in the first place because they considered the innovation an outrage against a settled industry of good standing, and secondly, because it adversely affected handicraft (1694-1700). A fine was imposed not only on the production and sale of the new sort of buttons, but also on those who wore them, and the fine was continually increased. The wardens even demanded the right to be allowed to search people's houses and claimed police aid to be able to arrest anybody in the street who wore unlawful buttons. When the otherwise extremely zealous and conscientious chief of the Paris police, de Ia Reynie, would have denied them

this, he received a severe reproof and even had to apologize. Nevertheless, the intendant of Provence, for instance, declared a few years later that he had to give up the fight against buttons made of cloth because they were universally used.[41]

All other struggles fade into insignificance, however, beside the notable attempt to prevent the production, import and use of printed calicoes, and this attempt is of particular importance because it concerned principally the cotton industry, that is, the industry which was the first to experience the great industrial changes.[42] The prohibitions were in force, on paper, for 73 years, from 1686 to 1759; they were contained in two statutes, some 80 ordinances and an even larger number of administrative orders, quite apart from the long-drawn-out public polemics on the subject. It was printed cotton fabrics that were chiefly forbidden, yet later the prohibition was extended to printed fabrics of any other kind, although cotton goods were still the most important of these. The tremendous and growing popularity throughout Europe of Indian cottons created for the traditional French textile industries—cloth, silk and linen—a competition which they were particularly anxious to exclude. But apart from excluding this new variety of fabric, it is of interest to note that a technique common to many manufactures became an object of attack; i.e. the printing of colours instead of dyeing them, the consequences of which became afterwards apparent. One technical cause of the above-mentioned change of policy was the backward state of French colour-printing. It was thought that the French products would be hopelessly swamped by the competition of inported goods if the popularity of the printed fabrics were to become extensive. This unwillingness to give free rein to innovations was an important feature of mercantilist regulation, especially in the form it manifested in France. Cotton fabrics themselves were never, apparently, forbidden; on the

[41] Levasseur II 339 f., 410 ff., 431 ff.—*Correspondance administrative* (Depping) I I I 713.—*Correspondance des contrôleurs généraux* (Boislisle) I 426 f.—The struggle against half-beaver hats had an earlier counterpart in England (G. Unwin, *Industrial Organisation in the Sixteenth and Seventeenth Centuries,* Oxford 1904, 146) and an amusing parallel is found in the scenes of the great Danish dramatist Ludwig Holberg's comedy, *Denpolitiske Kandestber* (Act 5, Scene 3), produced for the first time in 1723.—With regard to cloth buttons, there is again an English counterpart of the same period. See the following chapter, note 49.

[42] On what follows: E. Depitre, *La toile peinte en France au XVII^e et au XVIII^e sikles* (Paris 1912), now also A. P. Wadsworth and J. de L. Mann, *The Cotton Trade and Industrial Lancashire 1600-1780* (Publ. of the Univ. of Manchester, Economic History Series V I I , Manch. 1931).

contrary, they occasionally found decided patronage and support, though it must be admitted that the regulations were anything but lucid. But this backing really did not amount to much for, since it was impossible to manufacture a cotton yarn strong enough to be used as a warp, there was small possibility, before 1770, of pure cotton fabrics being produced. The printing of uncoloured Indian fabrics was thus a far more important branch of production up to that date than cotton production proper.[43]

An attempt of this kind to check the rise of a new fashion which spread like wildfire could not possibly be successful, the less so since the new fabrics were favoured by women in the first place—who in the France of that particular period were extraordinarily influential. It is estimated that the economic measures taken in this connection cost the lives of some 16 000 people, partly through executions and partly through armed affrays, without reckoning the unknown but certainly much larger number of people who were sent to the galleys, or punished in other ways. On one occasion in Valence, 77 were sentenced to be hanged, 58 were to be broken upon the wheel, 631 were sent to the galleys, one was set free and none were pardoned. But even this vigorous action did not help to attain the desired end. Printed calicoes spread more and more widely among all classes of the population, in France as everywhere else. But it must not be taken that because the policy could not achieve its purpose it was able to effect nothing at all. In fact, the fight against printed calicoes had very important results for French industrial development. It led to the unlawful consumption being satisfied principally by organized smuggling, which the cruel penalties could do little to hinder. The prohibitions against domestic production were easier to enforce, apart from a small number of "privileged places" which were either exempt (as Marseilles for export) or could not be got at (the exempted section of Paris). And so it was the native printing industry which had to bear the main brunt of the economic policy. The primitive calico-printing industry, in existence towards the end of the 17th century, was completely stunted in its growth. Since the printing of calicoes evolved roughly about the same date (around 1670) in France, the Netherlands and England, the French entre-

[43] The usually very well-informed P. Masson interprets the regulations as a prohibition against weaving *(Histoire du commerce frangais dans le Levant au XVIII*[e] *sikle,* Paris 1911—quoted below as Masson II—436 note 2).—On the support given to cotton fabrics, in the period before the prohibition, against printed calicoes, see e.g. Depitre I47f.; Levasseur II 524, 581 note 1.

preneurs and craftsmen emigrated, after the 1686 prohibition, to adjoining countries and gave the lands in which they settled a lead which was never overtaken later.

Consequently, when a number of printing manufacturies arose, after the opposition to calico-printing was finally abandoned, they suffered from a lack of skilled workers and, despite the protective customs duties, they could not stand up to the competition of foreign goods—not only the Indian but those of Western Europe. They therefore disappeared as fast as they arose. The fact that the most spectacular industrial development of the period that followed would take place in the cotton industry could not, of course, have been foreseen. And as a result, economic policy even under the Continental System bore more heavily on French industry than, perhaps, it would otherwise have done. But even without this, the typical economic policy of the time would not have been any the less burdensome.

This masterstroke of French industrial policy found its counterpart in other countries. The basic aims of industrial regulation were alike under mercantilism in almost every country. But the interesting feature is that nevertheless the results turned out to be dissimilar. A comparison with England is particularly instructive on this point. England hesitated—that is the first distinction—for 14 years longer, that is, until 1700, before she prohibited the import of printed calicoes. Moreover, she confined herself to an import prohibition and so gave a tremendous fillip to the native manufacturers. When in 1721 she again forbade any use of printed calicoes—just as France did—her industry had already developed a strength incomparably greater than the French. And besides, the English prohibition was never extended to production and so producers were enabled to go ahead and to produce for export. Among the fabrics excepted from the prohibition were "fustians" which were made with a linen warp. They were the oldest and most important part of the native cotton industry. By an Act of 1736, it was explicitly permitted to print them, and this permission was obviously applied much more widely than was originally intended. As a result, it became possible to develop a lawful, flourishing industry by printing fabrics made from yarn of linen and cotton combined, while at the same time, besides, the prohibited calico-printing was of course not discontinued. Finally, and perhaps most important, the prohibitions were not nearly so strictly enforced in England as in France. Although the prohibition against the use of printed calicoes was maintained on paper for no less than fifty-four years,

that is until 1774, nevertheless England obtained over France during that period a long start which was retained in cotton manufacture proper.[44]

The exclusiveness of the gilds

Side by side with the regulation of production the gilds lived on, without making any attempts whatsoever to introduce changes. Rather did they persistently develop their old characteristics which stood so prominently in the way of any adaptation to new conditions. The monarchy, at least in its pronouncements, took it upon itself from the outset to oppose the gilds' methods which it considered an abuse, in particular the high fees demanded from new masters and the expensive banquets for which they had to pay. The preamble to the 1581 edict thus stigmatizes these practices in the strongest language possible. It was admitted that journeymen were definitely led to set up for themselves contrary to the law and to work in their own chambers—forming a class of *chambrelans* as they were called, similar to the German *Bønhasen.* But in actual fact the state did more to encourage than to oppose the tendency to exclusiveness, especially by prescribing or allowing the *numerus clausus* to be applied to the members. In addition there were the laborious, expensive and purposely useless masterpieces.

To look for capitalist tendencies in the gilds as an explanation of this development, that is to consider their actions simply as an increased demand for capital from prospective members of the profession, is to misunderstand their very essence. Had it been lack of capital which prevented journeymen from becoming independent masters, the gilds would not have needed to place obstacles in the way of their preferment. In fact the fees imposed on a new master considerably lessened the capital on which he could later found his business, so that he was often left without means for that very reason; in these cases, it was not the requirements of production but the claims of the gilds which prevented poor craftsmen from setting up on their own account. Without manifesting any kind of "capitalist" touch, any profession can set a price on itself and thereby become expensive, simply by becoming a monopoly. Modern parallels to these phenomena are not at all the typically capitalist undertakings, requiring large

[44] Statutes 11 and 12 Will. I l l c. 10; 7 Geo. I c. 7 §§10 and 11; 9 Geo. I I c. 4.—See also Wadsworth and Mann, who make it largely unnecessary to refer to previous works on the subject. Further G. W. Daniels, *The Early English Cotton Industry* (Manchester 1920) 8 ff., 19 ff.; P. J. Thomas, *Mercantilism and the East India Trade* (Lond. 1926) 114 ff., 159 ff. (not quite accurate).

capital for their economic purposes but, on the contrary, those dependent upon licences to carry them on—for example public-houses and omnibus undertakings.

A very considerable and perhaps a major part of the gain which the masters secured from their monopolistic position was realized in the form of the benefits they received through being in a position to help their sons and sons-in-law to become masters over the heads of others. These relatives were always admitted for a small fraction of the fees and charges for training, etc., which others had to pay and, in many cases, they were the only ones admitted. Occasionally, it was altogether prohibited for a long stretch of time to accept any other apprentices. It is true that the choice of new masters from among the relatives of older masters could not strengthen the monopolistic character of the industry, properly speaking, since that would depend on the number of the members in the profession, the supply relative to demand. But indirectly it had the same effect, because the masters' sons and sons-in-law were never more than a very limited number. Thus when the Lyons silk industry was able to carry out a twenty-two years' blockade against all new apprentices who were not sons of masters (1684-1706), the wardens proudly pointed out in a letter to their colleagues in Turin that such was the secret of a flourishing industry. Inbreeding, besides, obviously increasingly discouraged new ideas and tended more and more to maintain itself by exploiting its industrial monopoly.[45]

The mania for litigation

The increasing monopolization of industrial practice manifested itself in a rage for litigation which, rightly or wrongly, has been considered a particularly typical French trait. The royal ordinances, which always had a sharp word to say on the gilds' extravagances, singled this out for special rebuke. A decree of 1691 called these law-suits "a public misfortune", and a statute of 1678 emphasized that the relations between the Parisian and the suburban gilds had given rise to endless litigation, overwhelming them with debts. Instead of bettering professional standards and thus assuring their future, the masters, according to this ordinance, merely revelled in "acts of mutual spite, in order to destroy the organization in some suburb, or some suburban organization putting a spoke in the wheel of the town

[46] Examples in Boissonnade, *Colbert* 249, 271 ff; Martin Saint-Léon 430; Godart I iooff.—To judge from a table in Godart I (119 note), it appears, on the other hand, that those of the apprentices who were not masters' sons were children of parents belonging to the most varied trades.

organization".[46] There is little doubt that these criticisms were thoroughly justified. In 1676 the Blois apothecaries met in order to complain of the injustice of the court which had allowed two females to administer clysters. In 1695 the wardens of the Paris painters' gild confiscated two portraits executed by an artist of the Academy of Art and commissioned by some noble personage, summoned the artist, and sentenced him to pay a fine. In 1730, the wardens of the Dijon innkeepers lodged a complaint that an innkeeper from outside the town had sent in a meal to an English traveller in the town. In 1752 the Limoges table-makers confiscated a table carried into town on a cart by a person who, not being a native, was not entitled to do so, etc., etc.[47]

The law-suits were, moreover, the principal cause of the gilds[5] growing financial embarrassment, to which the courts during the *ancien régime* also contributed through their incredible skill in prolonging disputes. In Poitiers, the apothecaries in the 18th century carried on a process against the surgeons which continued for fifty years, and the "big butchers" in the 17th century a process against the "little butchers[55] lasting almost a hundred years. In Châlons, the apothecaries and spice-dealers took proceedings throughout a period of seven years against the "united merchants[5]' on the matter of oil and soap, which had been brought into the town by an outside merchant—the former had placed a charge on the commodities thus introduced, while the latter had confiscated them. The Parisian founders in the course of two years instituted proceedings concerning various rights against eight other gilds. But it seems that the lawsuit between the tailors and second-hand clothes-dealers of Paris takes the prize, for their proceedings lasted more than three hundred years and were not even terminated before the Revolution. An estimate based on court records was made about the middle of the 18th century and it placed the annual cost of litigation to the Parisian gilds at 800 000—1 000 000 *livres* (= *francs)*.[48]

The monarchy never shrank from drawing attention verbally to these widely discussed misdemeanours of the gilds. To some extent, this was certainly due to the characteristic conception

[46] Printed in *Metiers et corporations de Paris* I 121.

[47] The illustrations are taken from Levasseur II 413 note 5, 470, 472; Martin Saint-Léon 444 f.; the case of the Paris painters is founded on a letter in the *Correspondance administrative* (Depping) II 819.

[48] Examples: Boissonnade *Org. du tr.* II 123; Levasseur II 202 ff., 223.—The chief contemporary source for these and similar occurrences is de Ia Mare's great work *Traite de Ia police* (Paris 1705-19).

that it was never necessary to declare oneself in agreement with regulations made by predecessors, but it was also due, to a larger extent, to the conception that the gilds were not offsprings of the work of the monarchy. But to say that the state authorities ever showed a serious desire to probe into the weakness of the system is an entirely different matter and would certainly be untrue. The great edict of 1581, for instance, completely neglected to have any steps taken against the abuses which it vehemently criticized in its preamble. And although this does not necessarily imply that the will to reform was wholly absent, yet even where it was found, it definitely failed to achieve its purpose in practically every instance. In spite of all the keen and conscientious work of French historical research into pre-revolutionary industrial development, it has, to my knowledge, never brought to light a single case of gild reform either from within or without. The medieval form of organization, which the monarchy had preserved and extended and round which it had built up its industrial system, thus proved itself completely incapable of further development.

6. THE FISCAL SIDE OF INDUSTRIAL POLICY

The foregoing account omits one of the most important features of economic policy, if not the most important of all—namely, what is called in French *fiscalisme* and may here be expressed as the fiscal aspect of industrial policy. The state, by its intervention, wanted to create large sources of revenue for itself, under the more or less false pretence of guiding industry along the right lines. This characteristic is particularly typical of French industrial regulation and provides a vital distinction between French and English development.[49]

Fiscalism (if the French expression be allowed) developed its practices far beyond the field of industrial regulation and in outward appearance was similar everywhere. But it exercised a special influence on industrial life. It meant in this connection that the state exploited for its own ends the monopolistic advantages which the gilds had secured for their members or the owners of private privileges had secured for themselves. The state was brought, through this intervention, to acquire a financial interest in the existence and development of the system which had been

[49] I have already dealt with this theme previously in Swedish, in the essay "De europeiska staternas finanser pa Karl XII:s tid" (in the collection *Ekonomi och historia* 110 ff,).

taken over from the Middle Ages, and it thus became a new force in the preservation of municipal policy.

No doubt this very same policy, fiscalism, could have been applied to precisely opposite ends just as in the coinage system, as indicated in a previous chapter.

A system of royal diplomas of mastership *(lettres royales de maitrise)* had been taken over from the Middle Ages; and to allow journeymen and others who were excluded from privileges to buy from the Crown the right to practise their craft formed one of the oldest of fiscal practices. These artificers bought their rights in this way, so as to avoid the more exorbitant demands of the gild organizations themselves. It illustrates the tendency of the monarchy to profit from the monopolies, and was turned into a regular institution by Henry Ill's great edict of 1581. According to this edict three royal masters were to be nominated in every gild (Art. 11). The series of general industrial regulations which was thereby introduced, unblushingly served fiscal ends, while the state never ceased to declaim that it had to help the unfortunate journeymen and craftsmen against the oppression and exclusiveness of the corporations.

The true intent of the regulations is clearly shown even in the edict of 1581, which created the right to acquire the status of master by the taking of an oath before a royal official; it was to the state exchequer that this arrangement gave the chief benefits. The authorities were to draw up lists of all craftsmen in town and country and to use "all possible means, in spite of every opposition and plea" (Art. 22) to compel them to pay—which comes somewhat unexpectedly after the preamble had explicitly described the statute as a benefit to these same craftsmen. The preamble to the next edict of 1597 openly declared that the king must be helped in his great financial distress; that his particular difficulty was now to pay his debts to the colonels and captains of his Swiss Guards; and that the revenue arising from the new decree was to be set aside for this purpose. The chief of the Swiss Guards was therefore appointed to sell masters' rights. When, in 1673, Colbert recapitulated the old ordinances and put them into force again, he pointed in the new edict to the enormous war expenses. This time the greatest stress was laid on the confirmation of the gilds' orders, and to this end scales of charges were established. The correspondence between the minister and the presidents of the law courts and the administrative officials on the subject of the application of the edict also makes it clear that the fiscal side of the edict was the only one

that interested the state. Payments were to be extracted, as one letter drastically expresses it, by means of "much persuasion and a little force".

We have already mentioned the ordinance of 1691 whereby hereditary wardens were to be elected in the gilds *à litre d'offices,* that is, through the sale of offices for the Crown's profit. At the same time, a "royal charge" *(droit royal)* was laid on all masters, which, in a later decree, gave rise to the assertion that "the king alone had the right to nominate master craftsmen". Turgot singled this statement out for special criticism when he ordered the abolition of the gilds in 1776.[50]

The measures taken in 1691 show up the close relationship between the central regulation of industry, as it was in name, but whose true purpose was really fiscal, and that even more extensive system, with its frankly fiscal aims, which was in the skilful and designing hands of agents and tax farmers and put up for sale every conceivable profession, privilege and title. In industrial policy, the latter system fell largely into two groups, one being concerned in the rights to practise any and every profession and the other in the control over professional practice and gild organization. Even the hierarchy of ordinary administrative offices in the field of industrial policy came in part under the category of purchasable services. But this was specially true of the large majority of offices and posts that were created simply in order that they might be sold. These stupendous *affaires extraordinaires* enabled the most powerful European state to carry on from day to day for a number of centuries. The list of such "offices" in commerce and industry, drawn up by Levasseur, for example, merely for the last twenty-six years of Louis XIV's reign, includes some 130 different groups of both the above kinds and up to 400 offices in each, making a total of about 4000 for the 60 odd groups on which the figures give detailed information.[51]

The newly created offices and professional privileges were hawked about in just the same way as the masters' rights, so that the corporations to which otherwise they would have been a great annoyance, were forced to "repurchase" *(racheter)* them. This, of course, mainly referred to the ordinary gilds, and that device compelled the already established masters to share their monopolistic advantages, which accrued to them at the consumers' expense, with the Crown. To be precise, it was literally a kind of

[50] The texts of the statutes in *Metiers et corporations de Paris* I 92 f., 98, 119, 124, 127, 128, 130 f.; the letters in *Lettres de Colbert* II 288, 324 f.

[51] Levasseur II 362 ff.

indirect taxation, taxing the consumers through the monopolistic artisans.

One example, chosen from a large number, will show how it was carried out. The intendant in Provence wrote in 1691 to the minister of finance that he had found it impossible to persuade the hat-makers to buy back the new official stamp, before he had made them feel the inconvenience of almost daily visits from inspectors to their shops and warehouses. Thus we see that the inspectors were in this case simply used for fiscal ends. The intendant then continues—'The same thing will happen to the pewterers. They refuse to buy the newly created offices for the examination and marking of pewter, firstly because they hardly know what revenues these would procure for them and also because, unlike the hat-makers, they have not yet felt the inconvenience of inspectors' visits." With regard to the hat-makers, he also pointed out "the great damage to foreign trade if these markings remained in the hands of the middlemen"; this is an example, moreover, of the way in which fiscalism diverted even mercantilist commercial policy from its purpose.[52]

Once the privileges were "repurchased", it was by no means certain that they would not be revived in some form or other so that they would have to be bought back once again or even several times, if those in the profession wished to avoid the unpleasantness bound up with them. A summary of the treatment suffered by the trade and handicraft organizations of Paris from 1690 to the middle of the 18th century provides a good illustration of this point. In 1691, as has already been said, the wardens' offices in the corporations were transferred to the category of purchasable, hereditary offices, and the same thing happened in the trades not organized in gilds. Then as early as 1694, auditors were introduced into the gilds and were given the right to examine all accounts that had not yet been closed, dating back to 1680.. The result was as desired—the powers of the auditors were "repurchased" in the same way as those of the state-appointed wardens. The transactions were so obviously financial that "loans" were spoken of and the state set aside definite sums for paying interest on the money received. In 1696 the six great trading corporations of Paris *(Six Corps des Marchands)* were freed of both functionaries; but this did not prevent auditors from being again introduced as treasurers of the corporations in 1702; and in 1704-6 there came into being a new kind of inspector *(greffier)* which was then "assimilated" by the gilds—a new term for

[52] *Correspondence des controleurs generaux* (ed. Boislisle) I (No. 967) 253.

"repurchasing". An innumerable number of similar offices and powers followed, all with the same purpose and, as a rule, with the same effect. An edict of 1745 finally presented a kind of summary of the whole, and contained in it these typical clauses: new *inspecteurs-contrôleurs* were to be introduced throughout the whole country, both for industries organized in gilds and for others. They were to be paid for according to a table drawn up specially for the purpose. The king set aside 400 000 *livres* per annum in order to pay five per cent interest on the money received. At the same time the corporations acquired the right to additional payments in exchange for old offices which had already been repurchased once but were now merged into the newly created ones. The corporations received three to six months in which to "assimilate" the new offices. Industrial control thus stood revealed as naked fiscalism.[53]

The present problem, however, is concerned not with fiscal policy in itself but with its influence on industrial regulation.

So long as fiscalism consisted in the creation of new masters, the result must have been a restriction of gild monopoly; for the royal letters of mastership could only find a sale if the price which they charged for the practice of a craft underbid that of the corporations; in other words, the policy increased the number of persons legally entitled to practise a craft. And to this extent the government was justified in proclaiming the measures as acts of liberation, since they provided a means for journeymen, who would otherwise not become independent, to rise to the position of master; incidentally this is additional evidence that it was not the demand for capital in the industry which excluded entry. On the other hand, however, the whole purpose of the gilds was vitiated by this very means, for it never apparently occurred to anyone to demand any kind of professional qualification of the new masters. With refreshing ingenuousness the Lyons silk industry, on the occasion of the royal decree at Louis XV's coming of age in 1723, asked to be freed of all royal masters, "because the industry must be considered one of those in which ignorance leads to loss".[54] Yet it should not be overlooked that

[53] The sources, in *Metiers et corporations de Paris* I 123-61.—For the rest, the literature on French fiscal policy is very abundant, and I confine myself —apart from the works which are already specified in the book by me, quoted above—to mentioning two parallel lines of development, namely, on the silk industry of Lyons, the work of Godart I 350 ff. and on Poitou, the rich and well-documented description by Boissonnade *(Org. du tr.* II 397 ff., 409 ff., 417 ff., 450 ff., 511 ff., *et passim).*

[54] Godart I 349, 515.

influences other than those of the old merchants and craftsmen were thereby brought into the industry, and they acted as a kind of counterbalance to the inbreeding within the gilds.

This tendency does not, however, appear ever to have been important. Moreover, not only does the argument fall to the ground but it has even to be reversed, as soon as it is found that no new opportunities for practising the craft were created and the measures of the state had the sole aim of continually forcing those within the industry to pay in order to exclude competition. In the first place, the monopolistic position of the old gilds then remained intact and was even strengthened, so long as they were not allowed to accept new masters until they had "repurchased" the royal masters[5] rights which were offered to them. Secondly, the gilds discharged the office of tax-collector of that peculiar roundabout fiscal tax mentioned above, because, in the last instance, they always passed on their charges to the consumers of their goods. This was an additional inducement to the state to strengthen the gilds' position. Thirdly, this arrangement co-operated with other factors, e.g. the innumerable lawsuits between the different corporations, to burden the gilds with greater and greater debts. It compelled them to use their monopolistic position to the very utmost, and at the same time to increase the fees charged to new masters and apprentices, which led to a continual fall in the number of such professionals. The burden of debt finally became an overshadowing problem with the gilds. It occupied the attention of reformers during the whole of the 18th century. The two attempts that were made to abolish the gilds—Turgot's unfortunate effort of 1776 and the successful attempt of the Constituent Assembly of 1791—devoted a major part of their attention to the problem of avoiding such injury to the gilds' creditors as would result from a cessation of the gilds.

The practice of "repurchasing" or "assimilating" all offices played at least as large a part in the taxation of consumers and the increasing burden of debt as did the new masters[5] rights and the other privileges. The interplay of fiscal interests had the twofold effect, first, of making abolition of the gilds more difficult and secondly, of making them less adaptable to the altered demands of industrial life.

Fiscal influence made itself felt principally outside the *reglemerits*; but it forced itself even on these through the special forms in which the wages of the inspectors were paid. The *riglements* themselves show fewer signs of fiscal tendencies than other parts of industrial policy, and the desire of the central authority to

prevent infringements instead of making a profit out of them was unmistakable.[55]

7. THE PRIVILEGED INDUSTRY: MANUFACTURES. FRENCH RESULTS COMPARED WITH THE ENGLISH

The very incomplete attempts to nationalize the gilds by extending their scope as described above do not exhaust the French monarchy's achievements in industrial regulation. Starting with that, there arose what must be considered a real innovation. This may appear strange, for in theory, at least, the gilds left no room for anything else, as soon as the monarchy's support had enabled them to become general. Before any innovation could be introduced, the system which the state had at first so persistently encouraged would therefore have to be set aside. But the *ancien régime* seldom shrank from such consequences. There were always special privileges at hand for either abolishing or limiting an ostensibly universal regulation. In order to put something new into practice, this method had to be employed. Privileges were therefore scattered broadcast and this implied more than a mere inroad into the exclusiveness of the gilds. It meant definite support and undoubted co-operation on the part of the state in all such new enterprises as were considered deserving of encouragement. The gilds, the corner-stone of the industrial system, as they were supposed to be; were thus to some extent put out of action. In this way French mercantilism paved the way for two distinct lines of development which later diverged widely from one another.[56]

Artistic handicraftsmen

The first point to be dealt with here concerns certain less important groups of traders, artisans, artistic craftsmen and

[55] It is difficult to adduce any special authority for such a conclusion, but it is supported chiefly by the fact that the administrative correspondence coincides in tone with the published decrees and that is so not only under Colbert, but also later. See e.g. *Correspondance des contrôleurs généraux* (ed. Boislisle) I 285 f., 299 f., 303 f. (Nos. 1078, 1130, 1143, 1145). The exact contrary was the rule with other industrial statutes.

[56] To what is said in the text we should add a reference to the workhouses, which were not altogether unimportant regarded from the point of view which their name literally implies, i.e., large-scale establishments for industrial purposes. A short study of them, considered in that light, is to be found, e.g., in J. Kulischer, "La grande industrie aux XVII^e^ et XVIII^e^ siècles" *(Annales d'histoire économique et sociale,* III, 1931, 31 ff.). See, however, also the more critical description in Boissonnade, *Colbert* (below, note 58) 128-31.

artists, whose work, though apparently organized in exactly the same way as that of the people organized in gilds, was nevertheless not under the control of the gilds.

Numerically, the most important professions were "crafts which followed the Court[55] *(métiers suivant Ia cour),* the traders and artificers who satisfied the numerous bodily and less numerous spiritual requirements of the Court. They date back to the end of the 15th century, but increased very considerably in the period that followed, especially during the reign of Henry IV who, in 1606, introduced no fewer than 320 such industrial positions and 47 various industrial groups. It seems that this number must be added to the 169 privileged positions which had already been invested by Francis I, sixty years before. Their number grew even more in the following period. The rights appertaining to the industries which "followed the Court"[5] and the independence of these rights of the gilds were subject to changes, but on the whole they maintained their special position, and their large number is a proof that they must have provided no mean competition for the gilds.

In addition, there were two other groups of purely artistic craftsmen and artists; there was little difference between these two classes at that period. They were certainly fewer numerically, but from the standpoint of technical development they were far more important. One of the two groups was called *les artistes du Louvre,* an entirely new class instituted by Henry IV, favoured in every possible manner and protected against the gilds, so much so that they were authorized to nominate masters every five years to the gilds in every French city, without paying fees or performing any other service; and these masters could thereupon practise the craft. A further step in the movement towards emancipation was the rise of a special academy of arts *(Académie de peinture et de sculpture,* 1648), for the artists who belonged to it were explicitly exempt from control, appropriation and confiscation by the craft gilds, although this exemption was not successful in every case, as an example previously given indicates.[57]

All this meant a limitation of the gilds[5] sphere of influence.

[57] Sources, printed in *Metiers et corporations de Paris* (ed. Lespinasse) I 102-17; see, further, Boissonnade, *Soc. d'Etat* 37-45, 119 f., 188-95, 287 (his information on the number of *metiers suivant Ia cour* is self-contradictory, and is therefore omitted); Levasseur II 176 f., 300 f.; Hauser, *Ouvriers* 138 f. (not quite exact), Hauser, *Dibuts de capitalisme* 177 ff.; Martin Saint-Léon 403 f.; G. Fagniez, *L'economie sociale de Ia France sous Henri IV* (Paris 1897) 101 f.; see above 177.

The protection given to the free arts and the practice of them paved the way to a technical revival which otherwise might not have taken place. From every point of view this revival exerted a vital influence on French industrial development, since her much admired and widely imitated luxury products became a typical feature of French industry and were based on artistic workmanship. Since however the artistic work organized in the way which has now been described remained entirely handicraft in form, the great changes of modern industrial life did not, as a rule, find their beginnings here.

The manufactures, as contemporary authors called them, had on the contrary quite different features. They were Colbert's darlings in the sphere of industry. Their first beginnings date back to the House of Valois, but the only important forerunner of Colbert was Henry IV.[58]

The differences between manufacture and handicraft

In the following account, the ambiguous term "manufacture" is employed to render the meaning it acquired in France during this period, and must not be confused with any of its historical or modern meanings in England.

In many respects the difference between manufacture, as now indicated, and handicraft were self-evident. Nevertheless the boundary line between them was anything but clear-cut. And so

[58] **It would serve no useful purpose to enumerate the extensive and still growing literature on the history of French manufactures; for only some particular aspects of it are of importance for my subject. Up to 1925, the most convenient bibliography is contained in See, L'*evolution commerciale et industrielle de Ia France* (note 9, above). A long series of monographs can be found in the *Memoires et documents pour servir d l'histoire du commerce et de l'industrie en France* (ed. Hayem—note 24, above). Though already rather old and somewhat one-sided, the only synoptic works for the whole period 1661-1789 are the two volumes by G. Martin, on the reigns of Louis X I V and Louis XV respectively, both frequently quoted already. For the earlier period, of less interest to my subject, Boissonnade, *Socialisms d'etat,* should be mentioned. Since the publication of both the Swedish and the German editions of the present work, that book has been followed by another of the same author, *Colbert, le Triomphe de r£tatisme, Ia Fondation de Ia Suprematie industrielle de Ia France, Ia Dictature du Travail (1661-1683),* Paris 1932, to which are appended a number of documents, previously unprinted. It is almost the only attempt made in recent years to give a collected view of French industry under Colbert; but the lack of references is a drawback.—For the situation in the 18th century, two contemporary works are of great importance, both extensively used by G. Martin; one is Savary des Bruslons, *Dictionnaire universel du commerce,* the other the section of the *Encyclopedic Mithodique,* edited by Roland de Ia Platiere, entitled *Manufacture, Arts et Metiers* (Paris and Liege 17851!.; to be distinguished from another section, "Arts et Metiers M^caniques").**

we find it very common, and perhaps even the rule, for the workers in privileged manufactures to acquire the rights of master handicraftsmen after a certain period of time or by special nomination. One particularly interesting case, the important silk-hosiery industry, had expressly prescribed to it in 1672 a formal gild organization, 16 years after it had been established as a "manufacture", at the same time retaining its manufacturing nature,[59] However, this was exceptional and even here the owner of the original privilege and his family were exempt from the ties of the new gild. It was a very common occurrence for "masters" to be employed as foremen or highly qualified workers in undertakings of a manufacturing nature. We thus see clearly that the latter were considered superior to handicraft. As far as is known, manufacturing as such was not excepted from the control of the gilds, but it is apparent that it was so intended and occasionally this is actually mentioned in particular privileges; and even if it was not so mentioned, the privileged position of manufactures protected them against any attempts which the gilds might make to obtain control. On the other hand, they were subject to the industrial control of the state and its *reglements.* The latter referred to manufacture at least as often as to ordinary handicrafts, and to this extent it was submitted to the same regimen as industrial production generally.

In practically every known instance these French manufactures owe their rise to some interference by the state. This certainly does not mean that the production for which they were responsible was always introduced by that means—on the contrary there are examples showing that the state tried, with greater or less success, to impose this new industrial formation on one of the already existing branches of industry. All that it does mean is that this special type of business enterprise came into being through the system of privileges. It was a many-sided system of favours upon which the new structures were erected, such as subsidies, protection against foreign competition and other benefits to the undertakings themselves, besides personal privileges of different kinds for the manager and his subordinates. The majority of these

[59] *Recueil des rhglemens* IV 7 ff.: "erigeons dans toute l'estendue de nostre Royaume en titre de Maistrise & Communaute, le *Mestier & Manufacture* des Bas, Canons, Camisoles, Caleçons & autres Ouvrages de Soye qui se font au mestier". *(Mestier,* i.e. *metier,* means in the first case handicraft, in the second case a loom; my italics).—With regard to the granting of masters' rights to the workers in the manufactures, see e.g. Savary des Bruslons, Art. "Manufacture" (in the edition of 1748 I I I : 1 1253); Martin I 180; II 264 *et passim.*

undertakings were in private hands and the name of *Manufactures royales*, conferred upon the most favoured among them, combined with the corresponding emblems, did not signify state ownership. There were also, however, a few state undertakings.

The extent to which manufacture as a type of undertaking differed from handicraft is not easy to determine. It is certain that the distinction between them was not complete. Nevertheless the manufactures were always placed on some special footing. Either by technique or by organization, either as technical units or as business undertakings, they represented associations of a larger number of forces than the ordinary small workshops. As opposed to handicraft, they were large-scale undertakings, even in the very frequent cases where they were not really large industrial plants.

In the most important cases, however, they were large technical units as well. They had their characteristics which remind one more of a workhouse or a barracks or a prison than of a modern factory, and this impression is strengthened by the fact that the workers were often housed at the place of work. One example will suffice. It concerns the most famous of these works, the specially favoured cloth-mill of Abbeville in Picardy, created under Colbert by the reformed Dutch family van Robais. This mill employed at different periods between 1200 and 1700 workers. In his commercial dictionary, Savary des Bruslons in 1727 described it with awe and admiration. It was surrounded on two sides by walls, and on the other two sides by moats filled with running water and fenced in. Keepers in royal livery guarded the entrances. Separate buildings, storeys or rooms within the grounds were reserved for various processes, and in addition there were without, five great buildings set aside for spinning. This instance shows that manufacturers collected really large gangs of workers, and it is by no means an isolated example.[60] This type of undertaking was, however, probably not the rule, and even where they did occur there is occasional evidence, and much more often probability, to indicate that out of the numerous workers to whom "work was given", only a small proportion

[60] Savary des Bruslons, Art. "Manufacturier"; numerous data concerning the number of the van Robais workers e.g. in the same article; further, a list in Levasseur (II 421 ff.); another in Martin I 413, etc.—A *reglement* for another manufacture is printed in Levasseur II 423 ff., and Martin I 14 f., II 202 f. recounts a third of a similar type; other examples *op. cit.* II 200 ff, Boissonnade, *Colbert* 261 f., also for the beginning of the 17th century, Boissonnade, *Soc. d'État* 278 f.

was occupied on the spot and a good deal was done by the workers in their own homes on behalf of the manufacture. The spinners in particular were largely found in the surrounding country.

Even where the manufactures followed the "putting-out system", they represented an important change in economic organization. From the point of view of business organization, the distinction between this and the old type of handicraft was vital even in the latter cases, in so far as the small industry had given up its entire entrepreneur fuction. But it must be added that this great change by no means took place in the sphere of manufacture alone, or was merely the result of its special privileges. In France it was, above all, the Lyons silk industry which evolved along these lines, without the help of "manufactures" in this sense. Here, the "working masters" *(maîtres ouvriers)* were subordinated, in the manner mentioned above, to the "merchant masters" *(maîtres marchands-fabriquants).* It sometimes occurred that these so-called merchants employed up to a thousand workers. Even outside the silk industry, this phenomenon was fairly widespread as early as the beginning of the Colbertian period. The great *règlement* of 1669 for the cloth industry leads one to the same conclusion, since it declared that all masters who, "by reason of their poverty", work for other masters should be treated as journeymen (Art. 54).[61] The French manufactures, as organized by the state, none the less gave a special impetus to this kind of development and in the many forms which it assumed, it provided an aid for the formation of industrial units which had outgrown the handicraft type, especially in the textile trades, where large-scale operations had previously played a much smaller part than in, e.g., mining and metallurgy. To this extent, the interference by the state lent not indeed a very vital, but an undeniable aid to the abolition of the medieval system.

The further problem of how vigorous these new institutions were and how far they constituted the starting-point for the development that set in later is not altogether simple, but there are various facts which do allow some conclusions to be drawn.

Luxury industry

The centre of gravity in manufacture just as in the *règlements* was found principally in that industrial field which enjoyed the sustained interest of the authorities in most countries until well into the 19th century. I refer to the textile industry in all its

[61] Godart I 89 ff., 181 ff.—Martin I 168, cp. 167.—*Recueil des reglemens* I 297.

various branches. It would serve no useful purpose to enumerate all the different branches of the textile industry which were regulated and encouraged in the form of manufactures. They included the processing of the most varied textile raw materials—from the 18th century onwards, also cotton—for the most varied products, cloth, hosiery, lace, tapestry, etc., etc. In the 18th century, a host of other industries grew up beside the textiles—sugar refining, soap manufacture, paper, glass and porcelain manufacture, rope-making and leather manufacture, as well as mining and iron works. Varied as this was, there is no doubt that it had one fundamental feature in common. It was the luxury industry which stood in the forefront of official encouragement and basked in state aid. To some extent, these industries were conceived as an end to themselves, or, more correctly, a technical rather than an economic interest was taken in them. Care was continually taken to achieve "better" technical results than before, or just as "good" technical results as other countries and, if possible, better. Whether these results corresponded to any demand—this point of view, which properly speaking is the economic one, was placed in the background. So far the institutions were still medieval in spirit, founded on professional honour and the technical tradition of work. This must of course not be interpreted as though economic policy was not motivated, at the same time, by the desire to "render oneself independent of foreign countries" and to increase exports, two ideals which were moreover quite irreconcilable. Undoubtedly this motive played its part, but technical refinement became a purpose in itself, competing with that of commercial policy, as the *reglements* and the privileges indicate again and again.

For France, besides, there existed an exceptional opportunity of attaining both aims simultaneously, a highly developed technique and a good sale abroad. The French gobelins and furniture stuffs, the much sought-after, beautifully woven materials, hosiery, ribbons, and lace with silk, silver and gold threads, mirrors and porcelains and many other products were received all over Europe with envy and admiration and imitated everywhere ; and though these industries evolved on the basis largely of an older and more spontaneous development, their final popularity was the outcome of ceaseless state endeavour. There was really only one of the great state-aided industries which did not, in this way, acquire throughout the character of a luxury trade and that was the cloth trade. Here, England was still always regarded as superior, especially in the finest qualities, while

France, in the middle of the 17th and even more in the 18th century, proved herself capable of eliminating its competitors in the Levant trade in every other kind of cloth. It is particularly interesting to note in this connection that the privileged manufactures in cloth production for the Levant receded more and more in the face of the so-called small manufactures. If a table for the fifteen-year period 1716-30 given by Germain Martin is summarized, it will be found that of the cloths intended for the Levant and exported from Languedoc, only 3675 pieces were of royal manufacture while considerably more than twice as many, 8244, came from smaller manufactories. Various other data demonstrate that this development was intensified in the period that followed. In the years 1730-37, the privileged manufactures' share fell to less than one-fifth and continued to decrease in the subsequent period. The cloth industry acquired a strong practical character by its importance for the equipping of the army; it adjusted itself to an actual demand. Thus in the 18th century, the infantry was required to obtain the cloth that it needed from definite French manufactures. Iron works and also cannon foundries, anchor forges and arms manufactories all had similar traits; and yet the state devoted to them only a small fraction of the interest which it showed to the luxury industries.[62]

[62] **The summary given here is based on the whole literature of the subject, as far as is known to me; as isolated references may be given: Martin I 224, 352 ; II 138 ff.; See E*v. comm. et ind.* 137 ff., 164 and his *Franzosische Wirtschaftsgeschichte* (Handb. der Wirtsch-Gesch., ed. G. Brodnitz) I (Jena 1930) 247, 256.—On the cloth industry: *Recueil des reglemens;* Ph. Sagnac, "L'industrie et le commerce de Ia draperie en France a Ia fin du X V I I^e siecle et au commencement du XVIII^e" *(Rev. d'hist. mod. et contemp.* IX, 1907/08) 25, 33, 39; Masson, *Histoire du commerce frangais dans le Levant au XVII^e siecle* (Paris 1896, quoted below as Masson I) 296 ff., 514 and Masson II 368 ff., 473, 484 ff.; Martin II 105 f., 119E, 244, 351 ff. (Petition of 1740).—The typical parallel case in Sweden, the manufacturing works of Alingsas, is dealt with in my book *Ekonomi och historia* 282 f., 288 ff.; but the same tendency appeared everywhere on the continent, especially in the 18th century.—For the cannon foundries, etc.: Martin I 184 ff., 187; II 153 ff., 265.—In his great work *Der moderne Kapitalismus* (2nd edn., Munch, and Lpz. 1916-17, and also later editions) as well as in two preparatory studies on the subjects entitled *Krieg und Kapitalismus* and *Luxus und Kapitalismus* (both Munch, and Lpz. 1913), W. Sombart seeks the two principal roots of the so-called capitalism in just these two phenomena, War and Luxury. Whether that is justified depends on one's interpretation of the Protean conception of Capitalism. But to combine these two phenomena is not in any case justifiable. Luxury belongs in the first place to the medieval type of industrial production. This came out in industrial regulation as well as in the character of actual commerce and is discernible even to-day in the fact that luxury production has made its home in those countries which are**

If the industrial development of the world had taken the same course after the beginning of the 18th century as before, it may be taken for granted that France might have become one of the first industrial countries and Colbert and his followers might thus have seen the fulfilment of their most cherished desires. For until this period such production as catered for an extensive market satisfied mainly luxury demands, almost the only important exception being certain mass requirements of the state, chiefly of a military kind. Although the sources are in the main silent on this as on many other fundamental facts, there is every reason to suppose that the demand of the masses for textile goods was principally satisfied by domestic production. Moreover a large proportion of the remaining production was in the hands of the small manufacturers or handicraftsmen who, in the first instance, produced for local markets. The backward state of communication contributed to the fact that only expensive products could be sold at a distance. To this extent, the part played by luxury production in the minds of those who directed economic policy could be explained on economic and not merely technical grounds and France had here a more obvious field for her industrial activity than any other country. The encouragement of art and artistic crafts and their development at the Court of Versailles, and the almost tyrannical domination of French taste over the mind of all Europe—both tended in the same direction as the regulation of industry, in which a high level of technical quality according to old inherited standards was almost an exclusive aim, and the catering for actual demand was hardly considered at all. In many cases the results were really brilliant. Although the majority of sheltered, industrial concerns probably failed, and only a few could be considered successful, and although even those that succeeded experienced in the end repeated set-backs which they could only overcome with renewed state help, nevertheless French industrial policy cannot be quoted as a proof of the inevitable failure of the system of subsidies and the policy of regulation. But historically, it is a more important conclusion that the intervention of the French state which was the most powerful, most typical and most purposeful achievement of mercantilism did not pave the way for that development which set its mark on the economic life of the last 150 years.

least characterized by modern large-scale industry. Certain military requirements, in the form of real mass demand, are on the other hand closely connected with capitalist large-scale industry. Cp. *infra* 221 f.

England"s lead

England's lead became manifest in the course of the 18th century, and remarkably enough, just at the same time when French industrial policy was harvesting the fruits of its long labours in its own field. It should be specially noted that the changing conditions appeared just before the great technical upheaval which led to the Industrial Revolution in the second half of the 18th century. Even before the period of new inventions set in and achieved its results, it was generally manifest that English development was running ahead of the French. From the middle of the 18th century onwards, the eyes of French statesmen and social reformers were continually on England, which was so far ahead in industrial matters, except for those things which required artistic taste or were in fashion at the Court of Versailles.

Attempts were made to overcome the difficulties by introducing English engineers, mechanics and skilled textile workers, both male and female. These were to spread their greater knowledge in France, whether through personal leadership or the translation of English writings, whether they set the backward French industries on their feet with the aid of English workers who were either smuggled out of England or were taken captive in war, or through the introduction of English machines which were again either smuggled out or imitated. The most famous Englishman who appears in the history of technological development in France was John Kay, the inventor of the "flying shuttle". But as an instructor to French industry, another Englishman played an even more important part, the Lancashire Jacobite, John Holker who was appointed general inspector of foreign manufactures in the country of his adoption and has been called by Ballot, the foremost French authority on the subject, "the great initiator". Holker was never tired of emphasizing the superiority of English industry over the French. In a report ascribed to him dated about 1754, it is stated that English industry had made "greater advances than anywhere else".[63]

[63] "Trois mémoires relatifs à l'amélioration des manufactures de France", printed by P. Boissonnade *(Rev. d'hist. icon, et soc.* VII, 1914/19; quotation from p. 69).—For the rest, see two other papers in the same review (although the title is somewhat changed): Ch. Schmidt, "Les débuts de l'industrie cotonnière en France" (VI, 1913), and Ch. Ballot, "La révolution technique et les débuts de Ia grande exploitation dans Ia métallurgie française" (V, 1912); further, Wadsworth and Mann (see above, note 42), particularly 193-208, and Bacquie (see above, note 24) 29 f., as well as Martin's summary II 185 ff., *et passim.*—Ballot's highly praised work, L'*introduction du machinisme dans I'Industrie francaise* (Lille and Paris 1923), is a posthumous collection of

This was not merely an understandable bias in favour of his old native country nor was it the comprehensible desire to place the value of the writer in a special light. Its truth is shown from the fact, among others, that France attracted skilled workers from England for the most varied industries, while, on the other hand, the corresponding attempts in England confined themselves, with one exception, to the luxury industries, above all to gobelin weaving.[64] It is also significant that privileges were very often granted for the production of all sorts of articles made "on the English model".

The most important sphere of English influence was the cotton industry, not only calico-printing, which the French tried so hard to suppress, but also cotton-weaving, which was encouraged with premiums and favoured in every possible manner. Illustrations of this fact can be found as early as two or three decades before the great changes in the English cotton industry leading up to the Industrial Revolution. As early as 1743, permission was applied for to produce printed cotton goods "on the English model". A year later a corresponding move was made in Marseilles to free calico-printing from legal restrictions, and in the 1750's Holker began producing on his own in Rouen. In view of subsequent developments, France[5]s subordinate position in this sphere might easily be taken for granted. But this is quite unjustified, for her inferiority was certainly not due to natural circumstances. The importation of raw material did not provide any difficulty either, for cotton growing was more extensive in the French West Indian colonies than in the English, and France's close connection with the Levant enabled her to purchase her cotton on more favourable terms than England could secure. In dyeing, France was even ahead of England; this was partly due to her connection with the much-admired Oriental dyeing industry and partly to superior technique. There was therefore no obvious reason for France's inferiority—whether in cotton manufacturing

its author's different contributions to the subject; and as it did not come into my hands before completing my text in its original form, I have retained the references to the separate articles; the quotation about Holker is, however, to be found in the last-named book, 2.

[64] Martin II 308 f.—The exception mentioned is dyeing (see below in the text and also e.g. Wadsworth & Mann 181), which had always been a weak point in English industrial equipment. The mirror-glass industry should perhaps be added to the other luxury industries in England in imitation of the French; at least, a French name occurs in an enterprise in Lancashire of the year 1773, privileged by Act of Parliament *(The Victoria History of the County of Lancaster,* ed. W. Farren and J. Brownbill, Lond. 1908, II 405)

or calico-printing, at any rate before the revolutionary inventions in England. Nevertheless, that it was backward is not to be denied and was, in fact, generally recognized. This was evidenced by the fact, among others, that the founders of French undertakings in the cotton industry were almost without exception foreign and mainly English. Oberkampf, for instance, whom Napoleon was later to call one of his best allies in his struggle against the English cotton industry (*vide infra* II 20) was a Bavarian. Apparently the explanation is the fact which we are considering here, that is the greater effectiveness of French mercantilist policy. For this very reason economic policy in France more than that of any other country must have had an obstructive effect on every new industry which came up against vested interests—which in France were noted in the first place for technically highly finished and expensive textile goods.

Even more peculiar than the history of the cotton industry was the development in the cloth and especially the wool industry, which the French state certainly encouraged more than any other branch. The importance of the woollen industry in the eyes of the leaders of economic policy may be gauged from the fact that, besides the general code of the industry, it occupies 700 out of the good 1000 pages devoted to all non-general regulations in the collection *Recueil des règlemens* (1730). It has already been said that the endeavours achieved success some decades after the beginning of Colbert's regime, particularly in production for export to the Levant; so successful, indeed, that English sales to that market were correspondingly cramped. But the French cloth industry could not maintain this position. The truth of the statement in the memorandum of 1754 already quoted (ascribed to Holker) to the effect that English cloth supplanted the French, particularly that of the South of France, by reason of its more attractive gloss and other technical advantages, is, to say the least, doubtful; for this does not hold good at least in the Levant trade at this period. But a change to the detriment of France occurred about 1770 and increased in the 80's, when the English introduced a new kind of woollen manufacture into the Levant. Still more important is the fact that the great technical upheaval had already before the French Revolution reached the Yorkshire woollen industry. Roland de Ia Plati&re, the minister of the interior, who was an acknowledged authority in this sphere, declared in 1792 that England was superior in all hard and striped woollens. The result is partly explained in that the period after the assembly of the French

estates was obviously not suited to fundamental industrial reforms. Nevertheless this cannot overshadow the fact that the innumerable measures for encouraging and improving the cloth industry did not make it easier for it to adapt itself to the new technique—in fact they had the contrary effect. Apparently, in principle this was the same in the English woollen industry; but in practice it was present there to a much smaller extent, so that English industry, in spite of everything, obtained a lead over the French.[65]

The same phenomenon may be observed in other fields where neither a fundamental change in the technique of English industry had taken place nor particularly advantageous natural conditions were present, in fact even in such cases where the first impulse came from France. An instance of the last-named result was the lace industry, in which the English type of lace came to be imitated in France; and to some extent another case was the porcelain industry (not of course genuine porcelain but faience) where various privileges were granted for the production of goods according to the English model. The English tanning industry appeared particularly worthy of imitation and attempts to produce *a l'imitation de celle dans l'Angleterre*, were generally made in the most differentiated activities, such as clock-making, production of watch-chains, paste-board making, etc.[66] A general expression of the greater competitive capacity of English industry in particularly exposed spheres is illustrated by what took place just before the French Revolution. With regard to the famous Eden treaty between France and England in the year 1786, which abolished a century-old prohibitive system on the exchange of goods between the two countries, the English industrialists showed a complete confidence in their competitive power throughout. French opinion, on the contrary, regarded these new facilities for trade as a powerful blow to French industry, and this measure contributed to the unrest prevalent before the outbreak of the French Revolution. The extent to which circumstances altered during the 18th century may be gauged by comparing the fate of this treaty with that of the commercial treaty which was to have been negotiated at the Peace of Utrecht in 1713. The latter

[65] Garsonnin, "La manufacture de toiles peintes d'Orléans" *(Mém. & documents*—cp. note 24—ed. Hayem III, 1913, 4, 18 f.).—*Rev. d'hist. icon, et soc.* VII, 1914-19, 75.—Masson II 489 ff.—P. Mantoux, *La révolution indusirielle au XVIII^e siecle* (Paris 1906) 262 f., 268.—*Correspondance du ministre de l'interieur relative au commerce, etc.* (Coll, des doc. econ. de Ia rev. franc., Paris, 1917) 341; See, E*v. comm. et ind.* 303.

[66] Martin II 140, 142, 191 f.—See, E*v. comm. et. ind.* 302 f.

was not ratified on account of the English fear of French competition.[67]

The iron and coal industries were, from this point of view, the most important fields of subsequent development. As Arthur Montgomery has pointed out,[68] the great difference between French and English development may be explained to a very large extent through the different, natural resources in these two vital industries. Since France had little coal and iron ore, the two materials upon which economic expansion was based during the next 150 years, it lost the lead in industrial development. In order to determine the influence of mercantilist policy upon the difference between the development of the two countries, this factor must therefore be eliminated, and that can be done by confining the comparison to the period before the introduction of the steam engine and of iron-made machinery. So far this method has been followed. Conversely, if the French iron industry was inferior to the English, the fault did not lie in the difference in the industrial policy of the two countries, and there is therefore no reason for making a comparison on that basis.

At the same time, there is at least one very apt illustration to show that France, quite apart from the influence of natural factors, found it very difficult to make use of the new inventions. I refer to the iron works in Le Creusot, which later became so famous. This instance is particularly happy since the iron works eventually became one of the most important undertakings of its kind in Europe, although natural conditions in the intervening period by no means changed in France's favour. It therefore repays a somewhat detailed examination.

At the beginning of the 1780's, an imposing plant was erected in Le Creusot with the co-operation of a young brother of John Wilkinson, the pioneer of the English iron industry. They tried to utilize as much information as they could collect about the English iron industry, and to adapt the technique by which the old methods of using charcoal, both in blast furnaces and in smelting, had been replaced by new processes—that is the use of coke and coal, and also the revolutionary changes in the other branches of iron production. To this end, a coke works and four coke blast furnaces were set up in Le Creusot, and, according to varying accounts, two or four to five puddling furnaces for

[67]. See my work *The Continental System* 20 ff. and the literature quoted there, as well as See, E*v. comm. et ind.* 300 f., 312 f., 359.

[68] "Nagra fragor rorande den industriella revolutionen i England" *(Ekonomisk Tidskrift* XXIX, 1927, 4).

smelting iron. These were intended to serve a process which shortly afterwards was thoroughly reformed by the invention in England of Cort's epoch-making puddling process. Steam engines (called "fire machines") were then added to the works for driving the blast, and what was even more sensational in contemporary eyes, railway trains (driven by horses) "on the English model" —the first in France. None of the most up-to-date innovations in iron production appear to have been overlooked. To the extraction of iron there was added cannon founding and the production of cylinders. As soon as it was seen that the works could function —the first tapping of pig-iron took place at the end of the year 1785—the merits of the works were loudly extolled. It was asserted that it was really the greatest achievement of its kind in Europe, and it was said to have excelled even its English prototype. Above all it was said that France had thus obtained, for the first time, a cannon foundry which was comparable with the English.

The result, however, by no means came up to expectations. From the outset, experts had their doubts about the quality of the iron, and after a few years the whole new technique was allowed to lapse. The activity of the factory was therefore limited to smelting pig-iron from the surrounding charcoal furnaces. The quality of the products sank lower and lower, although the demand for war materials during the revolutionary and Napoleonic era was enormous and cost was no consideration on account of the blockade in indispensable articles, such as artillery materials. Before the end of the first empire, the importance of Le Creusot had almost completely disappeared. It did not regain its prestige until Schneider founded there his world-famous enterprise in the year 1836.[69] This development can scarcely be explained except by the fact that the old order had in France obliterated those qualities in the industrial development which impressed itself on the period that followed. Several decades went by before that effect could be overcome.

There is no lack of contemporary statements to the effect that the usual type of French economic policy tended to obstruct the development of iron production. For instance, the head of

[69] Ballot's paper, which has already been quoted, in the *Revue d'hist. des doctr, econ. et soc.* V, 1912, 53 ff.; H. & G. Bourgin, L'*Industrie siderurgique en France au debut de Ia revolution* (Coll. de doc. ined. sur Phist. econ. de Ia reV. franc;., Paris 1920) 411 ff., 494; T. S. Ashton, *Iron and Steel in the Industrial Revolution* (Publ. of the University of Manchester, Economic History Series I I ; Manchester 1924) 45, 54, 76.

an iron works wrote, "Glass manufacturers, manufacturers of genuine porcelain and faience, cloth manufactures, embroidery concerns, silk and gold-lace production, all enjoy every possible privilege and exemption; iron manufacturers alone have no advantages, and yet they cater for real needs while the others serve only luxury and comfort." In its criticism of the existing French industrial system and the various branches of industry which it favoured, another statement went even farther. It is contained in the instructions to the young engineer, Jars, which were given to him in the year 1764 on his being sent on his first metallurgical expedition, which became very important for our knowledge of the iron industry of the time, through his subsequent descriptions of his experiences. They recommended that "Monsieur Jars should above all investigate why English industry is so much in advance of that in France and how far the difference, as may be assumed, rests on the fact that the English are not saddled either with *reglements* or an inspectorate".[70]

The results, in the main, appear to be clear. The industrial policy of French mercantilism did not lay the basis of the economic development of the 19th century. This was due in particular to the host of influences, above all technical innovations, which initiated a system of mass production and speedily forced on industry a whole series of changes in the methods of production. These changes were not of the kind which served the technical or aesthetic ideals hallowed by tradition, but were, on the contrary, able to serve the needs and wishes of the masses, to an extent never before conceived. For such ends the meticulous regulations, which were concerned with "qualitatively" superior methods, were a hindrance rather than a help. They belonged to the obstructive and not to the positive forces which had made industry what it was in the course of the last 150 years. The same idea may also be expressed by saying that the system of regulation held fast, in typically medieval fashion, to production and quality as ends in themselves, while the new forces made consumption dominate production.

France's quantitative superiority

If it must be admitted that France's economic development before the Revolution lagged behind that of England, it is important to avoid the conclusion that this must necessarily have

[70] The first quotation is found in Bourgin 464 ff. (quoted p. 470) the second statement in Ballot *op. cit.* 31. Jars recommended as early as 1768 on the basis of his observations in England the production in Le Creusot of pig-iron by using coke (Bacquié 48-53).

meant a purely quantitative superiority on the part of England. Statistical material is very meagre, but sufficient to correct false impressions which might easily arise.

The cotton industry lends itself most easily to forming a conclusion, particularly on account of the official returns for the imports of raw cotton, which are found at least in part in both countries for the year 1789, and in England also for several years before. In 1789 (Levantine) raw cotton to the value of 14 million *livres* was imported at Marseilles, representing a quantity of 4 046 000 Kgs. This information is based on the undoubtedly reliable figures given by the chamber of commerce of the city, but the no doubt much heavier imports of American cotton at other French ports is not so accurately known. According to one source, its value is estimated at 19 million *livres,* though a less reliable source places it at 26 million *livres.* Taking into consideration the difference in price between Levantine and American cotton, these estimates represent a quantity of something like 3720000 and 5100000 Kgs. respectively, that is, together with the import of Levantine cotton, about 7f or 9$ million Kgs.; and the lower of the two is the more probable. To this must be added the probably insignificant quantity of East Indian and Malayan cotton, making the probable total of French raw cotton imports about 8 million Kgs. before the outbreak of the Revolution.[71] This compared with the English imports for the year 1789 of 32 576 000 lbs. or 14 770 000 Kgs., from which must be deducted a considerable amount for re-export; but the figure still remains if times that of the French. This result, however, was due to the tremendous changes that occurred in spinning technique during the Industrial Revolution. The average English figure for the period 1771-80 is not more than the insignificant total of 2 324 000 Kgs. Even in 1787 the import is a bare 10

[71] The import figures for Marseilles and the lower figures for the rest of the imports *in* Masson II 432, 435, the higher figure for the latter in Arnould, *De Ia balance du commerce* (Paris 1794-95) I 327.—The unit values arc given by Roland de Ia Platiere *(Encyclopedic Methodique: "Manufacture, arts, et metiers"* I, Coton, cotonnier) for the year 1783 as from 200 to 300 *livres* per American quintal and from 140 or 150 to 200 *livres* per quintal for most of the Levantine cotton. If the quintal (at the rate of 100 *livres* weight) is taken to be 49 Kgs., then Masson's figures for the latter kind of cotton correspond to 169½ (money) *livres* per quintal, which obviously coincides almost exactly with an average of the 150 to 200 given by Roland. There is therefore no great risk in accepting an average based upon Roland's figures for American cotton too, and in taking its price as 250 *livres* per quintal. His information in the article **also shows the smaller importance of the rest of the cotton imports.**

million Kgs. Every probability therefore points to the fact that England's *absolute* lead over France in the cotton industry first occurred directly before the outbreak of the French Revolution and depended on the introduction of the new spinning machines.[72]

In iron production, the other of the two dominating spheres of technical change, the available figures are so much in France's favour that the first impression makes one doubt whether they can be entirely credited; but it would be difficult to explain how they could be false. They too refer to the year 1789. According to a specified table of that period, drawn up from the figures given by de Dietrich, the head of a leading ironworks, French production is estimated at 282 • 73 million *livres* (weight) pig-iron and 196-66 million *livres* (weight) wrought-iron, that is about 138 000 and 96 000 tons respectively.[73] The pig-iron production of Great Britain, that is England and Scotland, is placed as low as 68 300 tons for the same period. Of this 79 per cent was manufactured by coke and the remainder by charcoal, both together only half the French figures.[74]

How can these low figures for England be reconciled with her technical superiority, recognized at least for a few decades, in this department of industry ? The most natural though by no means the final explanation is the great difference in the populations of the two countries. The first proper census occurred in both countries in the year 1801, or, to be more exact, both in France and England and Scotland, though not in Ireland. The population in France (within the 1815 boundaries, that is approximately those of 1789) was 271/3 millions, as against not quite 11 millions for Great Britain and perhaps 16¼ millions for Great Britain and Ireland. Great Britain had only two-fifths (or three-fifths, if Ireland is included) of the population of France. To-day the

[72] The figures are those given by the official English customs office and are reproduced with various changes in the following two works: partly E. Baines, *History of the Cotton Manufacture in Great Britain* (Lond. [1835]) 215, 347, and partly Wadsworth & Mann 170 and App. G.; I have relied on the latter work except for the year 1789, which lies outside the scope of the work.

[73] The table is in Bourgin 463. The exact weight of the *lime* is difficult to determine, since it changed from county to county—cp. above 114, but the differences appear to fluctuate within a 20 per cent range. Here the pound is placed at 0.49 Kgs. (cp. above, note 71), which seems to have been the most common equivalent. Even if o. 40 Kgs. were the correct weight, the figures in the text drop only to 116 000 and 78 500 tons.

[74] The statistics appear to have found their way into the literature of the subject from a source in D. Mushet, *Papers on Iron and Steel* (Lond. 1840); they are to be found e.g. in H. Scrivenor, *A Comprehensive History of the Iron Trade* (Lond. 1841) 86 f., and Ashton 98.

population of England and Wales alone, even without Scotland and Ireland, is almost as great as that of France. What the figures were at the outbreak of the French Revolution, twelve years before the first census, can never be known with any exactitude, but everything points to the fact that the relative increase in the population of Great Britain must have been considerably greater than that of France when war and revolutions ravaged the continent while industry strode rapidly ahead in the British Isles. The almost inevitable conclusion follows, that the French preponderance of population must have been even greater in 1789 than in 1801, although opinions may differ on the actual size of the difference.[75] If industrialization had proceeded evenly in both countries in the sense of being the same per head of population, the absolute figures for cotton and iron production in France would therefore have had to be roughly double those for England. On this basis the 1789 figures quoted above indicate a fourfold greater importance of the British cotton industry than the French and equal importance for the iron industry in both countries. There are no adequate grounds for doubting these conclusions, though they cannot of course be more than approximate.

But of course a country's population in itself explains nothing, and to arrive at any definitive explanation, we must seek the reason why the population of the British Isles at the time was so much smaller, as compared with France, than it is to-day. The explanation appears to be that even in England industrialization at the

[75] On France, see Levasseur, *La population francaise* I (Paris 1889) 288, 300, 313 *et passim;* See, Ev. *comm. et ind.* 370 note *2; Franz. Wirtsch.-Gesch.* 370; on the British Isles: G. T. Griffith, *Population Problems of the Age of Malthus* (Cambr. 1926) 18, 45; J. H. Clapham, *An Economic History of Modern Britain; the Early Railway Age* (Cambr. 1926) 53 f.; on both countries: G. Sundbärg in *Statistisk tidskrift* 1891, No. 3, 184 ff.—Of the various estimates of the population of France in 1789, the highest is that of Levasseur who places it at 26 millions. It is the most probable, because it allows an annual increase of population until 1801—reckoned cumulatively—of 0.42 per cent; for England and Wales 1 per cent appears to be the most probable figure. These results would give an essentially smaller difference than that between the two increases of population in the two countries in the following twenty-year period 1801-21; but still Levasseur's estimate makes that difference greater than do the estimates of other authors. If twenty-three millions were accepted for 1787, a figure which is often considered more correct than that given by Levasseur, then France would actually have had a greater annual increase of population down to 1801 than England and Wales (1-15 per cent as against 1 per cent), which is absurd.—For the 1770's, Adam Smith estimated the population of Great Britain at a third of that of France (*Wealth of Nations,* Book 5 Ch. 2, sub-section 2, Art. 4, ed. Cannan II 389).

outbreak of the French Revolution had hardly emerged from its chrysalis stage and the innovations were potential rather than actual. This is particularly noticeable in the iron industry, where the figures for both countries show roughly the same degree of industrialization. Before the application of fossilized fuel, the development of English iron production was held in check far more than that of France, owing to her lack of timber. Even though all the great inventions in English iron production did take place before the French Revolution, their effects were still insignificant. The coking process which made it possible to use coal in the making of pig-iron is now believed to have originated as far back as the year 1709; but this pig-iron appears to have been used chiefly for iron foundings, not being considered suitable for wrought-iron, which was of course much more important. Even when wrought-iron could be made from pig-iron produced with coke, this was thought to require special sorts of coal. Moreover, timber was required just as much in making wrought-iron as in producing pig-iron, and until the puddling process was discovered for this purpose, no vital change could take place. This did not occur, however, until Henry Cort finally made practicable his invention of the puddling process between 1783 and 1784, that is only a few years before the French Revolution.[76] What applied to the iron industry applied also in a larger or smaller degree to most other industries. The essentials in French as well as in English industrial life remained unaltered. It was not yet possible even for vital changes in technique to exert so much influence as to evoke important differences. But mercantilist regulation in France had placed obstacles in the path of all innovations which had somehow succeeded in becoming established in England, and the Continental System, together with the general unrest that prevailed on the continent until 1815, again retarded fresh development in France.

8. RURAL INDUSTRY

One of the most important phenomena paving the way to the industrial development of the 19th century was the rise of rural

[76] On English iron production, see Ashton's book quoted above, particularly 32 ff., 87 note i, 90, 235 ff., 251. In a letter reproduced by Ashton in an appendix, the widow of Abraham Darby the second (1711-1765), son of Abraham Darby, the putative inventor of the coking process, ascribes the invention of the application of pig-iron made with coke for purposes of refining to her husband.

industry. This phenomenon was important in France as elsewhere. In its treatment of rural industry, the state deviated to some extent from a purely municipal medieval trend of policy, more widely than French industrial regulation usually did, though here too it is difficult to discover the tendencies which actually predominated when the regulations were put into practice.

A description of rural industry and its regulation is moreover particularly difficult, because of the ambiguity of the term rural. If it is taken to mean the whole area which did not belong to the towns organized in gilds, that is if it is taken to include the suburbs and the towns without gilds, this kind of industry has already been dealt with previously. But the conditions in those industries which were combined with agriculture, above all the widely ramified textile industry, were not at all the same. Rural industry must now chiefly be considered as of this latter kind. As a background, the statement may be repeated that spinning, weaving and dyeing were practised very extensively among the peasantry for their own requirements in all countries until well into the 19th century, within the framework of a more or less closed household economy. But we may leave this out of consideration at this point, since policy on the old lines was rarely directed against it.[77] But even that kind of industrial activity which was based on exchange, was combined at a very early date with agriculture, and for obvious reasons which were the same in most countries—plenty of spare time for the rural population during the winter months; the scarcity of provisions in infertile agricultural districts; the close connection with the production of textile raw materials through sheep-rearing and flax-growing and perhaps also the unavoidable localization of bleaching all over the countryside.

In connection with the general development of industry, this undoubtedly very old form of rural industry underwent a number of transformations. The old rural industry ran in very narrow grooves; it probably played an inferior part to agriculture and there was never, apparently, any question of control by any central entrepreneur. The coarse, cheap goods produced by the peasants under these conditions, by the aid of their simple tools, were usually no dangerous competitors of the technically much more highly developed municipal handicrafts. It is true that even this did not turn aside the vexation of the municipal burghers, who attacked tendencies which clashed with their holy principles. The whole

[77] Examples of an unsuccessful attempt that was made (1734): des Cilleuls 9i-

situation changed, however, as soon as rural industry was incorporated in a larger organization and acquired a different character. This occurred in connection with the tendency towards concentration of industry and increased demand for capital in industry generally. Rural industry could then become organized in two different ways. It could develop under the direction of "merchants" or "enterprisers" whose own activities were concentrated outside the city. If this happened, rural industry was just as odious to the interests of the burghers as it had been before. On the other hand, however, it was possible that the "merchants" within the city might prefer to utilize the work of the rural population; and if this occurred, municipal interests were engaged both in favour of and against the new order. In both cases the very fact that industry was localized in the country was of course a break with municipal principles.

Development along these lines was probably older in England and Belgium than in France and presumably older in North Italy than in either of these countries.[78] But even in France, it obtained great importance. The possibility of combining industry with agriculture—if the municipal merchants were the entrepreneurs then it was chiefly a question of spinning—made for cheap labour. But apart from this, the entrepreneur gained considerably, if he was able to throw off the gilds' restrictions regarding the number and qualification of his journeymen and apprentices. Thus the putting-out system or domestic industry—the latter, more common term is unhappily chosen, for handicraft in its medieval form was also carried on mainly at home—became of greater and greater importance in industrial development and eventually gave rise to the great fundamental changes. The state's attitude towards the new tendencies was therefore an important question in French development.[79]

The struggle of the municipal craftsmen against rural industry

[78] See below 238f.—A Doren, *Die Florentiner Wollentuchindustrie* (Stuttg. 1901) 249 ff.—H. Pirenne, *Histoire de Belgique* IP (Brux. 1922) 426-29.

[79] French conditions are hardly yet sufficiently well investigated to provide a coherent outline, the only monograph known to me is a small one by the Russian historian E. Tarle, L'*Industrie dans les campagnes a Ia fin de l'ancien regime* (Paris 1910). A good discussion of the theoretical aspect is to be found in Sée, among others, in his books E*v. coram, et ind.* 272 ff. and *Franz. Wirtsch.-Gesch.* 330-33, as well as in a short essay in the *Revue historique* (CXLII, 1923 47 ff.).—Information on the subject is to be found in greatest detail, perhaps, besides that in Tarte, in Levasseur II 317 ff., and 764 ff. (for the period about 1700 and that towards the end of the *ancien regime* respectively); cp. Boissonnade, *Org. du tr.* II 238 ff. and Martin II 32 ff.

became of some importance as early as the end of the 14th century. It was carried on partly under legal forms, partly by application of force, against obnoxious weavers in the country and against craftsmen in the suburbs. The monarchy in general came to the support of the municipal corporations, inasmuch as it gave them control over rural handicrafts, though as far as is known it did not prohibit these. The methods of town policy were nowhere applied with the same ruthlessness as in Picardy and in Flanders, chiefly in the cities of Amiens and Lille, the old centres of the cloth industry; but I know of no evidence that the French monarchy ever lent a hand in this—certainly not in Lille and its province, for the simple reason that it was not joined to France until 1668.[80]

On paper, the edict of 1581 made important concessions to the handicrafts conducted outside the town, in that it applied the gild system consistently to the whole country. But the clause in question (Art. 10) was apparently not intended for the agrarian population, but only for the industrial craftsmen outside the "legal" cities, and it appears moreover, to have had no practical effect. The most vital step was the great *reglements* of the time of Colbert. In principle, Colbert followed the line of policy formerly adhered to by the monarchy, in applying the industrial statutes over the whole country. This provision was intended to apply to the *reglements*, to which in theory there were to be no local or other exceptions. For rural industry this signified a theoretical right to exist. The *reglements* assisted the regulation of handicrafts outside the ambit of city politics. To this extent mercantilism took its programme seriously of creating unity within the state as a whole and thus paved the way for new social forces. On the other hand, the system of regulation brought into being rules for the practice of crafts which, while going into every detail of technical production, tried to fit it into a system created by the gilds and adapted to high-grade products. And this was particularly unwelcome to the rural industry of the old type, untrammelled as it was by regulations, arising here and there to cater for the needs of producers and consumers and confined in the main to coarse and simple brands, of which the latter, which counteracted rural industry, was undoubtedly the more important. The application of the prescriptions was however not very consistent, so that it is often doubtful what was intended by the policy.

[80] See the collection of examples in Eberstadt 289 ff., also Levasseur II102, 588 f.; Hauser, *Travailleurs* 134 and footnote 2; Hauser, *Debuts du cap.* 97 ff.

The underlying presupposition of the *reglements* as well as of the general gild edicts was the existence of gilds in the country. The fundamental, general *reglement* of 1669 for the wool industry required the possession of the status of master as a condition for the right of production of cloths of any kind (Art. 34). Even in isolated cases, Colbert exerted himself to extend the application of local gilds to rural areas, thus e.g. as early as 1666, with specially lenient and therefore attractive conditions for the whole province of Aumale, both city and country. From the standpoint of regulation, the gilds themselves were however less important than the opportunities for control. The existence of wardens, in other words, was more important than the existence of masters, and it actually occurred that wardens were set up independent of any gilds at all (e.g. in the neighbourhood of Alengon 1722). Thus in the same universal cloth *règlement* of 1669, it was also laid down (Art. 39) that suitable administrative centres for control should be established not merely in all cities of the country, but also in hamlets and villages. Colbert's instruction to inspectors of manufacture in the same period gives special attention, in one prescription (Art. 16), to rural industry, requiring control and marking of goods by deputies of the wardens if there were 'Villages and hamlets" *(villages et hameaux)* which were subject to their administration within a certain distance from their homes; but almost every source of information points to the fact that these rules were very seldom put into practice.

In the year 1692, for example, the minister of finance directed a circular to the functionaries in the provinces of Beauvais, Aumale and Amiens, describing the state of the control over rural industry. Far from the cities organized in gilds, the widely scattered workers sold their cloth at places which also had no gild officials. In some villages there were wardens, but they had no office for the marking and control of goods, so that they had to go direct to the workers and merchants and therefore often chose the undoubtedly easier method of allowing the stamping to be done by those who carried on the work. In other places again there were no wardens, and the cloth was carried unmarked to such places where the inspectors were most open to bribery. In the province of Aumale, six years after this circular, that is in 1698, there were, as appears from the decree of that year, only two places with offices of control and wardens. The majority of places had no control and goods were sold simply without any stamp. It was then determined that 25 places should belong to one bureau and 28 to another and that for 39 other places two

new bureaux should be established. This indicates that industry must have been spread over at least 92 different places. Even this attempt was certainly unsuccessful, for a new ordinance of 1717 again required the appointment of wardens, with detailed rules for the technique of production. But this was no more effective than the others, and four years later the intendant declared that the producers sent their cloth to Amiens, not only without the prescribed discs but also without having had it examined in the *halles,* because merchants sold it in their own private interests without discs.

In other cases, attempts were made from time to time to attract officially nominated wardens from other places; but then the initiative fell on the inspectors of manufactures. This occurred for example in Burgundy according to a *règlement* of 1718. In other cases again it was attempted to transfer the control of production within a whole province to its industrial capital, in order to facilitate the smooth working of the state inspectorate. This happened for example in Normandy where, by an ordinance of 1701, the examination of goods was transferred to Rouen when previously this would have occurred outside the city. Partly, this was intended to strengthen the hands of the city, but a contributory motive no doubt was to make the control more effective—if only the city merchants did not frustrate this hope by taking over the goods before they reached the control office.[81]

It was only in isolated cases that rural industry was exempt from the general principles of industrial regulation. The meticulous technical regulations applying to the coarse cloth of Burgundy and the neighbouring provinces (above p. 160), e.g., bore on a rural industry. It is true that variations in one or another of the clauses concerning length, breadth, number of threads, colour of dye, etc., occurred again and again without end in this industry, even more perhaps than in others; but this does not indicate any loosening of the principle that the regulations were to apply universally.

None the less, there can be found at least one case in which it was recognized that the regulations ought not to be applied to coarse cloth, particularly to the so-called *cadis,* which were the particular product of rural industry. This example occurred in

[81] In the order of the facts given in the texts: *Recueil des reglemens* I 289, II 408 ff., I l l 389 ff., I 291 f., 72; *Correspondence des controleurs generaux* (ed. Boislisle) I 285 f. (No. 1078); *Recueil des reglemens* II 422 ff., 332 ff., 315 f., I I I 75 ff., 308 ff (particularly 314: Art. 25).

Colbert's own period, and is so illuminating that it may be mentioned here. An ordinance of 1677 for Montauban and other provinces in Languedoc states that these cloths are produced from coarse, cheap wool and are sold more easily in foreign countries on account of their cheapness, even more easily than Dutch and English, although the latter are superior. For this reason it was said to be indispensable to elucidate the confusion, generated by friction between merchants and workers of this industry and the inspectorate, which desired to coerce them into keeping inviolate the clauses of the *riglements* with regard to length, breadth and dye, "against the intentions of His Majesty, who does not wish them to include fabrics of this kind". Here the concession is explicit that the *règlements* are really only adapted to expensive cloths, although this restricted application was an *ad hoc* assertion. This exception followed the precedent of another less widespread concession (1673, repeated later), obtaining in one of the most typical rural industrial provinces, Gévaudan, and the mountainous country of the Cévennes. In the course of the 18th century similar cases occurred. In addition, exemption was allowed in Gévaudan from the marking and inspection clauses, and with them every possibility of control vanished entirely.[82]

In the normal way, this special position of rural industry and of the inferior manufactures was not recognized. The state authority generally confined itself to placing them on the same level, in the application of the rules, as those goods which were chiefly made up in the cities, i.e. gave them a legal standing but took no notice of their peculiar character.

The equalization of status thus implied was, however, never complete. It often occurred that the towns were supported by the state in their endeavours to exclude the surrounding rural areas from the production of city cloth and from every special technical process connected therewith. This incapacity of French mercantilism to master even the particularism of municipal policy had important results, especially in the cloth-producing cities which, from the first, had developed for themselves a very strong position; in the north, Amiens and Lille; in the south, mainly those cities, principally in Languedoc, which had the right to export their cloths to the Levant.

The prescriptions in the first of the great Colbertian *règlements*, the one for Amiens of 1666, present a specially flagrant case of

[82] *Recueil des reglemens* I I I 39 f., 277 ff., I 313 f.—Des Cilleuls 152 f. (for the year 1747).

the entanglement of such mercantilist regulation in the particularism of municipal policy. This regulation extended to all stages of production. First, it laid down the universally recognized rules of municipal economic policy. Raw materials and half-manufactured goods were to be sold only in the market-places and in the halls and only at particular times. Regrating and trading without the co-operation of the municipal burghers was prohibited, and also the selling of goods in shops after market-times. But the systematic tendency of reserving production to the city is the most characteristic feature. Yarn was the only worked-up textile product whose import was permitted; and spinning was not reserved to the city (Arts. 36, 40, 41). But it was prescribed that no yarn was to be exported (Art. 47). In other words, it was seen to that all the processes following after spinning should be kept within the city. The centre of gravity naturally lay in weaving. All cloths were to be produced in the houses of masters (Art. 64). No master was to work in the suburbs or outside the walls; nor were apprentices allowed to follow them there (Art. 71). In order to reserve this important stage of production to the city, introduction into the city of unfinished cloths was prohibited whether for finishing or for selling (Art. 118). Cloths which had not been produced inside the city were not to be finished or coloured (Art. 201). No goods produced outside the city were to have their discs affixed there (Art. 117). But even dyeing and finishing were protected in the city by the prohibition against exporting undyed and unfinished cloths (Art. 120); even the cleaning of wool was reserved to the city (Arts. 25-26). In the neighbourhood of Lille, where one could build on the tradition of the period when the province still belonged to the Spanish Netherlands, rural industry was subjected to powerful attack by the authorities, in a manner which was exceptional elsewhere.[83]

It may safely be said that not only did the attempt to create gilds in rural areas fail almost completely, but the inefficiency of the innumerable regulations diminished in proportion to the distance from towns which had gild organization. There is a sufficiency of official data to confirm this, especially in the 18th century. The rural population obstinately opposed all state encroachment, even to the extent of offering personal violence to agents of the administration. During the 18th century, an additional factor in the case was the favourable attitude of the

[83] Amiens: *Recueil des reglemens* II 225 ff.—Lille and other cities: Levasseur II 588 ff.—Languedoc: Masson I 514; II 488.

authorities toward rural industries. This was partly due to the already mentioned antagonism between the municipal entrepreneurs and their workers inside the cities, because the state sided with the entrepreneurs in their endeavours to exploit the less "class-conscious" rural population with its lower wage standards. An unusually flagrant case in point occurred in Rouen in 1724. An ordinance abolishing all previous regulations allowed masters of the cloth industry to introduce such workers as suited them within or without the city, and even to allow these workers who were not organized to work as masters, though without taking apprentices. On the other hand, it should not be taken that this was a general rule. At the same time and also later the state intervened to oppose municipal manufacturers as well as rural craftsmen, when they attempted to come together over the heads of the municipal workers.[84]

Till the middle of the 18th century French mercantilism had thus preserved local municipal exclusiveness both in rural industry and in other spheres. On the other hand, here more than anywhere else, tendencies of a contrary nature may be discerned. The very fact that industrial production was permitted in theory in rural areas and was subject to the general rules was a result of a growing tendency towards unity within the country in opposition to the municipal ecxlusiveness, even though the system was not at all adapted to rural conditions. In addition, it should be remembered that rural industry, especially at the time of Colbert, was regarded benevolently by the government.[85] This was due to one of the economic ideals of mercantilism, its hatred of all inactivity and sloth *(l'oisiveti, Ia faineantise).* In the eyes of statesmen, the greatest service of rural industry was that it employed the whole population down to children of four years old. A characteristic provision of this system was the occasional imposition of monetary penalties on parents who did not send their children to work from the age of six years and upwards.[86]

Another circumstance contributing to the favourable treatment of rural industry was that industry in general enjoyed more esteem than did agriculture. Rural industrialism was a thorn in the side of the agrarian population and this sentiment was exploited to its utmost by the municipal interests; but they met with very little success, because in France, just as in other continental

[84] *Recneil des rlglemens* II 361 f.—Abundant material is to be found in the literature on the subject, e.g. Martin I 327; des Cilleuls 91, 145, 160 f.; Levasseur II 585.

[85] Cp. Levasseur II 271. [86] See below, II 155 ff.

countries, the authorities in nine cases out of ten favoured industrial as against agrarian activities.[87]

Administrative policy constantly wavered between this belief in the value of employment to the rural population and the dependence upon medieval municipal ideas. On top of this came the practical difficulties. The French government did seek to apply the general rules to rural areas but they always had to yield to the impossibility of enforcing them. This capitulation did not lead, as a rule, to official persecution of any industry which fitted awkwardly into the general frame of their industrial policy, though that did occur. The service of French mercantilism to rural industrial development lay partly in its tolerance and partly in its enforced passivity.

9. 18TH-CENTURY ATTEMPTS AT REFORM. THE POSITION AT THE OUTBREAK OF THE REVOLUTION

Although France adhered more closely than England to medieval forms, this does not mean that influences were at work in England and not in France, to bring about a new order of things. The reverse was rather the case. Tendencies manifesting themselves in specific proposals and administrative measures and much more sympathetic to reform than in England were known in France from the middle of the 18th century onwards, if only because

[87] Examples in Masson II 486; Levasseur II 587; Godart I 131 and footnote 2; Martin Saint-Léon 576, 583.—The only instance which I have come across of French interference in favour of agriculture as against industry belongs to the district of Rouen (1723). Industrial work was to cease entirely theie for two and a half months in the year on account of the harvest *(Recueil des reglemens* I I I 371 ff.). The next chapter will show how important this policy was in England.—The French preference for manufactures over agriculture comes out with exceptional clearness in a speech by the very influential intendant Daguesseau to the provincial assembly of Languedoc in 1681, introducing a proposal of Colbert in favour of a cloth manufacture for the Levant trade; he said there, *i.a.*: "Chacun sait que les fruits de Ia terra ne sont pas certains et qu'ils sont exposés à mille accidents avant qu'ils soient parvenus à leur maturité, que l'abondance et Ia disette sont également à craindre, et que le débit dépend de mille causes etrangeres, mais qu'il n'est pas de meme des manufactures, qu'elles ne sont sujettes ni aux révolutions des saisons ni à l'inconstance des eléments, qu'elles dépendent de l'art, de l'industrie et de Papplication des hommes; que si on parcourt les pays estrangers, on trouvera que ceux qui ont establi leur fondement sur les manufactures sont beaucoup plus riches que ceux qui n'ont que des denrées" etc. (printed Boissonnade, *Colbert* 333). This is the very opposite of the English belief in "the firm basis of land and the fluctuating basis of trade".

they were aired in the *salons,* which were visited by the foremost men of the country, whereas in England, there were hardly any *salons* for the foremost men to visit. If France none the less engaged upon her great political Revolution with an economic system which had not only preserved but had even developed its essential medieval features, it merely goes to prove how firmly entrenched the system was in France. In concluding our description of French conditions we must not omit a brief sketch of those attempts at industrial reform which were undertaken within the framework of the *ancien re'gime* itself.[88]

The new administrative tendencies have often been represented as the first awakening of liberal ideas. In later years they have been styled, more aptly, reformed mercantilism, for they were not really antagonistic to the axioms of mercantilism, their purpose being rather to give it a logical application which it had hitherto lacked. Moreover the practical difficulties of regulating industry, together with the rising flood of prescriptions and the diffusion of industry over the countryside where the prescriptions found it difficult to penetrate, presumably all combined to bring the situation home to those responsible for the observance of the orders. This applied to the central bodies, that is the minister of finance and the *Conseil* or *Bureau du Commerce,* as well as to the local organs of the government, especially the intendants, in so far as they prided themselves upon being "enlightened" people and wanted to preserve contact with the current of contemporary thought.

From 1720 onwards there is already a disposition in the *Bureau du Commerce* to oppose and even to reverse existing tendencies, and we find frequent refusals to sanction craft-gild statutes, so that they could not become legally recognized corporations. More significant still was the limitation of gilds to towns and their suburbs, for it amounted to an admission that the country industry could not be forced into the framework of regulation. In 1736

[88] The facts recorded here are so summary that, as a rule they do not require detailed references.—The work of reform before 1750 is described particularly by Des Cilleuls. The majority of authors lay most stress on the work of Gournay and the changes in the 1750's, which were also to all appearances more important than the previous reforms.—The extensive literature on the physiocrats and Turgot must be omitted here, in addition to a reference to A. Oncken who, in his *Geschichte der Nationalokonomie* (Lpz. 1902), presents the work of Turgot in a highly critical light. Though one-sided in itself, this book may be used as a corrective against the exaggerated praise of the reformers often found in French literature. The printed sources on industrial regulation are, on the other hand, the most meagre of this period.

it was even expressly contended that gilds were to be restricted to the more important towns and that every country artisan should be allowed the free exercise of his craft, the only proviso being that goods were to be marked on entering a town. Though all this was in obvious contradistinction with the great gild edicts of 1581 to 1673, such unorthodox tendencies, as well as other more sporadic measures, could avail but little against a system already so well established. It was not until the seventeen-fifties that a series of decisive steps were taken, and the main impulse originated from Vincent de Gournay, the chief protagonist of this practical reformed mercantilism and one of the four "commercial intendants" *(intendants du commerce)* who belonged to the *Bureau du Commerce,* the central regulating body. Gournay was a pupil of two 17th-century writers, the Englishman, Sir Josiah Child, and the Dutchman, Pieter de Ia Court, whose main work often went under the name of the well-known statesman Jan de Witt.

One of the first great resolutions on policy, an ordinance of 1755, was particularly significant. It declared that all the towns, with the exception of Paris, Lyons, Rouen and Lille, were to be thrown open to every Frenchman who had completed his training of apprentice and journeymen in any town. This was no more than the logical outcome of principles already enunciated in the gild edict of 1581, but it none the less met with intense resistance. Twelve years later permission was granted to exercise a craft without a diploma of mastership, through the issue of a certain number of special privileges in each organization. In theory this was certainly no innovation, but it was taken as an attack on the gilds in that it rendered possible the entry of foreigners and especially Jews. A 1762 ordinance, confirmed in 1765 and 1766, of greater interest and significance, met with still sharper criticism and opposition, for it aimed at alleviating the position of industry in the country and the unorganized towns, thus instituting a practicable system. But it did not annul the validity of the *règlements,* and the controls, that is the examination and marking of goods at their entry into a town, were retained, though their administration was transferred *in toto* from gild to state officials. But the liveliest struggle of all centred round another prescription in the ordinance, which gave the whole country the right to purchase in unlimited quantity the raw material for the spinning and weaving of every kind of textile goods—and this again amounted to no more than industrial unification on a national scale, i.e. the idea which should underlie the whole system.

There followed a host of new prescriptions, all directed towards greater freedom of movement. Hosiery, which prior to 1705 had been strictly limited to 17 towns, could from 1754 onwards be carried on everywhere. Four years later the free transport of hosiery looms was permitted, where previously they could not even be sent from one town to the other. For the first time there were real attempts at national uniformity for internal trading, and the right to transport food-stuffs and raw materials between the various provinces was allowed. The corn trade between the provinces was set free in 1754 and that was amplified in 1763. The restrictions in the woollen trade were dropped in 1758 and in the leather trade ten years later, while wholesale trade, which had always been free in theory, saw its position confirmed in 1765. As mentioned above, the seventy years' struggle against calico-printing petered out in 1759, while Gournay also made repeated if unsuccessful attempts to weaken Lyons' monopoly of the silk industry and its allied trades. In 1750 the Levantine trade, the regulation of which was at its most prohibitive in 1745, shed some of its restrictions. Manufacturers could now deliver any goods to the Levant and trading was individual and untrammelled. This was still further developed in the following decades, though on the other hand cloth destined for the Levant was exempted from the scope of the 1762 ordinance which legalized the textile industry outside the towns.

Except for the surrender of the local control of rural industry which was impossible in the very nature of the case, there was in principle nothing new in all this. Further, even in its more purposeful and perfected form, the work of reform was and remained no more than a series of well-meaning attempts which made but little impression on the well-established medieval system. In fact there is no lack of example to show that there were, side by side with these efforts to alter the system, other efforts to extend it still farther. They must not be left aside, if a true picture is intended.

In the first place, the new and attenuated ordinances could not everywhere be fully carried through. As might have been expected, the greatest difficulties were encountered by the ordinance of 1755 granting to masters and journeymen the right of settling anywhere in the country. In other words particularism was most difficult to overcome. In addition the creation of new craft gilds did not altogether cease, nor did it remain without support from the central authorities. Even as late as the 1770's, the previously unorganized industries were placed under compulsory

gild restriction, occasionally even directly against the wishes of those who were in the industry. To some extent, this was undoubtedly pure routine, but it was also partly the effect of certain reforms and the necessity for measures of control over industry wherever such control had not yet been abandoned. And what was more, their abandonment was still far from becoming an immediate fact. The constant infringements of the law led again and again to new *règlements* or amendments of the old, although it was somewhat useless expenditure of energy, since there were always opportunities of evading them. A collection of *règlements* contains almost three hundred drawn up between 1715 and 1789, an average, that is, of four per year; and none of these collections can be taken to be complete. The devising of different schemes did not end after the middle of the century. As late as 1782, a *règlement* for the cloth industry in Dauphiné was drawn up and contained 265 articles, thus setting up a record. Even the draconian application of the prescriptions was persisted in; and their application was perhaps even more capricious and uneven than before. Roland de Ia Platière, a well-informed if not an unbiassed witness, described in a memorandum to his minister in 1778 how, as inspector of manufactures, he was forced to apply the whole scale of penalties—cutting up of goods, public burnings, setting the offending articles on posts, searching the houses and workshops of the craftsmen, etc. Compared with what persisted, the changes were insignificant.

But there were also radical reformers and Turgot, the most radical of all, became minister of finance in 1774. He honestly endeavoured to eradicate the evil and in January 1776 he formulated his proposals for the so-called six edicts. In February the most famous of them, that for the abolition of the gild regime, was promulgated.[89] The preamble contains what is, even for French statutes, an unusually comprehensive, bitter and rhetorical indictment of the whole gild principle, as one of "effective monopoly". The clauses themselves on the other hand were very precise, unambiguous and ruthless, though altogether of a negative and destructive character. Apart from a small number of industries in which gilds remained—apothecaries, goldsmiths and book-printers and, for fiscal reasons, barbers also—all that

[89] The edicts of Turgot and Necker are printed in many places, among others in the collection of Isambert—above, footnote 13—and Lespinasse; Turgot's edict is also in Levasseur. The remaining facts in the following are to be found, in general, in Levasseur (Seguier's speech **II** 629 f.), Martin Saint-Leon, Godart and Des Cilleuls.

was required for exercising a trade was registration with the police. The statute did not remain satisfied with abolishing the old order, but also directly prohibited all associations, fraternities and unions. This was simply the formal application of the principles of the *ancien régime* concerning illegal associations, but there was this vital difference that now all associations were placed in the prohibited category. In the choice between free competition in the labour market, and the absence of any kind of state intervention—the dilemma from which the following century never escaped—Turgot unhesitatingly decided on the first. That is, he was prepared to assert the principle of free competition, using state compulsion as a weapon of persuasion. He had no regard for tradition or social influence. His whole tendency was openly revolutionary. And no one can doubt, moreover, but that it was honestly intended. Certainly here, a revolutionary change was planned in the regulation of industrial life.

But Turgot's measure constituted a revolutionary departure in a state which had not yet been revolutionized. In a speech against the statute, before Louis XVI, the logic of which the many contemporaries and later admirers of Turgot have never been able to refute, Seguier, *Avocat Général* of the Parisian parliament, pointed out against this procedure that the gilds constituted an essential element of the organic, corporative unity that was the French monarchy. "Sire," he said, "all your subjects are incorporated in so many associations as there are various estates in the Empire. These corporations are like links in a great chain whose beginning lies in the hands of Your Majesty as the head and sovereign leader of everything as it pertains to the body of the nation." When this statement is stripped of its picturesque rhetoric, it means quite simply that the French monarchy had grown up inextricably with the existing institutions and was incapable of annihilating them between one day and the next without losing its own balance. Turgot fell a personal victim to this impossibility. His edict had hardly come into force when it was repealed by a new one in August of the same year, emanating from his successor Necker.

In outward character Necker's edict is as different as possible from that of Turgot. The preamble was as limited and commonplace as Turgot's had been comprehensive and doctrinaire. The positive prescriptions were much more detailed, but at the same time much less clear than those in Turgot's edict. The craft gilds which were abolished by Turgot were reintroduced

to the number of 50 in Paris, which meant a considerable amalgamation of those isolated professions which hitherto had been opposed to one another in endless conflicts of authority. The exclusive right to practise a craft was given expressly to these gilds in their several spheres. The bodies thus authorized were really new, which is apparent from the fact that the masters in the old gilds had the right to exercise their crafts without associating with the new gilds. Had this category of older "professionals" then gradually lapsed, the new corporations would have become the sole representatives of the new order. It follows from this that the initiative of Necker was, in many respects, influenced by the reformers; and pointing in the same direction may be mentioned among other particulars the fact that foreigners were permitted entry, and that the forms were generally simplified. In addition, there were scheduled professions which could be practised simply upon registration with the police.

The two edicts of 1776 were in themselves limited to Paris, but that of Necker was also applied in the following year to the rest of the kingdom. The character and organization of the old gilds was thus shattered wherever the statute was actually applied, and the medieval order was thus undermined in many places. On the other hand, this essay at reform had its obverse with regard to those industries and places which had previously stood apart from the gilds, for these were to be included in the new system. And thus it was e.g. that Lorraine came under the gild regime at the eleventh or even the twelfth hour. Usually, however, neither the one nor the other case occurred, but the law was simply ineffective, since the gilds refused to implement the new statutes. Like most other measures of Louis XVI, Necker's attempt at a compromise in dealing with the gilds led to chaos rather than to positive achievement in one direction or another.

The same may be said to an even greater extent of an ordinance of 1779, by which the *règlements* were to be reformed, though its programme was much more radical than that of Necker's edict on the gild system. The prevailing disorder was frankly recognized and participation in the scheme of control was rendered purely voluntary. No manufacturer would thereby feel tied down to the production of any particular goods, or to the application of any particular methods of production. All that was required of the independent producers was that they should not use the official marks of control. Their products were to receive a special seal when they were finished, such seal being known as a seal

of liberty. At the same time the old system was retained for those who wanted to make use of it. The elaboration of new *règlements* was everywhere prescribed, and as mentioned above, there arose even as late as this period voluminous new industrial codes. These modifications were, however, not to apply to every province. The gold and silver thread-work which, from the mercantilist point of view, was particularly valuable, was completely exempt from the reforms, in the same way as the cloth intended for the Levant.

The most important effect of this measure of 1779 was, however, increased uncertainty and confusion. In Poitou, the province where conditions have been best investigated, the manufacturers were continually divided between deciding in favour of the inferiority which the new mark appeared to stand for and the desire to be rid altogether of the oppressive system of control. The inspectorate became thus more and more chaotic, and often worked according to incompatible principles. Similar information is available for other provinces, although it is connected less directly with the circular of 1779, which in many cases remained simply unknown to the people for whom it was intended.

By the same circular, the title *manufacture royale* was abolished for all such enterprises as were not unique, though the owners for the time being were allowed to retain it. As a motive it was frankly admitted that the titles had often been granted without justification and even that the same abuses might recur in the future if the system were retained. This decision, however, was not followed up. The will to determine the difficulties was unmistakable, but the result was an ever-growing obscurity and disorder.[90]

It will never be possible to determine what would have been the course of French development had it continued to proceed along these lines. The possibility must not be altogether discounted that, without the intervention of the great Revolution, the work of reform might have brought about an increasing adaptation of industrial policy to altered ideas and circumstances. This is not very probable, however, since at the outbreak of the Revolution so little had been achieved. In any case the system stood at the most at the beginning of a semi-deliberate liquidation of an order which found its roots long before mercantilism. What had occurred

[90] The letter of the year 1779 printed in *Recueil des anc. lois franc.* (ed. Isambert) X X V I 77 ff.—For the rest, see Boissonnade, *Org. du tr.* II 547 f.; Des Cilleuls 150, 338 f.; Levasseur II 665.

from the middle of the 18th century till 1789 were far less attempts at a new ordering of industrial life, than a confused medley of activities and concessions on the part of officials very often ignorant of what they wanted, what they were able to do and what rules they had to follow. This explains why the National Constituent Assembly dealt with industrial regulation in the way that it did; but this very treatment has made it impossible to determine what might have come of the reformist non-revolutionary endeavours in the sphere of French industrial policy. So much at any rate is clear. When the hour of doom of the French monarchy was striking, the solution of the problem which French mercantilism had set itself was scarcely yet adumbrated.

VI

THE INTERNAL REGULATION OF INDUSTRY IN ENGLAND

I. COMPARISON WITH THE CONTINENT

When the development in England is compared with that of France, described in the previous chapter, differences arise which can be considered complete in only one particular, that is as regards manufacture. Not only was there no counterpart in England to the *établissements* of the luxury industry in the hands of the state, but also—and what is much more important—the numerous and extensive private *manufactures royales* endowed with every possible privilege, and similar industrial forms to be found in France, were absent in England. The system of widespread privileges under the early Stuarts did not lead to industrial concerns of this kind; nor did the succeeding period provide the necessary conditions for their appearance. In so far as great enterprises did arise in England they came in the guise of companies and in this way they had a more direct relation to market demand. The most original and characteristic kind of economic activity under the French monarchy, which was generally imitated on the continent, thus remained entirely alien to English development.

This difference is vital. Thus if the technical changes of the following period had consisted, as those of the previous period did, mainly in improved manual dexterity, cultivated taste, and artistic plasticity, in other words if it had belonged to that technical sphere in which production was determined by the Royal Family, the Court, the aristocracy and other wealthy consumers, France would then have had every prospect of becoming the leading industrial country north of the Alps. But things turned out differently. "Industrialism" or "capitalism" meant mass production for mass consumption, and here the luxury industries were entirely subordinate. The factors which had given France her position as the typical industrial country were no longer decisive, but were rather an obstacle to progress in the new direction. The leadership was thus transferred to England, where there were no large-scale concerns under the immediate control of the state, producing for the demands of a cultured aristocracy. The advance came from less prominent enterprises and catered for less aristocratic needs.

This change is characteristic and has essentially contributed to the formation of our present-day economic system. It is irreconcilable with Sombart's contention that one of the roots of capitalism is luxury. Modern industrialism implies rather that for the first time in history the role of luxury has become insignificant.[1] Therefore the fact that the French tendency in manufacture was absent in England became a decisive factor in England's importance in the advent of modern industrialism.

So far we have been on safe ground. But a much more difficult problem arises when we attempt to obtain a clear picture of the similarities and dissimilarities in the actual development of trade regulation in England and on the continent, in France in particular.

This much is certain, that the foundations in the various countries were the same, in so far as we are dealing throughout with the phenomenon previously called municipal policy magnified locally. It must never be lost sight of that the basic ideas of French regulation held for England as well as for most countries of Western Europe. If the majority of these phenomena are in the present work only described completely in the chapter on France and are merely referred to here, it is chiefly because an exhaustive repetition in this chapter would have nothing new to add. The reason is not that features corresponding to the French development were lacking elsewhere.

On the other hand, the nature of industrial regulation is not nearly exhausted by this identity in the basic principles. On common foundations were erected two edifices which nevertheless were different in England and France; and the differences are as important as the similarities. As an approximate generalization we may say that the resemblances were greater in form than in content, though quite extensive in both.

The similarities and dissimilarities in the regulation of trade in the two countries gain special interest in that it was in England that the Industrial Revolution started in the 18th century, even though in the previous century France was at least as industrialized, if not more so. The profound change in the relative positions of the two countries largely depended on the differences in natural conditions—on the importance of the coal supply for the rising industries and of the humidity of the climate especially for the

[1] Cp. note 62 in the previous chapter and F. Lohmann, *Die staatliche Regelung der englischen Wollindustrie vom XV. bis zum XVIII. Jahrhundert* (Schmoller's *Forschungen* X V I I I : 1, Lpz. 1900) 78.—For the Stuart companies, cp. below notes 29 **and** 30.

cotton industry; and also partly on the character of the people—a less aristocratic life being better adapted to the new type of economic structure. But this does not exclude the possibility that the differences in the regulation of trade also contributed. There were other contrasts besides the most glaring already mentioned —that is the absence in England of any industrial manufacture of luxuries under direct state supervision. These threads will now be followed up. The outlines of English trade regulation under mercantilism must be indicated and compared with those of France.[2]

[2] The principal source of information for England are the Statutes, quoted here, under their official titles, until 1708 taken from the *Statutes of the Realm* and after that date from the *Statutes at Large*.—A very useful collection of documents are those edited by R. H. Tawney and E. Power under the title *Tudor Economic Documents* (I-III, Lond. 1924), though they do not set out to go farther than Elizabeth's death.

There are at least three distinct lines of thought in the literature on the subject, each of which has served to clarify a part of the general picture, and, in addition, there exists a series of independent studies. Cunningham, assisted by his enthusiastic pupil Lilian Knowles, is responsible for the first of the three lines of thought, which gives a fairly prominent place to the positive achievements of English mercantilism, especially under the early Stuarts. By the side and perhaps even ahead of his own great work, we must place Miss E. M. Leonard's *The Early History of English Poor Relief* (Cambr. 1900). Belonging to the same school is Miss O. J. Dunlop, *History of English Apprenticeship and Child Labour* (Lond. 1912). The exactly opposite view is embraced by G. Unwin, chiefly in his *Industrial Organisation in the Sixteenth and Seventeenth Centuries* (Oxf. 1904), also in his more popular work *The Gilds and Companies of London* (Lond. 1908); and in several essays in his posthumous *Studies in Economic History* (Lond. 1927). W. H. Price in his book *The English Patents of Monopoly* (Harvard Econ. Studies I, Boston & N.Y. 1906) agrees very closely with Unwin's point of view. Thirdly, for the period after 1688, we obtain a wealth of information upon the administrative side of regulation from S. & B. Webb's (now Lord and Lady Passfield) long series of volumes under the general title of *English Local Government*, the most important of which for my purpose are *The Parish and the County* (Lond. 1906), *The Manor and the Borough* (I—II, Lond. 1908) and *English Poor Law History* (I, Lond. 1927). The general conception of the Webbs resembles the first group much more than the second. For a picture of the many-sided character of the system as a whole in one of its most important branches, see H. Heaton's *The Yorkshire Woollen and Worsted Industries from the Earliest Times up to the Industrial Revolution* (Oxford Historical and Literary Studies X, Oxf. 1920). Lohmann's book, quoted in note 1, is a careful but rather summary study. Miss S. Kramer has dealt with the Gild System in two works, *The English Craft Gilds and the Government* (Columbia Univ. Studies in History, Jurisprudence, and Public Law, XXIII: iv, N.Y. 1905) and *The English Craft Gilds; Studies in their Progress and Decline* (Oxf. 1927). They are quoted below as Kramer, *Gilds and Government* and Kramer, *Gild Studies* respectively. For a central problem: R. H. Tawney, "The Assessment of Wages in England by the Justices of the Peace" *(Vierteljahrschr. f*

2. UNIFIED REGULATION: **ELIZABETH'S** STATUTE OF ARTIFICERS AND **ITS ORIGINS**

The peculiarity of English regulation

The persistent integrity of the English state in the face of particularist tendencies were to have far-reaching effects on the regulation of industry.[3] But its immediate effects on policy were not as great as might have been expected. English municipalities pursued the same ends as the continental, and the forces they set up to achieve these ends were more powerful than one might think. They bought their privileges, particularly the *gratia emendi et vendendi,* that is, the power over the organization of the market and of industry in general, by monetary sacrifices to the king. It was precisely these payments, in which the king had a special interest, that gave towns the opportunity of providing a privileged position for their taxpaying citizens and of treating all other people as foreigners. It is significant that the word "foreigner" (like the French word *forain)* was generally used —often well into the 18th century—to refer to those who were not freemen, i.e. those who did not participate in the city's privileges.[4] In the regulation of trade within the walls of the city, as little attention was paid to the rest of the country as on the continent. If at times English nationality was demanded of an apprentice (e.g. in York 1419),[5] it did not make much difference.

Soz.- u. Wirtsch.-Gesch. XI, 1913). The greatest gap in the literature of the subject is the part dealing with the practice of the law courts, W. S. Holdsworth's *A History of English Law* (especially IV-VIII, Lond. 1924-5) being the only work devoted to it.—Just after the publication of the Swedish edition of the present work, there was published the second and third volumes of E. Lipson's *Economic History of England,* with the sub-title *The Age of Mercantilism* (Lond. 1931). I have quoted him wherever his abundant material or his conclusions have led me to alter or add to my own, but not in the numerous cases in which we have, independently, arrived at the same conclusions.

[3] See, in particular, G. Brodnitz, *Englische Wirtschaftsgeschichte* (I, Jena 1918) and his essay "Die Stadwirtschaft in England" *(Jahrb. f Nat.-6k. u. Stat* CH, 1914, 1 ff.).

[4] E.g. "Any foreigner (and such they call all those who are not sons of apprentices of seven years' standing to a free man in the same town") . . . *{Britannia Languens,* Lond. 1680, Ch. 7, p. 97); "our rights and privileges might be defended against all incroachments made by foreigners" (1730; *Extracts from the Records of the Merchant Adventurers of Newcastle-upon-Tyne,* **Publ.** of the Surtees Society XCIII, Lond. 1895; I 255); for other examples, see Webb, *Manor and Borough,* under "foreigner" in the index (for an example in Berwick of as late as 1773, II 524).

[5] "Natus Anglicus" (Heaton 34 f.), and other cases.

The craft organizations certainly enjoyed the direct protection of the monarchy and suffered certain opposition from the municipal authorities; but they soon became completely dependent on the latter.

So far as the industrial legislation of the monarchy extended—it was much earlier and wider than on the continent—the ends which it pursued were not in general very different from those of the municipalities. In particular the regulation of the marketing of food-stuffs was devised with special attention to consumers' interests, if only because the Court, in its perpetual travels up and down the country, was in the same situation as city inhabitants. The fixing of prices for the whole country (assizes) practised at an early date was typical of England. Moreover, the problem of the city as a commercial centre was dealt with by the state by means of measures of the same kind as the cities themselves brought to bear against forestalling and middlemen. The cities also conclusively asserted their claims upon state interference from the end of the 14th century onwards in the direction of limiting the rights of "merchant strangers".

Generally, the friendliness of the English monarchy to the cities was most striking. The monarchy, with its perpetual wars at home and abroad, depended on the towns or their rich citizens for financial aid, usually granted in the form of loans, farming of revenue, or taxes. Besides, in England as on the continent, the municipal authorities and the gilds were made the executive agents of the government. This was brought out particularly clearly when Parliament from the Edwardian period, that is, from the end of the 13th century, began to an ever-increasing extent to regulate economic life. As elsewhere, the selection of the executive organs influenced the measures to be executed and the manner of their execution.

That the development in England had much in common with that in other lands is therefore obvious. Yet already in the Middle Ages, England had laid the foundations for a later development which deviated in part from that on the continent. The fact that the state preserved extensive powers could not fail to have lasting effects. This was noticeable especially in two directions. It operated in favour of greater uniformity of measures throughout the whole land; and it was expressed in the greater interest devoted to non-urban branches of industry, above all to agriculture, which was fostered in England more than in any other European country before the 19th century. The greater uniformity tended to bring about a larger measure of mobility of economic forces

in the country than occurred in the rest of Europe, although it must be granted that proofs of greater practical results are not many; in any case the total absence of internal customs barriers was a much more essential factor in that direction. The circumstance that no single branch of economic life was preferentially treated in England laid the foundation of a deep-set difference between English and continental policy, a difference which found its last expression in the specifically English form of mercantilist protection, the protection of agriculture and industry combined, or the "system of solidarity".

It was, however, only at a comparatively late period that a protectionist system of this kind arose, and its treatment belongs to the third section of this work, in which mercantilism as a protectionist system is dealt with. The point at issue here is the general internal economic regulation, in which the same tendency was manifested much earlier and in more mature form especially in the famous Labour Law of 1563 called by Adam Smith the "Statute of Apprenticeship", but nowadays more often quoted as the Statute of Artificers (5 Eliz. c. 4), the work of William Cecil, Lord Burghley. It was one of the most remarkable results of English economic policy. In spite of the much greater activity of the French monarchs in their heyday, neither in France nor in any other country is it possible to find any other attempt at so thorough a control of the whole industry of a country during the mercantilist period. Its origins and formation are particularly able to throw light on the characteristic features of English development.

Medieval legislation

The circumstance which provided the real motive for the enactment of the Statute of Artificers operated elsewhere, especially in France, as well as in England. In England too (see above 138 and 141) it was the enormous rise in wages after the Black Death which led to state interference. From that date the regulation of wages ceased to be a local affair and became a national problem.[6]

[6] Cp. Miss B. H. Putnam's very instructive study of this legislation in *The Enforcement of the Statute of Labourers during the First Decade after the Black Death 1349-1359* (Columbia Univ. Studies, etc. XXXII; N.Y. 1908), in particular, 3, 155 f., 160, 217 f. Her point of view—like that of previous writers on the subject—is that "they constitute the first important attempt of the central authorities to apply to the country as a whole uniform legislation on wages and prices—matters that had previously been left to local control" (Putnam 3). —Miss Putnam reprints a large number of original documents of the period with which she deals, including the "Ordinance of Labourers" 1349

The national regulation of wages is to be found in the Ordinance of Labourers and the Statute of Labourers enacted in 1349 and 1351 respectively, and in them it is already possible to perceive two closely connected and very essential divergences from the French decree of John the Good, likewise enacted in 1351. The latter held only for the Paris district whilst the former included all England in its scope and created a great judicial system, which covered the whole land and was very extensively employed. The second difference is closely bound up with the first. The French decree regulated mostly urban trades, whilst the English law was designed to fix the wages for every person who was in the service of another, and in practice the English measures were preferentially applied to rural workers.

The fundamental ideas of both these decrees were later reproduced without any essential modification in the Elizabethan Statute of Artificers, which on its own admission merely attempted a codification of older rules. Of the laws which were passed between 1349-51 and 1563, that of 1388 (12 Rich. II cc. 3-10) was specially important. It shows clearly that legislative attention was directed mainly towards agriculture, thus providing a striking contrast to continental tendencies. It stated, for instance, that whoever had worked on the land until the age of twelve must remain on it and was not to be admitted to handicraft. Contracts of apprenticeship not in accordance with this ruling were consequently to be annulled. Another clause, also illustrating the preoccupation with agriculture, proclaimed that "as well artificers and people of mystery as servants and apprentices, which be of no great avoyr (i.e., reputation) and of which craft or mystery a man hath no great need in harvest-time, shall be compelled to serve in harvest, to cut, gather and bring in the corn".

The Statute of Artificers

Out of these medieval laws, mentioned here very briefly, the Elizabethan Statute of Artificers created a whole legal system which with the exception of a few unimportant points remained on the Statute Book until 1813 and 1814.[7] Although a dry summary

(23 Ed. III) and the "Statute of Labourers" 1351 (25 Ed. III, ce. 1-7); both documents are to be found in the *Statutes of the Realm,* although the former is not an Act of Parliament.

[7] The Statute—which is, of course, printed in the *Statutes of the Realm*—is reprinted in *Tudor Economic Documents,* showing there in italics the changes which were added as a result of its discussion in Parliament. To the statute are added sources relating to the period immediately preceding it and to the period soon after it was made current (I 325-83). To supplement the latter period, see the collection of Bland, Brown and Tawney, *English Economic His-*

of the contents of the statute is not very informative in itself, it is essentially the starting-point for an understanding of the later development.

The basis of the law was the universal obligation to work (the *allgemeine Arbeitspflicht,* as it was called in Germany during the Great War); and already in medieval laws every able-bodied man or woman—with certain exceptions required by their superior status, etc.—was obliged to accept employment in agriculture (§3).

Two social historians, Hauser and Tawney, independently of one another, have shown for France and England respectively that this was an expression of the common medieval desire to prevent the engrossing of indispensable necessaries *(accaparer).* Labour ought no more to be held back than food or raw materials.[8] This principle was applied throughout in the Statute of Artificers —people not occupied in any of the expressly enumerated trades were obliged to serve in agriculture (§5).

The relations of all the groups of labourers were, next, subjected to systematic regulation. The methods of determining periods of engagement, the giving of notice and hours of labour resembled the methods of modern social policy, though the underlying tendency was largely different. But most important of all were the wages and apprenticeship clauses.

Wage-fixing was the point from which the statute set out. The reason for the law was declared to be the fact that the general rise in prices had forced down wages fixed at earlier periods and had brought the poor workers to "great grief and burden". The problem was flexibly handled when the law refrained from fixing new wage rates and, instead, required of the authorities, i.e. the J.P.s and such bodies in the towns as exercised their functions, that they fix wage rates anew each year according "to the plenty or scarcity of the time" (§11),

tory, Select Documents, esp. Part II, section III. Almost all the works quoted in note 2 deal with some aspect or other of Elizabeth's Statute. §25 of the Statute was repealed in 1694 by 5 & 6 Will. & Mar. c. 9 (see below 230). The wage clauses were repealed in 1813 by 53 Geo. **III** c. 40. The apprenticeship clauses were repealed piecemeal—first, for a small number of less important industries, by laws passed in the second half of the 18th century, then, for the most important industry, the woollen, in 1809 by 49 Geo. **III** c. 10, §2; and the Statute was finally repealed *in toto* in 1814, one year after the repeal of the wage clauses, by means of 54 Geo. **II** c. 96.

[8] Hauser, *Ouvriers du temps passé* (note 7 in previous chapter) 60-3.—Tawney's article, quoted in note 2 *(Vierteljahrschr. f. Soz- u. Wirtsch.-Gesch.* **XI, 1913,** 538, 562).

without any (maximum) rates being laid down in the statute. These were the wage assessments later so famous, though they did not by any means appear for the first time in 1563.[9] Here too the approach was medieval. The desire was to fix "just" wages; and the idea underlying the desire was expressed in the standpoint—not unknown even to-day—that wages could be made "just" by adapting them to the cost .of living. What was novel in Elizabethan legislation was, throughout, the machinery adopted. Wage-fixing in London in 1586 for example had to be carried out in a manner closely resembling the modern calculations of a rise in the cost of living, by referring to "the prices of all kind of victuals, fuel, raiment and apparel, both linen and woollen and also of house rent".[10]

The clauses regulating apprenticeship were much more complicated, but at the same time, both in what they said and what they left unsaid, they were more characteristic of the underlying policy. Like the wage-fixing clauses, they held good for town and country, for agriculture and for handicraft and commerce. But this did not mean that the different branches of industry were subjected to the same regulations. Instead, the fundamental idea throughout was to maintain the population first on the land and secondly in other simpler crafts, and increasingly to restrict entry into higher occupations as well as into those which were considered undesirably localized.

The motives are given in a contemporary commentary on the statute (1573?). This made the clear-sighted statement that ascent in the social scale was easier than descent.[11] The younger generation for its "better advancement" (§18) was therefore sent into agriculture and some of the lower handicrafts (§23), "such occupations as are the most laboursome and painful, whereof some do not much differ from the trade of labourers".[12] Other craftsmen could only accept burghers' sons as apprentices and as far as corporate towns were concerned (§19), Only burghers' sons of a similar town, whilst market towns could only accept burghers' sons of the same sort of town in the same county (§21). Apprentices of merchants and of superior craftsmen

[9] An assessment of this kind in Northamptonshire agreed to by the local J.P.s in 1560 is reprinted by Miss Putnam in "Northamptonshire Wages Assessments of 1560 and 1567" (*Economic History Review* I, 1927, 181 ff.) and another, of 1561 for Buckinghamshire, may be found in *Tudor Econ. Docs.* I 334 ff. Miss Putnam also discusses how far wage-fixing at higher rates than those allowed by the statute of 1388 was lawful before 1563. Cp. Lipson I I I 251 ff.

[10] *Tudor Econ. Docs.* I 366. [11] *Ibid.* I 358. [12] *Ibid.* I 354-

constituted a still higher category. They were to be either their own sons or the sons of 40s. freeholders. Strangely enough this minimum was higher (£3) for market towns (§22) than for the cities or towns corporate (§20), the reason for this in my opinion being that it was desired to limit these occupations in the smaller towns. The same intention was still more clearly in evidence with regard to the weaving of woollen cloth. Outside the town this particularly distinguished trade was prevented, with some exceptions, from having apprentices the parents of whom were not £3 freeholders (§25), no doubt with the intention of counteracting its spreading over the countryside.[13]

To all appearances the clauses quoted above were much too complicated to be adhered to in practice, and to this extent they were mainly an indication of prevailing opinion. The rules for the training of apprentices in the rural woollen-weaving industry were abolished in 1694, on the ground that they "hath been found to be very inconvenient and a great prejudice to the clothing trade".[14]

Next to wage-fixing, the second great practical achievement of the statute was the creation of uniform rules for the training of apprentices. They fixed a seven-year period of apprenticeship for all future handicraft workers in occupations "now used or occupied within the Realm of England or Wales[55] (§24). Probably no great significance was ascribed to the limitation mentioned which was introduced into the Bill when passing through Parliament; but in the course of time it had important consequences. From the point of view of unification, it was of fundamental importance that the statute treated the training of apprentices as a national question, ruling out local exclusiveness by never requiring apprenticeship inside the same town where the trade was to be exercised. And so legislation in England at the very beginning of the mercantilist period laid down a liberty of movement which in France was only introduced 200 years later through definite reformist influences.

Mobility between trades was not intended, for the same clause explicitly required a person to fulfil his seven years[5] apprenticeship in the same craft which he intended to practise. But although only indirectly mentioned in the statute, the so-called Custom

[13] It should be mentioned that J. F. Scott, *Historical Essays on Apprenticeship and Vocational Education* (Ann Arbor 1914) 35 construes these clauses of the Elizabethan code (19, 21, 24) to mean something quite different, which does not appear to me to accord with their wording.

[14] Cp. for Yorkshire, Heaton 106 f.—5 & 6 Will. & Mar. c. 9.

of London, in accordance with which a seven years' apprenticeship in any one craft gave the right to practise any other, still held good for the capital. The Custom of London was obviously intended to facilitate transfer from one trade to another, although at the same time it naturally rendered the guarantee of apprenticeship and industrial skill completely illusory. The result was that the law, as a whole, was based upon local mobility and that occupational mobility was retained for the capital.

It is self-evident that the legal restrictions concerning apprenticeship could not apply to agriculture, and the only provisions made for agriculture were that apprentices should be accepted between the ages of ten and eighteen and should remain apprenticed until the age of twenty-one, or at the most twenty-four (§18). In towns, twenty-four was the minimum age for the termination of apprenticeship and the establishment of independent business (§19, probably intended also in §21). Even in this case, consequently, the tendency to lay down rules for economic life in town and country alike asserted itself. Finally, the number of apprentices in proportion to the journeymen was not restricted as a rule, but only by a special clause applying to the textile trades and to shoemaking (§26).

The idea of assuring agriculture as well as urban industry of the necessary supply of labour is also evident from a clause which the Statute of Artificers adopted from earlier regulations, and according to which all handicraftsmen and other artisans were obliged to assist at harvesting in time of need (§15). This clause was more than a mere gesture, as is seen from a manual for Justices of the Peace (published in 1583) prescribing measures against the officials who failed to punish infringements of the clause with two days and two nights in the stocks.[15] It is very characteristic of English conditions that legislation with objects such as these remained at the basis of the industrial regulation of the *towns* throughout the whole *ancien rtgime.*

The preoccupation with the decay of arable farming and the growth of sheep rearing—both closely bound up with enclosures —was the chief reason for this part of the Elizabethan code, furnishing an added proof of the pro-agrarian side of economic policy. It was the main theme of all public and private declarations from Thomas More to Francis Bacon, finding in Cecil its strongest advocate, and providing the mainspring of the attempt to obstruct

[15] Lambardes *Eirenarcha:* 1619 edition, reprinted in Holdsworth IV 565. On other regulations of that character, see Webb, *English Poor Law History* I 26 note 2.

industrial progress, above all in the woollen industry, at the expense of agriculture.[16] This outlook was entirely alien to continental development.

Next to this all-absorbing care for the supply of agricultural labour, the most prominent feature of the statute was the national uniformity of the system. It manifested itself particularly in the fact that the administration of the law relied on the same bodies for the application of all the clauses, i.e. the Justices of the Peace and the corresponding officials in the towns. Even in this, the law followed earlier precedents; but it was important that economic administration of the mercantilist period was entrusted to such agents.

The Poor Law

Elizabeth's Statute of Artificers was supplemented by her equally famous and far-reaching Poor Law of 1597 which, in its renewal of 1601, has not yet been entirely repealed. The Statute of Artificers set itself the task of abolishing the sturdy beggar. To this end it prohibited, under pain of punishment, all persons in employment from leaving their town or parish unless they could prove that they had been released from their work (§§7-8). To overcome vagrancy, the mobility of the poorer sections of the population was limited and at the same time the apprenticeship provisions of the statute were always kept in reserve for decreasing the number of children who came on the poor law. When the state legislated on poor-law matters, it regularly copied the provisions which one advanced town after another, in particular London and Norwich, had already tried and put into practice. Again the executive machinery, as in the case of the labour legislation proper, consisted of the Justices of the Peace and their corresponding officials in the towns.[17]

[16] See a remark in Cecil's handwriting of the same period as the Statute of Artificers, printed in *Tudor Econ. Docs.* II 45. No further indication is needed in the matter, which has attracted more attention than any other problem from both contemporary and later writers. But the remarkable contrast to other countries appears to have passed unnoticed.

[17] Statutes: 39 Eliz. c. 3; 43 Eliz. c. 2.—Besides the statutes there is abundant material in *Tudor Econ. Docs.* II (Sec. 7) and III (Sec. 4). The small volume *Some Early Tracts on Poor Relief,* ed. F. R. Salter (Lond. 1926) chiefly contains the English translations of continental writings. Miss Leonard's book, quoted in note 2, is undoubtedly the most important on the subject. Webb's *English Poor Law History* I (ch. I) gives a review of the literature on the subject. In this work there is also the most thorough description of the practical working of the whole system, especially in the period 1689-1834.

The two great Tudor codifications formed the skeleton of a uniform system for the regulation of labour conditions in England throughout the *ancien régime.*

To sum up. In two important respects economic legislation was thus less influenced by municipal policy than on the continent. First, all branches of industry were uniformly regulated throughout the country and great care was taken to maintain a regular supply of labour for agriculture. Secondly, the agents which the law prescribed for the administration of its rules were the same for town and country. There was nothing distinctive in the spirit of the legislation; it was thoroughly medieval. Where it deviated from the continental, it only followed what had been for some time essentially English. Its chief innovation in contrast with the medieval order lay in its uniform and well-planned character, and the monarchy, knowing what it was about, was able to stamp this character on the whole system. It is tempting to draw a parallel between this and Gustav Vasa's equally well-planned medieval economy in Sweden, even though the latter belonged to a much more primitive epoch in economic history.[18]

3. THE GILDS AND RURAL INDUSTRY

The legal position

Gilds were not even as much as mentioned in the Statute of Artificers, and this fact emphasizes the difference between that measure and the roughly contemporary French edicts of Henry I I I (1581) and Henry IV (1597). Their principal task had been precisely to create a gild system embracing the whole country *(v.s.* 145 ff). The silence of the Statute of Artificers on this point followed from its general construction; the gilds could not be given a central position in a measure which was to provide systematic regulation for town and country by the aid of organs which were identical for both. So much is self-evident and requires no explanation. What is more difficult to decide is the precise influence of the statute and the rest of general economic legislation on the gilds' position in England.

The answer to the question is as follows. In the first place, *national legislation did not make gilds compulsory in England,* it did not create what is called in German *Zunftzwang.* The Statute of Artificers as well as the innumerable special laws, particularly for the woollen industry, again and again underlined the necessity

[18] Cp. my paper "Det äldre Vasakonungadömets ekonomiska politik och ideer" *(Hist, studier tillagnade L. Stavenow,* Upsala 1924).

for a seven-year period of apprenticeship as a precondition for practising a profession. This was the main principle throughout, and the fulfilment of this condition was regarded as sufficient. Only in exceptional cases did the law go farther and actually demand membership of the gild.[19] Where compulsory membership was required, it depended on the special privileges of particular places and corporations, and consequently what was legal for one might be illegal for another. Because the gilds were not an integral part of the general regulation of industry, this regulation did not restrict the pursuit of an occupation to persons living in a particular locality or to such as were trained in that locality. Here again, as with compulsory gild membership, local influences were very far from being absent—the corporations took good care of this, and could often enforce restrictions in a locality on the more or less justifiable ground of their privileges. But it was nevertheless important that local exclusiveness was not encouraged by the uniform system of regulation. From one point of view this meant that English legislation did allow more and not less particularism to creep in than the continental legislation, that is, to the extent that English gilds were allowed to retain their local exclusiveness. On the continent, however, the exclusiveness of the gilds was overcome only on paper. In practice the gilds grew in strength and spread over the country without their particular tendency to restrict trade to their localities becoming weaker. For that reason the reverse was true of England, because the gilds were not endowed with such power as to lead them to become a nation-wide system with full legal authority. The consequences of this became manifest when forces tending to undermine the English gild system were set in motion. Its power of resistance was then seen to be weaker than on the continent and the changes which took place were able to proceed without causing any decisive break with the existing order.

Nevertheless English legislation, in formulating its regulation of industry, did not entirely overlook the gilds. Many laws placed

[19] See e.g. the laws concerning the cloth industry of which a selection is given in note 48.—Still, some few statutes really contained compulsory gild restrictions, principally those for the leather trades. No shoe-maker or any other person was to supply leather to anybody who was not a member of the Curriers' Company of the City of London, for purposes of manufacture (5 Eliz. c. 8 §14; I Jac. I c. 2 §18). In the same way all silk-throwers in London and within a radius of four miles around London were obliged to become members of the gild (14 Car. II c. 15 §2). This case may however be regarded as one in which the Company acquired the right as a privilege, though it took the form of an Act of Parliament.

the supervision over the enforcement of the rules contained in the laws in the hands of the gilds and they were thus endowed with a generally recognized function. That a kind of general interest was taken in them may be seen from the fact that they were compelled, by a law of Henry VII, to submit their regulations for examination in the courts, as had often happened in the past.[20] But neither the one nor the other implied compulsory gilds and no obligation to join the corporations was created. Nor did the gilds attain that universal character necessary to a national gild system.

But these points of view are merely formal and it is as easy to overrate as to underrate their importance. The question that should be investigated is what place the gilds did actually occupy in English industrial regulation. The appropriate starting-point is an inquiry into the functions laid on the gilds by the Statute of Artificers.

The wage clauses on the whole were self-dependent, as wage-fixing devolved upon the Justices of the Peace. Only one clause (§11) left room for the participation of the handicraft organizations. The Justices of the Peace in fixing wages were to consult "discreet and grave persons" on the "plenty or scarcity of the time and other circumstances necessarily to be considered". But as far as the control of apprenticeship is concerned, no reference is made in the statute to executive machinery; and as apprenticeship had only an indirect bearing on agriculture, being on the other hand a task closely bound up with the gilds, it was one which would naturally fall to their lot in the administration of the statute, although they were not specifically mentioned. And so after the first twenty years of the operation of the statute, when complaints against infringement of the apprenticeship clauses were very rife, the gilds assumed control by incorporating in their own regulations rules concerning apprenticeship similar to those in the statute, and taking good care that they were enforced.[21]

The gilds' position as administrative agents for the application of the Statute of Artificers naturally enhanced their influence and aided their efforts to attain importance. As administrators, the gilds did not confine themselves to the application of the

[20] 19 Hen. VII c. 7 (1503/4); cp. Kramer, *Gilds and Government* 53f., 61 f., 65 f.—Later examples: 22 & 23 Car. II c. 8 §3 (1670/71); *Journals of the House of Commons* XXVI 779, 787, 794 (1753).

[21] Kramer, *Gilds and Government* 91-103; Dunlop, *History of English Apprenticeship* (see above, note 2) 73-86.

clauses of the statute, in fact they set them aside to a very great extent. One of the abuses which the gilds obstinately and persistently practised was to admit sons of master-craftsmen to the craft without any apprenticeship. And although this practice was not reconcilable with the Statute of Artificers, it often obtained legal sanction. It was carried to such an extreme that masters' sons sometimes became members of the gild at birth and were given the right to practise the craft from the age of twenty-one. Moreover the period of training required of other apprentices was often extended beyond the legally prescribed seven years. As has been shown, the statute had limited the number of apprentices in only a few industries. But in practice, this limitation became very common and there are many cases of outsiders being refused admission altogether to one craft or another. Again the statute only just referred to the journeyman, but he played a vital part when it came to practice and his importance was recognized in other statutes. The custom of having "master-pieces" was introduced into the London gilds in the 16th century; and at the beginning of the 17th century it was said to be common everywhere.[22] The general inference is that the passing of the Statute of Artificers could not do much in the direction of bringing about any other kind of organization within the gilds than that which prevailed on the continent. And except in a few isolated details, the statute probably did not even aim at bringing this about. But even if it had desired to do so, it could not possibly have been successful since its clauses were so general. Thus, although the statute was unique as an expression of methodical and planned economic policy in existence at the time, this did not prevent the medieval influence of the corporations from continuing undiminished even in England.

Moreover the statute did not go any farther than to regulate actual labour conditions. Had the state intended to regulate

[22] See e.g. Dunlop 86-93; Kramer, *Gilds and Government* ch. 3.—Position of Masters' sons: 21 Jac. I. c. 31 §6, cp. G. I. H. Lloyd, *The Cutlery Trades* (Lond. 1913) 130; summary: Kramer, *Gild Studies* 172, note 70. In Berwick in fact a decision was taken in 1800 to extend the benefits to illegitimate children; but this was carrying it a little too far, and it was immediately afterwards repealed (Webb, *Manor and Borough* II 510).—Limitation in the number of apprentices: 8 Eliz. c. 11 §5; 1 Jac. I c. 17 §2; 21 Jac. I c. 31 §6; 14 Car. II c. 5 §17; 19 & 20 Car. II c. 11 §3; cp. W. J. Ashley, *An Introduction to English Econ. History and Theory* §33 (II[4], Lond. 1906, 91-8 and notes); Kramer *op. cit.* 158, 162 note 6, 168 note 42, 186 note 5, 201.—Masterpiece: *Analytical Index to the Series known as the Remembrancia, A.D. 1579-1664* (Lond. 1878) 99; Unwin, *Gilds* 265 f., 347 f.—Etc., etc.

handicraft as a whole, it would have found itself confronted with other great problems, above all with the purely technical problem of laying down methods of production. This particular task had always been an important department of the gilds' activity, wherever they existed, and it was the basis of their importance as agents of state control. The state thought that it required the machinery of the gilds for this task even in England, and that was precisely its reason for encouraging the introduction of new gilds for a very long period.

The gilds' place in local government

Finally we must not overlook the part played by the gilds in local administration. There was certainly no definite gild organization extending over the whole country, but in many places municipal administration was built up on a gild foundation. Until the abolition of the old local government system in the 1830's, citizenship in London, which gradually developed into the greatest port and commercial centre in the world, was exclusively confined, apart from a few honorary freedoms, to the eighty-nine gilds or companies. Admission to them was obtained by birth, apprenticeship or purchase, and conditions were more or less similar in other towns. At least in twenty other towns was there some kind of close association between the government of the town and the gilds, including the cities of the two northernmost counties with such important towns as Newcastle and Durham, as well as for instance Sheffield and Coventry. Besides this, it occurred that apprenticeship in a gild enabled people to obtain burgess rights, even where there was no longer any connection between the handicraft organizations and the town government.[23]

Clearly this connection must have had repercussions on industrial control as practised by the gilds. And so in many cases it was only with the reform of municipal administration by the Municipal Corporations Act of 1835 and the corresponding Act for Scotland of 1846 that the final blow was dealt to the actual importance of the gilds in economic life. In England as on the continent, the gilds could not disappear without altering the whole administrative structure. But it is necessary to add that their connection with municipal administration was not the chief reason for their influence. For this administrative relationship existed only in the smaller part of the corporate towns. Moreover, many gilds had undergone such internal transformations well before the 19th century that only their external form really remained.

[23] Webb, *Manor and Borough* I 186, 188, 189, 297 f., II 495 ff., 579f.et *passim.*

It was perhaps more important that in many cases burgess rights were acquired simply by a seven years' apprenticeship without further ado, irrespective of whether it led to membership of a gild as such or not. Political franchise was also often made to depend on apprenticeship and this was cited in the House of Commons in 1814 as a ground for not abolishing the apprenticeship clauses. Nevertheless they were in fact abolished, eighteen years before the Reform Bill and twenty-one years before the Municipal Corporations Bill. It follows that even this connection with constitutional rights was of limited importance to the old order in industrial regulation.[24]

The treatment of rural industry

English craft gilds as purely urban organizations experienced the same difficulty as was found in the previous chapter to have existed in France, a difficulty in fact which was apparently even older in England. It consisted in the fact that handicraft passed beyond the jurisdiction of the city and so did not remain susceptible to the control of the city gilds. This was partly due to the filling of the suburbs with handicraftsmen and partly to the spread of industry in the country proper. There then remained only two alternatives, if the gilds were to be used for the regulation of industry. Either urban industry carried on beyond the bounds of the cities would have to be suppressed, or the gilds would have to spread into the country. The former would have involved an attempt to maintain the economic supremacy of the towns in spite of the spontaneous tendency of economic life to overcome it. The latter would have implied the formation of a national gild system. Although both were attempted, neither yielded appreciable results; and this doubly negative consequence became very important.

The measures adopted against the diffusion of industry through the country held good especially for the most important branch of all, the cloth industry, whose remarkable diffusion over rural England is amply documented from at least the beginning of the 15th century. At the beginning of the 16th century, most of the weaving industry already appears to have withdrawn from the cities. It is then only natural that legislation was initiated against rural industry from a very early date. But it is also

[24] See e.g. for England Kramer, *Gild Studies* 95 note 159, 139, 140, 174, 180 f.; Webb, *Manor and Borough* II 583 and note; Holdsworth VI 337.—For Scotland: Cunningham I I [8] 323 note 1.—Statutes: see below, note 85.—Parliamentary debate of the year 1814: *Hansard's Parliamentary Debates* XXVII 569, 570.

significant that this legislation soon ceased and did not go beyond the 16th century, after having been finally codified in a series of laws under Elizabeth's immediate predecessors.

Their clauses were guided by the same spirit as the Elizabethan Statute of Artificers, in so far as they did not merely consider the municipal master-craftsmen, but also took account of agriculture and its requirements. Thus one of these laws (1557/8) explained that the cloth manufacturers "do not only engross divers ferms and pastures into their hands, displeasing the husbondman and decaying the ploughs and tillages, but also draw with them out of city, burghs and towns corporate all sorts of artificers[55]."[25] The laws are very significant in so far as they indicate a sincere desire to call a halt to the exodus of industry from the towns and in general to prevent the formation of larger enterprises especially in rural areas. It is true that the resistance was weaker against those powerful urban "merchants[55]" who employed rural weavers; the law did not place such great obstacles in their way as it did in those cases where the urban masters themselves had to be protected from extra-urban competition. But the measures against rural industry, such as they were, prove that the tendency of legislation in this sphere, in spite of everything, was no less medieval in England than anywhere else.

The important thing, however, is the extent to which legislation yielded before *a. fait accompli.* Rural industry was explicitly recognized in all places where it had existed a certain number of years and the Act of 1557/8 went so far as to permit all existing rural workers to carry on with their work. Still more important, the counties in which it was most widespread were generally excepted from the scope of the acts. Lastly, even this legislation was not practicable. It was relaxed under Elizabeth in 1575/6, and James I[5]s last Parliament in 1623/4 made a clean sweep of this as of many other acts of interference with individuals. There were counterparts in other spheres, but on the whole it is not wide of the mark to consider these legal invasions so fairly negligible in their effect on actual development.[26]

[26] 4 & 5 Phil. & Mar. c. 5 §21. The same idea is expressed already in 25 Hen. VIII c. 18 (1533/4) and the motive is given in a later statute, 18 Eliz. c. 16 §3 (1575/6).

[26] Hen. VIII c. 18 (1533/4); 2 & 3 Phil. & Mar. c. 11 (usually called the Weavers' Act, 1555/6); 4 & 5 Phil. & Mar. c. 5 (1557/8) §§21, 24, 25; 18 Eliz. c. 18 (1575/6); 21 Jac. I c. 28 (1623/4) §11—as a parallel illustration 14 and 15 Hen. VIII c. 3 §7 (1523), which reserved dyeing and finishing to the City of Norwich and its suburbs.—Particularly antagonistic to rural industry was the statute 5 & 6 Ed. VI c. 24 (1551/2) concerning the hat and coverlet

English writers of the 16th century generally shook their heads over the migration of the woollen industry from the towns, which makes the slow retreat of legislation before the onward march of the new economic forces all the more characteristic of the course of events in England. They fully realized how different continental conditions were; and the consciousness of this difference is expressed in a passage from a well-known dialogue between the heralds of England and France, dating in its English version from the middle of the 16th century. The author puts the following words into the mouth of the English herald: "If our clothiers were commanded to enhabit in towns, as they do in France, Flaunders, Brabant, Holland and other places, we should have as many good towns in England as you have in France and cloth more finer and trulier made, notwithstanding your brags."[27]

As it was difficult to confine the old urban industries within city walls, the problem was how far the gilds could be used for the control of industrial production and domestic trade in all places to which they had migrated. Certainly many attempts were made to use the gilds for this purpose.

In England as in other countries, the first task was to deal with handicraftsmen who had settled in the suburbs either to escape the yoke of the gilds or because they were denied admission to them, as was the case with foreign immigrants; as far as I know, independent organizations of suburban craftsmen did not exist in England as they did in France. Particularly in London, but also in other English cities, the attempt was made more often than in France to extend the gilds' authority to a certain area beyond the city. The area would normally form a belt of three miles

industry in Norwich and the rest of Norfolk. According to the clauses in this statute no one was to practise the industry outside the city or in general without the permission *of* the officials of Norwich, with the exception of one single place. But it appears that the statute was not revived.—In the literature the question (apart from the last-named statute) has been eagerly discussed; see particularly Ashley §45 (II[4] 232-5); Lohmann 24 ff., 30 ff.; Unwin, *Industrial Organization* 88-93 and *Studies in Econ. Hist.* 189 ff., 318 f.—On the extension of rural industry in earlier periods, see also Unwin, *Studies,* etc. 264 and Heaton 59.

[27] J. Coke, "The Debate between the Heralds of England and France, 1549" *(Tudor Econ. Docs.* III 6, 8); "How the Comen People may be set to work an Order of a Comen Wealth" ("Drei volkswirtschaftliche Denkschriften aus der Zeit Heinrichs VIII," ed. R. Pauli, in: *Abhandl. d. Ges. d. Wiss. zu Gdttingen,* XXIII, Gott. 1878) 55; [J. Hales], *A Discourse of the Common Weal of this Realm of England,* ed. E. Lamond, 1549 (Cambr. 1893) 130f.; Leake's "Treatise of the Cloth Industry," 1577 *(Tudor Econ. Docs.* III 224).

width round the town, sometimes more and sometimes less. This regulation was possibly effective in some cases, but its ineffectiveness is, to say the least, much more frequently in evidence. Next, efforts to include the suburbs within the scope of the monopolistic companies under the Stuarts (especially in 1637) achieved no practical result. What had been achieved by the end of the 18th century is summarized in a passage of Adam Smith's, in which he is not concerned with proving the failure of the legislation, since he does not even allude to it, thereby making it the more patent: "If you would have your work tolerably executed, it must be done in the suburbs where the workmen, having no exclusive privilege, have nothing but their character to depend upon, and you must then smuggle it into the town as well as you can."[28]

But the most difficult task was not to get rid of the suburban craftsmen with the gilds' aid, but to develop the gilds as a means of controlling the much more widely diffused rural industries; and various solutions were put forward.

It is characteristic of the early toleration of rural industry in England that there had been medieval attempts to set up supervisory bodies with members recruited more or less equally from urban and rural craftsmen. This occurred in different forms in the Norfolk woollen industry around the middle of the 15th century and was revived there after the Restoration. Occasionally actual companies of this kind were organized, especially under the Stuarts. Companies in different parts of Suffolk were "incorporated" in the reign of James I (1610 and 1619), that is, they acquired legal status; and the two most important textile cities of the county were taken as the centres. Similar conditions obtained in Essex and Norfolk. About the same time (1623/4) the Hallamshire iron industry was incorporated actually by Act of Parliament, although here there existed a much older organization which has survived to the present day. An ambitious but unsuccessful endeavour was made in 1625 under the early Stuarts to create local organizations in each of the thirty-two

[28] Instances of enlarging the gilds' territory: 14 & 15 Hen. VIII c. 2 (1523); 5 Eliz. c. 8 (1562/3) §§14, 32, 33; 8 Eliz. c. 11 (1565/6) §3; 1 Jac. I c. 22 (1603/4); Unwin, *Gilds* 161 ff., 244 f., 249 f.—The attempt to organize the suburban masters of London (1637): *Index to Remembrancia* (see above, note 22) 227 ff. and the reference given there to the *Calendar of State Papers, Domestic*.—The inefficiency of the Legislation: Adam Smith, *Wealth of Nations*, bk. 1, ch. 10, pt. 2 (ed. E. Cannan, Lond. 1904 I, 131); Unwin, *Gilds* 346; Kramer, *Gild Studies* 201 f.

counties for the manufacture of lighter cloths—the "New Draperies". In the year 1662/3, in Charles II's reign, there was a rather more efficient plan to organize the woollen industry in the West Riding of Yorkshire around Leeds as a "perpetual" company. It had the same character as the older organizations, i.e. the state's own officials—the J.P.s—were to be included in the corporation together with the woollen manufacturers chosen equally from the town and its environs.[29]

The much more customary procedure, similar to the practice in the suburbs, was to allot a large territory to the gilds in a particular town for purposes of supervision—an interesting tendency although little came of it. Some of these attempts may be briefly summarized.

It is difficult to decide in which cases the extension of the scope of the corporations aimed at the suburbs or, instead, referred to rural industry in the proper sense of the word. But the assumption is that it certainly referred to rural industry when the radius outside the town was ten, twelve, fifteen or even twenty-four miles; and that was common. Moreover there were frequent instances of the corporate gilds of a particular city being given definite control over particular districts, larger or smaller; and as early as the 14th century, the powers of a number of London companies were extended more or less completely over the whole country. Another London company obtained similar authority in the second half of the 15th century. The new hosiery industry's organization, initially located in London, but gradually transferring its headquarters to Nottingham, secured the privilege of regulating the industry in the whole of England under Cromwell, and this was confirmed in 1663 under the Restoration government. Much more doubtful was the position of the companies which were created by Charles I and were granted monopolies or rights of control over the whole country; this policy and the organization which it entailed was swept away by the Puritan Revolution. In 1542/3 under Henry VIII the textile masters of York were granted the right of supervising the industry in the whole of North England, principally that is, in Yorkshire where rural industry was growing apace. Finally there were repeated attempts

[29] Norfolk: 20 Hen. VI c. 10 (1441/2); 23 Hen. VI c. 3 (1444/5); 7 Ed. IV c. 1 (1467/8); 14 Car. II c. 5 (1662).—Suffolk: Unwin, *Studies in Econ, Hist,* 283-6.—Hallamshire: 21 Jac. I c. 18; Lloyd, *Cutlery Trades* Ch. 5.—Yorkshire: 14 Car. II c. 32; Heaton 232 ff.—The earlier project: Unwin *op, cit,* 293; Heaton 219 (this appears to have included *only* the Justices of the Peace).

at binding rural manufacturers to bring their wares into the cities for purposes of control.[30]

With the exception of the Hallamshire Company for the manufacture of iron, incorporated in 1623/4, the origin of which was much older than its recognition by the state, all attempts at bringing rural industry under gild control appear to have been even more unsuccessful than the efforts to regulate handicraft in the suburbs. Gild influence could not be extended beyond the cities. Complaints against the general ineffectiveness of legislation were particularly rife in those areas which were entirely without gilds. This largely occurred, as on the continent, even in the corporate self-governing cities (' 'cities, boroughs and towns corporate"). In their researches into the last three centuries of the history of the two hundred of these cities that existed in 1689, the Webbs have discovered traces of gilds—whether sharing in municipal government or not—in only one-fourth of them, although it may be presumed that some of the others had gilds at an earlier date. Included in the three-fourths is e.g. so old a city as Cambridge. Gilds were seldom to be found in cities other than of this sort, i.e. in non-autonomous "market towns". This may have been an even more important delimination than the impossibility of reaching rural industry. The recognition of this led, e.g. to the incorporation of Leeds, giving it autonomy in 1626, for the purposes of securing control over the woollen industry; and it immediately set out to achieve its end by establishing gilds. There is a close parallel between this and foundation of cities in Sweden by Gustavus Adolphus during this period in order to put an end to the practice of rural trading. But in England this sort of thing was exceptional and it is precisely for this reason

[30] Examples: 10-mile area: 13 Geo. I c. 24 (1726); Ashley I I [4] 29 note 80; Unwin *Gilds* 244.—12-mile area: Heaton 28 note 2.—15-mile area: a charter of 1568/9 quoted in 12 Geo. I c. 35.—24-mile area: 4 Ed. IV c. 8; 7 Jac. I c. 14. —For the whole country: Unwin, *op. cit.* 79 f., 164 f.—On the hosiery industry: *Journals of the House of Commons* X X V I 593, 604 f., 615, 620 f., 624, 628, 779-94 (cp. J. D. Chambers, "The Worshipful Company of Framework Knitters (1657-1778)": *Economica* I X, 1929, 303-6).—North England: 34 & 35 Hen. V I I I c. 10 (Coverlet Act); Heaton 28, 33, 53 ff.—Examination in the cities 2 & 3 Phil. & Mar. c. 12; 4 & 5 Phil. & Mar. c 5 §14; 39 Eliz. c. 20 §11; 43 Eliz. c, 10 §3; 12 Car. II c. 22 §2; 14 Car. II c. 5 §9; cp. Unwin, *Studies in Econ. Hist.* 273.—Companies of Charles I: Price, *Patents of Monopoly,* particularly 37-40; Unwin, *Industrial Organization* 164-71; Cunningham §197 (I I [8] 305 ff.).—The company creations of the earlier Stuarts have now been studied from a slightly different angle: F. J. Fisher, "Some Experiments in Company Organization in the Early Seventeenth Century" *{Economic History Review* I V, 1933, 177-94).

that the confinement of gilds to corporate, self-governing cities was so very important.[31]

Whether because of the defects in the gilds or not, it is certainly a fact that industrial initiative, in so far as it did not remain in the country, arose essentially in the new non-corporate cities; which proves that there could have been no possible connection between the gilds and the new industrial development. And this point is no less important because obvious. There exists an early attempt at portraiture of the type of inhabitant of such a "market town", showing how strongly he could be distinguished from the traditional citizen. Thus in a description of Halifax, the Yorkshire textile centre, contained in a report to Cecil, Elizabeth's minister, the writer said (1588): "They excel the rest in policy and industry, for the use of their trade and grounds, and after the rude and arrogant manner of their wild country *[sic]* they surpass the rest in wisdom and wealth. They despise their old fashions if they can hear of a new, more commodious, rather affecting novelties than allied to old ceremonies. . . . It should seem that desire of praise and sweetness of their due commendation hath begun and maintained among the people a natural ardency of new inventions annexed to an unyielding industry." The picture is an apt illustration of the new type of entrepreneur to be found at the end of the 16th century in a town without gilds.[32]

Specific features

Finally there were several specific features in the English gilds contributing to lessen their effectiveness. One of them was the association of the most varied crafts in one and the same organization—a very common occurrence in England. It is obvious that control could be of little value when entrusted to such corporations.

[31] **On** the inefficiency of the control in the country, see below note 38.—Webb, *Manor and Borough* I 297 note 1.—Cambridge: Cunningham I I[3] 286; the city however had a general merchant gild as early as the beginning of the 13th century; see C. Gross, *The Gild Merchant* (Oxf. 1890) II 35 ff.—Leeds and the Regulation of the Yorkshire Industry under the Stuarts: Heaton 222-6.—Swedish parallels, cp. e.g. my paper "1500- och 1600-talens svenska stadsgrundningar" *(Historisk Tidskrift* XLIII, 1923). On the whole question, see Un win, *Studies in Econ. Hist,* 189 f.

[32] J. Ryder's "Commendations of Yorkshire" in an extract in Heaton 77.—In 1724 Daniel Defoe wrote in his book *A Tour through the Whole Island of Great Britain:* "I now began *to* approach the town of Halifax; in the description of which, and its dependencies, all my account of the commerce will come in, for take Halifax, with all its dependancies, it is not to be equalled in England" (Everyman's Library, Lond. no date, II 197). The city in the middle of the 18th century was typical of the new kind of town: see an extract in Cunningham I I[3] 322 note I.

Then there was the Custom of London according to which the completion of apprenticeship in one craft gave the right to practise in any other. In London itself the municipal government attempted to exclude small crafts from making use of this right and succeeded to some extent; but no more than that, at the time of the great municipal reform in 1835, *the* Custom of London still persisted in more than half the number of cases reviewed. And despite its name, the Custom of London was to be found in a large number of provincial towns. A few examples will suffice to prove how varied the offshoots of this practice could be. A member of the goldsmiths' gild in London called a whole family of stone setters (paviors) to life, all of whom belonged to the goldsmiths' organization. In 1671 these "goldsmith-paviors" were thirty-nine in number, as against only fifty-two stone setters in their own gild. A confectioner who wished to become a freeman of Newcastle in 1685 was allowed to choose a gild, and like the London stone setters, he chose the goldsmiths. Thus the attempt to bind newly accepted apprentices to their own professional bodies was a failure. Above all, the chances of effective professional control was thereby rendered very difficult.

Thus there were certain traits in the English gilds which make it easier to understand the exceptionally early decline of the old industrial code in England. It is much more difficult to decide how far specific capitalist factors contributed to this decline, particularly the early incursions of merchant entrepreneurs in the craftsmen's own organizations, although they presumably helped in hastening it, once the new economic forces were set in motion. Finally the policy of Elizabeth and that of the older Stuarts, especially Charles I, were also calculated to undermine the position of gilds, for they created in the most varied crafts monopolist privileges in favour of courtiers and other outsiders.[33]

[3a] Miss Kramer's second treatise, which I have rather arbitrarily quoted as *Gild Studies,* is in its first half a fully documented outline of the association between distinct handicrafts within English gild corporations. Miss Kramer repudiates the conclusion—conclusively to my mind—which Unwin drew in the first of his works, *Industrial Organization,* about the power of trading capital over the handicraft organization.—For the occurrence of the Custom of London outside the capital and the results on the efficiency of the gilds of the various characteristics of the system, see in particular Miss Kramer's book 132 ff., 165-73. The conditions in London itself: Unwin *Gilds* 341-44. Further examples in the *Index to Remembrancia* (see above,note 22) e.g. 103, io8f.; a further example Unwin *Ind. Org.* 129.—The policy of monopolies and its tendency to transfer responsibility for production and control from the hands of the craftsmen to the courtiers is illustrated, among others, by the otherwise fairly divergent descriptions of Price, Unwin and Cunningham (see above, note 30); cp. also **next section.**

4. JUSTICES OF THE PEACE, PATENTEES AND THE CENTRAL GOVERNMENT

Justices of the Peace

By the creation of that unique English constitutional institution, the Justice of the Peace, England was provided with assistance of a different kind from that afforded by the gilds. The Justices of the Peace were the agents of unified industrial legislation.

The great advantage of the justice of the peace over the gild functionary was that the former was not limited in his activity to the towns but was to be found over the whole country. The consolidated monarchy, particularly from the time of the early Tudors, increasingly transferred the work of enforcing the numerous industrial statutes to the justices of the peace. This was partly due to the desire to make use of those people whose appointment lay with the monarchy; but necessity too demanded the use of executive bodies outside the corporate towns. It became, therefore, a question of fundamental importance how far the J.P.s were in a position to fulfil such tasks and in what spirit they carried them out.

The ability of the gilds to apply the industrial code depended upon the egoistic or altruistic interest of their members in upholding the prescribed rules for their respective trades. The J.P.s, on the other hand, could have no such interest in the activities which they had to supervise. Their office presupposed a public spirit, an active feeling for law and order among the leading spirits in every county. The justices proved most useful in regulating conditions of agricultural labour and in poor-law administration, and here their position was certainly analogous to that of the gild officials. In other words, they acted largely in their own interests as land and property owners. In a sense this held good even more widely where the justices, or the corresponding town functionaries, who were to administer industrial regulations, were themselves employers. But it was precisely here that the danger of abuse was particularly great. With regard to the field which concerned us in the first place, however, neither the one nor the other was the normal situation; for industrial problems were not much of a personal concern to the majority of the justices. Here their position on the one hand guaranteed a high measure of impartiality, but on the other hand an active interest in their duties could not very well be expected of them.

Justices of the Peace were unpaid. It is not easy to say how

far they recouped themselves by accepting bribes. Allegations to that effect were not absent. Thus, in the year 1601 a speaker in the House of Commons stated: "A justice of peace is a living Creature that for half a Dozen of Chickens will Dispense with a whole Dozen of Penal Statutes"; and there is divers other proof of their corruption. Still writers who have thoroughly gone into the conditions consider this fairly exceptional, particularly in rural districts. The weakness of the system lay not so much in this as in their indifference and carelessness. As early as the time of the first great manual to justices of the peace, first published by Lambarde in 1583 under the title of *Eirenarcha,* the complaint was made that justices were scarcely willing to devote even three hours of their time to the Quarter Sessions, where an innumerable number of county problems remained to be dealt with. It was more and more common for justices to meet in public-houses, enjoy an ample repast with alcoholic accompaniment and then carry on without any agenda whatever. Obviously the detailed control demanded by the industrial regulations could not be efficiently carried out in these conditions.[34]

The most important part of industrial control could not be dealt with at meetings at all, but demanded continuous inspection and supervision of artificers and traders. The effectiveness of the system was to this extent independent of the justices' work at Quarter Sessions and even of their personal activities as officials. Their subordinates were the vital factor, and what applied to the J.P.s themselves applied much more to their assistants. Lambarde already complained that these were almost illiterate and subsequently, when their tasks were multiplied tenfold and twentyfold, this deficiency must have made itself more and more felt. For the actual control there were certainly various new officials subordinate to the justices of the peace. Their office too was as a rule honorary, but in contrast to that of the justices it brought them very little social prestige. They were far from being civil servants in the modern sense. They could not devote full time to their duties even if they happened to receive some form of

[34] Quotation of 1601: *Tudor Econ.Docs.* II 235; cp. N. S. B. Gras, *The Evolution of the English Corn Market* (Harvard Econ. Studies XIII, Cambr., Mass., 1915) 240 f.—The activity of the justices receives special treatment in Webb, *The Parish and the County,* Book 2 Chs. 2-4; general conclusions, 343-9, 372 f.; for the rest, see in particular 424, 438 ff., 442, 480 ff.—Lambarde, *Eirenarcha,* extract printed in Holdsworth IV 541-68; quotation concerning the Quarter Sessions *op. cit.* 144, the one concerning the "scanty clerical staff" of the justices of the peace (see next paragraph in the text) 150.

payment or fee; and so their efficiency was no greater than might have been expected.[35]

As regards the control of industry itself, there were a large number of people among the controllers who were themselves interested in the particular industries, and of course not in the application of the legal regulations; and to appoint them controllers was to set a thief to catch a thief. Others again took little interest in their work, and only the strict supervision of their superiors, the justices, might have rendered it possible to achieve anything.

At the very heart of the regulation, that is, in the cloth trade, the legislation of Edward VI and Elizabeth, in the middle and second half of the 16th century, created a system of overseers and searchers appointed by the justices of the peace. This showed that the Tudors placed more faith in their ability than in that of the corresponding gild officials. The application of the system may therefore be illustrated from this field.

An Act of Parlaiment of the later Elizabethan period (1597/8) ordered the justices to appoint two, four, six, eight or any other number of supervisors for a period of not more than one year in every parish, village or city where cloth was produced. Although the rule only applied to the North of England, four years later it was extended to the whole country and was really only a repetition of a statute of fifty years before (1549/50). The supervisors were to go at least once a year into all houses where cloth was to be found and there to examine it. If certain specific conditions were not fulfilled they were to confiscate the cloth and to bring the matter up before Quarter Sessions. Otherwise they were to affix their seal and mark the cloth with its length and weight. Except in certain legally established cases, it was a penal offence to decline the office of overseer. The justices themselves were to have access to the various establishments in order to search for tenters, which were particularly frowned upon. They were to exercise their judicial powers in all cases where they themselves were not the defendants. If they were such, the matter was to

[35] "An Enquiry into the Management of the Poor" (1767), quoted Webb, *Engl. Poor Law History* I 274 footnote: "The offices of Churchwarden and Overseer of the Poor, especially in all large and populous parishes in cities and great towns, are generally filled up with tradesmen and mechanics . . . whose situation makes it almost impossible for them not to do things through favour and partiality. . . . Their principal care is to rub through it with as little inconvenience to themselves as they possibly can."—See also Miss D. Marshall, *The English Poor Law in the Eighteenth Century* (Lond. 1926) for the overseers, 10, 12, 58-73, etc., for the constables 233 f., 239 ff.

be dealt with at the ordinary Assizes. This indicates the danger inherent in making cloth manufacturers themselves justices of the peace, and it was a real one. The legislation was maintained in various forms for upwards of two hundred years and was applied even as late as the 18th century. It is noteworthy that Yorkshire cloth was again subject to the supervision of the justices as late as the reign of George I (1725), and there followed until 1765 several legal regulations of this kind which will be considered later on (see below 297). It was sometimes demanded of the overseers that they visit the manufacturers twice a day, a claim on their time which they could not possibly reconcile with their ordinary avocations.

The J.P.s' responsibility in other industries was rather less, for unlike the cloth industry they were not to the same extent situated in the rural districts. The leather industry however was subjected to a control by the justices and their subordinates rivalling that of the textile industry. To a smaller degree their activity extended to other handicrafts.[36]

The technical control of various branches of industry however was but a small fraction of the J.P.'s duties in the economic sphere. In addition there was the many-sided and involved supervision of all branches of domestic trade, and chiefly the trade in food and drink and the fixing of prices for these commodities; then came the application of the ancient but unusually persistent "assize of bread, beer and ale", the complicated prohibitions against forestalling, regrating and engrossing, referring to middlemen trading in corn, cattle and other necessaries, and in industrial raw materials, such as wool, woollen yarn, leather and oak-tree bark; finally the inspection of weights and measures. As regards weights and measures there was another official besides the J.P. and independent of him, known as the "Clerk of the Market" with a court separate from but of the same type as that of the justice. His office has already been discussed in Chapter I I I (see 115 above). In the course of time inspection of weights and measures appears to have undergone a

[36] The statutes in question, which represent a fairly arbitrary selection: 3 & 4 Ed. VI c. 20 §§4-10; 39 Eliz. c. 20; 43 Eliz. c. 10 §3; 11 Geo. I c. 24 §§12-15; 13 Geo. I c. 23 and c. 24; 11 Geo. II c. 28 §3; 5 Geo. I l l c. 51— Leake's work of 1577 quoted above (printed in *Tudor Econ. Docs.* I l l, see particularly 220) provides a good survey besides Lambarde. Of modern descriptions, Heaton's (particularly 139-44, 408-18) is the most complete.— For other industries besides the cloth industry: Lambarde's survey printed in Holdsworth IV 562 ff.; the leather industry: 2 & 3 Ed. VI c. 9 §17 and c. 11 §4.

variety of changes. Sometimes it devolved upon the J. P.'s immediate subordinate, the High Constable, who also had a separate court in every hundred. But in the 18th century it was transferred more and more to new, and this time paid, authorities. To return to the justices of the peace, it was naturally their task to enforce those measures regarding agriculture which aimed at hindering the growth of sheep rearing at the expense of arable farming, and among these measures was for instance the one prescribing that one calf be kept for every sixty sheep.

The control of the general conditions of labour and trade, looked at from another standpoint, may be seen to be closely linked to the regulation of production itself; and belonging to this branch of the J.P.'s work was the task of fixing wages according to the Statute of Artificers, an aspect of his work most prominent in present-day discussions. There was also the enforcement of the other clauses of the Statute of Artificers and of the subsequent laws, concerning the admission to various crafts and their interconnection. Supervision of the hiring of servants was the work of the High Constable. All these tasks moreover were closely related to one of the J.P.'s chief functions, even to-day one of the most prominent problems of local government, namely poor relief, which at the same time more and more became the concern of the parish also. For the J.P.s this was bound up with the struggle against vagrancy and the prison system. An exhaustive list of the J.P.'s various functions would be pointless, and it need only be added that so important an administrative task as the care of roads also devolved on the justice of the peace. It goes without saying that they had no less important work in the maintenance of law and order.[37]

Even this brief outline makes it clear that the state placed superhuman demands on the J.P.s, and that they could not possibly carry them all out. It is equally apparent that both the will and the ability varied greatly and that their control of industry was particularly variable.

That part of the administration which seems to have occa-

[37] I have not attempted in this account to bring out the often doubtful boundary lines between the work of the individual justices; of the justices sitting in pairs; the Quarter Sessions; and the Special or Divisional Sessions.— The description is mainly based on Lambarde, but partly also on Webb's book; for the Clerk of the Market on a document to be found in *Tudor Econ. Docs.* I 127 f. (1564) and a proclamation (1618) printed in Cunningham II[3] 94 ff.; on the application of the legislation on usury, see the introduction by Tawney to his edition of Thomas Wilson's *Discourse Upon Usury* (Lond. 1925) 162 ff.

sioned the most bitter complaints was precisely the control of industry. Some examples may be given.

A pamphlet of 1577 frequently quoted in these pages, Leake's *Treatise on the Cloth Industry*, stated after an enumeration of the various ordinances: "So that I conclude better laws in these points cannot be made, only there wants execution." And even later their application made no appreciable progress. John May, a pamphleteer, declared in 1613 that controlling inspectors were in many cases very scarce, in other cases they left the affixing of seals to the very people they ought to have controlled; it is the same situation previously shown for France. In still further cases the overseers contented themselves with weighing the bales of cloth without further investigation, even when the manufacturers put stones inside to increase the weight. There is other evidence of perhaps even greater interest, of the inefficiency of the justices. In 1630 two emissaries of the Merchant Adventurers Company, the principal cloth exporters, were ordered by the government, as a result of a complaint against the quality of the cloth exported, to see whether it complied with the regulations, and they took five years in the process. They found many abuses and met with angry resistance on the part of the justices of the peace when they attempted to remove the abuses. In Yorkshire the J.P.s were manifestly careless in enforcing the prohibitions against cloth-stretching.

Finally the general ineffectiveness of regulation appears to have been even greater in rural areas with only the justices and their officials to enforce them, while in the towns there were always the gilds. In two different pamphlets of 1656 and 1661, it was said that the overseers in the cities were useless and contemptible and were only the creatures of their superiors, who were often cloth manufacturers themselves; but outside the towns there was no control whatever, because no one took the trouble to propose suitable persons to act as representatives of the J.P.s and the payment involved was too low to make the post attractive. And if occasionally a J.P. did attempt to enforce the law, then, asserted these writers, their work was sure to be vitiated by the certainty that Quarter Sessions would let the offender go scot free.[38]

[88] Leake's "Treatise on the Cloth Industry" (1577), printed in *Tudor Econ. Docs.* I l l 220.—J. May, "Declaration of the Estate of Clothing" (1613): an extract in Lohmann 63.—The controllers of the Merchant Adventurers (1630): *ibid.* 63 f.—"The Golden Fleece" (1656) and "Essay for Recovery of Trade" (1661): to be found as extracts in Cunningham I I [3] 311 note 1.—Yorkshire: Heaton 141 ff.

There is no doubt therefore that J.P.s and their subordinates were ineffective in regulating production. Elsewhere they gained greater outward success. The researches of the last generation of English scholars have shown that the fixing of wages which devolved on the justices according to the Statute of Artificers was really attempted over large areas throughout the 17th and even in the first half of the 18th century, in many places still existing in principle right through the 18th century. The important question is by how much the wages thus fixed by the justices deviated from the wages which would have been paid without their interference. This question is by no means completely answered; the fact that the same scale of wages could in many cases be renewed decade after decade does, however, tend to make one distinctly sceptical. But with regard to their outward activity in this matter, a definite and sustained achievement on the part of the justices is undeniable, and this applies even more to poor relief, where they were apparently more successful than in any other part of their manifold economic and social activities.[39]

The J.P.s in any case never lived up to expectations. A casual remark of Bacon was very apt on this point. He was one of the most eager defenders of the policy of the early Stuarts, but on the occasion of starting a big charitable institution, at the height of the J.P.'s influence (1611?), he said: "There is a great difference between that which is done by the distracted government of justices of the peace and that which may be done by a settled ordinance subject to regular visitation." A system could hardly be permanent which demanded so much selflessness of its agents and did not pay them for their work, especially as the average Englishman of the 16th and 17th century was not exactly insensible to gain. "It must be a better Age than this we live in,

[39] On the fixing of wages, see in particular Tawney's Paper quoted above in note 2: on the application 328-32, on the result 555-63.—Heaton provides a general picture for the whole of Yorkshire in his article, "The Assessment of Wages in the West Riding of Yorkshire" *(Econ. Journal* X X I V , 1914, 218-35), partly repeated in his book here frequently quoted 110-14, 233 f., 313 ff.—For several other counties, particularly E. Waterman Gilboy, "Some New Evidence on Wage Assessments in the Eighteenth Century" *(Engl. Historical Review* XLIII, 1928, 398-408) and "Wages in Eighteenth-Century England" *(Journal of Economic and Business History* I I , 1930 626 f.). It is shown there that the actual wages paid in the 18th century were higher in the cases investigated than the wages which were fixed; the author however ascribes to the regulation of wages an influence in the direction of increased immobility of the standard of wages.—The Poor Law: Leonard, and also Webb, *Engl. Poor Law History* (cp. above, note 17).

that Publick Works find Managers Gratis", wrote Sir Francis Brewster, a well-known pamphleteer, in 1702 on the very same subject of the J.P.s and their direct subordinates, the constables.

In such conditions the solution nearest at hand consisted in making the penalties so to speak pay for themselves, by creating an interest in the work of control, remunerated with the money received in the form of fines. Charles Davenant writing about the same time as Brewster said (1699): "The Publick Good being therefore very often not a Motive strong enough to engage the Magistrate to perform his Duty, Law-givers have many times fortify'd their Laws with Penalties, wherein private Persons may have Profit, thereby to stir up the People to put the Laws in Execution." This idea led to important results in different directions.[40]

Privileged inspectors

Ordinary inspectors could be retained and given the right to collect money fines as an inducement to take action against infringements of the law. This was one expedient. Another was to induce the general public to act as informers by giving them a share of the fines imposed. Finally supervision could be left to those who occupied an intermediate position between public officials and privileged private informers, by giving them a monopoly right of supervision and an exclusive right to the fines. The latter solution became particularly enticing, if patentees could be made to pay a lump sum for their privileges; but at the same time this solution exposed the absurdity of the whole system. For if the office amounted to a regular occupation, the money income derived from fines would have to be enormous both to recompense for the trouble expended and to admit of payment for being allowed to take it. The explanation is that only in exceptional cases was regular work required. The patentees then were able to profit by confining themselves to such infringements as it was worth their while to pounce upon. The hordes of sycophants did nothing but this. One of them for example wrote in 1618 with engaging frankness that "having spent a great part of his means in soliciting and seeking after suits, he had at last hit upon one" in the supervision of English lead; and in

[40] Bacon, "Advice on Mr. Sutton's Estate," printed in *Letters and Life of Francis Bacon,* ed. J. Spedding IV (Lond. 1868) 252. The following piece in that collection is later than November 1611.—Brewster, *New Essays on Trade* (Lond. 1702) 47.—Davenant, *An Essay upon the Probable Methods of Making a People Gainers in the Ballance of Trade* (Lond. 1699) 55.

fact they usually found what they were seeking. For the procedure had this advantage, that it provided an income for the officials who farmed out these rights—in other words it was at the same time a purely fiscal measure.

From the fiscal point of view it could also be profitable to give out these powers in the form of pure privileges, without payment on the part of the patentees, that is, if they would otherwise have had to be compensated in some other way. Queen Elizabeth usually paid her servants and favourites with such marks of her royal favour which could be considered good value. She was very sparing in making direct payment, but made no bones about these. The differences between the various methods had little bearing on the relative efficiency of industrial regulation. In any case the state had no other means of controlling industry. It was forced to exploit purely private interests. At the same time "fiscalism" wormed its way into industrial control both through the farming out of rights of supervision and by making them into a pure, unpaid privilege.

Here too there is an exact parallel in France, and the outcome was identical. The exchequer and the private farmers gained far more by accepting substantial payment in return for legal exemptions than by supervising the actual application of the law. The whole system thus amounted to a tax on such offences as the patentees could discover. In England as in France this truly indirect taxation could be very obstructive for the carrying on of all sorts of occupations. Only their simplicity could have led some historians to believe that this could create order in economic life. Even a partial survey provides some idea of the true nature and scope of industrial regulation.

A list of 1603 contains 36 privileges of this sort; *inter alia* a privilege for the dispensation of the legal regulations regarding leather-tanning and for the licensing of tanners; another granting the disposition over all infringements and penalties for making charcoal for iron production; a third to allow the owner to collect all fines arising out of infringements of the prohibition against the use of the gig-mill in cloth finishing; a fourth privilege monopolized the giving of licences for keeping gambling-houses and practising unlawful games. A proclamation of 1621 abrogated a host of privileges, amongst them that giving the owner the right to dispense with the apprenticeship clauses, as well as with the prohibition against converting arable land into meadow. An order in council and a proclamation of 1639 revoked again some thirty privileges—"a commission for compounding with

sheriffs for selling under-sheriff's places", for compounding with offenders to make butter, tobacco, timber, etc., "a commission to take men bound to dress no venison . . . in inns . . . and taverns", the right of weighing, gauging, marking and sealing all sorts of goods, etc., etc. Even the collection of fines which were the perquisites of the Clerk of the Market was farmed out under James I, and if we are to believe the Parliament in 1640, the system of farming out led in this case under Charles I to much oppression; also the right to act as assessor in his courts became a patent. Two people received in 1636 in addition the privilege during thirty-one years of fixing wages and supervising technical regulations in the cloth industry—that is, principally, to collect fines for infringement. The medieval cloth inspector, the aulnager (aulneger, ulnager), a name corresponding to the French *au(l)neur*, had long been a purely fiscal office. There are many examples showing that his seal on cloth had been sold far and wide as an ordinary commodity, but this did not prevent a new and similar office being created in 1594 for the New Draperies and in 1605 for other textiles. It became a valuable possession for the nobleman and his heirs in whose hands it remained for a long time. There were corresponding regulations for tin, lead, iron, coal, silk, etc. The Stuart companies mentioned above were often nothing but camouflage disguising the patents of monopoly which Parliament tried to eradicate, though it is true that also trading companies as well as other bona fide companies with different aims took over duties of supervision.

The system was typical mainly of the Elizabethan and early Stuart period, which marked the end of "fiscalism" as a force in English history. The system of favouritism and the corruption which prevailed at Court made it particularly detested by contemporaries. But these evils, which were caused by the circumstances of the time, must not blind us to the fact that it had also more deep-laid causes. A code making such enormous demands required bodies necessarily recruited from without, where they were not a regular part of the administration; and the patent privileges fulfilled a task in supplementing this deficiency to some small extent, although infinitely less than they purported to do. This side of the phenomenon comes out when a parallel is drawn with conditions prevailing under a quite different political regime. For similarly the lack of public bodies for public functions gave rise in the 18th century to the common practice of paying a lump sum to those private persons who took over public tasks. The farming out of functions belonging to social policy, such as

poor relief, prison administration and the treatment of vagrancy, has become especially infamous. Here a fiscal influence was absent, for the authorities paid for this work and private individuals accepted the payment, while Stuart methods were just the other way about. But still this solution too shows up the same fundamental weakness of the system, the lack of proper organs for the enormous task of mercantilist administration.[41]

The Stuart policy of welfare

Most of the previous illustrations of the J.P.s[5] activity and the new administrative organization are intentionally drawn from the period of the Tudors and the early Stuarts. For this period occupies a special position in the history of English administration, industrial regulation and social policy. It culminated in the period 1629-40 when Charles I reigned alone without a Parliament. This was the only time down to the middle of the 19th century when England had a really efficient central administration, represented in this case by the Privy Council; and certain aspects of the contents of the policy likewise did not find their counterpart until the 19th century. Never before or since did the justices of the peace have so strong a control over them and so conscious a central leadership. The weakness in the J.P.s' administration was never so inconspicuous. Even its similarity with French industrial regulation—with one single very important exception—happened to be stronger at that time than ever before or since. Finally, the period of the early Stuarts and in particular the reign of Charles I had important results on the later treatment of industry, when absolutism was given its final blow after the great political turmoil,

[41] Documents of 1603, 1621, 1639: printed in Price, App. C, O, Q, and R (145 ff., 166 ff., 171-5).—Clerk of the Market: Cunningham IP 94 note 2, 96 note 1; 16 Car. I c. 19 (1640).—Patent of the Year 1636: printed in Cunningham I I [3] 96 note 1.—Aulnager (e.g.): preamble to 5 & 6 Ed. VI c. 6 (1551/2); Leake's "Treatise" (*Tudor Econ. Docs.* I l l 219 f.); Sir J. Child, *New Discourse of Trade* (1669, edn. 1698*)* 3; Heaton 127 ff., 147 ff., 242 f.; Cunningham I I [3] 297.—Other privileges: particularly Price and Cunningham. —Statement of 1618: *Index to Remembrancia* (see above, note 22) 220.—Companies as Camouflage: a speech of Sir J, Colepepper 1640 (*Parliamentary History* II 656).—Elizabeth's Tactics: R. Naunton, *Fragmenta Regalia* (edited posthumously Lond. 1653; reprinted in *English Reprints* ed. E. Arber, Lond, 1870) 18, 50; the notice of James I of the 7 May 1603: printed in Price App. L.—The farming out of public functions: Webb, *Engl. Poor Law History* I 277-308, 383-7; *id., Statutory Authorities for Special Purposes* (Lond. 1922).—principally for other areas than are dealt with here; *id., The Parish and the County* 525; D. Marshall (see above, note 35) 131-40.—On the whole question, see besides these works: Holdsworth IV 321 f., 356 ff., VI 306, 332 *et passim.*

never to rise again. The nature of this unique economic policy directed from the centre well repays closer study.[42]

The most characteristic feature of the economic policy of the Stuarts and of the Tudors was the continual endeavour to aid the new classes of society who suffered from the new capitalist development, above all the weavers and the artisans generally, against the entrepreneurs and managers of industry and commerce, and also the agricultural population oppressed by the enclosures and sheep rearing. That was the most important difference between England and France, for the pre-revolutionary French never paid much attention to the "under-dog". This tendency in English policy had its roots in earlier times, and agreed with medieval ideas in so far as it was directed against economic and social innovations. The conservative or reactionary trend was thus all the more consistent. But at least with regard to the Stuarts, it must not be overlooked that the same elements which opposed the King's policy also voiced their opposition in Parliament. The Stuarts[5] policy thus attacked the parliamentary opposition in the economic as well as in the political field.

The novelty of these tendencies lay in the fixing of wages and the general treatment of entrepreneurs in the cloth industry. In the drafts of a bill of 1593 for supplementing the wage clauses of the existing law, etc., the avowed aim was already the raising of the wages of textile workers; and although this in itself was nothing new as it was also the object of the Statute of Artificers, the novelty was that the wage rates were expressly declared to be minimum and not maximum rates as they had been in all previous legislation. According to the drafts, the cloth manufacturers were to be fined a shilling for every penny below the prescribed rates, and if the wages they had paid till then were higher than that rate, they were to be maintained undiminished. Immediately on James I's accession in 1603/4, the principle of minimum wages was applied for the first time in an Act of Parliament, and the Stuarts consistently tried to uphold this principle. It was also stipulated in this act that cloth manufacturers were not to act as J.P.s for the purposes of wage-fixing. This clause was obviously intended to protect artisans against their employers.[43]

[42] In general: Holdsworth IV 70-105, VI 55-62.—Social Policy: Leonard (see above, note 2).—Tudor period: Lord E. Percy, *The Privy Council under the Tudors* (Oxf. & Lond. 1907).—Jas. Ps Reign: A. Friis, *Alderman Cockayne's Project and the Cloth Trade* (Copenhagen 1927) ch. 3.

[48] Draft of a Bill fixing Minimum Rates for Spinners and Weavers (1593): printed according to two different versions in *Engl. Econ. Hist.* (ed. Bland, Brown and Tawney) 336-41 and *Tudor Econ. Docs.* I 371-6.—Jac. I c. 6

For the rest, the central authority had to keep the dissatisfied and unwilling J.P.s to a strict enforcement of the industrial code in its entirety, the clauses concerning technique, wage-fixing, poor relief and last but not least the thoroughly medieval prohibitions against engrossing and middlemen, as well as against all kinds of usury. It has already been pointed out that the results were not those intended, but in any case the justices of the peace at that time were kept up to an activity which they had never before shown or later emulated.

It was an unusually wide "policy of welfare" which was pursued, especially in the years 1629 to 1640. In order to prevent unemployment employers were compelled to carry on in business even when it did not pay them. They had to keep wages high and were immediately thrown into prison if they showed disobedience. In one outstanding case a cloth manufacturer was kept in prison until he had paid three of his former workers twice as much as they asserted they had demanded of him, and until he withdrew his charges against them. According to a special decree landowners were to leave London during periods of depression and retire to their respective counties. For the purposes of poor relief the council formed a special commission with local committees and sub-committees. The J.P.s were to organize locally and to present a monthly report to the sheriff, the highest county official. Thorough control was to be exercised by the assizes which had to report to the king. Thus poor relief and the supervision of vagrancy were organized and connected with them, a most far-reaching regulation, including workhouses, migration and apprenticeship and above all an intensive policy of food control, whereby for instance corn was to be sold under cost price.[44]

To obtain a precise conception of this policy it may be well to describe one particular aspect of it in a little more detail, namely the measures taken against trading in food-stuffs. They

§§4 and 6.—Cp. a somewhat earlier reference to an infringement of the regulations by the Justices of the Peace in 39 Eliz. c. 20 §9 (1597/8); Jas. I's law repeated, for the rest, another law of the year last named (c. 12).—See also particularly the paper by Tawney quoted in note 2, 547 ff.

[44] This sketch is in general based on Miss Leonard's book, particularly chaps. 7, 9 and 12. It is true that the authoress harbours unlimited admiration for the policy, but this has not biassed the exposition of facts, and her results have hardly been modified by the research which has taken place after the publication of her book in 1900. The 1637 case: *Calendar of State Papers, Domestic, 1637*, 44, 70, 87 ff., 115. Lipson, who mentions this case (III 278), assumes that the workers spoke the truth and that the employers did not, and this is possible but certainly not proved.

are very characteristic since they were more specifically medieval than the rest of the economic policy although at the same time they were maintained in theory down to extraordinarily recent times. The underlying ideas were definitely urban—it was desired to prevent forestalling, that is the sale of foods on their way to the municipal market. This was related to the objection to regrating and engrossing which emanated from the same consumers' influence in municipal policy. Here, as elsewhere, municipal influence gained wider scope when economic policy passed over into state control. In England the measures were based on an Act of Edward VI (1551/2) which remained in force with several re-enactments for two hundred and twenty years and the principal clauses for as long as two hundred and ninety years, though a few amendments were made at the beginning of Elizabeth's reign (1562/3). The most important part of its application was embodied in the instructions, the so-called Book of Orders, sent by the Council to the local authorities when necessary. The Book of Orders was drawn up originally in 1586 and remained the standard guide until the Puritan revolution. As applied during the period of Stuart absolutism in the 1630's this policy took the following form.

The J.P.s were usually responsible for undertaking by themselves or by means of special juries, a complete inventory of the stock of corn in the hands of producers and dealers and for regulating its sale down to the smallest detail. They were to permit its sale in small amounts only, in specific markets, for such quantities as exceeded the needs of the locality or the limited allowances of the dealers. The compulsory use of the market was so strict that even the sale of small amounts to poor craftsmen and agricultural labourers who could not visit the markets was only allowed after permission had been given by the J.P.s. The "badgers", or the middlemen dealing in the import of foods into the towns, had always to carry a licence with them which alone gave them the right to trade. The licence stated how much and where they might buy and sell, etc. Generally speaking the buyers for the cities were subjected to a strict supervision; the Council even limited (in 1630) "export" from one county to another. The London bakers were allowed to buy in a radius of twenty miles around the city, Bristol obtained the right to buy in other markets, Gloucester, Exeter and London could buy in Cornwall, Tewkesbury in Pembroke, while Carmarthen and Portsmouth could buy in the Isle of Wight—a measure which had to be repealed in the southern counties in the following

year, it is true, by a declaration that the transport of corn was not prohibited between them. In the markets the dealers were not to begin their purchases until an hour after the opening of the market. Bakers and brewers who could not be refused the enjoyment of large quantities of corn were usually placed on the same footing as the corn dealers. Their production and prices were subject to a detailed and thorough control such as the medieval nature of this system demanded.

That this was earnestly intended may be seen e.g. from the records of the Somersetshire J.P.s in Quarter Sessions in the year 1630-31. The licences to corn dealers limited their freedom by allowing them the enjoyment of only two or three horses. Those denounced were people who had bought green crops, bought and sold corn within five weeks, and those who had regrated cheese, etc. But the firm resolve of those in authority to exact obedience is best seen in the proceedings of the Court of Star Chamber. In 1631 a person hailing from a town due south of London was found guilty by the court on a charge of increasing the price of corn by withholding stocks. He was made to pay a fine of 100 marks (£66§ sterling) to the king and £10 to the poor. In addition he was to be placed on the pillory at various points in London, bearing in his hat a placard with the inscription, "for enhancing price of corn"—in Newgate, then through Cheapside to Leadenhall and finally in Chelmsford.[45]

The J.P.s occasionally showed a tendency to oppose the orders of the Council, for their own interests as corn producers were often involved, but this policy corresponded on the whole to what the great majority considered right, and therefore found willing helpers. How far the corn trade was really susceptible to regulation by these means is an altogether different question which we do not propose to examine here. In other ways the justices were not only unable to carry out everything demanded by them, but were even able sometimes to offer successful resistance. Especially was this true of the regulation of the cloth industry and the measures in the interests of its workers. As far as my knowledge goes there is not a single instance of the applica-

[45] Acts of Parliament: 5 & 6 Ed. VI c. 14 (1551/2) and 5 Eliz. c. 12 (1562/3); cp. note 90 below.—Book of Orders 1586: printed in Leonard 318-26, also in *Engl. Econ. History* (ed. Bland, Brown and Tawney) 374-80.—Regulation of the Corn Trade 1630-31: Leonard 150f. (The expression "export" is the authoress's).—The Somerset Quarter Sessions Records 1630-31 and the decision of the Star Chamber 1631: printed in *Engl. Econ. History* (ed. Bland etc.) 386 f., 391-6.—See also the rest of the documents printed in the two works quoted and in Gras *Engl Corn Market,* App. L.

tion of the minimum wage clause of the statute of 1603/4. In a 1619 edition of Lambarde's book, although in the text deviations from the wage lists are discussed without specifying an upward or downward direction, the marginal heading is (measures against deviation in) an *upward* direction. Also the regulation of cloth production on its technical side proved unable to overcome the opposition of the justices of the peace.[46]

The J.P.s attitude—their compliance in the first case and their resistance in the second—is comprehensible. It arose from the fact that by reason of their position as agents of local administration they represented the outlook of the local population. In the former but not in the latter case, the policy completely coincided with public opinion. An efficient administration should be able to put even unpopular measures into effect, but for such a purpose an institution like that of J.P.s could not be used.

Results

This fact would however not have prevented English industrial development or English economic and social development in general from taking a different course, had the Stuarts remained in power; for their capacity for interfering with social life was unique in English history. Whether that would have been useful or detrimental is a question for everyone to decide for himself; but the probable course of events may be determined in a rather more objective manner. There would have been a closer analogy with continental and particularly with French development. England might have secured a stronger central government than that of the next two centuries, but there might also have arisen those very fiscal influences which were now spared the country. The two particularly doubtful points are, first whether a local administrative mechanism comparable to that of, say, France, Sweden and Brandenburg-Prussia could have been evolved, secondly whether the sympathy with the mass of the people against the new class of entrepreneurs on the part of the rulers would have been maintained, if presuming that the political grounds

[46] In the first respect, see on the one hand the quotation from the *Acts of the Privy Council, 1596-1600* in Lipson II 430 f., on the other hand, e.g. the following letter of a Yorkshire J.P. of 1630: "We have followed those directions given us concerning badgers, millers etc., a sort of people that did much raise the prices of corn; but I hope we have prevented it for the future, some of them being bound to the Sessions, other overlooked with a strict eye that they offend not as they have done" (printed in Leonard 340). This should be compared with the unwillingness to apply the prescriptions for wages and technique in the cloth industry on the part of the J.P.s of the same county: Heaton 112, 141 ff., 234.—Lambarde: printed in Holdsworth IV 565.

for the policy had disappeared with the victory of the royalists over the parliamentary party. If really both these features had become characteristic of England, it would have occupied a special position in the economic history of Europe down to the Industrial Revolution.

These speculations help to provide the background or, if you will, the photographic negative for the actual development. For, as everyone knows, in reality royal absolutism was overthrown, the Privy Council never again obtained the position which it had before 1640. At the Restoration no serious attempt was made to administer the country without Parliament, and at least hitherto nothing is known of a conscious attempt by the Privy Council after 1660 to make use of the justices of the peace as efficient organs of a consistent policy.[47] There followed within a generation the revolution of 1688, and the foundations of a strict regulation as it obtained before 1640 were after that completely undermined.

Cunningham has called the period between the revolution of 1688 and the publication of the *Wealth of Nations* in 1776 the period of "Parliamentary Colbertism". From some points of view this designation is comprehensible, particularly as regards foreign trade and colonial policy; but his description requires some additional comments.

In the first place it was a Colbertism without a Colbert. Cecil, Strafford and perhaps also Laud may possibly be compared with Colbert, but a man like Shaftesbury, one of Colbert's contemporaries and the greatest political mind of the Restoration period in the sphere of foreign trade and colonial policy, stood with one foot in the new world, the world of "enlightened" ideas, for he was a friend and spiritual fellow of John Locke. After 1688 there was less than ever anyone in England to be compared with Colbert. Secondly—and this was the vital point—England after the Restoration lacked the whole system of general administration which in France had come to full flower under and through Colbert. Without his intendants in every part of the country, the French minister could not have kept the machinery at work for a single day. England on the other hand could not boast of any better executive agents in the counties than the Lord Lieutenants, who at the best corresponded to the French provincial governors, whose general uselessness and particular inefficiency for the purposes of the new state regulation had precisely caused the far-sighted French statesmen to create and

[47] Cp. Holdsworth VI 302, 333.

support the institution of intendants. Thirdly, neither before nor after 1688 was there in England a paid *ad hoc* bureaucracy to supervise the enforcement of industrial legislation which Colbert had been at pains to create in France. During this, while France built up a new bureaucracy under centralized control both for administrative work in general and industrial regulation in particular, in England the administration which had served the older Stuarts was on the contrary breaking down and nothing was being set up in its place. This explains the development of English industrial policy and is therefore an important factor in the general European development of economic life. In other words, England before the 19th century acquired no civil service—no state-paid officialdom.

Comparisons between England and France are always instructive. But as regards the development after 1660 and 1688 they are so because of the peculiar outstanding contrasts. The course of events down to the Civil War wears a different complexion; till then the agreement between English and French internal development was usually greater than the disagreement.

5. THE ESSENCE OF THE ECONOMIC REGULATIONS

Before dealing with the factors of decline, it seems appropriate to summarize the content of English industrial regulations, although this showed few innovations as compared with the French.

Just as in other countries, the technique of manufacture in England was prescribed by the state and again just as in other countries the eyes of the officials turned primarily to the cloth industry. At least since 1197 the state prescribed the various dimensions of cloth, and continually new statutes appeared throughout the period that followed, really until the second half of the 18th century. These statutes referred to all the departments of technique, to raw material, dyeing, stretching, finishing, the tools of trade, the appearance and so on. Just as in France there were detailed rules concerning the various dozens of different kinds of cloth, their length, breadth and weight. Enactments against stretching with the so-called tenters were especially severe, as also against finishing with "iron cards" or "gig-mills'\ At the same time appeared rules for control, for the appearance of the lists, for the weaving of the crowned initials of the monarch and the name of the various workers, their addresses, rules regarding the various coloured roses according to the technique

of dyeing, and especially concerning various discs or seals of the controlling officials. At times there were added to these, distinguishing marks explicitly characterizing cloth as faulty. Similar regulations, more or less complete, were also applied in other branches of industry. The leather industry was a particular object of thorough treatment of this type, but few activities were overlooked, not even such branches of production as the making of feather beds and of wax and honey; thus e.g. the wax-melters were to have their initials cut out upon the cakes and makers and fillers of honey to have them burnt upon the casks in letters at least one and a half inches high.[48]

In theory, consequently, the whole of the policy which had everywhere on the continent been taken over from the medieval towns found its counterpart in England. Originally there was even the same avoidance of labour-saving devices; thus a patent from the time of the end of Elizabeth's reign was denied to Lee's revolutionary stocking frame. In 1623, the Privy Council commanded the breaking up of a needle machine and the destruction of all the needles produced therewith. This attitude however was retreated from later. Towards the end of the 17th century (1695/6) things had gone so far that the export of stocking frames was prohibited, on account of their beneficial influence on domestic production. This new attitude was expressed in the preamble: "a very useful and profitable Invention . . . hath

[48] From the acts on the cloth industry it may be enough to mention the following, leaving out all those which are earlier than 1550 and making no claim to completeness even for the following period: 3 & 4 Ed. VI c. 2 (1549/50), 5 & 6 Ed. VI c. 6 (1551/2), 5 & 6 Ed. VI c. 22 (1551/2), 4 & 5 Phil. & Mar. c. 5 (1557/8), 43 Eliz. c. 10 (1600/1), 4 Jac. I c. 2 (1606/7), 21 Jac. I c. 18 (1623/4), 12 Car. II c. 22 (1660), 14 Car. II c. 5 (1662), 14 Car. II c. 32 (1662), 22 & 23 Car. II c. 8 (1670/1), 10 Anne c. 26 (1711). Of the special legislation for individual counties mention may be made of 35 Eliz. c. 10 (1592/3) for Devonshire. But much more important was the Yorkshire legislation, a relatively early law of 39 Eliz. c. 20 (1597/8) and also 18th-century legislation: 11 Geo. I c. 24 (1725), 11 Geo. II c. 28 (1738), 5 Geo. I l l c. 51 (1765) and others. Of the numerous modifying statutes, those allowing greater freedom to special kinds of cloth are interesting, for instance in the time of Elizabeth and James I—27 Eliz. c. 17 and c. 18 (1584/5) 35 Eliz. c. 9 (1592/3) and 3 Jac. I c. 17 (1605/6).—On laws concerning dyeing (cp. text below): 23 Eliz. c. 9 (1580/1) and 13 Geo. I c. 24 (1726).—Lohmann's and Heaton's treatment of the general legislation on the cloth industry are the most important.—The various branches of the leather industry were subjected to a perhaps even more detailed regulation through a long series of acts culminating in 5 Eliz. c. 8 (1562/3) and 1 Jac. I c. 22 (1603/4). The latter contains 52 clauses. On feather beds: 5 & 6 Ed. VI c. 23 (1551/2).—On wax and honey: 23 Eliz. c. 8 (1580/1).

been lately found out for the better and more speedy making and knitting of Worsted and Silk Stockings, Waistcoats, Gloves and other wearing Necessaries, whereby great Quantities are wrought off in a little time". The capitalist tendency had so far gained the upper hand over the medieval order.

But with regard to measures which were taken at the expense of the consumers, everything remained the same. England added a few special features to the usual policies favouring the cloth industry which perhaps even more than in other countries was treated by the state as a favoured child. After a sorrowful petition by the Company of Cappers for the whole kingdom it was decided in 1571 that every person both in city and country was to wear an English woollen cap on Sundays unless he left his place of domicile; exceptions were permitted only for maidens, ladies and gentlewomen as well as for noblemen and some gentlemen. A similar regulation concerning burying in woollens was imposed under the Restoration, and this one was maintained for a considerably longer time. In contrast to all the religious traditions which prescribed linen for burying, there was ordered again and again (1666, 1678, 1680—based on a model of 1662) that both shrouds and the coffin trappings should be made of wool. Then there was the same sort of legislation which we have already found on the continent, such as the prohibition of stuff buttons (1698), to which was added the prohibition (1709) against sewing round the button-holes with stuff, and finally also the enactments against Indian calicoes. Through these last-named measures the policy continued down to the second half of the 18th century, as has already been described in the previous chapter (see above page 174 f.)[49]

The previous chapter has also discussed the question of the extent to which the action against Indian calicoes took different forms in England and France. As a general conclusion it may be said that the difference was quantitative rather than qualita-

[49] Needle machine: Holdsworth IV 354 note 7.—Lee: *ib.* and Cunningham I I [3] 76 note 3.—Export prohibition for knitting machines: 7 & 8 Will. I l l c. 20 §3.—Woollen caps: 13 Eliz. c. 19, this law was preceded by one 1 Mar. st. 2 c. 11 §6 (1553/4) whereby everyone was forbidden to buy more than a dozen foreign hats and caps. Elizabeth's law was however repealed before the end of her reign by 39 Eliz. c. 18 §5 (1597/8).—Burying in woollen: proclamation of 1622 Cunningham IP 393 note 3, statutes 18 & 19 Car. II c. 4, 30 Car. II c. 3, 32 Car. II c. 1.—Cloth buttons 10 Will. I l l c. 2 amended by 8 Anne c. 11 (1709), 4 Geo. I c. 7 (1717) and 7 Geo. I st. i c. 12 (1720); cp. for France the prev. ch. note 41.—Measures against calicoes: previous ch. note 44.

tive, but that the quantitative difference was both great and important.

English regulation of the technique of production was always confined to a modest number of clauses. They lacked altogether the meticulousness of Colbert's industrial *règlements,* which he and his successors had acquired from the Middle Ages and had developed to an unprecedented degree. There could hardly be a greater contrast than that between an English statute of Elizabeth (1580/1) concerning the dyeing of cloth, consisting of no more than four sections, or another statute of 1726, containing only seven and, on the other hand, the gigantic instructions of Colbert concerning the technique of dyeing, with 317 articles. It was another aspect of the same difference that the English system largely retained the form which it had already acquired in the 16th century, while the French expanded many times its former size, and in the 17th century and later acquired the administrative organs for carrying out at least part of its policy. So far, the distinction between the development of both countries is partly explained in the character of the code of regulations; for although it did not rest on different fundamental principles, the application was different in the two countries.

However, a closer examination makes it possible to discover some small but symptomatic differences even in principle.

The most vital difference was that many important districts were set free from the application of the statutes in England, while in France nothing remained unregulated in principle, apart from purely accidental exceptions on subordinate points. Further, it was an important part of the English system, laid down finally in the reign of James I (1606/7), that all kinds of cloth could be produced everywhere, provided that the prescribed conditions were fulfilled. Local exclusiveness and disintegration was thereby avoided, as it occurred in the medieval system and as it was found in the fundamental presuppositions of the French *règlements.* Next, a comparatively large measure of toleration was to be observed in the fact that variations in the length of the cloth pieces were occasionally allowed if the weight was correspondingly increased. Complete freedom was allowed for the narrow Yorkshire cloths in the matter of length and breadth, though this not before 1738; in 1765, all prescriptions concerning the dimensions of Yorkshire cloth were repealed. There is further a certain symptomatic interest in the fact that English statutes were in some isolated cases unorthodox enough to pay attention to the taste of the consumers. As early as the middle of the 16th century

in 1548/9 the shoemakers were expressly permitted to manufacture shoes for the nobility and gentlemen as well as for their ladies "as their pleasure is to have them made for their money and to all other persons as they shall bespeak them". Even for certain simple kinds of cloth, the same statute of James I permitted that in future they "be made in such a sort as shall best please the buyer". Finally the penalties for infringement were limited almost without exception to the imposition of fines. The truculent French punishments were not to be found in England in these matters, only with a few exceptions in the regulation of foods.[50]

Few of these distinctions were of great importance in their direct effects; but all of them indicated a somewhat smaller willingness in England permanently to retain the existing system; and as far as this goes the final outcome is partly explained.

In domestic trade and particularly the trade in foods there was no other difference between English and continental policy than that which arose of necessity from the economic and geographical conditions. The policy described above (see 258 ff.) with illustrations from the later Tudor period and the latter part of the reign of Charles I was the culminating point of the application of the medieval municipal principles.

When middlemen in the trade in food-stuffs were attacked, this action was not based as in the Great War on the idea that special conditions demanded special measures, but on the medieval conception that the operation of private gain was a general hindrance in the provision of food for the nation. Thus the future Archbishop Laud declared with regard to the Star Chamber judgment of 1631 already mentioned "that this last year's famine was made by man not by God", a sentiment which found expression also in an ordinance issued the following year. But while all this was medieval, its importance was far greater than it could possibly have been in the medieval towns. For the towns would never have thought of making it more difficult to import necessaries of life which they themselves needed, and they never interested themselves in the trade in these foods which was outside their own provision or their own trade. On the other hand the Tudor and particularly the Stuart policy attacked the trade in foods in all its aspects and sought to place obstacles in its way more than the towns had ever done. That is why the English policy, just as the continental, worked in the direction of

[50] 2 & 3 Ed. VI c. 9 §9 (1548/9).—On the right to change the length of cloth: 4 & 5 Phil. & Mar. c. 5 §8 (1557/8); " Geo. II c. 28 §13 (1738); 5 Geo. I l l c. 51 (1765).—4 Jac. I c. 2 (1606/7) §§2 & 12.

local and provincial isolation instead of national unification. The limitation of "exports" from one county to another in 1630, treating the different counties as foreign countries to one another, was quite continental in its conception. The older legislation which was still current in the time of the Stuarts went even farther. In 1616 the Privy Council was forced to interfere by means of a circular to the judges against informers who wished to prevent merchants from supplying London with butter, cheese and other "dead victuals". The capital had according to reputable estimates increased its population four or fivefold in one century, and to provide her population with food would presumably have been impossible had the law been strictly enforced. But if economic realities sometimes made themselves felt, this did not divert the general tendency of economic policy.[51]

The policy regarding trade in raw materials, particularly wool, yarn, leather as well as bark, and also fuel, was equally medieval and based on similar principles. The wool trade was prohibited for middlemen, the so-called "wool broggers", by a whole series of enactments, of which the most important was one of the year 1551/2, similar to the basic statute concerning the trade in food. Exceptions were allowed only in special places and provinces by laws passed about the same time. An attack on the fuel trade dates from the same period (1553). It was assumed that even this trade suffered through middlemen and was therefore to be limited to direct sale to the consumers by the producers. The trade in woollen yarn was regulated by a very much older law. The

[51] Laud's statement 1631: *Engl. Ec, Hist.* (ed. Bland, Brown and Tawney) 393.—The proclamation of 1632: Gras 460.—Cp. also note 45 above (year 1630).—Interference of the year 1616: *Acts of the Privy Council 1615-16* 524.—London is said to have had 50 000 inhabitants at the beginning of the 16th century, 225 000 in the year 1605 and 535 000 in the year 1696: Gras, *Engl. Corn Market* 74 f.; but the figures are very uncertain. Petty *(Ec. Wr.,* II 539, 603) estimated a higher percentage of increase and a higher final total toward the end of the 17th century; W. R. Scott *(English, Scottish and Irish Joint Stock Companies to 1720*—following chapter note n — I I I 18, 24) suggests; 160000 for 1590 and 700 000 for 1636, but these figures seem impossible. Cp. Lipson I 249 note 5.—Another illustration of the tendency to disintegration is found in the treatment of Welsh cloth 1613 *(Acts of the Privy Council* 1613-14, 9, 34-40 etc.). On the basis of older legislation of a contrary tendency (8 Eliz. c. 7, 14 Eliz. c. 12) and finally broken up by Act of Parliament (21 Jac. I c. 9, 1623/4); the cloth dealers' gild in Shrewsbury was able strangely enough to maintain in this case the monopoly without any legal grounds down to the end of the 18th century (A. H. Dodd, "The Story of an Elizabethan Monopoly 1565--1823," in *Economica* I X , 1929, 203-9).—Unwin's views on the subject, both in *Industrial Organization* (187) and in several of his essays in *Studies in Ec. Hist.,* appear to me to be altogether sound in most cases.

purposeful policy of the later Tudors and early Stuarts attempted to infuse new life into these laws. A legislative proposal of 1593 wanted to oppose "divers evil disposed persons commonly called yarn Choppers or Jobbers of woollen yarn wanting the fear of God, and caring only for their own private gain, without having any regard of the maintenance of a common wealth, using no trade either of making woollen cloths or of any other thing made of woollen yarn[55]. The wool trade was subjected to regulation in the year 1616, but soon after a reaction set in and this legislation was largely abolished in the great "spring cleaning[55] undertaken by James I's last parliament in 1623/4.[52]

To sum up, principles of English economic regulation did not differ essentially from those of the continent, but even at this stage there appear certain though certainly weak signs of change which had already started to undermine the presuppositions of the regulations. The policy of the earlier Stuarts was to give this new spirit a strong political impulse and thereby to encourage the very forces which it was anxious to restrain. Had the antagonists of this policy read Goethe's *Faust,* they might have called it—from their own point of view—"a part of that force which always intends evil and always creates good[55].

6. THE ANTAGONISM TO MONOPOLIES AND THE COMMON-LAW COURTS

One of the most important forces in the development and in the later decline of English economic regulation was the treatment which Tudor and Stuart legislation received in the law courts. The attitude of the courts on their side was connected up with both purely legal and popular conceptions which had their roots deep in the past. These have not yet been subjected to a systematic investigation and would probably remain rather obscure even after such had taken place. For these reasons it is difficult-to evaluate the various factors. Several points, however, are certain. The practical application of the legislation was a little more consistent than most modern descriptions would have us believe.

[62] The following is only a selection.—Laws on the wool trade: 5 & 6 Ed. VI c. 7 (1551/2) with exceptions in 1 Ed. VI c. 6, 2 & 3 Phil. & Mar. c. 13 and others.—Laws on yarn: 8 Hen. VI c. 5 (1429)5 33 Hen- VIII c. l6 (1541/2). Laws on leather: 5 & 6 Ed. VI c. 15 (1551/2), 1 Jac. I c. 22 (1603/4) §§6 & 7, §14 (bark).—On fuel: 7 Ed. VI c. 7 (1552/3).—The repealing law: 21 Jac. I c. 28 §11 (1623/4).—The draft of 1593: in *Tudor Econ. Docs.* I 375.—Interference of the year 1616: *Acts of the Privy Council 1615-16* 624 ff. *et passim*; cp. Unwin, *Industrial Organization* i88f.

The problem is linked to two closely connected ideas or expressions, first, the popular word "monopoly", common to the whole of Western Europe, and secondly, the specifically English legal concept "restraint of trade", which has profoundly influenced both English and still more American developments during the last fifty years. These concepts must first be considered.

The essence of the conception "monopoly"

The word monopoly like so many other expressions, e.g. usury, has been so much loaded with contempt that its actual import has often been lost. Thus the author of an English pamphlet in 1645 rightly declared it to be "a word odious all the world over[54]" and the Marseilles chamber of commerce likewise stated in a circular of 1665 that monopolies were "an abhorrence to God and man[55]. Another writer, of the 158o's, stated that monopolies were avoided by all statesmen and all well-regulated communities. In other words, the use of the expression has suffered from the same defect as the term treason in the ironic answer in the epigram "treason doth never prosper; what's the reason? For if it prosper none dare call it treason[55]. The word monopoly has very seldom been applied to anything acceptable to a writer or speaker, so that its application has changed according to point of view.[53]

It is possible to start with the literal meaning of monopoly, as signifying economic activity which is brought into the hands of a single individual or enterprise. This literal definition, however, led to the greatest difficulty in deciding what a single enterprise was; and the next chapter will indicate how important that point became in the case of the trading companies. Further, the importance of this magic *one* became doubtful, as several people might act as one. Without giving up the importance of the number

[58] [N. Brent], "A Discourse consisting of Motives for Enlargement and Freedome of Trade" (1645): extract in Cunningham I I [3] 231 note 2 (probable author: see Introduction (by G. B. Hotchkiss) to J. Wheeler, a *Treatise of Commerce* (N.Y. 1931) 104).—Marseilles 1665: long extract in Masson I (see prev. ch. note 62 above) 181.—"A Discourse of Corporations" (1587/9?): in *Tudor Econ. Docs.* I l l 266.—One of the few examples known to me from earlier times of a monopoly being called such and yet considered meritorious, is to be found in J. Savary in his famous manual for merchants, *Le parfait nigociant* (1675): "Quoi que ces cabales et monopoles sont contre les bonnes mceurs, neanmoins elles produisent quelquefois un bon effet au public", that is by means of preventing forestalling (Ist edition ch. 40, 375 f.).—Also J. Cary announced himself in favour of monopolies, with certain reservations (*An Essay on the State of England in Relation to Its Trade,* etc., Bristol 1695, 62, 64, 82) and Sir William Petty also called the patents for new inventions, approved by him, monopolies *(Treatise of Taxes* 1662, Ch. 11, reprinted in *Economic Writings* ed. C. H. Hull, I 75).

of traders, it might then be possible not to limit the use of the word monopoly to those cases where there was just one, but to apply it instead wherever the number was considered too small. So arose the medieval conception which in fact was fundamental in the whole conservative outlook on monopoly. Its best exposition among mercantilists it received at the hands of the most important economic writer of 17th-century Germany, Johann Joachim Bee her. His point of view is therefore a suitable starting-point for a discussion of the subject.

Becher turns his attention to three basic evils in an economic system—"monopolium", "polypolium" and "propolium". The last-named was equivalent to what usually goes under the name of forestalling, but was applied very much more widely by Becher. Here, however, it need not detain us; our concern is with the other two.

In Becher's opinion it was as foolish to confine a trade to one person as to throw it open to everybody—monopoly and free competition were thus both alike enemies of a well-conducted commonwealth. His fundamental idea was the medieval concept of suitable subsistence, which was also a necessary part of any consistent view of *justum pretium.* The monopoly robbed many people of their proper subsistence and a single person received as much as many could live on and therefore it was a great evil; while on the other hand general competition forced down large classes of society below the proper subsistence level and so was equally objectionable from the standpoint of these economic and social ideals. Becher himself summarized this idea as follows. A single person should not live on as much as a hundred could live on. On the other hand, a thousand should not live miserably and finally succumb where in their place a hundred might live respectably; his position was reminiscent of the Biblical prayer "give me neither poverty nor riches" ! In this connection, Becher's criticism of "polypolium" as practised by the Dutch is particularly interesting. He said of it that under it the craftsmen fight among themselves for work, they are "game for the merchants and dealers, for thereby the worker is maintained in continual poverty and work". In spite of the great confusion in Becher's presentation, he here took up an altogether consistent attitude, and one which has, besides, exercised a most lasting influence on the economic policy of the whole of Western Europe.[54]

[54] J. Becher, *Politische Discurs von den eigentlichen Ursachen des Auff- und Abnehmens der Stddt, Länder und Republicken* (ist ed. 1668, the edition used here is the second, Frkf. 1673); the quoted parts in Pt. 3 Ch. 1 (263 f., cp. 446), more complete in Pt. 2 Ch. 2 (110-14, in which the quotation originates).

Becher is quoted here only as a mouth-piece of the most general opinion on these matters and not because he has had any importance for English development, for of this there was nothing. But there are also a large number of English expressions of the same point of view.

With regard to the anti-monopolistic aspect of the question, there is in England an equally large number of illustrations. The prevailing aversion in the 16th century from the extension of sheep rearing at the expense of corn-growing was itself due, to a large extent, to the antagonism towards monopoly. Thus Thomas More said in one of his most famous utterances that "sheep that were wont to be so meek and tame . . . swallow down the very men themselves". Bacon declared in the last Elizabethan Parliament of 1601: "It stands not with the policy of the State that the wealth of the Kingdom should be engrossed into a few grazier's hands." The no less famous Chief Justice, Sir Edward Coke (Lord Coke), enumerated in the House of Commons six categories of people who would come to grief, among them "monopolists who engrosseth by themselves what should be free to all people" and the depopulator who drives away everybody and keeps only a shepherd and his dog. In the same way innumerable writers and speakers thundered against the rich who "eat out the poor". The expression "engross" in the quotation by Coke points to the fact that the objection to all hoarding played its part; and as has already been seen, this aversion dominated the whole of the internal policy with regard to food and also all the legislation on labour. It rested, in the last analysis, on the idea that it should not be permissible for one person to retain what could suffice for many and so the expression "ingrossed into few men's hands", was very common.[55] The same idea played a large part in the development of English trading companies, as will be seen in the next chapter.

It is particularly interesting to notice that this dislike of monopolies, moreover, gave rise to a spirit inimical to unrestricted competition, for the very reason that competition leads to monopoly. Here the statesmen of that period had a clearer understanding of the essentials than the school of *laissez-faire*, and

[55] More *Utopia* Bk. I (Trans, by R. Robinson 1551; Everyman's Library, undated, 23 ff.).—Bacon: D'Ewes, *Journal of all the Parliaments during the Reign of Queen Elizabeth* (Lond. 1682) 674, quoted Lipson **II** 402.—Coke: *Parliamentary History* I 1197 ("Depopular" for "Depopulator").—"Ingrossed into few men's hands" e.g. in "Polices to Reduce this Realm of England unto a Prosperous Wealth and Estate," 1549 (*Tudor Econ. Docs.* **III** 319), etc., etc.

their view has been amply confirmed in modern times. Two illustrations will suffice. At the occasion of the inauguration of a company of "Barbary" merchants (1582?) it was remarked: "It may be beneficial that a indifferent proportion be appointed to every man, lest otherwise, the trade being not great, one, two, three or a small number may with their great substance overlay the younger and poorer sort and the greater number and so in the end attain to monopoly." The same train of thought was even more definitely expressed in one of the most far-reaching discussions on monopolies throughout the mercantilist era, i.e., the report of Sir Edwin Sandys on the two so-called free-trade bills in the House of Commons of 1604. According to the view opposed by Sandys with all the force at his command, the trading companies were not monopolies, which, on the contrary, were caused by unregulated trade. Under the heading "the rich will eat out the poor" this point of view—that inimical to Sandys' proposals—was thus advanced: "If poor merchants should trade together with the rich, the rich beyond the seas would buy out the poor, being not able to sell at the instant to make themselves savers; and so there would grow a monopoly *ex facto*"™

The positive attitude behind this twofold criticism of "monopolies" and "polypolies" could be expressed by the Greek word "oligopoly". This expression is to be found elsewhere though in a slightly different sense.[57] In other words people thought of a pre-established distribution of business opportunities among a certain number of people in a given trade. This was throughout a true gild conception. Modern admirers of the gilds sometimes insist on the view that in its ideal form, the number of craftsmen was not fixed by a *numerus clansus.* They overlook the whole principle of the system—oligopoly based on a fair standard of living.

This economic ideal suffered from an inherent vagueness which certainly did not weigh heavily in a medieval society hide-bound by tradition, but which finally must have led to the decline of the system as soon as social conditions ceased to be static. As soon

[56] "Arguments for and against incorporating the Barbary Merchants" (1582?): in *Tudor Econ-Docs.* I I 60.—"Instructions touching the Bill for Free Trade" (1604)· in *Journals of the House of Commons I* 220, cp. 219 (repr. *Engl Econ. Hist.,* ed. Bland etc. 451, cp. 446).

[57] E.g. in the original Latin edition of More's *Utopia* (1518): "Quod si maxime increscat ovium numerus, precio nihil decrescit tamen; quod earum, si monopolium appellari non potest, quod non unus uendit, certe oligopolium est" (ed. J. H. Lupton, Oxf. 1895, 55). The English translation omits this statement.

as this point of view could no longer be based on a self-evident wage-level, the whole structure collapsed. The weakness of the system is best exposed by the simple question: How is the fair standard of living determined? Why is it an abhorrent monopoly if the trade or the industry is in the hands of "one, two, three or a small number" and not if it is forcibly limited to ten or a hundred? Sir Edwin Sandys turned this argument against his opponents: "The name of monopoly, though taken originally for personal unity, yet is fitly extended to all improportionable paucity of the sellers in regard of the ware which is sold. If ten men had the only sale of all the horses in England, this were a monopoly; much more the Company of Merchant Adventurers, which, in effect not above two hundred, have the managing of two third parts of the clothing of this realm, which might well maintain many thousand merchants more."

As can be seen the whole question then depends on what constitutes an "improportionable" scarcity of sellers. Here a transition is made to the anti-monopolistic attitude which was later to be identified with *laissez-faire*, i.e. the aversion from every *compulsory* limitation in the number of craftsmen in a trade, as against the number which would have been found without extraneous interference. In fact the germs of this conception existed at a very early date. They originated in medieval ideas of liberty. It certainly cannot be denied that what was called liberty in the Middle Ages was primarily guaranteed privileges for certain estates, groups or corporations. But from these medieval conceptions, one line of development led straight to *laissez-faire* and it is particularly important that the connection was much stronger in England than in most other countries. Magna Charta and 14th-century English legislation gave rise to the opinion held by later generations that economic liberty had therein an age-old legal basis. They thought that every compulsion in economic activity was illegal from of old. This idea had numerous consequences quite apart from the question whether those medieval decisions were correctly interpreted or not. The very fact that later generations interpreted them in this manner had important results. The whole conception was in many points antagonistic to the prevailing system of compulsion which not merely existed but was also to a great extent founded upon law; and the picture was undoubtedly dominated by this network of restrictions. Nevertheless those old ideas of liberty were of some importance.

The effects of these ideas of liberty may be summarized in three points: first, it was important that the conception which gradually

attained its full form in *laissez-faire* had its roots reaching far back in the past, and was thought even older than it actually was. Secondly, it was important that the conception was held legally binding, and that it was believed that certain rights were thereby guaranteed to every subject. Thirdly, the fact that this association in England was felt more strongly than anywhere else also played a part, for it was thus brought into closer connection with the particular political development of England. In such a way, this complex of conceptions became one of the causes why the Industrial Revolution first occurred in England and why the economic upheaval of the 19th century received the special character which distinguished it.

The preceding refers to the characteristic property of monopoly of excluding others from the practice of a calling. In other words it fitted into the framework of production and distribution. When taken up by *laissez-faire,* on the other hand, it undoubtedly stood under the domination of consumers' interests. According to *laissez-faire* ideas competition between sellers and producers was insisted upon in the direct interests of consumers. But in spite of this view of monopoly, even liberal thought concentrated upon the question of how many should be permitted to practise a trade, and that was a serious limitation in its outlook. For it is by no means obvious that this point of view furnishes a criterion for the conditions under which a commodity or service is placed at the disposal of the buyer or consumer. If then, lastly, antagonism to monopoly turns away from considerations of the number of people professionally engaged, and instead turns its attention directly to the conditions of sale, an important difference is introduced. The struggle against monopoly may be said to have taken this form, at least pretty frequently to-day. This means, to pursue the reasoning farther, that the struggle is directed less against monopoly as such than against *monopoly price,* which is considered too high. It is now important to note that even this kind of antagonism to monopoly had its roots in the Middle Ages; for a monopoly price could not possibly be a just price in the medieval sense of the word. Moreover the tendency of the monopolist to raise prices as high as he could was in contrast with the endeavours towards low prices and more plentiful provisions, which was an important part of the medieval economic ideal, as will be described in the third part of the present work. Accordingly the modern form of anti-monopoly sentiment also has medieval origins, even though it is difficult to combine it with other parts of medieval policy and medieval social concepts.

It will thus be seen to what an extent the fight against monopoly could be based upon ideas which were older than mercantilism.

Medieval legislation

It was probably only because Magna Charta was generally believed to be the foundation of every liberty and right, that it was considered a precedent against monopoly; for in actual fact the great Charter provided no such assistance. Apart from one section guaranteeing London and other cities their privileges (c. 13)—and rather calculated to oppose than to promote freedom of trade—only one clause could be appealed to, according to which all merchants could go safely and freely here and there, and could remain in the country for the purpose of buying and selling without having to pay illegal tolls, provided that they made the traditional legal payments (c. 41). This was probably only a concession to the foreign merchants who were unusually favoured by the English monarchy, but it was soon taken to be a general statement of commercial liberty and was interpreted in this sense even by the courts. Though far-fetched and historically untenable, there is nothing unnatural in this. Even that would, however, be saying too much with regard to another use of the great charter, that is, the use of one of its most famous clauses in connection with the question of freedom of trade. It deals with the guarantee promised to all free men who were to be tried only by their peers and according to the law of the land (c. 39). In an important judgment of 1711 (re Mitchel v. Reynolds), Lord Chief Justice Parker (later Lord Macclesfield) quoted this clause in its revised form, after the renewal of Magna Charta in 1217, in terms which might be translated into: "no free man . . . should be robbed of his own property or his liberties or his free customary rights" etc., and stated that they "have been always taken to extend to freedom of trade[55].

Other parts of medieval legislation however were far more serviceable, for example the statutes which during the long reign of Edward I I I granted, in theory, far-reaching freedom of trade and mobility. In later years these were also adduced far more frequently than was Magna Charta. Actually they set out to guarantee freedom of trade and commerce. One of these statutes, that of 1344, may perhaps be interpreted as though it were related to Magna Charta, as it declared the sea open to all merchants and gave them the right to trade thereon. But another act, passed as early as 1335, and later confirmed under Edward I I I and his successors, went very much farther. It allowed unre-

servedly all native and foreign merchants to sell all commodities wherever they wished, except to the enemies of the king and except for the export of wine, without regard to privilege, custom or legal decision of any kind—that is, on the face of it, it guaranteed an almost unlimited freedom of trade. The second renewal of this statute under Richard II (1387) was called by a writer of the time of the Protectorate (1655) "that never to be forgotten Statute". It was something—even if it were not quite what it pretended to be—that legislation sometimes stigmatized economic compulsion as "contrary to every Englishman's liberty" and this apparently took place under the influence of that interpretation of Magna Charta which had gradually become traditional.[58]

But the effects which emanated from this medieval legislation cannot after all be rated highly, either for its own time or for the future. Subsequent developments did not receive their true impulse from that source but, instead, from one of the most important forces in English history, i.e. common law, based upon the practice of the courts.

Common law

As is well known, English common law was not merely a system of rights based on the interpretation of Acts of Parliament; it was a completely independent system of rights based on the practice of the courts, and having its legal basis within or outside statute law. The independence of common law was so deep-rooted that legal decisions sometimes followed common law even after they had been expressly annulled as statute law. Parliament was certainly able to change common law if it formulated its statutes with sufficient skill, but the fact that a legal ruling did not occur in an Act of Parliament or had been repealed in that form was not, in itself, sufficient ground for assuming that this ruling had lost its force. From the point of view of economic legislation it was even more important that the courts were allowed a great deal of freedom in their interpretation of statutes. Sir Edward Coke, the great legal authority and most powerful representative of common law, sometimes expressed this by saying that common

[58] Magna Charta: see commentary in W. S. McKechnie, *Magna Carta, a Commentary on the Great Charter of King John* (second edn. Glasgow 1912) 247 f., 386, 400, 403, 407 *et passim.* Later laws 9 Ed. I l l st. 1 c. 1 (1335); 18 Ed. **I l l** st. 2 c. 3 (1344); 25 Ed. **I l l** st. 3 c. 2 (135O; 2 Rich. **II** st. 1 c. 1 (1378); 11 Rich. **II** c. 7 (1387); 12 Hen. V I I c. 6 (1496/7).—Mitchel v. Reynolds: Peere Williams, *Chancery Reports* I 188.—R. Gardiner, *Englands Grievance Discovered in Relation to the Coal Trade* (1655), Dedication (unpaged).—Cp. *Select Charters of Trading Companies* (ed. Carr, see next ch. note 6) liii note 2.—Further, see below **II** 277.

law was superior to statute law. In any case it followed from the courts' strong position that their practice was important in the development of industrial regulation, if they desired for one reason or another to influence it in any particular direction. In so far as the agents of the state exercised any real influence over the internal development of English trade and industry, this influence lay chiefly in the decisions of the courts. The formal changes in the law played a very subordinate part and were generally only an *a posteriori* confirmation of a *de facto* legal practice.[59]

It was primarily the political developments that were to provide the common-law courts with their influence upon economic regulation; for common-law jurists were the most powerful force in the resistance to the monarchy and its agents.[60]

Of these agents the Privy Council, as we have already seen, was the most important. Though English readers are not generally conversant with Swedish developments, a parallel drawn from Swedish history may still be instructive. In Sweden it remained the recognized legal practice, until the introduction of the Supreme Court in 1789, that the State Council functioned as a

[59] The idea of common law being, down to the Puritan Revolution, conceived as based upon natural or fundamental law was brought out by the great founder of the study of the history of English law, F. W. Maitland, in his *Constitutional History of England* (Cambr. 1908) 300 f., and was further elaborated by an American scholar, C. H. Mcllwain, *The High Court of Parliament and its Supremacy* (Newhaven 1910), chs. 1 & 4; for Coke particularly 286-92. On the strength of Scandinavian developments I venture to add that the basic idea probably was that law cannot be created but only interpreted. —Holdsworth is apt to reduce the importance of the concept of Maitland and Mcllwain, but the main features are unchallenged and unchallengeable. Cp. below 321 f.

The following is mainly based upon the Law Reports, which have been used in their original form, whether in legal French or in English. They have largely been transcribed for me, according to my directions, at the Squire Law Library, Cambridge, through the courtesy and with the assistance of its Librarian, Dr. J. Ellis Lewis, and under the supervision of my friend Mr. John Saltmaish, M.A., Fellow of King's College, Cambridge. There can be no question of completeness, but I hope that no important decisions have been overlooked. In my choice of cases I have of course derived a great deal of assistance from the great work of Holdsworth. A monograph on the subject is, however, urgently needed, preferably by a scholar with a legal training.

[60] F. W. Maitland, *English Law and the Renaissance* (Cambr. 1901) gives the most incisive exposition; see 10 and note 17; 19 and note 43; 22 and note 51; 29 ff.—Holdsworth IV 253-93 *et passim* presents this point of view in a rather milder form.—On the following, see further: *Select Cases in the Court of Requests*, ed. I. S. Leadam (Publications of the Selden Society, London 1898) xi-xv, xxxiv, xlvi, xcvi *et passim*.—Percy, *Privy Council under the Tudors* (see note 42 above) 45-67.

court of "last instance"; and the same obtained in England as regards the Privy Council in the second half of the 16th century and in the 17th down to the Puritan Revolution. The Star Chamber, the High Commission and the Court of Requests were more or less branches of the Council's authority, although the Council as such exercised concurrent legal powers. The Masters of Requests, whose position was an adoption from French practice, were similar to the Swedish so-called Revision Secretaries, although with this difference that the latter did not function as judges but were expositors of the cases—this was a feature peculiar to Swedish procedure.

While however this judicial system stood unchallenged at the head of the whole legal procedure in Sweden, in England it meant only a particular form of procedure which sometimes competed with the common-law courts for precedence and constituted a serious menace to the supremacy of common law. In other words, the struggle did not only centre on different courts, but to some extent on different systems of law. For these other courts, by their very nature, tended to introduce Roman or "civil" law into England, one of the few countries which had till then remained aloof. Even if this did not mean the complete decline of common law, it would certainly have led to a great limitation of its influence. Roman law in general provided monarchs with new implements of authority. The Privy Council, through which the Tudors and early Stuarts governed, acquired by the aid of Roman law an elasticity in its administrative and legislative operations which common law had never granted. At the same time these agents and their legal concepts facilitated the policy of welfare pursued by the monarchy. The Court of Requests from the very beginning was very characteristically known as the "Court of Poor Men's Causes". The law-suits there were to be cheap and summary to a degree that the common-law courts were never either able or willing to allow. Down to its decline in the 1640's, it therefore enjoyed a popularity which the ordinary courts tried in vain to overcome.

It is manifest that common-law jurists looked upon this development with no favourable eyes. The bond between them and parliament was of old standing. The absolutist tendencies were just as unwelcome to the professional interests of these lawyers as they were repugnant to the upholders of the powers of parliament. The common-law jurists, and especially Coke, therefore supplied the House of Commons with the intellectual weapons for combating the royal prerogative. For the same reason the

courts attacked the royal economic policy which was such a thorn in the side of the two allies. This association, however, could not appear until, in the latter part of Elizabeth's reign, parliament increasingly asserted its independence. It first achieved prominence when Coke rose from Attorney General to Chief Justice, at first functioning in the Court of Common Pleas (1606) and later at the Court of King's Bench (1613)—the two principal courts of common law.

But even though political disagreement and professional envy co-operated to prejudice the common-law jurists against industrial regulation, it should not be overlooked that the purely legal point of view, the sincere belief in an established legal code, also contributed to the same effect. A large proportion of the precedents made really had no political implications at all. The courts during this period did in fact make important contributions to fundamental problems of commercial law which have presented great difficulties to the present day.

Restraint of trade

The legal conception of restraint of trade was particularly free from any such political colouring. Certainly it was extended to include interference by the state and other public corporations with the exercise of a trade; but the most important sphere in which it was applied was that of private agreements limiting the economic freedom of trade of the partner to the agreement. As far as my knowledge goes, it was Parker who, in his quoted judgment of 1711, first associated the two kinds of encroachments on business freedom. Thus he mentioned "involuntary" and "voluntary" restraints; by the first he meant public interference and by the second limitations by private agreement. Otherwise the courts backed up their decisions, without making any such distinction, with precedents of both kinds and dealt with both in practice as the same. It was just this combination of the two that was important in the later development.

For with more consistency than the legislature, the courts adopted the standpoint that restraint of trade was harmful. As may be easily understood, the effect with regard to private agreements was to reject freedom of contract in so far as it interfered with the free exercise of trades and crafts. Whether this may be considered a *laissez-faire* tendency or its opposite is difficult to say, for upholders of *laissez-faire* doctrine have never made up their minds clearly in favour of free competition *d tout prix* against freedom of contract *d toutprix,* or in favour of the latter against the former.

From a very early date the courts regarded common law as a safeguard in economic affairs. In a judgment of 1365 it was already stated that "craftsmen and craftsmanship which serve the general weal stand in special favour with the law". Early in the 15th century (1414/15) is to be found a judgment against a restraint of trade by private agreement which was referred to innumerable times at later periods and consequently acted as a particularly strong precedent. A dyer had pledged himself not to exercise his trade at the place of the plaintiff for a certain period of time. Hull, the judge in the case, declared in favour of the defendant. "In my opinion/' he said, "you may object that the obligation is null since it is against common law; and by God, if the plaintiff were here he would have to go to prison until he paid the king a fine." This last outburst, which would seem to perceive a criminal offence in the agreement, probably meant very little; but in general the judgment was later so interpreted so as to permit no one to renounce his right to the free exercise of a trade without due consideration; the renunciation besides, in order to be valid, would have to have local and not general application.[61]

The importance of this legal doctrine to the development of industrial regulation is mainly to be found in its symptomatic character; it is mentioned here because it is inextricably bound up with such rules as were directly relevant. The most important application of the discouragement of restraint of trade in private agreements in England was the struggle against journeymen associations, and later against trade unions, when they went on strike or in any way collectively came into conflict with the employers. It was the same in France. There the expression "monopoly" was never so loosely applied as when applied to such associations. In England, the measures of the courts and the legislation against this form of restraint of trade were still further intensified by the application of the peculiar legal conception of conspiracy. According to this, a form of action which was considered socially harmful became a penal offence if exercised

[61] 1365: *Tear Book, Edward III,* ed. Wight (Lond. 1600), 40 E. I l l pl. 8, foil. 17 f.—1414/15: *Tear Book* 2 *Hen. V* (Lond. 1570) pl. 26, fol. 5.—Later cases: Rogers *v.* Parrey (1613/14): Bulstrode, *Reports* II 136; Broad *v.* Jollyfe (1620): Croke, *Reports* II 596; Mitchel *v.* Reynolds (1711): Peere Williams, *Chancery Reports* I 181-97.—Why it is said in the last-named case that Rogers *v.* Parrey was "wrong reported" I do not know; it contains the accepted doctrine.—Parker, C. J., said of Hull in his judgment of 1711: "I cannot but approve of the indignation that judge expressed, though not his manner of expressing it."

by a number of people in association, even though otherwise it was not punishable. In such questions social antagonisms became important and there was the tendency to punish actions where workers were concerned, and to tolerate them in the case of employers. The French journeymen, in connection with a strike in the book-printing trade, expressed this by saying "it is rightly and saintly prohibited to practise a monopoly; but this should not be applied against the journeymen only, but also against the booksellers and masters, who always have conspired as monopolists in order to overthrow the aforesaid journeymen". In England the trade unions could be penalized by common law under the legal category of restraint of trade, even after the statutes directed against them had been repealed.[62]

The courts and economic regulation

For the purposes of our study all this however is of secondary importance. Here we are concerned with the manner in which these considerations were applied by the courts in their treatment of public regulation of economic affairs. The courts could claim medieval precedents here also, even though the real formation was considerably younger and was influenced by the political development from the latter part of the 16th century onwards.

A medieval case, which according to modern conceptions could not have carried much weight, was particularly frequently referred to. A certain Peachey had bought from the Crown the exclusive right to sell sweet wine in London. Parliament in 1376/77 declared this to be a punishable offence and this was taken as a ruling, owing to the fact that parliament too was looked upon as a court of law, although the decision in this case was apparently purely political. Of a modern legal tendency, on the other hand, was a law-suit between private individuals, which took place shortly after, later known as the Gloucester Grammar School Case (1409/10). Two schoolmasters had sued a third who had competed against them and offered his services at a considerably

[62] On England, see party-: S. & B. Webb, *History of Trade Unionism* (Lond. 1894) ch. 2; A. V. Dicey, *Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century* (Lond. 1905) 95-102, 190-8; Holdsworth VIII, 379-84; and above all the very informative collection of sources on the tailoring industry: *Select Documents illustrating the History of Trade Unionism,* I *The Tailoring Trade,* ed. F. W. Galton (Lond. 1896), party. the judgment in R. *v.* Journeymen Taylors of Cambridge (1721): *op. cit.* 24 ff., cp. 9, 12, *et passim.* France: e.g. "Ordonnance de Villers-Cotterets" (1539) Art. 191: in *Recueil gén. des anciennes lois frangaises,* ed. Isambert and others X I I : 11 639 f. and Hauser, *Ouvriers du temps passe* 166 f., 175, 199 f., 203, 208, 211, 216. **222, 224 f.**

lower price. The judge overruled the plea with a decision, which became a precedent, that it was a case of "injury without injustice *{damnum absque injuria),* just as if I have a mill and my neighbour erects another mill which lessens the profit of my mill, and yet I have no claim against him, though it is damage to me". The judge did make a reservation with regard to rights of long-standing, such as a farmed market riglit or a privileged university ; but so much at any rate was clear that competition which had the effect of lowering price was n*ot* in itself inadmissible.

From the end of the 16th century onward, it had developed into a generally recognized rule of law that common law protected the economic freedom of the subject and did not recognize monopolies. Thus in a judgment of 1599 (Davenant *v.* Hurdis) concerning the company of Merchant Tailors in London which, by reason of their royal charter, had made the regulation that half of the cloth that they used should be "dressed" by some members of the same society "the ordinance although it had the countenance of a charter, was against the common law because it was against the liberty of the subject", and further "for that in effect would be a monopoly; and therefore such ordinance by colour of a charter, or any grant by charter to such effect, would be void". In a somewhat older suit (Chamberlaine de Londres Case, 1590/1), the plaintiff's advocate used the same argument and almost the same words. In a case which came up a decade and a half later (Le Case des Tailleurs des Habits &c. del Ipswich 1614) the court decided "the common law abhors all monopolies which prohibit any from working in any lawful trade" and further "that at common law no man could be prohibited from working in any lawful trade". In another report of the same case (The Clothworkers of Ipswich Case) the point of view of the court was formulated with an even greater tendency to fall back on natural law—to "make a monopoly . . . is to take away Free-trade, which is the birthright of every Subject". In approximately the same wording, it was recognized in almost every case; from which it follows that monopoly as such was deemed contrary to common law.[63]

It is obvious that a general thesis such as this should be inter-

[63] 1377-8: *Rotuli Parliamentorwn* II 328.—1409-10: *Tear Book II Hen. IV,* pi. 21, fol. 45a.—1599: quot. in Case of Monopolies: Coke, *Reports* XI fol. 86 (the single existing reference to this judgment).—1590/1 : *lb.* V, foll. 63 f.—The two reports of the case of the Tailors of Ipswich (in spite of several differences it must have been the same case): *lb.* X I , foll. 53 f., resp. Godbolt, *Reports* 253.

preted in various ways and that a consistent application of the principle would have meant almost a revolution. The courts therefore usually held fast to more *constitutional* criteria; that is, they decided according to the legal title which the monopoly could claim and not according to its existence or to its economic character. This gave the common-law jurists greater opportunity of attacking the special interests of their opponents and of preserving the interests of their own associates. There is, however, no doubt that a kind of legal system developed, even though built up on rather formal foundations, and therefore, from the economic point of view, particularly arbitrary. The result was as follows.

Monopolies based on royal privileges were considered invalid. From this followed the further fact that such regulations, issued by municipal authorities and professional associations, if grounded only in royal charters, were likewise rejected as soon as it was believed that they stood opposed to industrial freedom. But this, on the other hand, was far from meaning that unqualified freedom was maintained. First, monopolies created by Act of Parliament were respected; but they played a relatively small part as being rather scarce. Much more important was the second group. All kinds of local rights based on immemorial custom were also respected, and this influenced trade and handicrafts all over the country. In a law-suit opened by the City of London against a tallow-chandler, because he practised his craft without being a freeman of the city (Case del citie de Londres, often quoted also under the name of the defendant, as Waganor's Case, 1610), the judgment declared, "it is good by way of custom but not by grant", "in such cases it is custom which is usually stronger and more powerful than royal grant *(in huiusmodi casibus fortior et potentior est vulgaris consuetudo quam regalis concessioy."* This formulation recurs in many other cases, and the principle of this ruling was never abandoned. It is easy to see that this ruling saved a large part of medieval regulation in principle, but that, on the other hand, the system of royal privileges could not be upheld before the courts. This coincided not only with the political tendency of the common-law courts, but also with their fundamental conservatism. They themselves thought that they were the bearers of age-old legal traditions in the face of the monarchy's revolutionary tendencies. The cry *nolumus leges Anglie mutari*—we will not allow the laws of England to be changed—is characteristic of this attitude.

Still, the attitude taken up by the courts could certainly undermine essential aspects of medieval economic ideas. In any case

it could not but prevent the extension of the medieval order to new cities and to the whole country. A development such as took place in France was thus ruled out so far as the power of the common-law courts was concerned, both as regards a system of privileges and a national gild system. In a later action (Mayor of Winton *v.* Wilks 1705) the plaintiff's counsel rightly pointed out that this interpretation made it impossible for legal measures to be taken against industrial freedom by the *new* institutions, the newly privileged cities, and gilds of like standing, unless they could have the confirmation of parliament. In spite of their willingness to uphold age-honoured rights, and in particular the position of the local corporations, the common-law courts therefore proved a great hindrance to the further development of industrial regulation.[64]

For similar reasons parliament showed the same tendency as the courts, for there the same forces were dominant. By far the most important parliamentary measure on this subject was the great Statute of Monopolies of 1623-4. On the one hand it laid the foundation of modern patent law and rejected such patents of monopoly as did not confine themselves to new industries; but on the other hand it adumbrated in a long-drawn amendment that the prohibition against monopoly was not to apply to the city of London or to any other "town corporate". To any privileges granted to them or to "any corporations, Companies or Fellowships of any Art, Trade, Occupation or Mistery, or to any Companies or Societies of Merchants within this Realm erected for the maintenance, enlargement or ordering of any Trade or Merchandize".

The last words of this clause had another aim in view; and in this parliament and the common-law courts both combined in support of the industrial legislation—namely in everything which came within the category of "good order and government". In many cases this was synonymous with the *gilds,* and there the courts often allowed very wide interferences with the free exercise of a craft. In the case already quoted (Chamberlaine de Londres Case) of 1590/1 it was laid down that the city of London have the power to demand of all sellers of cloth that they bring it to a common market in Blackwell Hall, to levy a charge there and finally to punish infringements with fines. The most famous of all the cases in this connection is the Case of Monopolies of 1602/3. It concerned an injury to the rights of a privileged

[64] Case del Citie de Londres 1610; Coke, *Reports* VIII foll. I21b-130a.—Mayor of Winton *v.* Wilks: Lord Raymond, *Reports* II 1129.

monopolist. The defendant's counsel, named Fuller, emphasized the difference between an illegal patent of monopoly and the long-standing rights of the gilds. He was thus able to draw a distinction between *one seller* and several—"when there be many sellers, although they be all free of one company; as Goldsmiths, Clothiers, Merchants, Drapers, Tailors, Shoemakers, Tanners, and such like who have settled governments, and Wardens and Governors to keep them in order, they were never accompted a Monopoly". Similarly in the City of London action of 1610, "trade and traffic cannot be maintained or increased without order and government; and therefore the King may erect *gildam mercatoriam,* i.e. a fraternity or society or incorporation of merchants to the end that good order and rule should be by them observed for the encrease and advancement of trade and merchandise, and not for the hindrance or diminution of it". Many other such statements are to be found. The courts to this extent supported industrial regulation even where it was not backed by immemorial custom.

On paper Acts of Parliament were also respected, particularly if they originated with the Tudors and not with the Stuarts, and of course this applied above all to Elizabeth's Statute of Artificers. This was mostly referred to as a safeguard for the existing order, as Fuller maintained in direct continuation of the above-quoted argument, which had drawn a distinction between patents of monopoly and the gilds. In the London case of 1610 the Statute of Artificers was quoted in support of the validity of industrial restrictions.[66]

But this conception of the law, built up chiefly on formal differences, was not easy to reconcile either with the ideas of natural right or with economic principles which rejected monopolies as such. The results of this dualism were not always to the advantage of the parliamentary party and the common-law judges.

One result was that the monarchy, in order to save the privileges, gave them the form of craft gilds or local corporations, as has already been seen (see above 255). In this way monopolies could at a stretch be smuggled in and given legal standing in the eyes

[65] Statute of Monopolies: 21 Jac. I c. 3 §9.—Chamb. de Londres Case: Coke, *Reports* V fol. 51b.—Case of Monopolies (Darcy against Thomas Allin): Noy, *Reports and Cases* 182.—Case del Citie de Londres: see prev. note.—Also a "Discourse of Corporations" (1587/9?), although it included among monopolies not only the companies for foreign trade but also the privileges connected with internal trade, excepted the craft gilds because of their importance for professional training (in *Tudor Econ. Docs.* I 266, 273, 275 f.).

of the courts. They were placed superficially on the same footing as the recognized organizations, and could demand the same legal justification as was accorded to the others, the justification being that they existed for the preservation of "good order and government". That this practice was successfully pursued does not appear merely in the fact that it was frequently resorted to, but also in positive statements to the same effect. For example, the proposal for a paper monopoly in the 1580's began, "if anyone such Commodity be by graunt from the prince Brought to one man's hand . . . the same is said to be a monopoly and very prejudicial to the state". But since the object of the paper was to have a monopoly instituted, the statement concluded with the declaration that when a right is given to a corporation for paper production "the same is not monopoly".

The adherents of the monarchy lost no time in pointing out the inconsistency that one kind of restriction was rejected and another in fact recognized, while at the same time every restriction and every monopoly as such was discountenanced. While Coke, always a violent partisan, was still Attorney General he had to sponsor the cause of the Crown in the Case of Monopolies 1602/3. In this action it was a question of the validity of a monopoly for making playing-cards which had been granted to one of Elizabeth's courtiers. Coke's arguments at the proceedings made a real breach in the position which, as future chief opponent of the royal prerogative, he was later to uphold more than any other man. "The customary rights," he said, "and ordinances of the cities and corporations are legal although they oppose the common law and the liberty of the subject." We can understand that Coke preferred in these circumstances not to reproduce the speeches of the counsel for either side when he treated the case in his Reports. Coke's principal opponent was Bacon, who always sided with the court. He had already given a political turn to the same idea when he stated in parliament: "If Her Majesty makes a Patent or a Monopoly to any of Her Servants, That we must go and cry out against; But if she grants it to a Number of Burgesses or a Corporation, that must stand; and that, forsooth, is no Monopoly." Although it is not worth while investigating the matter in detail, it can easily be seen that the court lawyers could adduce sufficient precedents for all kinds of monopoly which were recognized on one or another occasion, although they did not in fact differ from pure privileged monopolies. The whole character of case law, which has created English legal development, led to such a state of affairs that both parties could

often with equal justification quote precedents, and the decisions might become more or less arbitrary.[66]

The opponents of the privileges had also at their disposal certain *economic* arguments, and from the point of view of economic history these are obviously the most interesting.

The judgment in the Case of Monopolies is particularly important, for arguments were employed which concerned not the interests of those excluded from the monopolies, but the common interest of all. It was stated first: "The sole trade of any mechanical artifice, or any other monopoly, is not only a damage and prejudice to those who exercise the same trade, but also to all other subjects." Then the disadvantages were specified in three points, first "the price of the same commodity will be raised, for he who has the sole selling of any commodity may and will make the price as he pleases". Secondly, "the commodity is not so good and merchantable as it was before"—as counsel for the defendant, Fuller treated this point of view very exhaustively—and the following argument was relegated to the third place: "It tends to the impoverishment of divers artificers and others who before, by the labour of their hands in their art or trade had maintained themselves and their families." In this as in other cases the connection with the prevailing mercantilist aversion to idleness (see below II 154 f.) comes out, because it was thought that monopolies would hinder young men from entering into professions. In the case of the Tailors of Ipswich (1614) it was mentioned among other things "at the common law, no man could be prohibited from working in any lawful trade, for the law abhors idleness, the mother of all evil, and especially in young men . . . for idle in youth, poor in age *(jeunesse oiseuse, vieillesse disetteuse)"*; it was rightly pointed out there that the Elizabethan Statute of Artificers would have had everybody set to work from youth upwards.

Finally, many expressions were of such a kind that had they been consistently enforced they would have played havoc with the whole of industrial regulation. Thus the judgment in the Ipswich case "his (the defendant's) ignorance is a sufficient punishment to him; for inexperience is the greatest punishment of the handicraftsmen because in every craft people seek out those that have experience; and if anybody takes upon him to work and spoils it, an action on the case lies against him". With

[66] Proposals for a Paper Monopoly (1586?): in *Tudor Econ. Docs.* II 251, 254.—Case of Monopolies (Darcy *v.* Allen): Moore, *Reports,* 675.—Bacon's speech: in *Tudor Econ. Docs.* II 272 and in many other collections.

this as the prevailing idea not only monopolistic but all other interferences with free exchange would have been pointless. At the same time there was the attitude to monopoly which above I have described as the *laissez-faire* attitude, This meant that in general, every limitation in the number of those practising a profession, even if with the assent of those taking part in it, was a monopoly and therefore to be condemned; only a "polypoly" would then be admissible. During a discussion in the Privy Council concerning the patent of the Merchant Adventurers (1613) Coke is reported to have said "a thing granted to a hundred is a monopoly, if the rest is prohibited".

Though it would be dangerous to read too much into such a statement, especially as it comes from a man such as Coke with his barrister-like tendency to exaggeration, there is no doubt that before the Puritan Revolution there were many tendencies towards an essentially economic, and not merely a legal or constitutional, antagonism to monopolies in their various forms.[67]

As far as I can see, the judgments now discussed, besides the far less numerous utterances of parliament, were the most important factors in determining the direction developments were taking. However, it is characteristic of the peculiarities of legal practice of former times that regard for formalities, which to-day seem quite meaningless, could be decisive and yet run contrary to the main legal principles. The decisions, therefore, often took quite a different turn from what might have been expected in view of the basis of the judgment. It would, however, be important to know whether this formalism, which at times appears almost grotesque to the modern observer, rested on the fact that forms were slavishly adhered to, or were simply used in order to free people, in practice, from the consequences of a standpoint which, as a legal principle, could not be set aside. Both motives probably co-operated, but one often has the definite impression that the courts by this means provided more powerful resistance to industrial regulation than would have been otherwise reconcilable with the doctrines which they represented. They sometimes took decided pleasure in repudiating the ties of industrial freedom and in denying the claims connected therewith, even if they were based on recognized legal rulings or written law.

[67] Case of Monopolies: for the judgment: Coke, *Reports* X I, foil. 84-88; for Fuller's statement: Noy, *Reports and Cases* 179.—The Ipswich Case: Coke, *Reports* XI foil. 53a~54b.—Coke's statement in the Privy Council: "Sir Julius Caesar's Notes," printed in A. Friis, *Alderman Cockayne's Project and the Cloth Trade* (Copenhagen 1927) 459.

To make this perfectly clear and at the same time to place the activities of parliament in their true perspective, I shall now give a brief survey of the most important measures in the struggle around monopolies from the end of the reign of Elizabeth down to the Puritan Revolution.

In the latter part of Elizabeth's reign a storm broke out against her unlimited grants of patents of monopoly as rewards to her favourites and servants. The old queen, however, understood how to quiet the minds of the people with such skill that parliament refrained from making any decision on the question. The queen referred the legality of the patents of monopoly to the decisions of the ordinary courts. The patent of her courtier, Darcy, for the production and import of playing-cards gave rise to the famous Case of Monopolies (Darcy *v.* Allen or Allin 1602/3). Without any qualification and without any attempt at prevarication, the decision declared the patent invalid. When James I again began to follow in Elizabeth's footsteps and grant patents, parliament once again returned to the attack. Its last and most remarkable piece of work was the Statute of Monopolies (1623/4). This memorable law introduced no essential innovations. It limited the Crown's right to granting exclusive patents to inventors of a trade which was new to the country. For future patents the validity of the patent thus granted was not to exceed fourteen years. The final break came when Charles I once again began granting patents, and the outcome was that the regulations laid down by the Statute of Monopolies were confirmed.

With regard to industrial regulation, the effects of this hardly did more than render impossible a development of the patent system on the French model. The medieval treatment of industry was not greatly affected by it, but this was not so with the numerous legal decisions from the period between the Case of Monopolies and the Statute of Monopolies.

One of the least challenged remnants of local exclusiveness was the requirement of the freedom of the City for exercising a trade in London. This demand was recognized in the case of journeymen in the early years of James I's reign (1606). Four years later occurred the action already quoted, between the City of London and the chandler, Waganor, who plied his trade without being a freeman of the city. The whole argument upon which the last-named decision was based justified the town, i.e. upheld its restrictive industrial policy. Coke's very detailed report of the case allows of no other conclusion, though it is true that the judgment itself is not formally given in his text. It comes as a

surprise to find a hundred years later a statement of Lord Chief Justice Holt, in Mayor of Winton *v.* Wilks (1705) to the effect that the decision in Waganor's case was different, the chandler being set free for some reason or other. This is an illustration of what I have previously stated with regard to the bias of the courts.

The outcome of the Tailors of Ipswich case was the same, but here the result was, considered formally, in full agreement with the generally recognized legal principles. The gild wanted to fine a man who had completed his legal period of seven years' apprenticeship, only because he had not reported to the gild officials to obtain their permission as prescribed in the charter granted to the gild by the king. The court, i.e. Coke, refused to recognize the charter and overruled the plea. It was not the seven years' apprenticeship which was thus declared invalid, but only the duty of reporting; but even this is evidence of an aversion to the Statute of Artificers, since the duty to report would make the clauses concerning apprenticeship effective. Finally the case of the weavers' gild in Newbury (Norris *v.* Staps, 1616) followed the same lines, although here the argument is difficult to follow. The gild possessed a charter dating from the last year of Queen Elizabeth's reign, and on the basis of this, the gild presumed to make the ruling that the period of apprenticeship be completed in the city itself, a ruling with absolutely no foundation in Elizabeth's statute; nor was immemorial custom pleaded. It might therefore have been expected that the judgment would have been given for the defendants. The court, however, found for the plaintiffs, "and yet judgment was given against them *quod nihil capiant"* on a legal quibble, because only two representatives of the gilds had complained and it was not known whether there were more than two, and so on. Sir Henry Hobart, who followed Coke as Chief Justice of the Court of Common Pleas when Coke was transferred to the King's Bench, also criticized this treatment in his report on the case. He said the question here was "between the particular privileges of towns and the general liberties of the people[55], but that the court had left this question out of consideration. The cases now mentioned doubtless provide the uniform impression that the courts grasped at any possible pretext to repudiate the validity of the industrial regulations.

None of these decisions, however, contain a denial of the seven-year period of apprenticeship as such. In the London case of 161 o the court, invoking a decision made in the previous year, explicitly declared compulsory apprenticeship to be valid in the brewing industry. The opposite plea was overruled, which is not surprising

since it was based upon a curious argument, at least to modern minds, to the effect that "every housewife in the country can ply this trade".

But none the less, this period—so rich in precedents on industrial legislation—provides at least some cases with an exactly contrary tendency. As early as 1590/1 a judgment in the Court of Exchequer declared it to be "holden clearly" in the Statute of Artificers that a seven years' apprenticeship in any one trade mentioned in the statute gave a right to exercise all trades; on the strength of this a man apprenticed to a tailor was allowed to work as a chandler. The Act of Elizabeth, of course, stated exactly the reverse.

Another case was even more far-reaching (Rex and Allen *v.* Tooley, also known as Tolley's Case, 1615). It was probably the first which limited the requirement for apprenticeship itself, and the reason for this innovation was the most interesting part.

A citizen of London was sued because he had taken to upholstery whereas his apprenticeship had left him a woolpacker. The judgment overruled the plaintiff's argument, but in a much later judgment (Raynard *v.* Chase, 1756), it maybe seen that no actual decision was taken. Nevertheless the judgment was of interest. It would hardly have been worth quoting if it had simply referred to the Custom of London, which, as explained before, made apprenticeship in one industry valid for all, or if it had for other reasons come to that conclusion as in the case of 1590/1 just quoted. But such was not the argument. The judgment instead declared that upholstery did not come within the scope of the statute at all, and a whole series of reasons was quoted. In the first place the statute mentioned sixty-one different industries without naming it and, thought the court, it would not have been omitted if there had been any intention of extending the law to that trade. Now in actual fact, the general apprenticeship clause of the Statute of Artificers (§24) did not enumerate professions at all. All it said was that for "any person or persons other than such as now do lawfully use or exercise any art, mystery or manual occupation" it was forbidden "to set up, occupy, use or exercise any craft now used or occupied within the Realm of England and Wales", without completing seven years' training therein. This indicates the nature of this interpretation of the law, which aspired to formality and yet failed to respect it. Even more remarkable was the real reason that was given, that upholstery did not *deserve* to come within the scope of the law,

because it demanded no professional skill—the upholsterer "is like to Aesop's Bird which borroweth of every bird a feather" —and the whole scope of the statute concerned only such industries as demanded professional skill. A large host of craftsmen were quoted specifically in the decision, who for this reason were not bound to the apprenticeship clauses; included among them were brickmakers, potters and millers, while brewers and bakers were expressly mentioned as being bound to have apprenticeship.[68]

The last-quoted precedent was not upheld in the subsequent period. It points, however, to one of the ways in which the statute of Elizabeth was later gradually pulled to bits.

Results

The final outcome of the development before the Puritan Revolution was therefore as follows. Monopolies were considered contrary to the traditional rights of every Englishman; but the medieval treatment of industry was nevertheless maintained in principle both by parliament and its allies, the common-law courts. On the other hand the possibility of further development either through patents and privileges, or through the extension of the gilds to fresh fields, was mainly prevented by the claims of immemorial custom. In addition, anti-monopolistic feeling had obtained support from the same two powers within the country on the basis of an essentially economic line of argument. Finally it is possible to establish that the courts tended to be hostile towards interference with industrial freedom, even beyond their own legal doctrine. This influence was already of importance

[68] **On** the struggle against monopolies, see particularly: Price (see note 2 above); Scott, *Joint Stock Companies* (next chap., note 11) I ch. 6; E. W. Hulme, "The Early History of the Patent System" *(Select Essays in Anglo-American Legal History* **I I I ,** Cambr. 1909) 117-147; also his series of papers in *Law Quarterly Review* XII, XIII, XVI and XVIII, 1896, 1897, 1900, 1902.—The Case of Monopolies, as will be seen from the foregoing, is reported in three different Law Reports, Coke's, Moore's and Noy's. The first reproduces mainly the judgment itself, the second the speeches of both parties, and the third, in great detail, Fuller's speech for the defence, i.e. against the monopoly.—The case of the London Journeymen is quoted in John Hayes and Others *v.* Edward Harding and Others: Hardres, *Reports* 53-6.—-Norris *v.* Staps: Hobart, *Reports* 210 ff.—Case of 1590/1 : Leonard, *Reports* IV 9. The Statute of Artificers stated in §24: ". . . it shall not be lawful to any person . . . to . . . exercise any craft . . . except he shall be brought up *therein* seven years at the least as apprentice" etc. (my italics).—Rex & Allen *v.* Tooley: Calthrop's **"Reports** of Special Cases", repr. *Tudor Economic Docs.* I 378-83.—Raynard *v.* Chase: Burrow, *Reports* I: iv 4.—For the rest, see references in the foregoing notes.

under the early Stuarts and was to become still more so when the two allies, the courts and the opposition in the House of Commons, had won the day.

7. THE DECAY OF THE INDUSTRIAL CODE

The impotence of the administration

The new institutions that arose under the Stuarts disappeared after the Puritan Revolution without leaving a trace. But fundamentally the change was not much less, even when compared with the Tudor period. The acceptance of Roman law was definitely frustrated. The function of the Privy Council as a court both directly and indirectly, through the newly created courts, entirely vanished. The traces of its controlling powers over local administration and local industrial regulation were also extremely scanty; it has even been said that the character of the central government tended rather to aggravate than to remedy the deficiencies of the local authorities. It is true that one of the systems which had competed with the common law persisted and even expanded, namely the Court of Equity of the Lord Chancellor and the special rights pertaining thereto; but it acquired no importance in the field which concerns us and, besides, came to resemble common law in many respects. Particularly after the Declaration of Rights in 1689, the system of privileges inherent in the royal prerogative was confined within very narrow limits, and the opportunity of effective industrial control was thus made even smaller. The welfare policy of Cecil and the Stuarts never returned again. The 1603 addition to the Elizabethan Statute of Artificers concerning minimum wages in the cloth industry was absolutely disregarded, although on paper it was never actually repealed.[69]

Few opportunities remained to the government of directly influencing the application of the industrial code. It is true that the Crown could always issue a so-called *non* or *nolle prosequi* in every case where the complaint was brought in the name of the king, and then no action would lie. If the leading spirits had shown any conscious endeavours in this direction, the government would presumably have been able to do away with a large part of the industrial code, in the same way as it did in individual

[89] For the general relations between the central and local bodies, see now E. G. Dowdell, *A Hundred Tears of Quarters Sessions. The Government of Middlesex from 1660 to 1720* (Cambr. Studies in Engl. Legal History, Cambr. 1932), especially 17 f., 169.

instances.[70] But the idea of consistently pursuing this course never seems to have occurred to anybody, and it may have encountered obstacles of which I am ignorant. With regard to a consistent policy in the opposite direction, i.e. upholding or strengthening the old system of regulation, the powers at the disposal of the rulers of the country were in any case insufficient. The counsel to the Board of Trade declared in 1718 that the Crown might "upon special occasion and for reasons of state restrain" a trade, *i.a.* in the interests of the balance of trade; "carrying on such trades as in truth (what some Acts of Parliament have declared some trades to be) being guilty of common nuisances". It is quite true that a whole host of things were included in this category. But although the government occasionally considered itself justified in interfering on the basis of this legal title, this hardly contributed to increase the authority of the Crown. It was most important in municipal administration, and, for the rest, was applied by means of Acts of Parliament to stigmatize such divers activities as the import of Irish cattle and French goods, the export of leather and the formation of joint stock companies without a legal title. By no means did it form the basis of general industrial regulation.[71]

In actual fact there is nothing which would make it probable that there was any interest on the part of the administration to systematize the industrial code in one direction or another. Nothing is more significant regarding English development after 1688 than the absence of any sign of such activity in the central government.

The limited influence of parliament

When authority was definitely transferred to parliament, this in itself meant no essential change in the political basis

[70] Unwin reproduces in *Industrial Organization* 252 an extract from the Register of the Privy Council, in which a *non prosequi* was demanded in a law-suit. It was shown that the proceedings were forced "out of spite", because the defendant practised as a cloth-dealer in Framlingham although he had been trained as an apprentice to the tailoring trade in London (1669). Cf. below, note 90.—Other instances: Dowdell (previous footnote) 176 f.

[71]. Examples: 14 Car. II c. 7 (1662) §10; 18 & 19 Car. II c. 2 §1 and c. 8 §1 (1666); 30 Car. II c. 1 (1678) §70: 1 Will. & Mar. c. 34 (1688) §1; 6 Geo. I c. 18 (1720) §19; cp. the decree against the export of knitting machines (1666): Cunningham I I [3] 513 note 3.—Local administration: Webb, *Manor and Borough* I 26 f., 104 f., II 540 etc.; *id., Parish and County* 463, 470, 473, 523, 528 etc.—In general: HoldsWorth VI 303 note 2,312 note 2, 335 f. (his example that the cab trade was regulated by an ordinance on the government's own responsibility is incorrect, however; this ordinance was based on the Act of Parliament of 14 Car. II c. 2).

of industrial regulation. But it was a change in a negative direction, for it shut the door to administrative freedom of action. This result of parliamentary government may seem unlikely, since there is in England to-day what the present Lord Chief Justice, Lord Hewart, has called the "New Despotism"[5], that is, the uncontrolled power of the bureaucracy over statutes, which has shown itself to be perfectly capable of an agreement with the constitutional pre-eminence of parliament. But there was no question of delegating the legislative authority of parliament, on which the present-day position of the English central authority is based, at a time when it had just won for itself its dominant position. Therefore the conditions for an all-embracing administrative power were not present in England in the period between the Restoration and the Parliamentary Reform of 1832. And a system of interference in all spheres of social life presupposes such a power. The difference in economic and social development between England and the continent is, to this extent, explained by the fact that England laid the foundations of constitutional government at a time when continental absolutism was being consolidated.

The independence of the administration was further limited by a phenomenon which the distinguished English jurist, Dicey, has made the centre of his description of the English constitution. I refer to the Rule of Law. According to this the state was conceived as a subject of law, on the same footing as all other subjects, and like these was obliged to prove the legality of its acts in the same way as individuals, without being able to claim an *a priori* legality for its actions.[72] This principle, which was medieval in origin, became anchored in the modern English state through the victory of common law. The political changes thereby created a new difficulty for an all-inclusive industrial code.

This did not, however, prevent the parliamentary regime from strengthening the old forms of industrial control here and there, particularly during the Restoration, which naturally had more points of contact with the earlier Stuart period than had the new system after the revolution of 1688.

Here it was above all a question of the control of industry by the industrial organizations themselves. As early as 1660 regulations were made for the New Drapery in Colchester, and

[72] Dicey, *Introduction to the Study of the Law of the Constitution* (Lond. 1886) Part 2.—Cp. Dicey's reference to Bentham's spiritual heritage from Coke, whose influence the founder of utilitarianism had done so much to overthrow in other directions {*Relation between Law and Public Opinion* 175).

there followed in 1662 a further series of Acts of Parliament for various branches of the textile industry. The cloth industry of Norfolk had its regulations enlarged upon their medieval foundation. In the Yorkshire industry there was created a company, of which we have already spoken (see above 242). Another company for silk-throwing, which was already endowed with a charter from the time of Charles I, obtained parliamentary sanction and became the focal-point of a universal regulation. Finally in 1670/1 the cloth industry of Kidderminster obtained a gild by Act of Parliament. Alongside of these new structures, created by "public" Acts of Parliament for the whole branch of an industry, new gilds for individual crafts in particular localities were very frequently granted charters, by the municipal authorities as well as by the monarchy and by "private" Acts of Parliament. This activity continued more or less sporadically during the greater part of the 18th century. The London coal-porters obtained parliamentary sanction as late as 1758 and 1770.[73]

Nor was the course of events different in other spheres. The famous ordinances concerning burying in woollens occurred in the Restoration period, and after the revolution of 1688 there followed the prohibition against cloth buttons and calicoes (see above 265). In many respects these measures, however, harmonized not only with the old but also with the new spirit. But in some areas the old spirit lived on without fusing with the new, as may be seen from the following examples. From the beginning of the 18th century onwards, the cloth industry was again subjected to a new and thorough technical regulation. In 1711 an act was passed regarding "mixed" cloth, and already in 1708 the regulation of Yorkshire cloth had begun. It was continued later and was placed under very detailed statutes in 1725, 1738 and 1765, the two latter of which, however, repealed at the same time the clauses concerning dimensions of cloth. In 1726 both the woollen industry as such and dyeing were subjected to technical regulation, though it was not very thoroughgoing. The latter legislation was generally enforced by justices of the peace and their appointed searchers (at a later date inspectors were added to the searchers, and both were subordinated to supervisors). Thus they made use of the second of the two

[73] **Statutes: 12 Car. II c. 22; 14 Car. II cc. 5, 15 and 32; 22 & 23 Car. II c. 8.—Other organizations: Kramer, *Gild Studies* 26 note 12; 34 note 44; 94 f.; 183 note 47; Webb, *Manor and Borough* I 199 f. note, 283 and note, II 417, 583; Unwin, *Gilds* 347 f. and note, 363 f. note; *id., Ind. Org.* 78; Heaton 238 ff.**

possibilities at their disposal. Finally in 1777 there also came special inspectors dependent on the manufacturers and these were to investigate the abuses of domestic labour. This latter attempt was also repeated on a later occasion in other textile centres 1784-90. The leadership did not lie with the government, but otherwise these moves were more akin to the French system than was the rest of the English code, in that they necessitated a great deal of administrative machinery. The legislation of the period of James I was revived even as late as 1800 in an act relating to the treatment of raw hides, though London and its environs were exempt from the application of this law. Even in the heyday of *laissez-faire* a very detailed regulation of the Irish linen industry was formulated (1835 and 1838), the single limitation being that the clauses should apply only to goods brought to the markets. As the associations of workers became more and more general in the 18th century, this gave rise to a whole series of measures, in which old and new were combined—the state's tendency to regulate, and the employers' desire to keep down the workers.[74]

One of the most important innovations of the Restoration, concerning domestic industrial and social policy, was the so-called Act of Settlement and Removal passed in 1662. It became the basis of poor relief and of the whole treatment of the large mass of the people till well into the 19th century. In essence the law bound all paupers to their place of residence; if they had wandered forth, they were to be sent back again. Compulsion consequently was not confined to those who actually came on the rates, but included all who might possibly do so. Theoretically few measures could be imagined more likely to prevent economic mobility and to oppose any general change in the industrial life of the country. In this respect it was medieval, but in actual fact it was an innovation with very little precedent. It is true that attention has already been drawn (see above 232) to a clause in Elizabeth's

[74] Laws on technical regulation etc.; 7 Anne c. 13 (1708), 10 Anne c. 26 (1711); 11 Geo. I c. 24 (1725); 13 Geo. I c. 23 and c. 24 (1726); 11 Geo. II c. 28 (1738); 5 Geo. I l l c. 51 (1765); 17 Geo. I l l c. 11 (1777); cp. above 249. —39 & 40 Geo. I l l c. *66* (1800); 5 & 6 Will. IV c. 27 (1835, re-enacted by 1 & 2 Vic. c. 52, 1838). Of these laws the one on dyeing left the control in London and its environs for a radius of ten miles to the Dyers Company of the City of London (13 Geo. I c. 24 §4).—Heaton 408-418; Unwin, *Studies in Econ. Hist.* 298 f.; Clapham (see note 75 prev. ch.) 323, 343.—Laws against workmen's organizations etc.: 7 Geo. I st. 1 c. 13 (1721); 12 Geo. I c. 34 (1725); 22 Geo. II c. 27 (1749); 29 Geo. II c. 30 (1756); 30 Geo. II c. 12 (1757); 8 Geo. I l l c. 17 (1768); 13 Geo. I l l c. 68 (1773).—With the exception given in the text I omit entirely the legislation for Scotland and Ireland.

Statute of Artificers, according to which each worker, on leaving the place where he worked, had to show he had been freed from his employment, and that numerous attempts had been made to enforce this rule; and other obstacles to the mobility of labour could also be found in the Elizabethan system. But they were insignificant in comparison with the initiative of the Restoration, represented by the Act of Settlement. In the information—insufficient, it is true—concerning the origin of this law it cannot be seen that it was based on any of the older and milder acts which had been passed. In their helplessness to solve the problems of poor relief and vagrancy, the authorities of the second part of the 17th century, without apparently considering the consequences, seized on a measure which more than any previous one was calculated to hinder the movements of the population towards those places where they could find their best opportunities for gaining a livelihood. This was a new method of binding people to the soil.

At the same time it must be emphasized that to all appearances the principle of the Act of Settlement was carried out to only a very limited extent. The law was enforced least against unmarried adult males, and presumably they moved about more than anyone else and were most important in changes in economic life. It is probable moreover that the law was applied chiefly in rural areas against married men with families, but that it was not so applied in the cities. In the cities the statute was directed in the first place against the physically helpless and economically least mobile elements—widows and unmarried women with or without children. The effect of the statute on restricting mobility was thus very much diminished by the fact that those in power in the cities, and in fact in industrial districts generally, found it to their interests that the supply of labour should be increased. In the normal way, then, there was nothing to induce them to help enforce the statute. The statute was obviously most important in those rural communities between which migration would in any case not have been very great, although it is not inconceivable that people were thereby retained in agriculture who would otherwise have drifted into industry. The enormous increase in the population of London and of the new industrial communities of the 18th century, however, proves that the effect of the Act of Settlement in this direction was limited, and that it really could not obstruct mobility of labour as much as its literal content would lead one to suppose. Nevertheless, the conclusion is that without the law, internal migration

would have been even greater and would have followed more closely the demand for labour. The great expansion of industry in the North of England, Lancashire and Yorkshire, occurred, as has lately been shown, chiefly with the aid of local labour. This circumstance and the actual great differences between the standard of wages in different parts of the country may have had a certain connection with the Act of Settlement. Adam Smith's penetrating criticism of the act, which theoretically would have been fully justified if the act had been applied literally, was not entirely wrong even in connection with the actual position; but it was very much exaggerated in that respect. In any case the statute could probably do very little to counteract the attraction which the new economic opportunities offered to the people. It is not possible to prove conclusively whether in this connection it accomplished more or less than the medievally constructed policy of other countries; but there is a definite impression that its effect was weaker and that economic life in England was less tied by legislation than that on the continent.[76]

The interest of the state, and not merely of the government, in internal industrial regulation subsided after 1660 and particularly after the revolution of 1688. The centre of gravity shifted more and more to external activity, above all to trade and colonial policy and in general to the new joint stock companies which had no relation with the conception of industry as inherited from the Middle Ages; and also to the provision of credit, the insurance system and the domestic capital market in general, and finally to agrarian protection. It was precisely through the last named that England distinguished itself in the latter period of mercantilism from the most important continental countries.[76] Thus while the regulation of handicrafts and domestic industry

[75] Law of Settlement: 13 & 14 Car. **II** c. 12—most recent description: Webb, *Engl. Poor Law History* I ch. 5; what they state on the application of the law is based chiefly on Miss D. Marshall, *The English Poor in the 18th Century* (Lond. 1926), party. ch. 5-7, where a very illuminating description of the practical aspects of the system is to be found.—Attempts at the application of the Statute of Artificers §§7-8; see e.g. an extract of 1572 in *Engl. Econ. Hist.* (ed. Bland etc.) 333-6; cp. Tawney, *The Agrarian Problem in the Sixteenth Century* (Lond. 1912) 271 f. and Lipson **I I I** 457-69.—Adam Smith, *Wealth of Nations* book I, ch. 10 sub-sect. 2 (ed. Cannan I 137-42, cp. 435).—Migration within the country: Wadsworth & Mann 313; but the economic effects of the Act of Settlement have yet to be investigated more closely.—Standard of wages: Gilboy, *Wages* (note 39 above) 627.

[76] The best way to forming an idea of how far the state directed its attention to one or another sphere can be gained from the collections of statutes *{Statutes of the Realm* and *Statutes at Large).*

in England receded behind these new interests, France was forcing her state regulation of industry to the very limit.

The importance of the new measures to English industrial life was certainly fairly small. There are no indications that the attempt in the Yorkshire industry of 1662 effected any positive results. The organization disappeared both actually and formally in 1685. The companies created by the city of Leeds roughly at the same time had hardly any more vitality, and in 1720 an attempt at reviving them also failed. The regulation of the Yorkshire industry by the J.P.s and their inspectors after 1725 was apparently more successful though this system was a dead letter at the beginning of the 19th century. The Kidderminster cloth industry fell into decay shortly after receiving its charter. On the other hand parliament took action to prevent gild exclusiveness from dominating the silk-throwing industry, which seems to indicate that it was still quite powerful there.[77]

In fact what appears to be most difficult to explain are the motives of parliament and municipal administration for allowing the old industrial conception to extend in certain directions. For usually the destructive forces worked all along the line and there was no inclination to offer them any constructive opposition. It was this that gave the development of the period between the Restoration and the revolutionary wars its peculiar impress and its essential significance.

But at the same time it must be pointed out that even in a negative direction no trace of systematic planning can be found. It was a highly heterogeneous and arbitrary dissolution of the old order, determined in individual cases by pure accident, by the wavering attitude of the higher courts, the municipal administration and the gilds, without any kind of unified leadership.

The helplessness of the local corporations

An examination of the state of the gilds and municipal administration reveals, here and there in the 18th century, a confused activity on the old lines, even down to the great municipal reforms of 1835 and in exceptional cases even later than that. Of the large number of available examples a few, taken from the later periods, may suffice.[78]

[77] Yorkshire industry: Heaton 234, 238 ff., 309 f., 416; Webb, *Manor and Borough* II 417.—Kidderminster industry: *Victoria County History: Worcestershire* (Lond. 1908, 1913) II 294 f., I l l 165.—Silk-throwing: see below 304.

[78] The following is based principally on the data in Kramer, *Gild Studies* 139-210 ("The End of the English Craft Gilds"). In addition there is the abundant material in the second volume of Gross, *The Gild Merchant,* which is set out alphabetically according to the names of the towns.

It was very customary for measures to be taken against outsiders and above all against those who did not belong to the gilds, although those who were not freemen of the towns were also often victimized. London was at the head of this movement. In the two years 1828 and 1829, no fewer than 2689 industrial workers who were without the freedom of the city were denounced; and other cities did likewise, as also the gilds, for example the mercers in Shrewsbury in 1823, the cordwainers in the little town of Ruthin in 1825, various industries in Chester roughly about the same time, the gold and silver wire drawers in London 1826, the mercers in Faversham 1835 etc. etc. The demand for apprenticeship was maintained in many cases even after the clauses concerning it in the Statute of Artificers were abolished in 1814, apparently because a reservation was made there in favour of the charters of corporations. In 1789 Berwick had the clauses concerning apprenticeship revived, and it even intensified the restrictions in 1833, by prescribing a very high fee. The mercers of Shrewsbury kept a list of apprenticeship contracts down to the year 1835. The conflicts between the corporations of various crafts persisted as long as they themselves persisted. In many cases the gilds retained their position even after the municipal authorities had decided to support them no longer. This was so in Bristol in the long period between 1703 and 1792. The municipal administration often helped the organizations in their struggle against outsiders. Occasionally the municipalities pursued the policy of exclusion, after the gilds themselves had disappeared or had given up the struggle.

These examples, however, tend to create a false impression, in so far as the measures appear to be aimed at limiting the practice of a craft to the old gild brethren or freemen. But this happened only in exceptional cases. Usually all that was attempted was to extort payments from outsiders, and in London, for example, these sums were fairly small. The degree in which the financial point of view was sometimes predominant is seen from the fact that the court of the Company of Framework Knitters in 1742 decided that it was "for the interest of the company to increase the number of their members" and that therefore a guinea should be paid to every member who could propose a new "purchaser". The same motive led to the fabrication of superfluous offices, which represented a heavy burden; all that was required was the payment of an exemption fee from such onerous offices, with the framework knitters in several cases as much as £10 sterling. Thus, fiscalism in a certain sense played a

large part to the very end, even in England, although much less than in France, and without the state having anything at all to do with it. Seriously intended industrial restrictions and actual industrial control occurred more and more rarely, and disappeared in general before the end of the 18th century, except in some London corporations; one of these exceptions was the London Saddlers, who as late as 1822 destroyed sixteen saddles considered worthless and appointed nine searchers in 1837.[79]

The gilds were on the decline everywhere in England from the beginning of the 18th century onwards—at least, all observers are agreed that this was the case from the middle of the century. Many gilds ceased to exist altogether, or without any formal decision on the point, refrained from taking action against outsiders or maintaining their demands for apprenticeship, often also ceasing to function at all in any corporative capacity. It is of particular importance that the capitalists and employers felt to an ever-increasing extent the need for greater mobility; in particular, the right to employ journeymen who did not belong to a gild or a city was greatly coveted if the native workers demanded higher wages. A decision of the London Common Council of 1750, rendered after many previous moves in the same direction, is typical; according to this the employers obtained what amounted to unlimited power to employ journeymen from outside. Similarly in Bristol (1700 and later) where action against outsiders ceased altogether, and in Dover (1747) and in the matter of the butchers of Newcastle in 1760 (although with certain backsliding in 1785).[80] Only this must not be taken to mean a consistent policy pursued by the municipalities. They were as helpless as all the others.

The attitude of the state officials largely contributed to the helplessness of the local corporations. What parliament introduced was certainly not very much, one way or another, though it was not altogether insignificant. In the Civil War an attempt was made to admit soldiers to the freedom of a craft, even though they had not finished their period of apprenticeship. This recurred directly after the Restoration and, in extensive form, towards the end of

[79] Besides the foregoing note: 54 Geo. **III** c. 96 §4.—Webb, *Manor and Borough* I 399, **II** 449 note 4, 450 note, 510, 583 note, 584.—Kramer, *Gild Studies* 127, 138.—Unwin, *Gilds* 345.—Company of Framework Knitters 1742: extract of the records in *Journals of the House of Commons* X X V I , 784, 787, 790.—Cp. footnote 83 below.

[80] Webb, *Manor and Borough* I 399 f., II 638 and note 3.—Kramer, *Gild Studies* **145** f., **159** and note, 139, 196.

the century (1698) after the Peace of Ryswick. At times this appears to have led to great confusion in the organizations. After the Fire of London in 1666, freedom for life was granted to anyone who co-operated in the rebuilding of the city. When in 1663 the linen industry was to be stimulated in England, it was believed that this could best be done by admitting everyone to it, without charges, both in the cities and in the country. Attempts were also made to prevent encroachments on the part of the gilds themselves. When the silk-thro wing industry obtained its gild in 1662, it was expressly forbidden to permit any rules concerning wages. And this extended both to members in their relationship to outside employers, and to members regarding the workers employed by them. Several years later, 1667/8, this very enterprising organization was denied the privilege of limiting the number of spindles which every member might possess, and the number of apprentices to less than three. There are certainly many other examples of this kind, for it was obviously here a question of a struggle of the old gild ideas with the new capitalist tendencies, where parliamentary sympathy was definitely on the side of the latter. A parliamentary committee of 1751 condemned outright the principal part of the old regulation, and a House of Commons resolution of 1751 contained one of the most vigorous anti-gild utterances of the century. There the national organization of the framework knitters, founded on a charter of Charles I I, was inveighed against in the strongest language possible; the charter itself was said to be harmful to industry, and to lead to monopoly, and the rules of the company and its measures against outsiders highly dangerous to the whole country. This was largely due to the fact that the organization chiefly represented domestic workers.[81]

The vital importance of the courts

The various points touched upon here were not the most important in the future development of industry. Its fate depended far more on the interpretation by the courts of the law as existent before the Puritan Revolution. The most decisive impulse came from this direction. The importance of the courts in comparison

[81] Soldiers: 12 Car. I I c. 16, 10 Will. I l l c. 17 §1; cp. Kramer, *Gild Studies* 143 f.—Rebuilding of London: 18 & 19 Car. II c. 8 §16.—Linen industry: 15 Car. II c. 15.—Silk-throwing: 14 Car. II c. 15 §9, 19 and 20 Car. II c. n §§1 & 3.—Committee of 1751 : *Journals of the House of Commons* X X V I 292 f.—Framework knitters: *ib.* X X V I 788, 794; the report of the committee on which the resolution was based (779-94) went even farther and gave a very well-documented description of the gild system in the early half of the 18th century. Cp. Chambers (see note 30 above) 319-23.

with the other state agents had increased enormously after the independent authority of the monarchy had ceased to obtain. It is therefore easily seen that the focus of the development became more and more concentrated on the courts.

From a purely legal point of view the treatment of the industrial code by the courts did not mean any change in the principles which had been laid down before, although the spirit of the age made itself felt to an ever-increasing extent. But the influence of this legal practice became more and more pronounced and gradually led to the dissolution of the system. It seems appropriate to follow up first the fate of the gilds; it will then be seen what became of the unified legislation represented by Elizabeth's Statute of Artificers.

The treatment of the gilds

The fact that the gild regime was not anchored in the great industrial codes and that compulsory gild membership was based only in exceptional cases on formally accepted law (see above 233) now brought its consequences. These consisted chiefly in that the rights of the gilds could never be decided universally but always after examination of particular cases. It led to great uncertainty and increased the difficulty of the gilds when they tried to enforce their measures.

The single important exception to this legal position of the gilds was their right of technical control and of supervision over quality. This was guaranteed by many Acts of Parliament, but little was heard of the corporations showing interest in this function of theirs. To my knowledge it was very rare for it to become a matter of conflict in the courts. The gilds pursued other ends, wherein their legal titles were much more doubtful. The chief interests of the gilds and the municipalities consisted in excluding foreigners or non-freemen, that is, those who had finished their apprenticeship elsewhere and those who were not citizens of that particular city. They were further concerned with the seven-year period of apprenticeship as a precondition for the exercise of a craft, principally of course as a means of stemming the tide of those who wanted to practise the profession; in other words to create an *oligopolium.*

It might appear as though at any rate the demand for apprenticeship was firmly anchored in the current industrial system. The condition itself certainly was; but this did not mean that the gilds had thus acquired a legal influence. This circumstance was already calculated to lessen the guarantee that the clauses would be enforced- The Tailors of Ipswich Case of 1614, already dealt

with in detail, was a precedent according to which the gilds were not allowed to make the exercise of a craft conditional on the result of their control over the completion of the period of apprenticeship. At least this particular case could be so interpreted, and the precedent was recognized in every case of which I am aware. This does not however mean that there was any lack of examples of similar situations more favourable to the corporations. Lord Mansfield thus admitted that everyone desirous of joining the gilds of the city of Durham must first obtain permission from the municipal authorities, for "it provides a Method for previously examining into the Rights of those who claim to be made free" (Green *v.* Mayor of Durham, 1756/7). On the other hand the London goldsmiths, for example, in 1661 questioned the right of the gilds to impose such examination; and the same was the attitude of a lawyer consulted by the mercers of Derby in 1709. It was presumably the Ipswich precedent which was considered decisive here.[82]

The right to exclude "foreigners" stood on a different footing, for here there was the indubitable fact that the right existed in some cases and not in others. On the whole the courts stood by the opinion which they had adopted from the beginning—that all measures of this kind were illegal in so far as they were based only on royal privilege, but were valid if founded on age-old custom. To this extent conditions were unchanged since the time before the Puritan Revolution. The decline of the monarchy however enabled this doctrine to attain absolute supremacy, and this too constituted a great change. Moreover, immemorial custom was what the courts conceived it to be and this often differed from the gilds[5] conception. This criterion led to a fundamental difference in the legal position of corporations and cities which for the rest were alike. The whole doctrine thus became a manifestation of that confusion in industrial regulation which followed from the fact that the gilds were not established in all-embracing statutes for the whole country.

The first legal authority of the successful revolutionary party of 1688 was Sir John Holt, Chief Justice of the King's Bench from 1689 to 1710. He was one of the two judges who did most to pave the way for a new system of industrial law. On the point in question he apparently went even farther than his

[82] Green *v.* Mayor of Durham: Burrow, *Reports* I: iv 127-33; the Ipswich case (see note 63 above) is likewise quoted there and also in the suit of the London Soap Makers (see note 90 below).—The incidents of 1661 and 1709: Kramer, *Gild Studies* 160 f.

successors. In one famous case to which we shall return later (Mayor of Winton *v.* Wilks, 1705) he recognized on the one hand the right of excluding "foreigners" in the city of London; he took it that this was determined in the legal struggle of the city against the chandler Waganor in 1610. On the other hand he considered it doubtful whether such a practice existed elsewhere. On this occasion the case was decided on other grounds. Almost all the later precedents respected in theory immemorial custom as a justification for the policy of exclusion.

Holt's immediate successor as Chief Justice of the King's Bench was Parker, later Lord Macclesfield. He devoted the most detailed discussion to the question which it has ever received, on the occasion of the case Mitchel *v.* Reynolds (1711); as has been mentioned in the previous section, Parker made it the reason for a disquisition on all forms of restraint of trade from the point of view of their legality. All restraints of trade founded on royal grant he set aside, with the exception of inventors' privileges based on the Statute of Monopolies. But he largely recognized the traditional rights of local corporations and the local by-laws founded thereon. Trading restrictions in favour of a community he recognized on principle as well as the right to exclude "foreigners". "Custom is *lex loci* (a local law), and foreigners have no pretence of right in a particular society, exempt from the laws of that society." He also recognized restrictions for "better government and regulation" and finally such as limited an industry to particular localities in all cases—all on the condition that there were precedents. The single exception from the validity of this ruling according to Parker were hindrances to the exercise of industry in general, that is over the whole country. Like all his successors he characterized this without exception as an illegal and even criminal monopoly. Thus this important judgment fully illustrated the local differences between legal conditions in the field of industrial regulation.

Another important decision often quoted was made in 1732 (Corporation of Colchester *v.* Sympson). It limited the right to practise a trade to freemen of Colchester. This was further emphasized in the year 1748 in the case of the city of Devizes (Bodwic *v.* Fennell), although the judgment in this case was for other reasons given against the plaintiff. The most effective conservative force on this point was the fact that the doctrine of the legality of long-standing custom was supported by the second of the two judges, who along with and even before Holt worked for the abolition of the old order—Lord Mansfield, Chief Justice

of the King's Bench for no less than thirty-two years (1756-88). For example, in a case which likewise became a precedent (Woolley and Another *v.* Idle, 1766/7), the plaintiff's counsel having taken up the position that a tailor in Bath should be a freeman in order to exercise his trade there, Mansfield interrupted him almost at the start, immediately accepting his view: "There is Nothing of Doubt in this Case. The Custom is good and warranted by a vast Number of Cases." As late as 1821 this judgment of Mansfield's was quoted, and it was said that the freedom of the city of York was a precondition for the exercise of retail trade (the Mayor and Commonalty of the City of York against Welbank).[83]

On the other hand in many cases local industrial control was rejected where the locality could not point to immemorial custom. Some examples chosen at random may be given in illustration. In 1727 the Merchant Adventurers of Newcastle wanted to preclude the members of other gilds from buying corn direct from outsiders. They based their claim on a customary right. This was challenged by the opposing party. The company lost the action and judgment was given against it with costs. In 1773 the city of Berwick was denied the right of excluding those who were not freemen. A very heterogeneous company of Bridgnorth complained in 1784 against an outsider who practised in the town. The judge broke off the proceedings after hearing only two witnesses and demanded that the jury liberate the man —which was immediately done. In 1827 a judge of the King's Bench disallowed the plea of a trading company of the city of York against an apothecary, on the ground that the company had not succeeded in proving immemorial custom. The local organizations therefore found it very difficult when they tried to obtain from the courts legal support for their restrictive measures, although in many important cases the legal doctrine itself granted them the right. Even in 1684 it was said that their regulations "met with no favour in Westminster Hall". There

[83] On Holt: Lord Campbell, *The Lives of the Chief Justices of England* (2nd edn. Lond. 1858, II 136 f.) ; a very similar conception of him is found in Holdsworth VI 519 f.—Mayor of Winton *v.* Wilks: Lord Raymond, *Reports* II 1129-35 ; Case del Citie de Londres: see note 64 above.—Mitchel *v.* Reynolds: Peere Williams, *Chancery Reports* I, 181-97.—Bodwic *v.* Fennell: George Wilson, *Reports* I 233-7; the Colchester Case is taken from the same source; it does not appear to have been reported, though its finding is referred to in the last-named report as being "solemnly determined".—On Mansfield *La.*: Campbell II 439.—Woolley *v.* Idle: Burrow, *Reports* IV 1951 f.—City of York agst. Welbank: Barnewall & Alderson, *Reports* IV 438 ff.

is little doubt that the judges were fond of giving judgment in these actions in favour of outsiders. But to determine the importance of this tendency the legal cases would have to be more thoroughly and systematically perused and sifted than has been done here.[84]

Many obstacles were placed in the way of the corporations in their desire to exercise their customary right of excluding strangers. In the above-mentioned case of Winton (Winchester) of 1705, all the judges with great and evident satisfaction pointed to the fact that the customary right, which had in itself been accepted as valid by the court, held good only for the Gild Merchant *(gilda mercatoria)* of the city, whereas the plaintiff in this case was the city itself. The fact that the two had not been shown to be identical was made the reason for a unanimous judgment in favour of the defendant. In the case of Mitchel *v.* Reynolds, Parker gave his opinion with great frankness regarding "corporations who are perpetually labouring for exclusive advantages in trade and to reduce it into as few hands as possible". In the case of Bodwic *v.* Fennell, one of the judges says that "these exclusive privileges are much abused"; judgment there was given against the town of Devizes—although it was able to prove immemorial custom—because the plaintiff was an individual and not the city itself. This distinction was of practical importance, for the interpretation of the law in the above sense rendered it impossible to make use of the system of informers for enforcing industrial regulation. Without abandoning the old legal doctrine, the courts in a very great number of cases thus placed obstacles in the way of this regulation.

The confusion in the system as seen from the examples now given is largely to be explained by the fact from which we set out, i.e. that the English regulation of industry did not depend on the gilds. All general solutions were out of the question so long as this principle was retained. The gilds were neither recognized nor rejected. This made possible their decline, but nevertheless prevented their complete uprooting. They could not be overthrown by the mere fact that certain laws were abolished.

[84] Newcastle: *Newcastle Merchant Adventurers*, ed. J. R. Boyle & F. W. Dendy (Surtees Soc. Publ. XCIII 255 note).—Berwick: Webb, *Manor and Borough* II 510.—Bridgnorth: C. A. J. Skeel, "The Bridgnorth Company of Smiths'[5] *(Engl. Hist. Review* XXXV, 1920 247).—Merchants' Company of York *v.* Harwood: (after York Courant) in *The York Mercers and Merchant Adventurers*, ed. M. Sellers (Surtees Soc. Publ. CXXIX) 316-21.—Statement of 1684: Kramer, *Gild Studies* 161.

It was not until the Municipal Corporations Act of 1835 for England and the corresponding law of 1846 for Scotland that the exclusion of "foreigners" was prohibited; and even these laws failed to do away entirely with the gild regime as such, a point which the Scottish act stated explicitly.[85] Thus the English industrial structure retained its influence, until it was finally and completely overcome—and some small remnants of it exist even to-day.

The treatment of the Statute of Artificers

The endeavours of the towns and gilds to exclude "foreigners" were only one aspect of the old industrial policy, while the other important part was national legislation, and thanks to the Statute of Artificers, England could show a larger degree of unification than any other country. If the practice of the courts tended gradually to overcome the old order in this sphere too, this could have no connection with fact that the legislation itself was not national, but must have had some other cause. And if anything, this aspect of the development was even more important than the fate of the local corporations.

The application of the wage clauses of the Statute of Artificers was, generally speaking, the exclusive task of the justices of the peace. Through an alteration in the statute undertaken towards the end of Elizabeth's reign, an older clause was annulled according to which wage rates were to be reported to the Court of Chancery, although even in these cases it happened that the higher courts opposed the system of regulation. When the heyday of the Privy Council was over, it was left entirely to the J.P.s whether and how the clauses were to be applied. In certain cases parliament, however, passed additional regulations. In a law concerning the rebuilding of London after the Great Fire, measures were taken against those who "make the common calamity a pretence to extort unreasonable or excessive wages". There were also numerous cases of wage-fixing. A law of 1721 concerning the London tailors determined both wages and hours of labour and gave the J.P.s the right to change wage rates on the Elizabethan pattern "according to the plenty and scarcity of the time". This rule, which adhered closely to the lines of the old regulation, was revived as late as 1768. Also a statute for the woollen industry applying to the whole country (1756) laid down

[85] 5 & 6 Will. IV c. 76 §14; 9 & 10 Vic. c. 17 §§1 & 2.—It may be noticed in passing that the English law applied only to definitely enumerated boroughs (§142), so that a uniform solution did not take place even at that time; cp. Webb, *Manor and Borough* II 739, 751 f.

that the J.P.s were to determine the wage rates and nail them up on the church doors. The so-called Spitalfields Act of 1773 for silk-weavers in London and its environs contained similar clauses.

The attitude of mercantilist writers towards the wage clauses was entirely dependent upon their conception of the good or harm which might result from higher wages, for without further ado, it was taken for granted that the determination of wage rates had the tendency to keep wages down. Of the two most prominent and influential economic writers of the Restoration period, one was in favour of and the other opposed to the statute regarding wage-fixing, both for the aforementioned reason. Sir William Petty in 1662 characterized all infringements of the law on this point as a great danger to trade, and would have had the whole system adapted to the changed circumstances of the time, as he was afraid of increases in wages. Sir Josiah Child in 1669 declared himself against them, believing that their great grandfathers had attempted—without any success—to keep wages low by law, but that this had occurred before trade was introduced into the country; since then, however, like the rest of the commercial world they had grown wiser and he hoped that they would remain so. Neither of these two well-informed men appear to have believed that the legislation was at that time actually put into effect.

Here as usual the situation, as far as the actual influence of the old system was concerned, was hardly uniform. The circumstances in the case of the London tailors have been particularly well investigated. Wage-fixing was not entirely insignificant there even in the 1750's. In exceptional cases it persisted, in theory, very much longer, in fact into the next century, but did not play any vital part after 1770. An observer whose evidence must be given due weight, Sir John Fielding, the professional Bow Street, police magistrate, in 1768 characterized wage-fixing by J.P.s as a great benefit to the capital. But that must have referred to an exceptional case. His half-brother, Henry Fielding, the famous novelist, who was also an active J.P. of Middlesex, said that the wage clauses had "grown into utter neglect and disuse"; and recent research in the history of the Quarter Sessions of that important county shows that assessments had been reissued mechanically without alteration since as early a date as 1610, and that after 1725 there was not "the faintest sign of the most perfunctory action". The above-mentioned statute drawn up in 1756 provided for such wage-fixing for the whole of the woollen

industry in the country, but remarkably enough it was abolished as far as this was concerned in the following year. Free agreements on wages between cloth manufacturers and their weavers thus acquired unlimited validity. In the West Riding of Yorkshire, the textile groups finally disappeared as early as 1671 from the list of industries in which wages were assessed. Only in rural areas and agrarian districts do the clauses appear to have retained some importance.[86]

It was not the wage clauses which really occupied people's attention. The apprenticeship clauses were far more prominent, and the influence of the higher courts was primarily felt here. The seven-year apprenticeship period largely regulated admission to crafts and would have made its power of limitation felt more and more, as the traditions of the gilds disappeared and the mobility of the population enabled even such classes as were far removed from the old organizations to practise some craft. This factor in the industrial system must therefore occupy the centre of our discussion.

The influence of the courts was throughout exerted towards limiting the application of the apprenticeship clauses. One of the judges in a case of 1669/70 (the King against Turnith) said: " I have heard all the Judges say that they will never extend that statute farther than they needs must"; and almost a century later Blackstone repeated the same statement in the first edition of his famous *Commentaries* (1765).

The law itself contained only one more or less serious limitation, but its scope grew ever wider in practice; and to this were added several freely invented limitations.

The limitation in the statute itself has already been mentioned above (p. 230), the seven-year apprenticeship to apply only to

[86] Statutes: 39 Eliz. c. 12 (1597/8) §4; 18 & 19 Car. II c. 8 (1666) §15; 7 Geo. I st. 1 c. 13 (1721); 29 Geo. II c. 33 (1756); 30 Geo. II c. 12 (1757); 8 Geo. III c. 17 (1768); 13 Geo. III c. 68 (1773); J. H. Clapham, "The Spital-fields Acts 1773-1824" *(Econ. Jnl.* XXVI, 1916) 459-71.—Petty, *Treatise of Taxes and Contributions* ch. 5, pt. 15 *{Econ. Writings,* ed. C. H. Hull, Cambr. 1899, I 52).—Child, *New Discourse of Trade* (unpag.) Foreword (according to this Foreword the book was written "long before" the opening of parliament in 1669), and this must be accepted for the first part; in its final form the pamphlet has an *Imprimatur* of 1692.—The tailors of London: *Select Docs. Illustr. The Hist, of Trade Unionism,* I (ed. Galton, note 62 above) xxxv-xl, xlvf., Iviif., lx, lxiv, 86f. etc.—Sir John Fielding: quot. Webb, *Parish and County* 342.—Henry Fielding and Middlesex generally: Dowdell (above note 69) 151. On the episode which led to the fixing of wages in 1756/7, see also Lipson III 266-70.—West Riding: Heaton, "The Assessment of Wages" (*Econ. Jnl.* XXIV, 1914) 228 and his book 313 f.

crafts "now used or occupied within the Realm of England or Wales[5]" (§24). The words give the impression of being almost entirely ornamental, but the fact that they were first introduced in parliament possibly indicates that something was intended by them. In any case at least as early as the beginning of Charles Ps reign, they were so interpreted as not to include newly created industries within the scope of the law, and their number naturally grew apace after 1563. Most important among them was the cotton industry, in which the Industrial Revolution was to find its most typical development. But even other industries were involved, for example the hosiery industry, according to a judgment of 1728. It has already been said (above 304) that the linen industry was thrown open to everybody by a special Act of Parliament, and it is uncertain whether it would otherwise have been considered subject to apprenticeship clauses. The seriousness with which the limitation was applied is seen in the fact that it was considered doubtful whether the statute extended either to new qualities in a time-honoured industry, such as the New Draperies, or to old industries in new localities such as the worsted industry in the West Riding of Yorkshire.[87]

Next come such modifications as found no support in the statute.

In the first place there arose the question of whether the statute should extend only to craftsmen who would have to have some professional training, or to others as well. This was the most obscure point in the whole system. Tolley's case of 1615 (see above 292 f.) did not form a precedent in this connection, in so far as several later law-suits led to the application of the apprenticeship clauses to upholsterers. Holt, ż.a., definitely stated (Rex *v.* Paris Slaughter, 1699/1700) that he differed from the judgment of 1615. He remarked, with perfect truth but contrary to the decision in that case, "there are several trades within the general words of the statute, besides those there mentioned". The judgments sometimes took one course and sometimes another, as is found for example in the arguments on this case. A judgment of the time of Charles I which excluded from the apprenticeship clauses

[87] Anne Stafford's Case (1627/8): Palmer, *Reports* 528.—The King against Turnith: *Modern Reports* I 26.—Blackstone, *Commentaries* (11th ed., Lond. 1791): "The Resolutions of the Courts have in general rather confined than extended the restriction".—Lipson II 107.—Unwin, *Studies in Econ. Hist.* 292.—Heaton 310.—A small book discussing a number of these legal cases is J. F. Scott, *Historical Essays on Apprenticeship and Vocational Education* (Ann Arbor 1914).

a hemp-dresser, and another from the reign of James II which treated a wool-comber in like manner may be cited; in the first of these, one of the judges expressed doubts with regard to bakers and brewers. A third case concerning a pippin-monger was never decided. The Newcastle Merchant Adventurers launched numerous attacks in the 18th century against outside merchants in their capacity of grocers irrespective of the kind of trade which they actually carried on, simply because grocers were considered to fall within the scope of the apprenticeship clauses of the statute, which was much more doubtful with others. When a lawyer, Serjeant Onslow, broached the question of the repeal of the clauses in the House of Commons in 1814, he too emphasized the fact that a hopeless confusion existed. He mentioned for instance that gardeners were not considered to fall within the scope of the law while fruiterers were.[88]

The scope of the apprenticeship clauses was further limited by the courts in two different directions. First they were not considered valid in rural areas, as arises from a great number of judgments of the Restoration period and as Blackstone repeated about a hundred years later. There was consequently no attempt to regulate trade and handicraft outside the towns, thus providing a complete contrast with continental practice. The second point was even more important. The demand for a seven-year apprenticeship was regarded as complied with as soon as the particular person had worked seven years in the craft whether as master or artificer. The inadequate control over the enforcement of the statute made this a very great relaxation; the illegal practice of a craft thus became legal simply by being continued for seven years. This came out quite clearly in a judgment of 1706 (Reg. *v.* Maddox); and a few years later it was laid down in another case (The Queen against Morgan 1711) that exactly the same rights could be acquired by working with a non-qualified as with a qualified person. Afterwards this was considered a recognized right, as appears from the following example. When the Merchant Adventurers of Newcastle made their last attempt in 1786 to limit trade to their own members, a number of outside merchants

[88] Upholsterers: Plaier *v.* Pettit (1665/66): Siderfin, *Reports* I 269; Roy *v.* Cellers (1668/9): *Ibid.* I 367; Rex *v.* Paris Slaughter: Lord Raymond, *Reports* I 513 f.—Excluded trades (besides cases—presumably unreported—mentioned in the last-named one): The King and Informer against Fredland (1638/9): Croke, *Reports Car.* 499.—*Newcastle Merch. Adv.* (see note 84 above) XCIII xlv f. and note.—Hansard's *Parliamentary Debates* XXVII 566 f.

rebutted this claim by referring to the fact that they had served seven years or more in the trade.[89]

But more important than any of the isolated interpretations of the law was the general unwillingness of the courts to apply it.

Among the rare exceptions that have come to my notice is a judgment in favour of the London Soap Makers Company; it is explicable in that it was one of the few handicraft organizations which had derived its patent privileges from the early Stuarts. This judgment occurred during the Protectorate (John Hayes and Others *v.* Edward Harding and Others 1656). The court declared that the Statute of Artificers "is a beneficial Law made *pro bono publico,* and therefore must have a liberal and favourable construction".

The common practice was of a precisely contrary nature. Even a decade earlier, a judgment quoted in this case declared that a draper of Norwich came within the scope of the law, but the information was quashed because it was not proved that he had not been practising the trade at the time when the statute was passed, and this excepted him, according to clause 24 of the statute, from the application of the clauses. When this judgment was given, the Statute of Artificers was already eighty-four years old, and consequently the only supposition under which the clause excepting him would have applied was that he had been in the trade for the same period. There can be no doubt about the spirit of a judgment of such a character.

No change took place after the Restoration. It even occurred that the government took measures to protect craftsmen from the outcome of judgments which otherwise would have been avoidable, and a case of this kind has already been touched upon (Rex *v.* Kilderby, 1669, see above 295). The case referred to a man who had served his apprenticeship as a tailor in London and was sued later for settling down as a woollen-draper in Framlingham; judgment was given against him but he was saved by a *nolle prosequi* of the Privy Council. After the 1688 revolution, if not

[89] Anonymous (1669): Ventris, *King's Bench Reports* I 51.—The King against French (same year): Keble, *Reports* II 583.—The King against Tumith (same year): *Modern Reports* I 26; several others are mentioned in a footnote to the last-named report, among them—it should be added—some decided in the opposite sense; but even then "the Court said that it had been the common practice to find for the defendant, on evidence that he followed the business only in a small village*'.—Regina *v.* Maddox: Salkeld, *Reports* II 613.—The Queen against Morgan: *Modern Reports* X 70 f.—*Newc. Merch. Adv.* XCIII 267 f.

before, statements in the judgments themselves occur which are definitely hostile to the statute. Thus Holt, in the case of Mayor of Winton *v.* Wilks (1705), states: "What was the foundation for making the statute of the 5 *Eliz.* but the general liberty of trade, which all persons had before the statute?" Here the industrial code is represented as a fall from the original state of freedom. In the same year it was said in a report on a case against a seamstress, who was sued because she had not finished her prescribed period of apprenticeship, "the indictment was, *ubi revera* the defendant never was educated in the said art or mystery *tanquam apprenticus* (for *apprenticius).* And because the word *apprenticus* was nonsense, the indictment was quashed" (Regina *v.* Franklyn). The absence of one letter consequently led to the judgment being given for the defendant. In the following year a judgment in the case of Regina *v.* Maddox stated "this being a hard law", which was the precise opposite of what had been said in the year 1656 in the judgment in favour of the soap-makers.

Finally it remained for Lord Mansfield to condemn the statute itself in two findings separated by a short interval. In the first case, Raynard *v.* Chase (1756), the judgment itself was consistent with the spirit of the law. A brewer not working on his own account was to be exempt from the obligation of apprenticeship if he had a prefessionally trained partner. Any other interpretation would have caused enormous difficulties in trades demanding association of capital. The finding was remarkable not for this outcome but for the opinion expressed by the Lord Chief Justice concerning a law which was, after all, the corner-stone of the whole industrial policy—"1st, This is a *penal* law; 2dly it is in *Restraint of natural* Right; 3dly, It is *contrary to the general* Right given by the Common Law of this Kingdom; I will add 4thly, The *Policy* upon which the Act was made, is, *from Experience*^ become doubtful." Lord Mansfield did not draw the express conclusion that the statute was invalid on these grounds but he came very near to doing so. Even earlier judges, in his opinion, "had by a liberal Interpretation, *extended the Qualifications* for exercising the Trade, *much beyond* the letter of the Act; and have *confined* the *Penalty* and *Prohibition* to Cases *precisely within* the express Letter". Three years later his colleague, Sir Michael Foster, elaborated his opinion in a lawsuit at the first hearing of which Mansfield had himself presided. Foster said "In the Infancy of trade, the Acts of Qụeen Elizabeth might well be calculated for the public Weal; it might perhaps be of

Utility to have those laws repealed as tending to cramp and tie down that Knowledge it was at first necessary to obtain by Rule____"[90]

A number of these quotations indicate the universal philosophic conception which actuated the courts' attitude towards the old industrial policy. This does not mean that the courts had vacated the position established by Coke and the other common-law jurists even before the Puritan Revolution, but that a much stronger tendency to assert "natural rights" had crept in, in sympathy with the general spiritual orientation of the 18th century.

Of all the material at my disposal, very few judgments started from the point of view of *oligopoly,* which may be said to have represented the principle that individuals could be excluded from the practice of a craft so long as the majority were permitted. One of them was the case of the London Soap Makers Company of 1656: "All such Patents and By-laws as tend most to the well regulating and ordering of Trades and the better management of them, so that the benefit of them may be derived to the greater part of the People, though with a prejudice to some particular Persons, have always been allowed by the Law; but Patents which tend to the engrossing of Trade, Merchandize and Manufacture, tho of never so small value, into one or a few Hands only, have always been held unreasonable and are always unvalid and unwarrantable." Likewise in a somewhat later case (1669), another company of handicraftsmen, the silk-throwers, were upheld in their restriction of the number of spindles per worker, with the argument on the part of the court that "the major part may restrain the rest and manufacturers differ from other trades, for here all must have something, else they would be left to starve'5.[91]

[90] John Hayes & Others *v.* Edward Harding & Others: Hardres, *Reports* 53-6.—Rex *v.* Kilderby: Saunders, *Reports* 311 f.; *nolle prosequi:* note 70 above. Regina *v.* Franklyn: Lord Raymond, *Reports* II 1179.—Raynard 0. Chase: Burrow, *Reports* I: iv 2-9 (italics those of the report). The finding in this case was contrary to precedents, e.g. Hobbs, *qui tarn,* and against Young, 1690/1 *(Mod.* I l l 313-17); but on that occasion one of the judges, Sir William Dolben, dissented and said of the Statute of Artificers that "it would be for the common good if it were repealed", for reasons of an entirely *laissez-faire* nature.—Judgment of the year 1759: (after the *Manchester Mercury* 3rd April 1759) quot. *in extenso*: Wadsworth & Mann 367; G. W. Daniels, *The English Cotton Industry* (Publ. of the Univ. of Manchester C X X X I I I, Manch. 1920) 51 f., ascribes the statement erroneously to Mansfield himself; but there can be little doubt that Foster expressed Mansfield's thoughts.

[91] Master, Wardens and Assistants of Silk Throwsters against Fremanter: Keble, *Reports* II 309 f.

Conversely, in the case of Mayor of Winton *v.* Wilks (1705) Holt and partly also his colleagues put the point of view of freedom of trade in categoric terms. Holt said "all people are at liberty to live in this place, and their skill and industry are the means they have to get their bread; and consequently it is unreasonable to restrain them from exercising their trades within this place, within which having a liberty to live, they ought also of consequence to have all lawful means of supporting themselves". One of the other judges in the same case, Powell, agreed with Holt and said that a customary right which excludes people from the exercise of a craft is a "strange custom". But, he cautiously added, "if that were the point now to be determined, he would consider well of it, because the giving judgment to set aside such a custom, would have a very great influence; because such a custom is claimed in most corporations by prescription". And then all the judges unanimously and with evident relish seized upon the expedient of overruling the plea on purely formal grounds. From the economic point of view, Parker's argument in 1711 was considerably less consistent, but it contained at the same time what Holt had said and even more. Clear and categorical on the other hand, was the utterance of Mansfield's colleague, Foster, who said in 1759: "If no man may either employ or be employed in any Branch of Trade but who have served a limited Number of Years to that Branch, the particular Trades will be lodged in a few Hands, to the Damage of the Publick and that Liberty of setting up Trades destroy'd." In other words it was said that it was precisely the Statute of Artificers, the basis *of oligopoly,* that laid the foundation for monopoly, or at least for such results as had always been laid at the door of monopoly. Judges with these views were more influential than any other people in determining the fate of English industrial policy.

As was to be expected, parliament proved to be in agreement with the "progressive" judges. An illustration of this may be quoted from the conclusions of a parliamentary committee of 1751 mentioned above. It was said there, among other things, that "since the improvement of trade in general it is found that all Manufactures find their own Value according to their Goodness; and that scarce any Prosecutions have been carried on upon these Statutes but against such as have excelled in their own Trades, by Force of their own Genius, and not against such as have been ignorant in their Professions; . . . These obstructions arise partly from the Laws . . . partly from particular Franchises and By-laws

of Corporations. . . . If the legal Restraints were once removed, the particular By-laws would soon be reversed; as they cannot but observe that the most useful and beneficial Manufactures are principally carried on, and Trade most flourishing, in such Towns and Places as are under no such local Disabilities."[92]

Contemporary literature expressed itself in similar terms. A few examples will suffice.

It is true that the flood of mercantilist pamphlets in England was notably less preoccupied with these questions than with problems of trade, shipping and colonial policy; but still there is no lack of contributions to the discussion of gilds and compulsory apprenticeship. For the most part they were frankly hostile. Some of these writings exercised great influence, and almost all were typical of the attitude of the times.

Sir Josiah Child scathingly attacked the internal regulation of industry and this was particularly important in view of Child's position in public opinion. He attacked not merely compulsory apprenticeship but extended his condemnation to city charters and to the gilds in general. With even more emphasis he urged the abolition of technical regulation of the cloth industry on the following grounds: "If we intend to have the Trade of the World, we must imitate the Dutch, who make the worst as well as the best of all Manufactures, that we may be in a capacity of serving all Markets, and all Humours." Expressions of this kind have won for Child the admiration of 19th-century liberals, and have given rise to the long-prevailing conception that he himself was an early pioneer of *laissez-faire.* This is a matter of definition which can only be decided if we know what *laissez-faire* means. In his general economic outlook, however, Child was a genuine mercantilist and a better could not have been desired, as will appear even more clearly in the third, fourth and fifth parts of the present work. Moreover his attitude towards internal industrial regulation was in many respects typically mercantilist.

This is best seen if we compare him with a far less forceful, contemporary author, whose mercantilist limitations are particularly pronounced, also widely read and quoted, and therefore perhaps a better representative of general opinion. I refer to the author *of Britannia Languens* (1680) which saw the principal injury to economic life in Elizabeth's Statute of Artificers and in gild privileges. Of the statute he says: "It gratifies the blind

[92] *Journals of the House of Commons* X X V I 292; see also, for this and other examples, Lipson I I I 287-91.

avarice of some of our Corporation men." In the opinion of the author, the unnecessarily long seven years' training deterred people from putting their children to industry. He considered the gilds a monopoly which should have been abolished by the Statute of Monopolies of 1623/4. "If a Man be exquisite in his Trade, he shall hardly get a freedom for Money, in a Corporation where there are more free of the same Trade." "The fewer Free-men there are in a Trade, they think the rest may get the more, and thus are most of our ancient Corporations and Gilds become *oppressive Oligarchies,* excluding or discouraging the English Subjects from Trading in our greatest and best situated Towns." In the same way John Cary declared his opinion in an essay of 1695, the title page of which describes him as a merchant of Bristol. He said that the charters of towns and companies "discourage Industry and Improvements both in Handicrafts and Manufactures, because they exclude better Artists from their Societies, unless they purchase their Freedoms at unreasonable Rates".

Finally it was by no means unimportant that some few widely read authors went even farther. They were extremely opposed to monopolies and so arrived at an attitude resembling, in actual fact, a kind of cosmopolitan liberalism. One representative of this group is Roger Coke, a younger relative of Sir Edward Coke. His writings have a charm of their own, in spite of being confusedly written. Alluding to previous discussions of monopoly, he began by saying that if monopoly means restraining production or sale to the exclusion of other people, then in the first place a limitation of economic advantages to English subjects is a "Monopoly to *all the world besides".* In the second place, he continued, "the restraining the free exercise of Arts and Mysteries in any Manufacture to the Freemen of Corporations is a Monopoly to *all the nation besides."* Thirdly the limitation of foreign trade to the trading companies is "a Monopoly to *the World,* as well as the *Nation"* [93]

[93] Child (see note 86 above), party- ch. 7 & 8.—*Britannia Languens* (Lond. 1680) ch. 7, 97-100.—Cary, *An Essay on the State of England in Relation to its Trade* 125.—Coke, *Treatise* I I I , *England's Improvements,* Epilogue 66 f. (my italics) —The aversion from the gilds was even stronger in Germany, where the consolidated states were fighting the excesses of gilds and journeymen, which appear to have outdone those of England and even France. See e.g. Schmoller's description in *Umrisse und Untersuchungen,* the 6th Essay. The foremost Austrian mercantilist, F. W. von Schrotter (Schroder) manifested an almost fanatical hatred of "that accursed and thrice-damned pest of all Germany, the gilds, which should be driven to the devil's grandmother" ("die vermaledeyten und

There is therefore no doubt that the regulation of industry even at the time of the later Stuarts, that is, at the same time as Colbert's great system of regulation in France, was considered obsolete in those English circles which were already influential at that time and were to become even more so after the 1688 revolution.

Regulation of food-stuffs

Finally it is interesting to follow up the legal developments in the internal trade in food. From some points of view the change here was in agreement with the general development of economic policy. Export premiums on corn, which became an important part of English commercial policy from 1689 onwards, were inconsistent with limitation of native trade in food. "The gospel of high prices" inherent in protectionism—dealt with in the third part of this work—inspired economic writers like Malynes (1622) and Child, in their criticism of prohibitions against engrossing. But still, this attitude was not altogether predominant, for public opinion was particularly sensitive towards the prevalence of purely commercial interests in the trade in food. Adam Smith in 1776 compared the fear of corn merchants' manipulations with the fear of witchcraft.[94] Consequently a very chequered development of regulation ensued, assisted by the contrast between common law and statute law, which became more spectacular in this case than in most.

The trade in corn was facilitated in some ways by a law of 1663. Holt emphatically took his stand on the side of the reformers. The application of the prohibitions against forestalling in the London fish trade he rejected as untenable (1692), although the law on this point at that time had not yet been altered; it was only altered as regards the Billingsgate fish market six years later, presumably as a result of Holt's opinion. A clearing up of this legislation, which aimed at being thorough, took place in 1772. The previously mentioned law of Edward VI (see 259) against "regraters, forestalled and engrossers" was repealed for the reason that it had a tendency to increase prices, and at the

als die argste Pest von ganz Teutschland verfluchte [sic] Zunfte" which should "zu des Teufels Grossmutter gejaget werden") *(Furstliche Schatz- unci Rent-Cammer* ch. 92 §3, ch. 102 §4; First edition, Lpz. 1686, 449 f., 521). But this meant very little in practice, and, even more important, the gilds were rejected chiefly in so far as they opposed purely state regulation; there was nothing against any internal trade regulation as such.

[94] G. Malynes, *Consvetudo vel Lex Mercatoria,* sec. 1 ch. 42 (1st ed. Lond. 1622), 213 f. Child, *New Discourse of Trade,* 72.—Adam Smith, *Wealth of Nations* bk. 4, ch. 5: "Digression on the Corn Trade" (ed. Cannan II 35).

same time created difficulties to production and was therefore a great evil "if put to execution". It was consequently regarded as having fallen into disuse, and that no doubt was true. The legal abolition of these clauses thus appears to have come about comparatively early—hardly any part of the system of industrial regulation had at that time been officially abolished—and to have been complete. But this was not the end, for here common law took a very unexpected step. The transactions which had ceased to be punishable under statute law remained punishable under common law.

This appeared in two actions during the revolutionary war of 1800/1, namely Rex *v.* Rusby and The King against Waddinton. The autonomy of the courts which was asserted here was exercised in a direction opposite to the usual. The whole phenomenon would be inexplicable were it not for the special circumstances of the time, which were very reminiscent of the Great War with its scarcity of food, its paper currency and high prices. This is seen too in the handling of the situation, but even considering this, it is remarkable that common law could maintain this legal position where laymen thought that the measures against food regrating had been abandoned for several decades in all forms of law.

The plaintiff's counsel pointed out, in one of the cases quoted, that common law was already valid before the statute of Edward VI, and that it was only the age of the statute which made people think so little of the original ruling. Since the law of 1772 had not expressly annulled the common law on this point, the judges eagerly supported its continued validity; and this was even admitted by the counsel of the defendant in the first, though not in the second, of the two cases. In addition, the judges were agreed to apply common law with all the powers which it put at their disposal. Lord Kenyon, Mansfield's immediate successor as Chief Justice of the King's Bench, and one of the less distinguished holders of that office, directed a formal attack upon Adam Smith who had called the fear of food-engrossers "fear of witchcraft". He was of the opinion that the jury had never had a weightier duty imposed upon them than during that action; and in the summing-up he declared: "Though in an evil hour all the statutes which had been existing above a century were at one blow repealed, yet, thank God, the provisions of the common law were not destroyed.[55] All the judges remarked that increase in prices was inadmissible according to traditional legal dicta. It is also clear that the two decisions were consistent with older

common law, though it is no less clear that they opposed the legal conceptions of freedom of contract introduced by Holt and Mansfield.

The outcome of the first of the two actions was that a London corn dealer was condemned for regrating, because on the same day he had bought some oats for forty-one shillings and had sold them for forty-three. In the second law-suit, a man who was said to have raised the price of hops in Worcester was fined £500 with one month's imprisonment. It was not until a law of 1844 that the old order was finally swept away. In explicit terms and with direct reference to common law, the old offences were then declared to "be utterly taken away and abolished[55].[95]

This episode, too, proves that it was not essential whether the old or the new order was recognized by Act of Parliament. The important thing was how the courts viewed the situation. In this case they decided in favour of the medieval ideas; but since in most cases they took up a hostile attitude towards the old industrial order, they contributed more than anything else to its dissolution.

The ruins of an industrial code

The general impression is certainly that the old order towards the end of the *ancien règime* in England represented, far more than in France, the ruins of a legal system. In 1762 Oliver Goldsmith, the author of *The Vicar of Wakefield,* wrote, "There is scarcely an Englishman who does not almost every day of his life offend with impunity some express law, and for which in a certain conjecture of circumstances he would not receive punishment." He then continued, "and none but the venal and mercenary attempt to enforce them. . . . The law, like an indulgent parent, still keeps the rod, though the child is seldom corrected."[96] In reality according to Goldsmith's own description it was the "venal and mercenary", that is the informers, who were able to set the judicial rod in motion or at any rate expose the citizens to the risk of it. It was often very difficult to oppose the application of laws which had lost their support in legal consciousness. On

[95] 15 Car. II c. 7 §3 (1663).—Anonymous: Shower, *King's Bench Reports* I 292.—12 Geo. c. 71 (1772).—Rex *v.* Rusby: Peake, *Additional Cases at Nisi Prim* 189-94.—The King agst. Waddington: East, *Term Reports* I 143-72.—7 & 8 Vic. c. 24 (1844). As to the activity of the justices of the peace, Dowdell (above note 69) says (170) : "There is strong ground for believing that, for all practical purposes, the laws against forestalling, engrossing and regrating were a dead letter in Middlesex during the reign of George I I . "

[96] Goldsmith, "Letters from a Citizen of the World to His Friends in the East" (*Miscellaneous Works,* Lond. 1812, I I I 195); cp. Dicey, *Relation betw. Law and Publ. Opinion* 74 ff.

the whole, however, things were as Goldsmith described them, and this can be illustrated with any number of examples.Three, however, may be sufficient, touching upon the main problems of the foregoing exposition.

When the last important outgrowth of technical regulation of industry, the statute concerning Yorkshire cloth, passed in the year 1765, came to be abolished in the year 1821, a manufacturer of Halifax declared that he had contravened it every day. Another said that according to the law he would have had to pay £100 fine every day for twenty-five years—which would have meant three-quarters of a million pounds altogether, apart from the interest, if we are to believe the manufacturer. When the wage clauses of the Statute of Artificers were repealed in 1813, it was declared in the House of Lords that their very existence was unknown even to eminent lawyers, as well as to a committee of the Lower House. It is true that the apprenticeship clauses had remained more effective, particularly because a kind of apprenticeship had been preserved in other than the prescribed forms; but none the less a Yorkshire manufacturer stated in 1806 that he had never heard of them. When they were repealed in 1814 it was asserted that the law was daily infringed and that juries were only with great difficulty persuaded to decide in favour of the plaintiffs.[97] Even the regulation of food and indeed this, perhaps more than the others, had long been a dead letter. Lord Kenyon and his colleagues spread a veritable terror in the land when they enforced them, which of course they only did on account of the difficult position in regard to food-stuffs during war-time—it is true that this cannot be said to have made the measures more suitable, only psychologically more comprehensible.

Thus the English regulation of industry collapsed from within. Only a few of its prescriptions were specifically abolished in the 18th century, and one of the few measures which did have this aim was unable to attain it, as has just been shown. But among the ruling classes the general opinion that it was impossible to carry out the system effectively gained wider and wider currency. The English mode of jurisdiction, a mobile system built up on

[97] Hcaton 310, cp. Lipson II 75 and note 4.—J. H. Clapham, *An Economic History of Modern Britain: The Early Railway Age* 338 f.—Hansard's *Parliamentary Debates* X X V 594, X X V I I 563, 566 f.—W. Smart, *Economic Annals of the 19th Century, 1801-20* (Lond. 1910) 368, 402.—-Cp. T. K. Derry, "The Repeal of the Apprenticeship Clauses of the Statute of Apprentices" (*Econ. Hist. Review* I I I, 1931, 72, 74) and Lipson II 40 ff.

legal practice, together with the impotence of the central and local administration, combined to do away with the political hindrances obstructing those developments which were to make England the theatre of the Industrial Revolution. There were extremely few measures definitely assisting industrial progress along these lines, and even the dissolution of the old order was carried out without plan or system. These circumstances gave English social life its peculiar character and distinguished it from that of the continent. Nevertheless in spite of the absence of any plan the changes which took place had a profound effect.

Before we conclude this exposition and deal with the final dissolution of the old order, one aspect of mercantilist regulation of economic life must be investigated, namely foreign trade and the organization of enterprises in general.

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VII

FOREIGN TRADE AND BUSINESS ORGANIZATION

I. INTRODUCTION. NATIONAL UNIFICATION

The general impression of the achievement of mercantilism in the field of industrial regulation, and perhaps even more of domestic trade, is that it did not lead to much in the direction of greater internal unification, nor did it give an impetus to the positive forces which caused the great economic upheaval of the 18th and 19th centuries. But in foreign trade we find a completely different state of affairs. A picture of mercantilism which omits the regulation of foreign trade and its organization would therefore be quite misleading. The general development of the forms of enterprise was further so closely bound up with the form and regulation of foreign trade that every description must apply to both. Unfortunately this rather long chapter goes beyond the proposed subject proper, and has become a description of the general development of business organization under mercantilism : in other words, it is not limited to those aspects directly connected with mercantilism. Otherwise it would have been difficult to explain the part played by mercantilism in the general development.

The work of unification in foreign trade was fairly easy, in so far as the medieval municipal economic system in all its local exclusiveness could not possibly be applied to foreign trade. Apart from the powerful North Italian cities, with towns and provinces under their direct control, it was on the whole impossible for the towns to exclude the competition of merchants from other towns in foreign markets. So the tendency towards common organization of a number of towns or their merchants came into being, and was accentuated by other specific phenomena.

An important cause of this development was the fact that medieval trade seldom had at its disposal independent transport concerns, and so the merchants were compelled to provide for the transport of their goods themselves and to accompany them on voyages. Thus there arose merchant colonies in the towns in which trade was carried on. Merchants of different towns were thrown together, sometimes for long periods, in these colonies, within the same city walls and sometimes even within the walls of the same building: in foreign "factories", "marts",

common lodging-houses or with the same "hosts". The fundamental unity of medieval culture led to these merchants being imbued with the same economic, ethical and religious outlook, and thus merchant associations often originated in foreign trading centres. Moreover it required foreign trade to evoke in the minds of people, who were otherwise firmly bound to their local corporations, a feeling that they belonged to an inter-urban structure. As the more detailed description concerning England will show (see 376 f. below) and as is also true, e.g., with regard to Germany, merchants active in foreign trade were, at the same time, members of local organizations. The inter-urban union thus extended only to a limited sphere, whereas the town corporations retained its all-embracing influence with regard to the activities of their members.[1] If the focus of interest was later transferred, to an ever-increasing extent, to the trading corporations, this may be considered a step towards the overcoming of the policy of municipal exclusiveness. Of course it did not mean that this policy had lost its influence on foreign trade. Right up to the 19th century it played some part in every economic sphere in general and in foreign trade in particular—a trade especially bound up with the towns. But even the fact that the development increasingly tended away from exclusiveness is sufficiently eloquent.

The most famous of all the medieval organizations engaged in foreign trade was the German Hansa. The name seems to have originated in the foreign associations of Low German merchants. It then appears in some way or other to have spread to the towns whose citizens enjoyed common rights abroad.[2] The actual management of the Hansa was in the hands of the cities themselves, chiefly Lubeck, although the *Kontor* or factory in Bruges was often able to exert great influence.

The English associations of merchants, on the other hand, had even their centre of activity abroad. In the years 1391 to 1408 a series of charters for various English corporations engaged in foreign trade were issued, and they described the merchants concerned as "sojourners" *(commorantes, commorantes et conversantes*

[1] See note 48 below.—On North Germany: E. Arup, *Studier i engelsk og tysk handels historie* 18.

[2] W. Stein, *Beitrdge zur Geschichte der deutschen Hanse bis um die Mitte des XV, Jahrhunderts* (Giessen, 1900) 14 f.; cp. the detailed discussion of the same author in a paper in *Hansische Geschichtsblatter* **XV** (1909), **XVII** (1911), **XVIII (191**2), *et passim.* The true character of the origins of the Hansa has been widely discussed without becoming altogether clear; but it has little **bearing upon our** subject.

respectively) in the foreign countries in question.[3] The most important of these corporations was the famous Fellowship of Merchant(s) Adventurers or Merchant(s) Adventurers Company. It was governed from its Mart Town, that is, from its foreign office, down to its disappearance in Napoleonic times. The London members certainly did complain on one occasion (1542) to the Privy Council that the "young men resident in Antwerp" treated their "heads and masters", that is the London merchants, with contempt, and did not respect their wishes in the choice of the governor of the company. It was only at a considerably later date (1688) that the London members acquired an important official influence. It is a proof of the strength of tradition, binding the management to the foreign centres, that the original principle was maintained for many centuries, in spite of the danger that the members and representatives abroad who were invested with supreme power over the company would be inferior to those in England, both in commercial influence and in general authority, even though they were not exactly employees.[4] The second surviving medieval company in England was the Eastland Merchants or the Eastland Company. It is true that their centre was in London, not on the continent; but their continental office was allowed wide powers.[5] When a less-known association trading with Andalusia obtained its charter in 1530, it referred to four Spanish cities as possible places for their meetings.[6] The tradition therefore is clear.

[3] *Foedera, Conventiones, Literae et cujuscunque Generis Acta Publica,* ed. T. Rymer (1st edn., Lond. 1704 ff., quoted in the foll, as O.; 3rd edn., ed. G. Holmes, Hagae Com. 1739 ff., quoted *in* the foll, as H.): O. **V I I** 693 f. = H. **I l l** : iv 66 f. (date 1391); **O.** VIII 360 f. = **H. IV: 1** 67 (date 1404); R. Hakluyt, *The Principal Navigations, Voyages, Traffiques & Discoveries of the English Nation,* 1st complete edn., London 1598 ff., quoted in the foil, as O., I 184, reprinted Glasgow 1903 ff. quoted in the foll, as G., **II** 106 ff., has a somewhat diverging text.—*Foedera* **O.** VIII 464 f. = **H. IV: 1** 107 f. (date 1407); **O.** VIII 511 = **H. IV: 1** 125 (date 1408).

[4] *Acts of the Privy Council of England,* N.S. I (Lond. 1890) 52 (Schanz's text—see below—**II** 573 f., is somewhat different.)—*The Merchant Adventurers of England, Their Laws & Ordinances with Other Documents,* ed. W. R. Lingelbach (Translations & Reprints from the Original Sources of European History, **publ.** by the Dept. of Hist, of the Univ. of Pennsylvania, **I I** : 11, Philadelphia 1902) 5 ff., 195ff., 257 ff. etc.—The relationship is mentioned *en passant* by G. Schanz, *Englische Handelspolitik gegen Ende des Mittelalters* (Lpz. 1881) I 339 f. ;it is documented in detail by Lingelbach in *Transactions of the Roy. Hist Soc,* N.S. **X V I** (1902) 51-61.

[5] Arup, 88 note 6.

[6] Charter printed in *Select Charters of Trading Companies A.D. 1530-1707,* ed. C. T. Carr (Publ. of the Selden Soc. XXVIII, **Lond. 1913) 1 ff.**

From this organization, whose tentacles stretched across the boundaries of the city, there did not necessarily arise a purely national regulation of foreign trade. On the contrary one might have thought that the merchants of all nations would have associated in a single corporation at any place that was foreign to them. The very rude treatment occasionally meted out to foreign merchants by the officials of one trading centre or another would, it might appear, have encouraged this development. But their feeling of solidarity was not strong enough for that. Since municipal exclusiveness was lacking, the feeling of national solidarity attained greater importance than ever before, and to this extent foreign trade exerted a strong influence in the mercantilist sense. It is this that lends it particular interest.

The German Hansa was certainly far from being an organization embracing the whole of Germany. It was merely Low German and stood in perpetual contrast to the High German cities; but it was nevertheless much more inter-urban than any handicraft organization and far more national than any territorial lord. The concentration of state authority in the territories was one of the factors directly leading to the decay of the Hansa—a peculiar example of the break-up of a unifying influence through the strengthening of the power of the state, and a phenomenon also usually to be found, to a lesser degree, in the handicrafts. The regulations of the Hansa prohibited dealings with non-Hanseatic merchants. They were neither to deliver goods nor have any credit transactions with them; neither were they to sell them ships nor provide them with freights. The non-Hanseatic merchants were prevented, as far as possible, from penetrating Hanseatic trading territory farther than the coast, and from becoming shippers in vessels belonging to the Hansa and so forth. The Hansa followed a continually growing policy of exclusiveness against those who were foreigners from its point of view. It is true that this did not mean that the Hanseatic cities treated the citizens of other Hanseatic cities as their own. If anything they attempted to do them as much damage as they could. Even Ltibeck, the headquarters of the Hansa, acquired advantages from outsiders at the expense of other Hanseatic cities. But non-Hanseatic merchants were systematically treated even more harshly. It has always been proved that solidarity can be sooner realized by causing unpleasantness to outsiders than by trying to promote mutual co-operation. Nevertheless the organization of the Hansa represented a uniform policy of the North German

cities in foreign trade, such as was unequalled in any other sphere of German economic life in the Middle Ages.[7]

The English regulation of foreign trade proceeded on other lines. Different organizations arose for different functions, and as a rule for different trading territories, though the boundary lines between them were not always clearly marked. A country with so strong a national unity as England could create organizations in foreign trade which extended all over the country to an even larger extent than was the case in Germany. This had far-reaching results in the development of foreign trade and business organization in the subsequent period.

Particularly outstanding was the unification in what was probably the oldest of English foreign trading organizations, the "staple" directed partly by the state and partly by private individuals and created in the first place for the wool trade. The constituent members, the Merchants of the Staple, formed a corporation. The sources of their history which have been preserved do not indicate the influence of any individual town. In the year 1313, the governor was named "mayor of the merchants *of the realm"* and in 1326 he was elected by the richest citizens in the various exporting towns.[8]

Gradually the Merchants of the Staple found an increasingly powerful competitor in the Company of Merchant Adventurers, established for trade with different parts of the continent but concentrating by degrees upon the Netherlands. It was far less representative of the whole country, undoubtedly because it was not an official organ to the same degree. But so long as they were in foreign territory, the Merchant Adventurers were also treated as a national unit. As early as 1296 and 1305 privileges were drawn up by the Duke of Brabant for "merchants of the realm of England" with common management and organization "according to their ancient, customary ordinances". English charters of 1407 and 1462, an English royal letter of 1458, and other documents, characterize this company partly in the same terms and partly with other expressions such as "merchants of

[7] On Hanseatic policy a reference to the chief work in this field may suffice: E. Daenell, *Die Blutezeit der deutschen Hanse* I—II (Berl. 1905-6), particularly relationship to the power of the princes, II 469-500, to the South German cities II 268-80, Hanseatic trading and shipping policy as a whole II 355 f., 376-89, 404-22, measures against other Hanseatic towns II 151 ff., 189, 205-10, 237 f., 257 ff., 265, 440-44.

[8] *Patent Rolls* 1313/17, p. 15; *Close Rolls* 1323/27, p. 564; both quoted from E. Lipson, *An Introduction to the Economic History of England* I (Lond. 1915) 484 and note 4.

our realm of England and our other possessions", "our subjects from our realms of France and England and our principalities Ireland and Wales, as well as other possessions, principalities and territories". Corresponding to this were similar names for groups of English merchants in other foreign countries. A complaint of the mercers of four named and various other unnamed English cities north of the Trent from the year 1478 gives an insight into the organization common to all merchants trading in the Netherlands—the Merchant Adventurers. This document stated that the English merchants in the Netherlands had always had two governors, one from London and one from the English cities north of the Trent. The first was said on that occasion to have arrogated all revenues to himself and had thus prevented the election of a second governor, and moreover had perpetrated a whole series of encroachments against the provincial merchants. The king sent the document to the offender with the strong injunction that he respect old custom. A really general organization for the various cities therefore existed, though it found it difficult to assert itself against the habitual arrogance of the London merchants.[9]

However, the fact that the merchants in their native towns were bound to the local organizations which dominated municipal life had its repercussions on the regulation of foreign trade. But in England this circumstance is best treated in connection with the work of unification during the mercantilist period in the sphere of foreign trade. Many other issues must be clarified first.

2. MEDIEVAL DEVELOPMENT

Associations of capital

In another and undoubtedly more important direction, too, foreign trade cleared the way for those forces which were destined to burst medieval municipal policy asunder. I refer to the rise

[9] Acts of Parliament as usual in *Statutes of the Realm.*—Privileges of Brabant: *Bulletin de Ia commission roy. d'histoire* L X X X (Bruss. 1911) 548-51.—The English sources for the Merchant Adventurers: *Foedera* (ed. Rymer) O. VIII 464 f. = H. I V : 1 107 f. (1407); Schanz II 539 ff. (1458); Hakluyt O. I 208 ff. = G. II 147 ff. (1462); *The York Mercers & Merchant Adventurers 1356-1917* (ed. M. Sellers); (Publications of the Surtees Soc. C X X I X, Durham 1918) 75-80 (1478). For the rest, see note 3 above.—See now E. M. Carus-Wilson, "The Origins & Early Development of the Merchant Adventurers' Organisation in London, as shown in Their Own Medieval Records" *(Economic History Review* I V, 1932/3, 147-76)*

of associations of capital. Trade in general, and long-distance trade in particular, demanded larger amounts of capital than any craft bound to a local market. The investments had to be sunk for the whole period from the fitting out of the trading expedition to the time of the sale of the goods on its return. Of course, long-distance trade had always existed. The Crusades, however, involved so powerful a development of sea trade in the Mediterranean that the way was prepared for capital associations in the Italian towns. With the development of High German and Hanseatic trade in the later Middle Ages, these forms of enterprise spread to Central Europe. The important, position occupied therein by the ownership of capital was difficult to reconcile with an organization of trade based entirely on the strictly circumscribed personal qualifications of those practising the trade. This was one of the starting-points of the disintegration of the medieval social order.

The Italian cities had a motley crowd of different kinds of trading and shipping associations of capital as early as the 12th century, and much more from the beginning of the 13th century onwards. The praiseworthy attempts to define legal boundaries between the individual forms are calculated rather to hide than to reveal their common features. From the economic point of view the circumstance that they were all associations of capital is the most important. It was a question of either uniting a number of capitalists each contributing his share, or uniting one capitalist and one craftsman who had no capital. All the partners were joint entrepreneurs, bearing the common risks, some risking their capital, others their labour, and all sharing in the profit probably, as a rule, in such a manner that labour was estimated as equal to a third of the capital invested in the case of shipping, and to a half in that of trade on land. Distinctions and terminology fluctuated and to some extent variations were to be found between North Italy and the Hanseatic territory. The association of a sleeping capitalist partner and a craftsman who had no capital has usually been called *commenda* and it is the forerunner of the modern partnership *en commandite.* The prototype of the ordinary modern partnership, that is the union of active co-operating—or active and passive participating—capitalists went under the name *ofsocietas.* A third, less capitalist, and generally less precise type was the *compagnia,* derived from the words *cum* and *panis,* those who ate of the same bread, and lived and worked in common. It is believed to have been the forerunner of the simple company which continental legislation and continental lawyers consider as

the basic form of association, with its name derived from the medieval type in question.[10]

Only one of the many explanations which have been advanced is reproduced in this outline, as the boundaries between the different types are unimportant to our subject. But apart from the historic connection of specifically legal kinds of enterprise of that time and of the present day, the associations of capital constituted a formation in no way comparable with the medieval corporations. This was already manifest in the fact that with the new institutions arose *enterprises* of a corporate character, for the old structures were essentially official bodies that did no more than force the isolated, independent entrepreneurs to accept uniform standards; they regulated economic activity from above. The new institutions now developed on lines cutting into those of the old, and the relationship between the two necessarily became uncertain. Occasionally, all members of a company partnership were members of one and the same corporation; occasionally, they were members of various corporations. If the latter were the case, it was naturally frowned upon, as we have indicated in connection

[10] From the abundant literature we select the following works. On the Italian development, *Universalgeschichte des Handelsrechts* (Handbuch des Handelsrechts 1:1, Stuttg. 1891) 254-98; A. Schaube, *Handelsgeschichte der Romanischen Volker des Mittelmeergebiets bis zum Ende der Kreuzzuge* (Handbuch d. ma. u. neu. Gesch., ed. Below and Meinecke, III, Munich & Berlin 1906) 110-13, also the note on the last by F. Schneider in the *Vierteljahrschrift fur Sozial u. Wirtschaftsgeschichte* V, 1907, 571. On the Hanseatic development, see Daenell II 424 ff.; Arup 19-23; essays by Keutgen and Lehmann in the same quarterly IV, VII & VIII; see also notes 12 & 13 below.—A short essay, useful for its references to the literature, is A. E. Sayous "Les transformations des methodes commerciales dans l'Italie medievale" *(Annates d'hist. econ, et soc.* I, 1929, 161-76).

In addition we may refer to K. Lehmann, *Die geschichtliche Entwicklung des Aktienrechts bis zum Code de commerce* (Berl. 1895) and W. Sombart, *Der moderne Kapitalismus* I—II (2nd & subsequent editions, Munich & Leipzig 1916/17, etc.) especially II 70-181.—Lehmann's study is altogether confined to the aspects of legal history. It is still valuable in spite of an occasionally insufficient knowledge of the facts (e.g. 12 & note 2), for it stands almost alone in being based upon the by-laws of the joint stock companies. But even from a purely legal point of view, the parallel drawn between the "chambers" of the Dutch companies and the "separate voyages" of some English ones, as survivals of an earlier shipping association, distorts the facts, as far as I can see; and the relevant economic factors are altogether relegated to the background. Sombart's main idea is that the "spirit" of various kinds of undertakings is the decisive factor, but this is apt to obstruct the view of the economic functions they were supposed to serve.—I must say that I have had to restrict myself to those aspects directly relevant to my subject.

with the Hansa (see above 329), but nevertheless it occurred everywhere.

An unexpected and curious influence upon future developments, unconnected with the rise of the associations of capital for trading purposes, came from the organization of public credit. This latter kind of organization assumed its greatest importance in Genoa; but there were similar tendencies in other Italian cities. A trade in the bonds of the city-states came into being about the middle of the 13th century and thus gave rise to stock exchange transactions. This of course became of great importance to the later development of business organization; but the influence of these public credit operations did not stop there. The financial disorder, characterizing the finances of almost all states from the later Middle Ages down to the 19th century, compelled the Italian city-states to grant their creditors guarantees for interest payments in the form of claims on definite state revenues, and they had also on occasions to grant them special privileges. This in turn led to a corporative organization of creditors carrying out economic functions.

Two different types of such corporations existed side by side. One was the so-called *maone.* It was made up of individuals who, of their own free will or under compulsion, fitted out a military expedition or a similar enterprise on behalf of the city-state, and received, in compensation, some share of its financial profits. The most famous of these *maone* went under the family name of Giustiniani. It was a colonizing enterprise and for a long time possessed and administered *inter alia* the island of Chios. The second type of corporation was usually called *compere,* meaning "purchase"; this name clearly served to disguise its inconsistency with the canonic prohibition of usury. From the outset the *compere* were less active in character. But these creditors created strong organizations and secured control over the administration of important state revenues, so that they were able to supply the city with new loans and obtain corresponding new privileges; and through this they, too, developed into economic enterprises. The most famous of these *compere,* the *Casa di S. Giorgio* in Genoa, obtained the privilege of establishing a bank in the year 1408, and in this capacity it later played a very important role.

It is usually considered, in the literature on the subject, that the *compere* were no joint stock companies but altogether non-commercial associations like, e.g., the Board of Foreign Bondholders in the late 19th century. The economic correspondence between the *compere* and several of the most famous companies of the end

of the 17th and the beginning of the 18th century is, however, complete almost down to the smallest detail. Both the Bank of England, the English South Sea Company, John Law's French Mississippi Company, as well as other well-known institutions of this period, were originally associations of capitalists who obtained the right to pursue various kinds of trade in return for making fresh loans to the state, or for taking over old ones. The Bank of England, in fact, had precisely the same function as made the *Casa di S. Giorgio* famous. The correspondence here is obvious. The only doubtful point is whether the origin of the more recent of these organizations can be attributed directly or indirectly to the influences of the earlier ones. Up to the present, at least, this has not been proved. Judging from our present knowledge, it appears probable that the same difficulties led spontaneously to the same solution.[11]

The second type of medieval association of capital, as represented by the *maone* or *compere,* is important on account of its *corporative* character. This expression is not applied here and in what follows in a specifically legal sense, but is intended to indicate this decisive point, that a guarantee for the perpetuation of an enterprise was given, irrespective of the personal fate of the individual shareholder. Precisely upon these grounds can this type of organization be immediately distinguished from the two previously discussed.

Of these the different forms of partnerships, which constituted the one type, undertook a single journey or voyage without any guarantee of permanence. It is true that it sometimes did happen that they became permanent concerns with continuous accounts, as has been shown to obtain in certain Hanseatic concerns trading with Venice at the beginning of the 15th century.[12] In other cases, powerful and formidable trading-houses were founded on a family basis in the South German cities from the middle of the 15th century onwards; "the great Ravensburg

[11] W. Heyd, *Histoire du commerce du Levant au moyen âge,* French ed. (Lpz. 1885-86) I 493 ff., II 413, 423; H. Sieveking, *Genueser Finanzwesen mit besonderer Berücksichtigung der Casa di San Giorgio* (Volkswirtschaftl. Abhandl. d. badischen Hochschulen I: III, I I I : III, Freib. i. Br. 1898-99) I 43 ff., 55, 169, **II** 15-37 5 Lehmann 6-22.—On the later period: W. R. Scott, *The English, Scottish and Irish Joint-Stock Companies to 1J20* (Cambr. 1910/12) I 388 ff., 398 ff., **I l l** 291 ff. *et passim.*

[12] S. van Brakel, *De hollandsche handelscompagnieën der zeventiende eeuw* ('s-Gravenh. 1908) 114 and note 3, based on W. Stieda's valuable collection of data in *Hansisch-Venetianische Handelsbeziehungen im 15. Jahrhundert* (Rostock **1894), esp. 41 ff., 46.**

company" and the famous houses which provided credit for the states—the houses of Fugger, Welser, Hoechstetter, Haug, Imhof, etc. They were obviously no fortuitous structures, but the form of short-period partnerships was retained. The Ravensburg company, which existed longest, that is for the 150 years between 1380 and 1530, was founded on six-year contracts; and the same applies to the others.[13] And though in practice they closely resembled such enterprises as were independent of the length of life of the constituent members, no clear corporative character was developed.

On the contrary, those medieval organizations which were corporations were not of the nature of enterprises. It is true that they were not entirely lacking in business character, as will appear later;[14] for the strands of development were all to be found more or less everywhere. But the merchant gilds and the craft gilds were essentially corporations regulating the trade of their members, and were not trading concerns themselves.

The associations of state creditors thus constituted a type differing from both. They were the first companies clearly and consciously to combine both functions which were to characterize the enterprises of later times. They had a corporative character, and they were at the same time capital associations with the functions of an enterprise. In other words, they were the first real corporative associations of capital.

Particularly in considering the development of the textile industry in Italy and the Low Countries during the last few hundred years of the Middle Ages, it is noteworthy that the industry played no leading part in the development of the medieval form of enterprise. This undoubtedly points to the fact that its capitalist character, in the economic and not in the propagandist sense of the word, could not have been very deeply ingrained. The determination of the stock of capital in the industry would neces-

[13] R. Ehrenberg's *Das Zeitalter der Fugger* (Jena 1896, and several later reprints) is still the central work in the wide literature on the Fuggers. It deals with the subjects treated in the text in I 380-95. See also A. Schulte, *Geschichte der grossen Ravensburger Handelsgesellschqft 1380-1330* (Deutsche Handelsakten d. M.A. u.d. Neuzeit, publ. by the Hist. Comm. of the Bavarian Academy of Science, I—III, Stuttg. and Berl. 1923) I—III, esp. I 86-94, and his earlier work: *Geschichte des mittelallerlichen Handels und Verkehrs zwischen Westdeutschland und Italien* I chs. 53-59; cf. on the distinction between the Hanseatic and South German companies J. Strieder, *Studien zur Geschichte kapitalistischer Organisationsformen* (Munich and Lpz. 1914) 96 ff.

[14] See next note and further.

sarily have to emphasize the permanent nature of the enterprise, had the capital investment been at all great.[15]

But there was at least one sphere of industrial activity in which the application of fixed capital was of a comparatively great importance already during the Middle Ages, namely in mining. It was therefore to be expected that associations of capital should have been an early phenomenon in that field. However, the demand for such associations in mining was restricted by the fact that its supply of capital took the form of credit. This was the system of credit which in Germany (and Sweden) was called *Verlag*. The miners (and the workers employed by them) received advances in kind or in money for their maintenance and for supplying the necessary tools etc. The creditors were almost always merchants, who recovered the money which they loaned, in the form of products raised, and who probably believed that they ran a particularly small risk in investing their capital in mining with its fixed and always controllable collateral. But as soon as the demand for *Verlag* grew, the merchants could scarcely keep pace with them without combining amongst themselves. And in addition it happened that the later refining processes in several branches of mining were detached from the older mining industry, with the increasing division of the stages of production among various enterprises, and were taken over by the capitalists themselves, who were called "merchants" in common usage even well into the 19th century. This may be traced most clearly in copper production, where the smelting of the ore or the production of raw copper was in the hands of the old foundry masters whilst the refining went on in special foundries controlled by "merchants".

It is always difficult to gauge the relative extent of a certain phenomenon in different spheres of economic development, firstly because the available sources may be very unevenly distributed and secondly because the different fields have not all been investigated with the same care. As far as can be judged from the researches now made, however, associations of capital north of the Alps became more powerful, towards the end of the 15th and in the 16th century, in mining than in any other industry. This was true of almost every kind of mining, silver, copper, tin, quicksilver, salt and iron. The most important centres were Eastern Germany and the neighbouring Austrian districts of

[15] In the Florentine woollen industry, the gilds sometimes acted as the capitalist entrepreneur: A. Doren, *Studien aus der Florentiner Wirtschaftsgeschichte* I 350-58.—The Netherlands: Pirenne, *Histoire de Belgique* I I [3] 69.

Steiermark and Lower Austria, the Upper Palatinate and the Mansfeld territory in Saxony.

The great trading towns of Augsburg and Nlirnburg in South Germany, the houses of Fugger, Welser, Hoc̈hs tetter, Herwarth, Haug, Fürer etc. were keenly interested in mining and in the trade in mining products, not only in the above-named territories, but also in countries under Spanish rule. The powerful agitation against monopolies which set in at the beginning of the 1520*5 was directed first and foremost against them and their copper trade. In the history of the enterprises, however, they did not represent any essential innovation. As we have already said, they were companies formed for a shorter or longer period and they approximated very closely to the ordinary partnerships. Even the majority of the numerous other mining companies were, as a rule, non-corporative. Several of their features, however, went beyond purely medieval kinds of association, and it was the degree of permanence which distinguished them from most trading associations of capital. For the later development of joint stock companies on the continent it is of especial interest that "sub-participators", as they were called on the continent—"under-adventurers" in England—were frequent. They made their payments through the actual members of the company and had no voice in the administration; but they shared in the profit in proportion to the amount they had subscribed. Their connection with the type of "sleeping partner" is obvious; but another parallel can be found in the practice of the South German trading institutions of receiving deposits from outside.

There were, in addition, mining undertakings which went farther. Especially noteworthy was an iron trading company established in Steyr in Upper Austria in 1581. The actual date of its inauguration was indeed late. But at the time, a criticism was levelled against the company system, a criticism with a peculiarly modern flavour in the condemnation of its manifold drawbacks and abuses: and this, together with the wealth of detail in the by-laws of the company, indicates that the type of enterprise had a long history behind it. The company was granted its own seal and had a strictly defined capital known as *Hauptkapital* or *Leggeld.* This was kept altogether distinct from the annual profits set aside for dividends. The profit was to be estimated as a percentage of the capital and was to be determined by an annual calculation of the accounts. It is true that the paid-up capital remained with the company for four years only and could then be taken out after a given period of notice; but the length

of life of the company as such was unlimited. In addition to the share capital, the undertaking could raise fixed loans against the security of the total amount of the "company's property" (*Gesellschaftsgüter),* which consequently had a separate legal existence.[16]

The German mining companies were characterized by their close connections with public bodies, particularly with the innumerable lesser and greater princes who together had rights of all kinds over the minerals, their extraction and manufacture, and who often also invested capital in the companies. The result was not only privileges often of a monopolistic kind, but also an increasing corporative tendency. The Steyr iron company was even considered an actual concern of the city. Its governors were elected by the town council, the city assumed liability for its indebtednesses and the company seal bore the name of the city as well as the company's name. This fact also was of importance in the later development.

3. COUNTRIES WITH STATE ENTERPRISE

With the growth of companies at this stage of development, the new geographical discoveries provided society with new problems of imposing dimensions in the regulation of foreign trade and the forms of enterprise. It would seem as though the undertakings just described were partly an effect of the great changes wrought by the discoveries, for they post-dated the discoveries. Company development, however, went ahead in two countries, Italy and Germany, that were hardly affected by the new events, which proves that it was not the result of the discoveries; and the unbroken connection of the new type of undertaking with the old confirms this view. In order to see how these new problems were resolved, we must first turn to other countries and to other departments of economic life.

[16] The most important contributions on this development are Strieder's work quot. in note 13 and W. Mollenberg, *Die Eroberung des Weltmarkts durch das mansfeldische Kupfer* (Gotha 1911). The Steyr iron company's by-law is reproduced in Strieder 388-404. The only thing in the by-law pointing to confusion of the shareholders' and company's obligations is the clause stating that the debts were to be taken over by the company's representatives "for us, our descendants and heirs" (§9), instead of for a corporate organization. Criticism of the company system *op, cit.* 132 f. The development in copper production in Möllenberg, esp. 16, 23 ff.; a saltworks and company for peat-cutting in North Germany in the 1570's: B. Hagedorn, "Betriebsformen und Einrichtungen des Emdener Seehandelsverkehrs in den letzten drei Jahrzehnten des 16. Jahrhunderts " *(Hansische Geschichtsbl.* X V I 1910, 275-84).

New problems

The first point to be cleared up is why the discovery of the sea route to India and the acquisition of America necessarily involved new problems in the matters under consideration. In the first place the voyages themselves became longer, more costly and more dangerous than before, and the result was an increased demand for capital and greater scarcity of capital, the former on account of the greater cost in fitting out the expeditions and because of the longer period of investment from the beginning of the journey until the sale of the goods and the winding up of the business. This change obviously already obtained in the case of expeditions which were of a purely adventitious character and which did not involve the foundation of any definite settlements. But now that trade was extended to non-European countries, a demand arose for capital for permanent uses too, for setting up business establishments and defence works, for providing military forces and diplomatic representation and finally for all the machinery of administration.

This turn of events was not particularly welcome to any of the new sea-faring nations, and, in fact, they attempted as far as possible to escape the consequences—the Portuguese and Dutch with the greatest success, Spain and England with the least. Apart from the increased demand for capital, another effect was that trade acquired an essentially new *political* complexion, because in countries where European methods of government were not in force, certain elementary state functions became bound up with the trade proper. It became necessary to fulfil such functions as no European commercial organizations had ever had entrusted to them and it was no simple matter to find the proper organization for a trade with so strong a political complexion. Political problems were obviously most urgent in new regions without any administration of their own, or where the administration was entirely ineffective, i.e. in the colonies, which one country after the other was forced to found.

The most far-reaching effect of the new developments on foreign trade and business organization during the centuries following the great discoveries was naturally to be found in the extended sea voyages and in the new countries; but even the well-established trade routes by land, and even economic life within the old countries, did not remain unaffected. The old Levantine trade required its organization just as much as did the "Indian" trade to the East and West. Even the structure of European trade itself was changed in conformity with the new commercial

problems, as for example English trade to the west coast of Europe, and English (and Dutch) trade to the Baltic. Here too there was a kind of link with official bodies, owing less to economic or social necessity than to the fact that the purely medieval organizations had borne this impress so markedly.

This exposition however is not concerned with the development as such, but with its connection with mercantilism, with the treatment of these problems by state authorities and with the results of this treatment.

The simplest solution would have been for the state to assume entire control over the new trade; and the admixture of political problems with trade to distant lands pointed in this direction. The more or less public character of the medieval, and to some extent even of the later, organization of trade and production must have been a further reason for this, all the more so now that the state assumed control over economic life. To those who interpret mercantilism simply as an expression of this form of state initiative, direct state control must have appeared to have been the only possible course where economic activity was so closely bound up with political functions. It is only when it is realized that mercantilism by no means fits in with this interpretation of it (as the later parts of this work, and particularly the fifth part will show) that we can explain why the development essentially took another turn. It should however be added that trade carried on by the state met also with insuperable difficulties of a purely practical character, such as the lack of discipline and the dishonesty of nearly every state administration of the period. Further, state enterprise as one possible solution was by no means ruled out, for in some few instances this solution was fully applied, and in a larger number there was a more or less direct co-operation with the state.

Portugal

The most extensive overseas commerce carried on by the state was Portugal's trade with India and the intermediate ports on the African coast—a trade which broke entirely new ground. Although little research into this branch of commerce has yet been published, colonial trade was evidently carried on until 1577 under a pure state monopoly. It was undertaken entirely on the king's account, at his own risk, and in his own ships, and licences to private merchants for the Indian trade were given only in exceptional cases, though somewhat more frequently in the African trade. When they were given, the condition was made that the agents of the merchants should attach themselves to the royal ships, which used to sail in fleets of a definite number

of vessels. On the return to Portugal the goods were then sold to merchants. This rule, though stringent in theory, was widely infringed in fact, through the private trade carried on by officials and the ship's crew. Such private trade was originally permitted to a small extent in accordance with the practice of former times, but it came to such a pass that eventually whole vessels were on occasions laden with the captain's own goods. The officials always took good care that their own private and illicit trading in India and at home should take precedence over the lawful trade. The work of Sir William Hunter, in fact, based on official English transcriptions of the materials in Portuguese archives, gives the impression that the illicit trade was even greater than that of the state. It was not until 1577 that any new attempts were made to trade through companies of various kinds and for various purposes, though apparently they caused no appreciable improvement.[17] This, the most far-reaching attempt of all to institute pure state trading, did not encourage imitation. No other country went as far, though tendencies in that direction were not altogether lacking. This referred only to Portuguese trade with East India. Before the discovery of the new sea route to India in the 15th century, Portugal had had quite a number of companies for different purposes, especially in the African trade, though this system was not allowed to extend to the infinitely more important Indian trade because the king wanted that for himself. When the route to Brazil was discovered, the new trade was however thrown open to the same sort of companies as had existed previously. These associations were of a rather advanced type, probably owing to the influence of the Genoese *maone,* but there is no need to investigate them in this connection, as their importance in company development in other countries must have been negligible.[18]

[17] W. W. Hunter, *A History of British India* I (Lond. 1899) 104 f., 175-81, 236 f.—H. M. A. Fitzler, "Uberblick uber die portugiesischen Uberseehandelsgesellschaften des 15.-18. Jahrhunderts" *(Vierteljahrschr. f Soz.- u. Wirtsch.- Gesch.* XXIV, 1931, 282-88.—Preliminary study to a greater work).—Data differing in detail in the description not based on primary sources is to be found in Ch. de Lannoy and H. Vander Linden, *Histoire de l'expansion coloniale des peuples europeens,* [I] *Portugal et Espagne* (Bruss. 1907) 136-52, and C. H. Haring, *Trade and Navigation between Spain and the Indies in the Time of the Hapsburgs* (Harvard Econ. Studies XIX, Cambr. Mass., 1918) xxiii, 23.—F. C. Danvers, *The Portuguese in India* I—II (Lond. 1894) contains very little concerning the trade.—There is no difference of opinion as regards the character of the Indian trading organization of Portugal.

[18] These associations have been described in a later article by Miss H. M. A. Fitzler, "Portugiesische Handelsgesellschaften des 15. und beginnenden 16. Jahrhunderts" (*Vierteljahrschr.f Soz- u. Wirtsch.- Gesch.* XXV, 1932,209-50).

Spain

Spain originally modelled its methods in trading with "The Indies[5]", i.e. America, on the East Indian trade of Portugal, but this form of trade probably experienced greater difficulties in the case of Spain, as she had to trade with a newly colonized continent, while Portugal traded with old centres of civilization from a small number of establishments. Spain therefore, on principle, very soon limited the state's function. Private trade was permitted, even though it was strictly regulated, controlled and organized by a system of semi-state shipping. This represented a much closer return to medieval practice than was the case in Portuguese commercial organization. The danger of piracy and privateering, in fact, had acquainted most towns and countries in the Middle Ages with convoys and other methods of sailing in company for the common protection of trading vessels in distant waters. The direct model of the Spanish organization was probably the Venetian galleys sailing to the North Sea which, since their inception in the year 1314, had become one of the best-known features of medieval sea trade. The galleys were sometimes supplied by the city-state, and more often by private individuals, but the sailings themselves were organized by the state.[19]

The Spanish "Silver Fleet", carrying the whole amazing output of precious metals on board, was bound to strike the popular imagination; as a temptation to pirates, who grew bolder and more unscrupulous with the rise of the new shipping, it had no equal. The need for protecting ships and cargoes thus became greater than ever before or since, and this need had somehow to be satisfied.

The way this was done from about the year 1526 onwards was to prohibit trading vessels from sailing alone. Some ten years later a royal armada was formed for purposes of protection. In this way was organized the Spanish "Silver Fleet", the subject of perpetual discussion and political tub-thumping in all countries. From the 1560's onwards it consisted, strictly speaking, of two quite different fleets, the *galeones* and the *flotas*. The first was intended for *tierrafirme,* that is for South America, and the second for Mexico. Both were to set out according to a plan at definite times and to go part of the way together. The fleets were to include armed ships provided by the state and private trading vessels in such numbers as the state permitted. This was not the same

[19] A. Schaube, "Die Anfange der venezianischen Galeerenfahrten nach der Nordsee" *(Hist. Zeitschr.* CI, 1908, 37, 48 ff., 80 f.).

as state convoys for private vessels, for even the armed ships usually carried goods, particularly silver, the principal and most valuable commodity; and this was always the case with silver cargoes belonging to the state, but often also with silver belonging to private individuals. To exclude foreigners was a fundamental principle of the system. It was regulated moreover by detailed rules which swelled like a flood from year to year. Their application was entrusted to a special organization, a kind of state department known as the *Casa de contratación,* which was situated for the first two centuries of its existence in Seville. The legal branch was in the hands of a corporation of merchants concerned in the ''Indian" trade, the particularly notorious consulate in Seville. What has been said of the Portuguese organization holds good to an even larger degree for the Spanish. Both the legal exceptions which were forced from the state in its continual financial embarrassment and the actual infringements of the law, smuggling and undercutting, all grew to such proportions that in reality they exceeded the official system and could not be uprooted except by means of a radical convulsion.[20]

Thus Spain, too, was unable to exercise a positive influence on the development in those European states which were destined to take the lead in the new sea trade. It is true that while Portugal was hardly ever considered, and even more seldom correctly understood, the statecraft and the political writers of every country were preoccupied with the economic policy of Spain, the inexhaustible treasure-house of all mercantilist riches. But in these discussions, Spain was held up as a deterrent example; a mercantilist pamphlet would seldom let the opportunity pass of proving that Spain's economic policy was based on principles entirely contrary to those which the author considered correct. Statesmen, in complete agreement with this view, attempted to exploit the innumerable loopholes in the Spanish system for the advantage of their own country. Imitation was farthest from their minds.[21]

[20] The most important of the later works is that of Haring, mentioned in footnote 17. On the text above cp. party- 3, 24, 26, 31 ff., 39-43, 71 ff., 201 ff., 205 ff., 208 ff., 215 ff.—A shorter description of the conditions around 1700, largely based on French sources, in the first book of E. W. Dahlgren, *Les relations commerciales et maritimes entre Ia France et les cotes de l'ocean pacifique {commencement du XVIII^e siecle)* I (Paris 1909), is, however, much clearer, particularly as regards the abuses (ch. 2, La Fraude).—See also next footnote.

[21] It would serve no useful purpose to enumerate all the mercantilist books and pamphlets which support this assertion; the two best known are perhaps Th. Mun, *Englands Treasure by Forraign Trade* (publ. 1664) ch. 6, and J. Gee, *The Trade and Navigation of Great Britain considered* (publ. 1729). On practical

The Spanish organization of sea trade and commerce, however, obviously does not explain the nature of the Spanish trading enterprises as such and the manner in which capital was raised. There is in fact little to be said on this head, for no really new forms of undertaking arose in the Spanish-American trade. The small trading companies adopted from Italy prevailed in the 16th century, although it is true with a tendency to increase the share of the profit of the active partner as against the passive and to make room for trade on commission. An important reason for this lack of originality was undoubtedly that the Spaniards themselves had such a small share in the exploitation of their enormous acquisitions. As early as the 16th century this activity was mainly in the hands of the Genoese and the important South German trading-houses, the Fuggers and the Welsers. The capitalists of other countries then came upon the scene and there was the possibility of using the financial difficulties of the state as a means for making advantageous bargains—the *asientos de negros,* dealings in slaves, was only one type of such bargains —and taking advantage of the opportunities which illicit trade offered. Clearly no impetus to general European developments could come from such conditions.[22]

Although neither the Spanish nor the Portuguese methods of solving their new problems had any profound influence on the development in those countries which were the true protagonists of mercantilism, yet none the less, even in these latter countries, enterprises were not entirely without official co-operation. This came about in various ways.

France

North of the Pyrenees France showed stronger traces of direct state enterprise in foreign trade and in colonization than most other countries, though it was more veiled than in the Iberian peninsula. The very numerous trading companies, which arose

policy, French material is particularly instructive. See Colbert's numerous circulars on this point, in greatest detail in the instruction to the French Ambassador in Madrid 1679, printed in *Lettres de Colbert* (ed. Clément) II 699-705; on Colbert's interest in the silver fleet, see for example the same collection II 421, 488, 519, 659, 690, V I I 236, 247 f.; and in addition the very abundant collection of material of Dahlgren for the period around 1700.

[22] A. E. Sayous, "Partnerships in the Trade between Spain and America and also in the Spanish Colonies in the 16th century" *(Journal of Econ. & Business Hist.* I 1929, 282-301).—K. Haebler, *Die Geschichte der Fugger'schen Handlung in Spanien* (Supplement to the Zeitschr. f. Soz.- u. Wirtsch.-Gesch. I Lpz. 1897) and *Die uberseeischen Unternehmungen der Welser und ihrer Gesellschafter* (Lpz. 1903); also Ehrenberg, party- II 222 ff.

at the time of Colbert and later, differed fundamentally from those of Holland and England. Their initiative usually came from the state or, in Colbert's time, from Colbert himself, since he embodied French state power in the economic field. A large proportion of the capital was put up by the king and the royal house, in other words by public means, and, for the rest, it was raised by strong pressure on the part of the authorities on officials and others. The capital risk, too, was largely carried by the king. The directors of the companies were strictly controlled and their treatment was hardly different from that accorded to the intendants of provinces, colonial governors and ambassadors abroad. Finally the management was predominantly in the hands of non-merchants and the merchants proper generally had a poor opinion of the Parisians who were to carry on the trade under high protection. Instances of this may easily be given.

When the French East India Company was about to be formed in 1664, Colbert had Louis X I V write to the financial officials in Bourges, to the effect that he did not doubt their willingness to take so favourable an opportunity of placing themselves at the service of God, himself and the community by subscribing shares, and that the king for his part would urgently entreat them to do so. In 1667, Colbert wrote to one of the presidents of the courts of law and informed him of the king's pleasure at his zeal in extracting subscriptions from the officials of his tribunal. The king through Colbert promised him to discriminate between willing and tardy subscribers so that "without useless threats" measures should be taken against those who had omitted "to show themselves agreeable to him on an occasion such as this". Judging from Colbert's correspondence, his tools, that is mainly the intendants, did not shrink from using force to press contributions, particularly from merchants and other members of the middle class. This method of subscription was not peculiar to the East India Company. It was applied also in the contemporary West India Company. In 1684, after Colbert's death, the Guinea Company was about to be established. The king declared that it was to consist of "such of our subjects as we shall select for this purpose", in other words shareholders by royal selection. It is obvious that subscriptions under these conditions would come in very slowly. Without the Crown's financial support, the companies would never have arisen. In the charter of the West India Company 1664, the king guaranteed one-tenth of the capital for four years. All losses were to be covered by this account. In the *Compagnie du Nord* and the Levant Company of 1669, the king's share was

a fourth. Colbert himself, in a survey of 1673, estimated that the king had paid in four million *livres* to the East India Company and two millions to the West India. According to other sources, the first company was said to have received, after four years, from private persons, no more than five of the subscribed fifteen millions—the manner of its subscription has already been described—while the amount which the king and the princes themselves subscribed ran to four and one-third millions. The actual share of the state in the *Compagnie du Nord* was more than half of the total share capital. Thus the French companies had little in common with the normal type of capital investments and private business undertakings.

Even the management of the companies was apparently similar and was a kind of state activity. Most of Colbert's correspondence with the directors of the two India Companies has indeed been lost, but what remains is clear enough. In a memorandum of 1670 to the directors of the West India Company, when a voyage to America was projected, Colbert laid down three fundamental commercial principles which they were to observe. He drew their attention to the object of price regulation, emphasized as the principal aim of their activities the increase of population, and pointed to the necessity of low prices as the means for the attainment of this end. Low prices were to be achieved by purchasing goods in France wherever was best and cheapest. Four months later this economic platitude was supplemented by new rules. The directorate of the Baltic Sea Company (the *Compagnie du Nord)* was given an equally clear lead. It was to obtain the right of settlement in Göteborg and in Gotland, and was to enter into commercial relations with the Northern merchants, with the object of selling French salt from Brouage and with a further eye to the spirit trade, and was to furnish at least forty ships—a hint which was repeated again and again; it was to co-operate with the West India Company, to be on its guard against the Dutch and so forth. The merchants on their side were far from being delighted with the growth of the companies, and wherever possible opposed them and attempted with all their power to circumvent them. How they behaved in the matter of the East India Company has already been shown, and conditions were not vastly different in other cases.

In the *Compagnie du Nord,* it was altogether very difficult to induce private individuals to invest in shares. The merchants of Bordeaux had to be coerced by a special ordinance depriving them of the privilege which they had hitherto enjoyed of exemption

from taxation, unless they subscribed at least iooo *livres* (1669). With few exceptions, the merchants of Marseilles did not support the Levant Company, although Marseilles was the pivot of the Levant trade. The Levant Company therefore had to draw its support from the usual crew of courtiers. When this company was about to be revived in 1699 after numerous unsuccessful essays and reconstructions, cold water was poured on the project in commercial quarters, on the ground that so unwieldy an organization would prove useless to commerce. In the South Sea traffic at the beginning of the 18th century, the rather unscrupulous but commercially highly efficient shipowners and merchants of the tiny port of St-Malo affected an undisguised contempt for the numerous unfortunate companies established by the state under the direction of inexperienced Parisians; and they denied them their co-operation.[23]

On these points the practices of the English and Dutch companies may be contrasted in a few words, to be discussed at greater length farther on. The English companies, almost without exception, owed their development to the private initiative of merchants and aristocracy. The monarchy was usually interested in the companies, but certainly did not support them with money; on the contrary, it usually shared the profit or utilized the credit of the merchants for revenue purposes. No English instance can be found where the government ventured to dictate upon the internal affairs of the company. In the Netherlands, the development did not differ quite so much from the French type as was the case with the English companies; but the Dutch East India Company, almost to a larger extent than the English,

[23] The writings of Colbert on the East India Company: *Lettres de Colbert* II 428 f., 439; cp. the description in H. Webér, *La compagnie frangaise des hides (1604-1875),* (Paris 1904), 122-32 chiefly based on letters in the *Correspondance adminïstrative* (ed. Depping) III 354-82 (the letter quoted on page 130 was anonymous and is therefore hardly altogether conclusive).—West India Company: Colbert's letter of 1666 in E. Benoit du Rey, *Recherches sur Ia politique coloniale de Colbert* (Paris 1902) 270; the company's charter (§42) on page 265 f.—Guinea Company: P. Bonnassieux, *Les grandes compagnies du commerce* (Paris 1892) 382.—The Baltic Sea Company: charter in *Lettres de Colbht* II 802; for the rest P. Boissonnade & P. Charliat, *Colbert et Ia Compagnie de commerce du Nord* (Paris 1930), on the information in the text, see particularly 63-6, 120.—Capital subscriptions in general: *Lettres de Colbert* II 676, *See, Ev. comm. et ind. d. L France* 117 f. (after a paper by Boissonnade). The correspondence with the directors of the West India Company: *Lettres de Colbert* III: n 472-6, 483-7; do. for the Baltic Co. *ib.* II 488f., 530f., 588, 597 f. 625 ff. *et passim.*—Levant Co.: *ib.* II 449 f., Masson, *Comm. du Levant au 17^{e} s.* 180-5, 199.—South Sea trade: Dahlgren 160, 203 *et passim.*

was a creation of the commercial community and of **the** capitalists, not of the state. For the state it was a source of income, not a cause of expenditure. France on the one hand and England and Holland on the other, under the same outward form, developed widely different types of business enterprise.

The fact that the course of French development took this turn was obviously connected with the general tendency of the policy pursued by Colbert and his immediate successors. Colbert, and to a lesser extent these successors, were convinced, without a shadow of doubt, that they knew best what was good for the economic welfare of the country. Maritime trade and colonization were therefore treated as nothing but problems of state. Whether this acted as a deterrent upon private enterprise or not, it is a fact that companies at the time of Louis X I V occurred with less spontaneity than in the time of Henry I V, Richelieu and Mazarin. In the former period there was an appreciable number of instances of private initiative, particularly for trade with Canada, the Antilles and Guiana; and at that time, too, several companies were formed, though they probably soon disappeared, the so-called *sociétés et bourses communes* made up of merchants and aristocracy in the ports and vigorously encouraged by the assembly of estates and by royal decrees.[24] The companies created by Colbert, moreover, proved unable to carry on—which indeed holds good with regard to the older organizations too. Thus French mercantilism failed to pave the way towards any vigorous development of companies with corporative capital. To the extent that they were satisfied at all, the demands of French maritime trade and colonization were, on the whole, satisfied in other ways.

Private French trade which was advanced for the time, and also French industry, made use of the various types of companies with non-corporative capital, i.e. the simple partnership, the

[24] See the verbose defence of the *Societe'et Bourse Commune* of the city of Nantes: [Le Pere M. de Saint-Jean, originally Jean Eon], *Le Commerce honorable ou considerations politiques* (Nantes 1646—actually 1647), 3rd section, on the companies in other cities 351 f.—The colonial companies: Bonnassieux 182-223, 346 f. *et passim;* cp. the outline in Levasseur, *Histoire du commerce de Ia France* I, 278-89.—Bonnassieux's book is the only one which sets out to describe trading companies in all countries, but it is important only on France. On the French companies it is partly based on researches into the archives but it leaves much to be desired from the point of view of precision and system. The point of view developed here in the text with regard to the characteristics of French companies does, however, agree with what is mentioned there, e.g. 167,489.

ordinary partnership and the partnership *en commandite.* The detailed description of them given by Jacques Savary in his famous manual for merchants, *Le parfait négotiant* (1675), proves that they were "more common in wholesale than in retail trade". Savary des Bruslons, son of Jacques Savary, remarks *en passant,* in his no less well-known *Dictionnaire universel de commerce* (1727), with regard to the simple partnership, that it was "very common among merchants and traders". The 1673 *ordonnance pour le commerce,* one of Colbert's major achievements, devotes a special chapter *(titre* IV) to the companies *(les sociétés),* that is to say, to the ordinary partnership and the partnership *en commandite,* and is even regarded as their first legal formulation. But this had no importance in the development of the *corporative* associations. Rather did it reveal the gulf dividing them from the companies of the commercial world. The 1673 *ordonnance* confined itself exclusively to the non-corporative institutions and therefore laid down with perfect consistency *(titre* IV Art. 4) that every change in the partners of the companies was to be registered and published.

This, however, must not be taken to mean that the Savarys, father and son, failed to notice the trading or corporative companies as well; they showed keen interest in them. But in the elder Savary's description the treatment of these companies was completely separate from the chapters on the non-corporative companies, which were chiefly a commentary on the 1673 *ordonnance,* in the formulation of which Savary, the elder, is said to have had an important share under Colbert's direction. The younger Savary discussed the difference, in his opinion, in the usage of the two really identical terms *société* and *compagnie*; the latter he declared was only employed for "the large associations which had been and still were formed for foreign trade and for long voyages" by means of privileges and other public measures. In English, the word "company"—which has already been shown to be much older—was used both for corporative and non-corporative types of company, and the same was true of the Netherlands; in France, the practice of reserving this expression for the corporative structures, the trading companies, shows that they were outside the general current of business organization, and in fact they exercised no influence upon subsequent developments. Another verbal peculiarity is characteristic of the lack of connection between the older French companies and the modern joint stock company. In the commercial terminology of the time, as used for example by the two Savarys,

but not merely by them alone, the expression *societe anonyme*, which, in fact, is the modern French term for a joint stock company, was applied to the loosest of all non-corporative institutions, the simple partnership, unknown to contemporary legislation and possibly not even recognized by it.[25]

The reason for this trend in French development was probably the one already hinted at, that the characteristic feature of the Colbertian regime was to exercise personal and direct supervision over all commercial activity. Another factor, however, may have contributed, namely the lack of medieval foreign trade companies which, though not capitalist, were yet corporative, those which in England were called "regulated" companies. An important corporative tendency was thus absent from the trend of French business organization.

4. THE NETHERLANDS

France thus occupied a peculiar position among European countries north of the Pyrenees. But if the French state played a dominating part in the direct undertaking of sea trade and colonization in the form of companies, this does not mean that the state refrained from taking some share in these activities either in the Netherlands or in England, the two other countries which will now be considered.

If the general economic and commercial development of Europe during the mercantilist period were being described, Dutch trade and Dutch enterprises would have to be placed at the heart of the discussion. The Netherlands were the most hated, and yet the most admired and envied commercial nation of the 17th century. However, economic development in the period of mercantilism is an entirely different question from mercantilism itself and its development, and it is the latter with which we are concerned. The paradoxical situation now arises that the Netherlands, although the ideal of all mercantilists, were yet at the same time less affected by mercantilist tendencies than most other countries. The only explanation is that the Netherlands were idealized. People discovered in them what they wanted

[25] Savary, *Le parfait negotiant* (1st ed.) deals with the usual companies in chs. 40 and 41, the trading companies in connection with foreign trade, particularly in chs. 51 and 53.—Savary des Bruslons, *Dictionnaire universel de commerce*, under "Compagnie" and "Societe".—*Ordonnance du commerce, titre* I V : in *Recueil des anciennes lots francaises* (ed. Isambert) X I X 96 *et passim.*—cp. G. Fagniez, L'*economie sociale de Ia France sous Henri IV 1589-1610* (Paris 1897) 245 f.

to discover, rather than the actual facts. When in the 18th century the Netherlands were succeeded by China as the economic Utopia, this tendency became even more marked. In both cases it was the results that fascinated people, and they did not trouble to discover whether the results were achieved by the means which they favoured. Since the Netherlands did not really follow mercantilist practice, the development there of the forms of enterprise is less instructive for our purpose than might have been expected.[26]

Loose organizations

The greatest peculiarity in the development of the Dutch enterprises has, to my knowledge, seldom or never been given prominence. I refer to the capacity of the Dutch for making shift *with fewer* and *simpler* commercial organizations than other nations whose carrying-trade and shipping were in no way comparable with that of the Netherlands. Ordinary partnerships for commercial and shipping purposes were obviously to be found in large numbers. A study of Dutch books on commercial practice of the middle of the 16th century and later indicates how common was this trading by association or "on common account"; in several instances a large number of members were affected without the forms of enterprise differing in the least from those which prevailed for years in Italy and the Hanseatic towns. It is also evident that from early times there was already a comprehensive system whereby credit was granted against security in the form of ships and cargoes, advances on bottomry *or foenus nauticum.* As had been the case already in ancient Rome, it had developed into a kind of speculation almost amounting to pure lottery and for that reason had been prohibited in some of its forms in 1549.[27] Capital associations were thus not entirely lacking, but they were altogether private at the outset; even later the field of activity of the large publicly supported associations was strictly confined.

[28] Dr. J. G. van Dillen was kind enough to read through the section on Dutch enterprises in the proofs, with the result that I have retouched this section in some particulars.

[27] See W. M. F. Mansvelt, *Rechtsvorm en geldelijk beheer bij de Oost-indische Compagnie* (Amsterdam 1922) 23-45.—That this applied not to European trade alone may be seen from the 1611 protocol of the States General for the Levant trade—see note 30—where mention is made of the deputies "van de compagnie handelende op Turckijen" and of the representatives "van alle de compagnieën"; also see below, the section concerning *voor-compagnieën.* —Trading associations in Emden towards the close of the 16th century, Hagedorn's paper mentioned in note 16, 262-73.—Cp. also Ashley, *Intro, to Eng. Econ. Hist.* II §68.

That Dutch maritime trade could make shift, to such a large extent, with purely individual initiative was undoubtedly due to the national characteristics of the people. For the Dutch merchant may be considered the bourgeois of Western European history *par excellence.* At the same time we must not overlook the possibility that even other nations, too, might have had the same opportunities in maritime trade without employing other means than the Dutch. To this extent Dutch development is of importance in our study, as an *antithesis* of mercantilism.

Dutch maritime organizations were established at a surprisingly late date. The cities of Holland, in the narrower sense of the name, that is the cities of North and South Holland and Zeeland, always stood apart from the Hanseatic League and proved increasingly serious competitors to it in commerce and shipping, at least from the beginning of the 15th century onwards.[28] The development of the Dutch cities proves that unprecedented commercial progress was possible without the support of a strong league between towns or of a powerful state authority, and incidentally renders very suspect the view that the commercial decline of the Hanseatic League was due to the absence of a strong German state. Were that the case, the expansion of the Dutch would remain inexplicable. Since the Dutch had no external political organization whatever to rely on, it should have been expected that the purely commercial organizations at least would be all the stronger.

As has been observed, the reverse was true of their European trade. If corporative structures of the medieval type ever did exist in the Netherlands, they seem to have disappeared entirely. We have hints of them only in the ubiquitous "convoys" and the corresponding associations for land journeys.[29]

The "directions"

It is true that the Dutch, in their trade with the old world, had a remarkable organization in the so-called "directions". *(directiës).* It is tempting to see in them the remains of medieval corporations; but to do so would be to ignore both the chronological order and the nature of the institution. The system of "directions" was only fully developed in the Levant trade, and

[28] The boundaries of the Hansa's extension in the west: W. Stein, "Die Hansestädte" *(Hansische GeschichtsbL* XIX, 1913, 235, 533-60); Daenell II 297 ff., 302.—Competition of the Dutch with the Hansa: *ib.* I 273 *et passim*; cp. W. Vogel, *Geschichte der deutschen Seeschiffahrt* I (Berl. 1915) 331 ff.

[29] S. van Brakel, *De hollandsche handelscompagnieën der zeventiende eeuw* ('s-Gravenh. 1908) xvi ff.

even there it did not date back farther than the year 1625. Before that there were, to all appearances, purely fortuitous associations of Dutch merchants trading with the Levant, with delegates or representatives in common for negotiations with the local officials (1611). But when fourteen years later a strong organization was formed, it arose with the merchants' approval, through the initiative of the Dutch "orator[55] i.e. the ambassador at the Porte, and not through the corporative spirit of the merchants themselves. The proposal of the ambassador was actuated by the desire to afford as much protection as possible to ships by supervising them before their departure from the mother country, particularly against the Algerian pirates and the Turkish Pashas. The Levant "direction" appointed consuls and on the whole played a very important part, but there was a gulf between this organization and the medieval merchant gild. For the "directions" were not associations of merchants, or a bond of union between them, but a board appointed by the authorities in the home country, though consisting of seven (later eight) merchants who had the right to levy taxes and exercise administrative powers. It was certainly no organization of trade as such and even less was it a corporation. This institution therefore is rather unimportant in the development of the forms of enterprise, however useful it may have been from other points of view.

The "direction" of the Levant trade was in itself very influential and attained a special significance by the fact that it existed when Dutch trade was at its zenith. This was not true of the other "directions". The two single cases on which information is still extant are the "directions" in the trade to the Baltic Sea and the White Sea. They did not arise until the latter part of the 17th century and confined themselves as long as they were in existence to the protection of shipping, voicing also the demands of the trades which they represented; they thus corresponded most closely to modern chambers of commerce or bodies of that type. The modest part played by them in the Baltic trade is truly remarkable in the circumstances. For the Dutch trade to the Baltic was all-important in these parts, as appears from every page of the toll accounts of the Sound. It dominated the corn trade of Northern and Western Europe, and is often thought to have been the mainstay of the whole of Dutch economic life in the 17th century. That this trade was able to carry on, during the period of its greatest prosperity, without any general organization whatever, shows how easily the necessity for organizations can be overrated. Sir Josiah Child, the governor of the English

East India Company and a fanatical admirer of the Dutch, was not altogether wrong, perhaps, when he ascribed their superiority in the Baltic trade precisely to the absence of associations.

The only Dutch organization bearing any similarity to the medieval corporations was not to be found in trade but in herring fishing, and was rather older than the ' "directions" themselves, since it dated back to the end of the 16th century. It consisted of representatives of the different fishing towns, who originally were probably selected with the co-operation of the fishermen themselves, but later simply became deputies of the local fishing authorities. In this case, the exercise of the trade itself became the object of a real control and regulation, but the whole phenomenon was apparently altogether isolated.

The "directions'[5] were all purely local institutions set up by the towns. The hostility between the "directions" of various cities was often very keen, although certain attempts were made to induce them to co-operate. It is true that the extent of this hostility was greatly limited in practice by the overwhelming preponderance of Amsterdam both in the sea trade and in the shipping of the Netherlands. But it illustrated the ineradicable particularism, which had hardly been attacked at all seriously, in the conglomeration of cities and territories comprehended in the sometimes almost ironical name of the United Provinces—a particularism which scorned all mercantilist efforts at unification.[30]

[30] The rise and early history of the Levant "direction": sources in *Bronnen tot het geschiedenis van den Levantschen handel* I: I-II, ed. K. Heeringa (Rijks geschiedkundige Publication I X - X , 's-Gravenh. 1910) 426 note, 434, 963 f. 978 ff.—The Levant "direction" in general: H. Wätjen, *Die Niederländer im Mittelmeergebiet zur Zeit ihrer hochsten Machtstellung* (Abhandl. z. Verkehrs- u. Seegeschichte I I , Berl. 1909) 173 ff. 176 f., 180-83.—Baltic Sea "direction" : van Brakel, *Die directie van den oosterschen handel en reederijen te Amsterdam* (Bijdragen voor vaderlandsche geschiedenis en oudheidkunde I V : ix, 1910) 329-50; cp. Letters to the King of Sweden from the Swedish resident of the time in the Hague, J. F. Preis 10/21 Sept., 1/12 Oct, 8/19 Oct. 1723 with enclosures (Swedish Public Record Office).—The directions as a whole and also the fishing organization: van Brakel, *Handelscompagnieën* xxiii-xxix.—Baltic Sea trade: besides the Sound toll accounts edited by N. Ellinger-Bang; O. Pringsheim, *Beitrdge zur wirtschaftlichen Entwicklungsgeschichte der Vereinigten Niederlande im xvii u. xviii Jahrhundert* (Schmoller's Forschungen X: Ill, Lpz. 1890) 15 ff.; cp. de Lannoy & Vander Linden (II) Nëerlande et Danemark (Bruss. & Paris 1911) 370, and E. Baasch *Holldndische Wirtschaftsgeschichte* (Handbuch der Wirtschaftsgeschichte, ed. G. Brodnitz, Jena 1927) 289.—J. Child, *Trade & Interest of Money Considered* (1669) ch. 3 (in *New Discourse of Trade*, Lond. **1698,** 105). Cp. note 10 above.

Trading companies

It is clear, however, that the prominent position of the Dutch in the new oceanic trade and shipping made demands on business organization completely different from those of the trade with the Old World. The Dutch trading companies were, besides the English, the most famous undertakings of the mercantilist period. It is curious that the influence of the state upon their form was even more pronounced than was the case with the English companies, in spite of the fact that England was, politically, infinitely more unified.

Here too the new institutions had only a short history behind them. Their forerunners had been very short-lived and had been neither public nor private corporations. The oldest prototype of the great Dutch East India Company was the purely private *Compagnie van Verre,* as it was called, established in 1594. The Dutch East India trade was no older, so that associations could not have arisen earlier there. Some ten very similar companies followed in rapid succession on the heels of the first, especially in the provinces of Holland and Zeeland. All these pioneers were later collectively called *voor-compagnieen.* Their creation occasioned a violent and not exclusively commercial competition. The various authorities, both municipal and provincial, as well as the States General were extremely perturbed by this competition in their East India trade, partly because they saw in it a danger for the very existence of this trade, but also for political and military reasons, since it prevented a united front being formed against the king of Spain, who at that time was also king of Portugal and thus master of the East Indian waters. Repeated attempts were made to unite the various interests. An amalgamation of the six companies which had their seats in Amsterdam also came into being, but it was of little avail, for the Zeeland merchants, who were always suspicious of the Holland merchants, kept themselves aloof and united in opposition to the Holland enterprises. Such being the situation, it was only the States General which could help. The work of unification was thrown on to the shoulders of the foremost Dutch statesman of the time, Oldenbarnevelt. After involved negotiations, promoted by the States General, all the existing enterprises were, with one negligible exception, amalgamated to form the "united" East India Company in 1602, eight years after the birth of the first company. One of the most powerful forces in the colonial history of Europe for the next two centuries was thus created.[31]

[31] Van Brakel, *Handelscompagnieen* 1-22; Lannoy & Vander Linden II 34-46. (Van Brakel describes the development as though it were independent

The East India Company did not stand alone but was soon succeeded by others. It is true that attempts to reinstitute similar institutions for the Russian and African trades failed, but in 1614 a monopoly was granted for whale fishing, which, in 1616 and 1622, led to an entirely new and original kind of company, the *Noordsche Compagnie.* In 1621 came the West India Company. Its predecessor had been an association trading with New Holland in North America, which was founded and granted monopoly rights by a law of 1614, according to which the discovery of new ports or other places brought with it a monopoly for four voyages. The West India Company itself, far more than the East India Company, was a creation of the state. Its charter did not appeal to private initiative and gave the States General far more authority than did that of the East India Company; and the company's military functions were strongly emphasized from the outset. It soon became evident that it could not be formed unless the government itself contributed half of the capital, and great pressure was exerted to raise the remainder from private individuals, almost as Colbert later did in France. In its later activity too the new company served political and military purposes which its predecessor, the East India Company, had avoided as far as possible.

Important as some of these institutions were, it is necessary to bear in mind a fundamental distinction which is generally ignored between the Netherlands and England—the fact that trading companies never became a feature of the ordinary economic life of the Netherlands during the *ancien régime,* at any rate before 1720. It is true that the East India Company was the corner-stone of the whole of Western European commerce, shipping, and colonial organization; nor was its influence at all confined to the Netherlands. Trading in its shares, moreover, led to the rise of the Amsterdam stock exchange and to speculation in shares. The West India Company also played a part, though an inferior one, in these activities. But this was as far as company development went on the whole, and dealings on the stock exchange in the 17th century were limited to the shares of these two companies. Important branches of trade made shift without any common organization or only with administrative "directions" as we have already seen. Of the companies once established, the *Noordsche Compagnie* expired in 1642. Various endeavours in

of considerations of attack by external enemies. This however is refuted by a series of both public and private statements; see, e.g. the latter work II 44, and J. H. de Stoppelaar, *Balthasar de Moucheron,* 's-Gravenh. 1901, 192, 195.)

the 1620's and 1630's to form capitalist insurance corporations came to grief. The Bank of Amsterdam was founded in 1609 as a purely communal institution. An industry which might have demanded corporative capitalist companies never appeared in the Netherlands. It is therefore a great mistake to look primarily to the Netherlands for the origins of modern forms of enterprise.[32]

The organization of the Dutch East India Company, and of the West India Company which imitated it, deserves great attention as something novel and unique in the history of business organization, unique not only in relation to the past but also to the succeeding period, although this circumstance naturally narrows its significance. For the history of mercantilism its principal interest, however, consists in serving as a background to and contrast with England, in which the connection between mercantilism and the forms of enterprise must chiefly be studied. The Dutch company followed a line of development which had one of its roots in state trading. Its peculiarity, however, was that this occurred in a country in which the state was less tangible, and was split up into particularist institutions far more than in any other country, and where at the same time the merchants' need for independence and their self-reliance was far greater than in any other European country of the time. The Dutch East India Company was therefore the most paradoxical of all the enterprises and companies of the period. This is true in a deeper sense than the trivial contrast between principles and their application, characteristic of Spain and Portugal; it refers to conscious planning and construction.[33]

[32] On the facts: the general charter of 1614 printed in *Groot Placaet-Boeck vervattende de Placaten, Ordinantien ende Edicten van de . . . Heeren Staten Generaal der Vereenighde Nederlanden,* ed. C. Cau, I ('s-Gravenh. 1658) 563—6; charter of the West India Company: in *ib.* I 565-78, party- Arts. 5, 19, 20, 39-41.—van Brakel, *Handelscompagnieen* 22-40.—Baasch 67 f., 71, 240-45; cp. J. G. van Dillen, "Termijnhandel te Amsterdam in de 16de en 17de eeuw" *(De Economist,* LXXVI, 1927, 520).

[33] The principal source on the inner history of the Dutch East India Company is the enormous work, written on behalf of the governors by the first *'advocate" of the company, i.e. its highest official at home, P. van Dam, in the years before and after 1700. Its publication by F, W. Stapel has commenced *(Beschryvinge van de Oostindische Compagnie;* Rijks geschiedkundige Publication, LXIII, LXVIII, LXXIV, LXXVI, 's-Gravenh. 1927-32). On this book, which makes use of sources in archives nowpartly lost, is based the much-quoted description (in German) by a Protestant pastor in Sumatra G. C. Klerk de Reus, *Geschichtlicher Vberblick der administrativen, rechtlichen und finanziellen Entwicklung der Niederldndisch-Ostindischen Compagnie* (Verhandelingen van het Bataviaasch Genootschap van Kunsten en Wetenschapen XLVII: 111,

The voör-compagnieën

The forerunners of the East India Company, the *voör-compagnieën,* were not different in outward appearance from the noncorporative associations of capital scattered throughout the south, middle and west of Europe. The disputed question of whether they in turn had their roots in partnerships for shipping purposes *(Partenreedereien),* ordinary partnerships or in some other forms of enterprise is a matter of legal construction; in actual historical fact the character of the associations was the same. They were non-corporative. Every expedition was an isolated event, so that those holding shares in the different voyages even competed against one another. On the other hand there were certain tendencies towards a more powerful organization; in the first place, the quite considerable number of shareholders in the individual enterprises, and secondly the fact that the same individuals often associated again and again for a number of voyages, very much like the far older South German family partnerships. We find in the *voör-compagnieën* a practice very similar to the German division into (chief) participators and sub-participators or "under-adventurers". The former were given the name, later so famous in Dutch company history, of *bewindhebbers* (directors), and were, at least in many cases, responsible for the companies' activities and had to make up the required amount of capital themselves where necessary. The latter were not accepted under their own names, but took part through one of the chief participators and were often looked upon as a kind of creditor, who before the ships sailed had a claim to fixed amounts of interest.[34] There was nothing new in all this, but it influenced later developments.

Batavia and 's Hage 1894). The first Charter of the company is printed in various places; for the same and for similar documents I have employed the *Groot Placaet-Boeck* (the charters of the two great companies: I 529-4.8, I 565-96 resp.). Unless otherwise stated the remaining facts are taken directly from the first volume of van Dam or—indirectly largely from the same source—from Klerk de Reus. *Of* the modern works that by van Brakel and also that of Mansvelt are valuable. The summary of Lannoy & Vander Linden describes colonial policy in detail, but deals with the remaindei very cursorily. In Baasch the whole subject receives very scant attention.

[34] "De participanten, die hare gelden in die Compagnie van de veertien schepen tot Amsterdam hadden ingeleyt, heeft men verstaan, dat derselver namen op de boeken niet souden werden bekant gemaakt, maar alleen de Bewinthebberen, onder wien yder van deselve was sorteerende, des dat die gene, die hare gelden daar to hadden gefurneert, souden genieten intresse tegens seven en een half ten hondert int jaar" (van Dam 16).—Mansvelt excellently underlines the "juridical or rather unjuridical character" (45)

The organization which arose later through the amalgamation of these enterprises was different in one vital respect, and it was this that made the advent of the Dutch East India Company so epoch-making.

Corporative features

The "United" East India Company developed a strong corporative complexion absent in its forerunners. The negotiations entered into at its formation show that various alternative solutions were considered—even individual trading under common control; the Portuguese example was cited in support of this plan, but the solution contemplated really had more in common with the "directions" set up later.[35] This expedient undoubtedly harmonized best with the desire for independence among the Dutch merchants and with the general and theoretical attitude expressed by Oldenbarnevelt among others. As this way out was, however, not adopted, a modern observer might jump to the conclusion that the reason was the obvious impossibility of creating and maintaining a colonial empire by private merchants. But the earlier part of this chapter itself is enough to prove that this explanation is entirely erroneous. The single aim of the commercial nations of the time was great and rapid profits in commodities which were in greatest demand, Indian spices, precious metals, precious stones and, later, slaves. This mentality was universal, but was most striking in the foremost trading nation of the time, the Dutch. Down to the French Revolution, they paid as little attention as possible to the natives in their trading territories, especially in India. People did not yet realize the significance of fixed capital in the broadest sense of the word, that is including purely administrative or military establishments. The methods employed, which were often very violent, aimed at extracting profits from trade rather than from production, and any monopoly was thus a monopoly of trade and not of production, the domination of markets and not the domination of

of these associations and does away with the legal constructions. Much less fortunate is his strong emphasis on bottomry as an explanation of the position of the sub-shareholders. Van Brakel's description 93-121 is particularly useful. Less apt appear to me to be Lehmann (see above, note 10) 29 ff. and Ehrenberg II 325 ff.—See also J. G. van Dillen, "Nieuwe gegevens omtrent de amsterdamsche compagnieen van Verre" *(Tijdschrift voor geschiedenis* XLV, 350-56).

[35] See de Stoppelaar 197.—It is possible that the Portuguese example referred to was a "Companhia das Indias Orientais" which was planned in 1587 but never came into being (see the article quoted in note 18 above).

production. The explanation which would spring most naturally to the mind of the student is thus incorrect.

The Dutch East India Company is and must remain a difficult phenomenon to explain. The principal idea behind its formation was probably the endeavour to establish a common front against Spain and Portugal; but presumably there was also the contributing cause that no medieval organization existed which would limit competition. Therefore the choice lay between what amounted to complete and unregulated individual freedom on the one hand, and a full-fledged concerted monopoly on the other.

The charter issued by the States General granted to the East India Company a monopoly for the India trade during the whole period of the charter (Art. 34), in the first place for twenty-one years, and then repeatedly renewed. The company obtained what were practically sovereign rights in the territory monopolized. It could make agreements with foreign princes, build fortifications, equip troops, exercise legal jurisdiction and so on (Art. 35). This indicated no appreciable difference either from the English or from the French type of company. In all three there was, as a rule, a devolution of state power to private enterprises in Eastern countries. The expression "a state within a state", frequently used of all companies, actually applied most of all to the Dutch East India Company, because its management, more than that of any other company, was dominated by the arrogant self-reliance of the wealthy merchant. But though this feature was characteristic of the Dutch, the overseas companies of the mercantilist period usually had the same authority against outsiders in principle, and to some extent also in practice, in all countries. The fundamental distinction between the Dutch type and the others, especially the English, was to be found in internal organization. The relationship both of the various branches of the company and of the directorate towards the shareholders was different. The Dutch company was unique in these two respects.

Unity and disruption

The organization of the Dutch East India Company was such a paradoxical mixture of unity and disruption that practically every description must give a chaotic picture; but any such description of this, the most famous enterprise of the period, is illustrative of the kind of commercial undertaking which trade was able to put up with at that time, and it therefore throws light upon the achievement of mercantilism or at least upon its limitations.

As an enterprise, the corporation was indivisible. All transactions were carried out on common account. The capital belonged to the company and the system of dividend payments was uniform throughout. Functioning as the principal organs of the company and with far-reaching authority were six chambers, as they were called, organized on a purely local basis. The greatest and by far the most important of them all was that of Amsterdam, the next that of the province Zeeland, and the remaining four those of Maas and the towns of the "northern quarter", Delft, Rotterdam, Hoorn and Enkhuizen. From the outset these chambers had each contributed a definite part of the company's capital and later too had to arrange for the distribution of dividends to the various shareholders. They had to bear a definite proportionate share of all the costs (one-half, one-quarter and one-sixteenth respectively, Art. i of the charter). For example when it was arranged that the management in India receive annually eight *legger* of Rhine wine, the chambers had to contribute eight, four and one *legger* each, respectively. The equipment of the ships and the procuring of cargoes, provisions and arms, as well as the actual building of the ships all devolved upon the individual chambers. The ships had eventually to return to those chambers from which they had departed (Art. 12). They had to bring back "returns'[5], that is Indian products, for the chamber which had equipped the ship as well as for the others. The orders for these "returns" were distributed among the chambers, and they each had to sell the goods received, but all on the common account of the company. The administration in India belonged indeed to the company as a whole, but, with the exception of the chief officials, it was recruited by nomination, made independently by the individual chambers whose hands were tied only in certain matters of secondary importance, and which moreover often treated with indifference the few legal limitations that had been laid down.

Clearly this system led to the most complicated debit and credit arrangements between the chambers and also between the chambers and the company, which was usually represented by Amsterdam. The most far-reaching systems of control and audit which were elaborated for this purpose were unavailing. Besides the general clauses in the charter (Arts. 13--14) there arose in the course of time a large number of regulations, according to which the chambers were obliged to help one another out with goods and money, but the later disentanglement of this network of debts was a task of insuperable difficulty. It was often decided

that dilatory chambers should forfeit their share of the "returns", and that this share be divided among the other chambers and the cost borne by the offending chamber, but this clause was apparently never applied. The system of debt administration appears to have been particularly confused. Funded loans and advances of goods—on a *pro rata* division of the burden among the chambers—were accepted both on the common account of the company and of the individual chambers. The chambers whose credit was sounder, especially Amsterdam, repeatedly took over debts on account of the others, although it was laid down that no chamber be obliged to do so against its will, and for that reason they drew disproportionately higher charges than the others. This was an important feature, for towards the end of the 17th century, the company during two periods paid its dividends in the form of bonds and other obligations, sometimes on common account and sometimes for each chamber separately. Even when this practice had ceased, means for paying dividends were raised in various ways by incurring debts. In spite of the abundance of data, it is therefore very difficult to gain any conception of how the system functioned.[36]

The management of the chambers themselves was entirely particularist, and this constituted a close bond with the public bodies. The directors of the individual chambers (the *bewindhebbers),* who were also thereby directors of the company, were originally taken over from the amalgamated companies (Arts. 18-23 of the charter); but when their number had been reduced to sixty (Arts. 24-25) vacancies were to be filled by the political administration of the particular provinces (Art. 26). With characteristic independence; the province of Holland changed this clause at the suggestion of the city of Amsterdam, so that this city might take over the authority of the province; and with corresponding pliability the States General gave way, and with certain provisions this principle was also extended to the other chambers. The relationship between them and the political authorities thus became even more intimate and the burgomasters of the towns automatically became *bewindhebbers.* The list of candidates, which was binding upon the authorities, originated with those who had been until then *bewindhebbers* themselves, but only with those of the particular chamber (Art. 26). Later, according to the renewed charter of 1622 (Art. 3), they were reinforced by an equal number of chief participators, included in which were also

[36] On this, see particularly chs. 10 and 16 in the first part of van Dam's book.

such shareholders as owned as much in shares as was demanded of *bewindhebbers.* The most extreme political and economic particularism was thus embodied in the framework of the enterprise, without in any way impairing its external unity.

It is difficult to find a simple formula to express the chambers[5] position in the company. In theory they were the company's organs, their agents or commissioners as it were, but at the same time they were integral parts of the enterprise itself and to that extent were therefore rather its shareholders. They were responsible for their share of the common capital and bore their share of the company's debts. But at the same time each chamber had its own debts, claims and stocks of goods, though these again could only be considered part of the debts, claims and stocks of goods of the company, since indeed the capital and dividend payments were common to both. The property of the company was cited as security for the loans which were at the same time debited to each individual chamber.[37]

It is probable that features of the simple partnership with its loose connection between the partners—as well as the connection in the normal partnership between the agents who were at the same time partners and the other partners—contributed to this remarkable organization. But the real explanation is that a mean had to be struck between the desire for a uniform enterprise and the aspirations of an unrestricted particularism. Any comparison with modern associations, therefore, must be rather lame. The modern cartel is founded simply on community of interest and consequently does not affect the entrepreneurial character of its members in principle. Every constituent company has its own capital, its own profit and loss account, may go bankrupt and so forth, without the cartel as such being affected. It is only an agreement, limiting for monopolistic ends the freedom of concerns which have kept their separate individuality. Consequently, there is practically no resemblance between the cartel and the organization now discussed, for the outstanding characteristic of the Dutch companies was precisely that they were each an undivided concern. A modern trust, or a corresponding non-monopolistic association of business concerns, on the other hand, *entirely* abolishes for a limited period or for all time the independence of its member concerns. Their very names as independent entities may disappear and, even if their names are retained, they lose their individuality as long as the trust exists. And thus neither trusts nor cartels provide a counterpart to the independent

[37] Van Dam 448, which refutes Mansvelt 53 f.

functions and the individual administration of property characterizing the chambers of the Dutch companies.

The companies, however, did not entirely dispense with important common bodies; in fact it would have been impossible for them to do so. One of these predominated as the all-powerful ruler of this mighty organization, "the common assembly or college" (Art. 2 of the charter), usually called the "Seventeen Masters" (*Heeren Seventien).* On paper this college did not form the administration of the company but was rather an offshoot of the *bewindhebber* members of the chambers, selected in a definite order from among the latter: eight members from Amsterdam, two from Zeeland, and a varying number from the remainder. The Seventeen Masters usually met only three times a year but as may be expected, their tasks were many and onerous. They had to lay down the common rules for the company's activities and to allot the individual chambers their functions (Art. 3). They consequently had to determine how many ships were to be built, how many to be sent out, how the ships were to be equipped with supplies, crews, arms and soldiers, which goods should go to India and which brought back as "returns[55]. They also had to determine the conditions under which transactions could take place, though their application was always left to the chambers; it was only when the chambers failed to sell the "returns" that these were to be taken over by the Seventeen. The task of equating the chambers' transactions and of smoothing out their disputes also fell to their lot, as did the examination of the chambers[5] administration; the company's financial statements had to be drawn up by them on the basis of the books of the chambers. In general they were ultimately responsible for all the activities of the chambers. The ever-growing empire in India, especially in the Indian Archipelago, was also directly subject to the Seventeen, though in the middle of the 17th century a special committee, known as the *Haagsch.*

Besogne took over much of this work. Finally it was the Seventeen who performed the function which most concerned the shareholders—of determining the annual dividends on the foremost stock in the world.

The whole system would have been impracticable had Amsterdam not been so important. With one vote of the smaller chambers, Amsterdam had the majority in the powerful circle of the Seventeen, and for six years out of eight, the central management was to sit in Amsterdam as the "presiding chamber[55] (Art. 4 of the charter).

The absolute power of the governors

The company government's independence of the shareholders was strengthened rather than weakened by Amsterdam's influence, and this constituted the second peculiarity of the Dutch type of company. The shareholders had practically no opportunity of making their influence felt, and no statement of accounts was made by the management during the whole of the company's existence. Dividends were paid entirely at the arbitrary pleasure of the governors and on one occasion they even openly threatened to withhold payments altogether if the shareholders showed themselves refractory towards their "lords and masters". Historically this is obviously explained by the fact that the ordinary shareholders were descended from the sub-participators of the *voor-compagnieen,* who never appeared under their own name in the books, but always acquired shares through the *bewindhebbers,* upon whom the whole system depended. It was just in this reaction on the organization of the Dutch East India Company that the system of sub-participators had its most far-reaching effects. The peculiar thing is that the original charter of the company made no distinction between various kinds of shareholders. When later the special position of the chief participators was recognized by the first renewal of the charter in 1622-23, the authorities attempted to give them the influence we have already mentioned through nominating *bewindhebbers* and also to give them some measure of control over the hitherto entirely unshackled administration and management. But in point of fact the position remained practically unchanged, presumably because the chief participators were conscious of solidarity with their social and economic equals, the *bewindhebbers,* whose position they hoped some day to occupy, while the main body of shareholders, despite their protests, were systematically excluded.

The companies thus became really representative of the power of the wealthy Dutch merchant. This was assisted instead of being hampered by the companies' close connection with the public authorities, who usually worked in harmony with them and protected their government against recalcitrant shareholders. In the course of time, the principals of the country's various public bodies, from the States General down to the municipal administrations, themselves assumed directorships, thus bringing the companies still nearer to the status of public institutions. In the case of the West India Company this public influence was given wider scope in the charter itself than in the case of the East India Company; for the charter provided

that the States General were directly to nominate a member in the council of the "Nineteen" of that corporation, which corresponded to the "Seventeen" of the East India Company (Art. 18). Thus did the Dutch companies drift farther and farther away from those private types of enterprise destined to influence subsequent development.

In many other respects, however, the East and West India Companies represented an advanced stage of association of capital and an approximation to the type current in the 19th century. The *Noordsche Compagnie* was far more loosely organized. Every chamber could raise capital independently, and secured from the company the right of participating in the trading expeditions. It had in addition various other peculiarities.[38] However, it is not worth our while to probe the matter any farther, for the organization of the two other companies was the important thing.

Limited liability

Lawyers have mainly confined their attention to the question of the limited liability of the shareholders. This problem has neither in earlier history nor at the present time the economic significance which it may presumably have from a legal point of view. Not until the latter half of the 19th century did limited liability of the shareholders become a normal ingredient of joint stock associations in most countries. Previously such a legal arrangement always required a special charter, but that did not hinder the extension of enterprises which, from the economic standpoint, corresponded most closely to joint stock companies. How exiguous was the significance of the distinction may be gathered from the present-day relationship between joint stock banks and banks with unlimited liability as, for example, in Sweden, where they are economically indistinguishable. From the economic point of view the principal importance of limited liability is that it stresses the independent capital of the company as against the private property of individual shareholders, who are constantly changing. A form of enterprise thus arises which is able to carry long-term investments, but plainly its economic position may possibly be such that it does not involve claims on the private property of the shareholders at all, so that the question of limited or unlimited liability does not arise. The *de facto* independence of the concern, as not involving the property of the shareholders, has apparently developed without reference to the

[38] Van Brakel, *Handelscompagnieën*, 54-61. (Charters in *Groot Placaet-Boeck* I 669-83, give no information regarding the organization.)

legal liability of the latter. From the economic standpoint the chief interest of limited liability is therefore the question whether it contributed to the idea of independent company capital.

As regards the Dutch companies, the ordinary shareholders were never considered legally responsible to a third party. Their descent from the investing sub-participator of earlier times is sufficient evidence of this. It was always a question of the liability only of the *bewindhebbers.* Later historians generally seem to have interpreted a clause in the charter (Art. 42 in E. I. Co., Art. 36 in W. I. Co.) as though the *bewindhebbers* also were exempt from third-party liability. What the clause actually states is that they or their property must not be charged or distrained upon for the costs of administration or for the wages of employees, but that these matters should come within the purview of the ordinary courts of law. However, it is not clear whether these clauses had the significance ascribed to them, for even at the end of the 17th century, in individual cases it was considered necessary expressly to release the *bewindhebbers* of the East India Company from liability for the company's debts, security for which was to be exclusively provided by the property of the company. But irrespective of this it is clear that a company capital distinct from the property of the shareholders had to some extent been created in the Netherlands. The extent of the shareholders' liability to their company is far less evident and the treatment appears to have varied with the circumstances.[39]

Durability of the capital

Since the problem of limited liability is mainly interesting from the non-distrainable character of company capital, from the economic point of view it is more important to examine *directly* how far the company as such was distinct from the persons of the shareholders and thus enjoyed corporate status. In this respect the East India Company satisfied all conceivable demands in so far as the original capital subscribed remained completely untouched to the end: it was neither decreased by the disbursement of dividends nor increased by new subscriptions. The curious

[39] On the whole question, see van Brakel, *Handelscompagnieen* 161-70; Mansvelt 30 f., 39, 51 f., 56, 90 *et passim,* (E. J. J. van der Heyden, *De Ontwikkeling van de Naamlooze Vennootschap in Nederland vdór de Codificatie,* Utrecht 1908, was not accessible to me), The resolutions quoted by van Dam made in 1697 and 1698 concerning the debentures contain the clause "alles onder verbant van de goederen en effecten van de Compagnie en sonder dat de Bewinthebberen in haere personen of goederen sullen wesen gehouden of aanspraeckelijck" (448, similarly 445: year 1680).—See also Lannoy & Vander Linden [II] 132, 351-

financial methods applied later on showed that the governments of the companies were far from taking the consequences of their form of organization; but that must be left aside here. The point in question is how it came about that in practice the company capital remained intact.

The answer is by no means to be found in the clauses of the original charter of the East India Company. In the first place the original subscription was not to be regarded as binding. Anyone dissatisfied with the first trading expedition was to have the right to demand the return of his capital together with interest for the time that it remained with the company (Art. 9)—a clause modelled on similar clauses of the *voȯr-contpagnieën.* But on the completion of the first voyage, this claim could apparently only be allowed after ten years had elapsed, on the occasion of the financial statement which was, in any event, to take place every tenth year. Everyone was then to have the right to demand the return of his share, and the costs were divided up in a definite proportion among old and new shareholders (Art. 8), who were significantly called shareholders of the first and second account respectively. In other words, the company's capital covered a shorter period than the company's actual charter, and it was no longer guaranteed after the expiry of the ten years. There is an evident resemblance to the type of mining concern of which the iron company of Steyr was an example. Thus the continuity of the company's capital was not guaranteed. The question was discussed as early as 1611. The company rejected the demand for withdrawal of capital, and the reasons advanced are very instructive. On the one hand, the directors pointed out, it would cause inconvenience to the company itself. Its assets in India consisted of fortifications, ships, arms and munitions, and in offices, outstanding claims etc., and to transfer these to a new account would necessarily cause great confusion. On the other hand, they argued, the whole operation was unnecessary as far as the shareholders were concerned, for there was nothing to prevent them from selling their shares and severing their connection with the concern by converting them into money.[40] This of course did not alter the fact that the charter had made an explicit ruling to the contrary. Had it been enforced, liquidation would have been the inevitable result, but the will of the company's government was a factor of much greater importance. Even the statement of account prescribed in the charter, which to-day would be a matter of course, could never be carried through in the face

[40] Van Dam 16.

of the governors' opposition. It was thus only to be expected that the really decisive reasons against liquidation would make a dead letter of the contrary clause in the charter. Consequently, it was not the intentions prevailing at the time of the creation of the company, but the pre-eminent power of its governors, which really accounted for the fact that the capital was not returned to the shareholders. It was the predominance of the company's government which first brought about the *de facto* continuity of the association of capital.

The charter further endangered the position of company capital by providing for repeated dividend payments in the peculiar clause (Art. 17) that dividends were to be paid to the shareholders as soon as 5 per cent of the "returns" had been realized. The merchandise sent home and sold there was obviously only a gross value, that is, it included the capital which had been spent in fitting out the fleets and cargoes, and those parts of the fixed assets which were gradually released. Had the clause been followed literally, not only would any increase in capital through the retention of profits have been rendered impossible but the whole of the capital would ultimately have been frittered away in successive dividend payments. In other words, it would have prevented not merely the extension but even the maintenance of the fixed capital. The explanation of this clause has rightly been sought in the fact that the governors failed to grasp the difference between capital and profit. In other words it was believed that all the company's activities could be wound up after every expedition, as was the case with the Dutch *vóór-compagnieën,* and also with the English East India Company for another half-century. These trading concerns thus constituted a more primitive stage in the development of companies than the one to be found in mining, with its fixed capital—which is, after all, not surprising. Here too, the omnipotence of the governors prevented the application of the clause, their authority in fact being more effective than ever where dividends were concerned. On this point, the States General shifted their ground at the time of the renewal of the charter in 1623; the charter after that simply enjoined the management to make such payments in goods or money as were available after winding up part or all of the debts, over and above the costs of equipment etc. On this point, the prescriptions were therefore no longer obstructive.

In one important respect the consequences of making company capital fixed were not followed to their logical conclusion. During the two centuries of the company's existence, there was never any

systematic book-keeping showing capital and profits under separate heads, so that changes in the company's profits might be clearly seen. The methods of book-keeping, in use to the last, were those inherited from the concerns where the capital was not kept distinct. The result was a system of finance which involved, at times, a large increase in capital and on other occasions an equally large decrease of assets by reason of dividend payments, the connection between the two never being clearly grasped.[41]

Even according to its original charter of 1621 the West India Company represented a more advanced stage of enterprise. Capital repayments were expressly forbidden during the period covered by the charter (Art. 17) and dividends were specifically limited to what was called profits; therefore no payment out of the balance in hand was allowed as had been the case with the East India Company, and dividends could only be paid when the profit amounted to 10 per cent (Art. 16). How this was applied in practice is unknown, for this much less important company has never been investigated with the same thoroughness as was the East India Company.

On the whole, the Dutch companies constituted an assortment of heterogeneous elements unique in history. Their extremely odd organization was far too strongly influenced by the peculiarities of the United Provinces, and far too unwieldy to be adopted *in toto* by any other country at that time or later. This only occurred in exceptional cases as, for example, when those Dutchmen, who found an insufficient outlet for their talents at home, founded companies abroad. An extreme case of this kind was the General Trading or South Sea Company founded by Gustavus Adolphus on the initiative of the gifted, but very speculative, Dutchman Willem Usselincx. This actually insignificant attempt was, according to its charter of 1626, a servile imitation of the two great Dutch companies, embodying *inter alia* division into chambers, than which nothing could be more foreign to Swedish conditions.[42]

On the other hand, the organization of the Dutch companies was of course not by any means *merely* a curiosity, although their

[41] Renewal of 1623: in *Groot Placaet-Boeck* I 545 f.—Mansvelt ch. 4 has a useful analysis on the nature of the system of book-keeping and van Dam ch. 12 may be referred to for comparison.

[42] Charter of the Swedish South Sea company: in *Samling utaf kongl. bref. . . ang. Sweriges rikes commerce . . .* ed. A. A. von Stiernman I (Sthlm. 1747) 933-47 (Division into chambers Arts. 16-23).

most important results were independent of the founders[5] conscious motives. It is for example of relatively minor importance whether the origin of the rarely effective supervisory council *(Aufsichtsrat)* of the modern German joint stock company may be traced to the almost illusory authority of the chief participators in the Dutch East India Company. The significant fact is that the company as such acquired independent existence in the Netherlands at a very early date.

The stock exchange

In addition it was of great importance to the stock exchange and the trading in futures on the exchange that shares in a great and highly speculative enterprise were created, which were identical between themselves ("fungible") and could change hands indiscriminately. Trading in futures on the Amsterdam exchange, which had already begun in the form of trade in commodities in the middle of the 16th century, was thus extended in the following century to securities, that is, to the shares of the East India and later of the West India Company. The speculative character of these enterprises and many features of their organization were therefore of paramount importance in the rise and evolution of the stock exchange and dealings in securities. Linked up with this is the actual nature of the company, for the impersonality and objectivity of the company and its power of disposal over property is an essential condition for the existence of a stock exchange.

On the other hand, the various political bodies and the governors of the companies did not take deliberate steps to bring about this state of affairs. The charters left these matters entirely unregulated, though it is true that the government of the East India Company did contemplate from the outset the possibility of selling shares. Even though there was much to facilitate trading in shares, the official measures were calculated rather to impede it. The shares were not of fixed amounts. The charter of the East India Company explicitly provided (Art. 10) the right to subscribe any amount at will. In fact, in the Amsterdam chamber, there were shares of from 60 to 60 000 *guilders.* A certain definite figure (3000 *fl.* and multiples thereof) was certainly more common, but that was not due to deliberate intent on the part of the leaders. The elaborate procedure laid down for the sale of shares might have been obstructive if the registration demanded had always been observed. Finally the governors of the company influenced the government as early as 1610 in proscribing dealings in futures. Any encouragement to trade in shares was, in the

main, unintentional and was at any rate not part of the original *purpose* behind the organization of the Dutch companies.[43]

Conclusion

The development of the various forms of enterprise in the foremost trading and shipping nation of the mercantilist period thus proves that tardy and feeble organizations satisfied the needs of its European and Levantine trade, and that its oceanic trade had to make shift with the most awkward kind of association in existence of the time. Strictly speaking, it testifies to the commercial greatness of the Dutch, but it also shows that the achievement of the mercantilist period in the sphere of company organization is not to be sought in Holland. For this we must turn to England.

5. ENGLAND: THE REGULATED COMPANIES

As in the Netherlands, company development in England is characterized by a paradoxical contrast, though of a different and more superficial kind. In the first place, the purely medieval corporations had nowhere attained such force or persisted so long, nor had they exercised so powerful an influence on company development as they did in England. On the other hand, nowhere did modern company forms during the *ancien régime* gain so great an influence on economic development. The explanation of this apparent contradiction lies in the fact that the *medieval corporation* had in England displayed the very features which were of fundamental importance in the development of modern associations. This refers to the idea of the corporation, the legal personality of the company, its existence beyond the life-time of the individual shareholder. England was the first heir of this medieval tradition. The old merged almost imperceptibly into the new and thus opinions differ as to whether certain companies were or were not already of the nature of capital associations.[44]

[43] Van Brakel, *Handelscompagnieën* 152 f.—Ehrenberg II 330-50.—Van Dillen (see above, note 32) 505-10, 513.—F. W. Stapel, "Aandelbewijzen der O. I. Cie" *(Economisch-historisch jaarboek* XIII, 1927, 240-6).—L. Samuel, *Die Effektenspekulation im 17. und 18. Jahrhundert* (Betriebs-u. finanzwirtsch Forsch., ed. F. Schmidt, II: xm, Berl. 1924) 20, 26 ff.—M. F. J. Smith, *Tijd-affaires in effecten aan de Amsterdamsche Beurs,* was not accessible to me.—The oldest prohibition against future trade in shares in *Groot Placaet-Boeck* I 553 ff.

[44] Carr's collection of *Select Charters of Trading Companies* quoted above (note 6) is a souice-book covering a number of English trading companies. The editor has, however, deliberately confined himself to unprinted materials, of which he gives a rich selection. The previously printed texts must be looked

The persistent influence of the Middle Ages

Medieval characteristics were retained most clearly in the regulated companies. The'frame probably originated with Sir Josiah Child and has long been in common use. Adam Smith already declared them to be similar in every respect to the "corporations of trade, so common in the cities and towns of all the different countries of Europe", meaning the local associations of trade and handicraft organized in gilds.[45] In England they

for in various places, particularly in Hakluyt (see above, note 3).—Of the charters of individual companies only those for the East India Company will be quoted here. Its first charter of 1600 is reproduced best in *Register of Letters etc, of the Governour and Company of Merchants of London trading into the East Indies 1600-1619*—often quoted as *First Letter Book*—ed. G. Birdwood & W. Forster (Lond. 1893); the later ones in *Charters granted to the E. I. Co. from 1601* (Lond. 1773) were not available to me in the original but only in secondary sources. —The charters of the regulated companies and their other proceedings are generally published. On the Merchant Adventurers, their regulations etc. are a primary source as published in the work by Lingelbach, *The Merchant Adventurers of England (see* above, note 4). The records of two local sections: *Extracts from the Records of the Merchant Adventurers of Newcastle-upon-Tyne* [ed. J. R. Boyle & F. W. Dendy] I - I I (Publications of the Surtees Soc. X C I I I and C I, Durham 1895, 1899); *York Mercers and Merchant Adventurers* (see above, note 9); and others in Gross, *Gild Merchant* (see below, note 47).—Eastland Company: *Acts and Ordinances of the Eastl. Co.,* ed. M. Sellers [Camden Soc. Publ. I l l : xi], Lond. 1906.—There are no corresponding publications for the Levant Company.

The majority of the books of sources on the regulated companies are prefaced by introductory essays.—For the rest most works are occupied with the Merchant Adventurers. Schanz's book quoted above, note 4, provides sources in its second volume, and in its first a description of the Merchant Adventurers until the middle of the 16th century, which is still the best of its kind.—General contributions: Lingelbach (quoted above, note 4); Amp's book quoted in note 1; van Brakel, "Entwicklung und Organisation der M.-Adv." *(Viertel-jahrschr.f Sozial- u. Wirtsch.-gesch.* V, 1907,401-32); G. Unwin, "The M. Adv. Co. in the Reign of Elizabeth *(Studies in Ec. Hist.,* Lond. 1927) ; A. Friis, *Alderman Cockayne's Project and the Cloth Trade* (Copenh. 1927); C. P. Lucas, *The Beginnings of English Overseas Enterprise* (Oxf. 1917).—Eastland Co.: See foregoing.—Levant Co.: M. Epstein, *The Early History of the Levant Company* (Lond. 1908)—and reprinted in this is *inter alia,* its charter of 1605; Arup (most complete).—On the joint stock companies Scott's work (quoted note 11) is the principal source of information. In addition only the best work on the most famous among them, the East India Company, may be mentioned, going down to 1708: W. W. Hunter, *History of British India* I - I I (Lond. 1899, 1900); other works are quoted in their respective places.—Lipson II 184-370 treats of the most important companies individually.

[46] Child (see note 30) 102 : "Companies who trade not by a joint stock, but only are under a government or regulation"; Adam Smith, *Wealth of Nations* book 5, ch. 1, part 3, Art 1. Cp. book 1, ch. 7 and book 1, ch. 10 part 1 (ed. Cannan II 225, cp. I 63 f., 120).

were unique as large national associations; which throws some light on the national unification occurring in England and only in England, even in the Middle Ages. The two most important, the Merchant (s) Adventurers' Company and the Eastland Company, have already been mentioned in the first part of this chapter *(v.s.* 328). They completely dominated English sea trade in the 16th century and the Merchant Adventurers in particular was still the most important commercial organization in the first few decades of the 17th century. It was only in the course of the 17th century that it declined, and its monopoly of the export of cloth to the Low Countries and the German North Sea coast was abolished directly after the revolution of 1688 (by 1 Will. & Mar. c. 32 §10). The Eastland Company, its sister organization, faded into insignificance even more rapidly after it had lost, in 1673, that part of its monopoly which covered Sweden, Norway and Denmark (by Car. II c. 7 §8).

In the history of the regulated companies, what distinguishes English development from that of the continent, even more than their mere existence, is the peculiar fact that they were not confined to such organizations as had been inherited from the Middle Ages. A large number of enterprises arose between 1550 and 1600 in the principal departments of foreign trade which, although at first organized in the modern joint stock company form, later reverted for a long or short period to the medieval type. This definitely occurred in the Levant Company founded in 1581 according to its charter of 1605, and had presumably been put into practice even several years before. The Russia or Muscovy Company, founded in 1553, became a regulated company in 1622, and finally not later than in 1669. The East India Company, established in 1599 and granted a charter in 1600, experienced an unfortunate attempt of the same nature between 1698 and 1708. The Africa Company which emerged in varying forms became regulated in 1750, and even with an explicit prohibition against trading on common account.[46] It would thus be incorrect to consider the regulated company simply as

[46] Levant Company: Charter of 1581 in Hakluyt, O. I I : 1 149, G. V. 200 f. ("according to their stocks" etc.), charter of 1592 *ib.* O. I I : 1 302, G. VI 90 f. (paying members), charter of 1600 in *Select Charters* (ed. Carr) 41 f. (neglected payments), charter of 1605 in Epstein 154, 168 ff. *et passim',* Scott II 88; Lipson II 339 f.—Russia Company: relevant Act of Parliament 8 Eiiz. (1566) in Hakluyt O. I 372, G. I l l 91 ("joint put in stock"; "one ordinary, full and intire portion or share"); A. Friis 56 note 5; Scott II 67.—African Company: charters of the 17th century in *Select Charters* (ed. Carr); 23 Geo. II c. 31 party- §4.—The remainder is well known.

the precursor of another, more finished form of mercantilist enterprise. The older type preserved a remarkable vitality throughout several centuries.

This is one of the many proofs of the importance of the medieval organizations during the whole mercantilist period. But regarded from another aspect, the regulated company was different from most medieval institutions since it did more to prepare the way for, than to obstruct, a new order of things.

The separation of foreign trade

In the first place, the organization of foreign trade experienced great difficulties as hinted at above *(v.s.* 327) and as will be emphasized below *(v.i.* 415 ff.)—in liberating itself from the influence of local institutions, institutions which absorbed, in conformity with medieval usage, every facet of the individual's life from the cradle to the grave. There are many examples in English cities to show that there originally existed a common gild merchant, *gilda mercatoria,* embracing everyone exercising a trade. Indeed, even craftsmen were originally treated as merchants *(mercatores)* selling their own products, and not solely as artificers.[47] Nevertheless it soon became usual to make a distinction between craftsmen and merchants. On the other hand it was a long time before any division was made between the retailer and the wholesaler, between the trader and the merchant, and it is that which happens to interest us at this juncture.

The foreign trade associations were primarily so to speak *supplementary* bodies for limited tasks and not corporations of the kind which made the individual part of a superior entity. All the previously mentioned medieval privileges granted to merchants engaged in foreign trade have the same stamp of regulations drawn up for a limited end, that is for trade abroad. The "superior entity" was represented for a long time by associations that did not confine themselves to foreign trade, chiefly by the gilds of mercers in the home city and also by other regular corporations of a similar kind. The history of the Merchant Adventurers provides many illustrations on the point. Their newly discovered records have been found in the books of the London Mercers, and that gild retained its hold upon the new organization, which acted for it in the most vital transactions. The head of the

[47] A very useful work on this development, especially as regards the Middle Ages, is C. Gross, *The Gild Merchant I-I I* (Oxf. 1890): on the subjects touched on here see especially ch. 8 in his text, but even more important are the sources and index in Vol. IL On the handicraftsmen as "mercatores": F. Keutgen, *Aemter und Zunfte* (Jena 1903) 133.

organization of English merchants in the Low Countries chosen in 1478 *(v.s.* 331) was named "mercer" on one occasion and in an Act of the same period was explicitly called the master of the London mercers *(magister mercerorum Londonensium)*; in other words he was simultaneously the head of the gild corporation at home and of the national association abroad. A petition, taken up in the introduction to the first Act of Parliament concerning the Merchant Adventurers, passed some twenty years later (12 Hen. VII c. 6, 1496/7), retails that "the fellowship of the Mercers and other merchants and adventurers, dwelling and being free within the City of London", had become guilty of extorting payments from English merchants in the Low Countries, although the latter had had, at the time, a special organization for over 200 years (cp. *infra* 421 f.). Thomas Gresham, who was apprenticed and originally practised as a Merchant Adventurer, always added the word "mercer" to his signature right down to 1558. And even later an intimate connection is discernible between local organizations for local trade and similar bodies for foreign trade, especially in the provincial cities. The Merchant Adventurers of Newcastle thus consisted of members of four different trading bodies.[48]

Towards the end of the 16th and at the beginning of the 17th century, the separation of retail from wholesale, local from foreign trade can be taken as generally recognized in the main, although it was never really possible to apply the principle in the provinces and although exceptions were to be found here and there even in London. The large-scale traders reserved the name of merchant or *mercator* to themselves. They were regarded with admiration when they ventured forth on the high seas, swarming with pirates, and visited the coasts of strange lands which were often no less dangerous. These seafaring merchants were called "venturers", "adventurers" or "merchant adventurers" *{mercatores venturarii* or *periclitantes).* The latter was often used as a special name for the participants in the most important mari-

[48] Cp. on the development of the relationship between the organizations for local industrial activities: Kramer, *Gild Studies* (quot. in ch. 6 note 2) 3 ff., 20-51 and *passim.—Magister Mercerorum Londonensium:* in *York Mercers* (ed. Sellers) 74.—Newcastle: in Gross II 382 (1516), cp. *Newcastle Merck. Adv.* (ed. Boyle & Dendy) I xxix f., xxxvi-xxxix.—Gresham: in J. W. Burgon, *Life and Times of Sir Thomas Gresham* (Lond. [1839]) 1 184, 200, 20I, 486; cp. 463.—Schanz had already recognized the connection between the Mercers in London and the Merchant Adventurers (I 340).—See now, and even in the first place, the paper of Miss Carus-Wilson (note 9 above), confirming, by a number of characteristic details, the **conclusion reached before.**

time trade, that with the Low Countries, and was thus transferred to their organization—the Fellowship of Merchant Adventurers or the Merchant Adventurers' Company. How far this increasing division of commercial activity was bound up with the growing capital requirements in large-scale trade in general, and in foreign trade in particular, is not altogether clear. The connection cannot be taken for granted, since the division was carried through by force and against powerful resistance, which would not have been necessary had it arisen automatically; but though not necessarily true, the possibility cannot be ignored. In any case the division made it possible to form such organizations for foreign trade as included the merchants more or less completely. Associations of English merchants abroad thereby ceased to be mere supplementary organizations in foreign trade and became instead main organizations for those engaged in foreign trade; so that in London, at least, membership of the old local gilds lost any significance it may once have had for the seafaring merchants. It was only when the development reached this stage that strong organizations could arise in foreign trade. The new state of affairs was given clear expression in the fact that members of the regulated companies were prohibited from devoting themselves to retail trading. In exceptionally strict cases it was even forbidden to accept people as members who had at any time been retailers. It became a rule that the members had to be "mere merchants".

This state of affairs prevailed shortly after the middle of the 16th century. In a letter of Gresham's of 1553 there is mention of a decision taken, though not yet carried out, that retail and foreign trade be kept distinct and that every trader must make his choice between the two. As early as 1560 members of the Merchant Adventurers in York were up in arms against the principle in so far as it was to be applied to them. Outside the Merchant Adventurers' Company the decision was applied in practice—with a break of only a few years—in a company which arose in 1577 for the Spanish trade; and was particularly applied in the great charter of 1579 to the Eastland Company and in another royal charter of 1584 to the merchants of Chester trading to Spain. In the company which the latter charter sanctioned, only seafaring wholesale merchants were enrolled, although this decision was made less severe shortly after.

This exclusiveness was in time increasingly developed. In the codification of its by-laws, undertaken by the Merchant Adventurers in 1608 and 1609, especially thorough regulations were

included, applying with the greatest severity to the London merchants. Any person who had once been a retailer had to declare in writing one year before his admission to the organization, that he wished to renounce retail trading or shopkeeping, and he was not allowed to return to it within five years; all this on pain of heavy fines for infringement. The 1605 charter for the Levant Company and the 1611 charter for merchants trading with France went even farther. For a member to be a retailer was made to be as much a crime as "offences and the practices of evil demeanour", the punishment for which was expulsion. These rules had to be considerably toned down for the provincial cities; but the endeavour to erect a barrier between wholesale and above all maritime trade on the one hand and handicraft and retail trade on the other dominated the regulated companies throughout their existence, and was, for instance, intensified in the Merchant Adventurers by governmental ordinances of 1634 and 1643.[49]

The gild spirit

The codification of the by-laws of both the Merchant Adventurers and the Eastland Company which took place almost simultaneously—the first begun in 1608, the latter formally in 1617—illustrate the nature of the two foremost regulated com-

[49] From a large number of examples: "Touching retailers at home . . . I place them in a lower degree, as not worthy the name of merchants. . . . Whereas the merchant adventurer is and may be taken for a lord's fellow in dignity, as well as for his hardy adventuring upon the seas, to carry out our plenty, as for his royal and noble wholesales, that he makes to divers men upon his return, when he bringeth in our want" (one of the lawyers in Thomas Wilson's *A Discourse upon Usury,* 1572, ed. R. H. Tawney, Lond. 1925, 203); Charter of the Merchant Adventurers of York, 1581 : "mercatores . . . multa et grandia detrimenta indies sustinuerint super mare per magnum numerum piratarum", ". . . diversorum naufragiorum in alto mare", "per que mercatores civitatis predicte multifaria dampna sustinuerint multaque majora sumptus et onera perferre cogantur in deferendo bona et mercandisas eorum usque civitatem predictam" (in Gross II 280). The first measure against retailers in Burgon I 464; *York Mercers* (ed. Sellers) 164 f., 230, 234; *Eastland Company* (ed. Sellers) 144; Gross II 362; see also Unwin, *Studies in Econ. Hist.* 181 f. and Kramer, *Gild Studies* 31 note 32, 108 ff.—Levant Company's Charter of 1605 in Epstein 168 ff., 203 f., Merchant Adventurers' Laws, Customs and Ordinances (in *Merchant Adventurers* ed. Lingelbach 36, 94, 111-14, 115f.); *Foedera* ed. Rymer O. XIX 583 f., H. VIII: iv 97; O. XX 547, H. IX: III 106 resp.—Charter for the French trading co. 1611 (in *Select Charters,* ed. Carr, 75): "remove, expel, disfranchise and put out of the said Company any of the said Company which they shall know . . . to be retailers, clothiers, shopkeepers, handicraftsmen, ligiers, or factors using buying or selling in Blackwell Hall"—the hall for selling cloth goods—"aforesaid and not to be mere merchants."

panies in the full bloom of their development; and the facts available for the Levant Company entirely fall in line. The salient feature is that the principal corporations in foreign trade in the time of the early Stuarts, that is when mercantilism was at its height, undertook so detailed a regulation of the life and activity of its merchants that it approximated in all essentials to the medieval regulation of handicraft by the gilds. The passage from Adam Smith quoted above, on the relationship between the regulated companies and the medieval associations, was directed precisely at this feature.

From an economic point of view, the meticulous regulation of the lives of the merchants, their agents and apprentices is of minor importance, but throws light on the spirit of the system and expresses the striving after a supra-personal organization, embracing the whole individuality of its members. The members were never described as anything but "brethren", their wives were "sisters"; the "brethren" were to go together to church, to assist at weddings and burials. A whole chapter in the by-laws of the Merchant Adventurers is given up to punishments for indecent language, quarrels between brethren, fighting, drunkenness, card-playing, immorality, keeping of hunting dogs and so on. It was also unlawful to enter the porter's lodge on the arrival of the post—instead, letters were to be received at his window outside the lodge; further no one was to carry through the streets any more than could be decently held under the arm or in the sleeve—infringements of any of these carrying fines of different severity. The same rules are to be found in the sister organization, though typically enough masters were excepted from the prohibition against "undecent speeches or words of reproach or discredit" when they upbraided their apprentices and paid servants. Apprentices were the children of the large family and were treated as such.

The treatment of apprentices brings us to the measures of direct economic importance. Here, too, gild principles still reigned supreme. Normally admission to the corporations was either by inheritance or by completing the course of apprenticeship, a corollary to the fact that membership was reserved to "mere" or "legitimate" merchants. Where the door was opened to "outsiders," they usually had to pay several times more in fees and charges than the ordinary members. At the same time the period of apprenticeship was regulated, and over and above there was practised what was called the "stint of apprentices". This apt expression is to be found in one of the marginal headings

in the by-laws of the Eastland Company and denoted an intentional limitation of the number of apprentices, with the undisguised aim of checking competition within the company. As in the gilds, the control of competition was a major aspect of their whole activity. At times it assumed entirely medieval forms. Thus the Eastland Company prohibited its members from drawing the attention of a potential buyer by pulling at his sleeve or by calling him away from another member. On the whole, however, the system was rather more refined, and one of its usual tenets was the limitation of the total number of merchants and their sales, and the division of the total sales among various merchants by limiting the amounts which any merchant might ship, so that "the rich" might not "eat out the poor". It was just this which was usually named "stint", and with the Merchant Adventurers it played a specially important role.[50]

The most characteristic medieval feature of the regulated companies, a feature which modern works too generally consider the most vital, may be stated as follows: they were *not* business concerns, but associations of independent traders each of whom retained his own independent trading capital. There is thus no connection between the Italian and German associations of capital on the one hand and the regulated companies on the other; this fact can scarcely be over-emphasized. The latter, in this respect, too, bore the unmistakable stamp of the gilds. As the need for capital in foreign trade grew more urgent, the regulated companies were of no direct assistance, although their system of regulation or their limiting of competition was possibly of some importance. But this did not prevent them, as a late and vigorous offshoot of the extensive tree of medieval associations, from exerting very great indirect influence on the development of the associations of capital.

Incorporation

Their influence emerged in the corporative status of the companies. As a general and typical feature of the medieval organizations, this was to be seen in England on a particularly large scale. English institutions of the 16th and 17th centuries were consequently provided with legal personality in a way

[60] The most important points here (M. A. = Merchant Adventurers' Laws etc. in Lingelbach's edition; E = Eastland Company, Acts and Ordinances in M. Sellers' edition). Personal control: *Newcastle Merch. Adv.:* I xxx (with references), M.A. 169-77, 105, E. 26 f.—Apprenticeship and entry: M. A. 34-52, E. 16f., cp. 90, 125. "Stint": M. A. 68 ff., *et passim.—"The* rich eat out the poor": see above 272 f.

peculiar to themselves; and this fact constituted a vital distinction between the English and Dutch companies. The charters granted to the Dutch East and West India Companies never gave them an official name, so that anyone was free to give them what name he pleased. Neither did the charters give even half a thought to the defining of the legal nature of the companies. Without any ado, the Dutch East India Company changed its seal and title.[51]

The English company charters on the other hand went into details over the names of the companies, e.g. "Marchants Adventurers for the Discovery of Lands, Territories, Isles and Seignories Unknown" (1555), "Governor, Assistants and Fellowship of Merchants Adventurers of England" (1564), "Governor, Assistants and Comminalty for the Mines Royal" (1568); and special permission had to be obtained before any of these long-winded expressions could be altered. The organizations received a seal of incorporation which was a visible proof of their existence as a corporation. In the majority of cases, they were also granted "perpetual succession" or, at least," succession", i.e. their legal existence was made independent of their members' lifetime; and they were given the explicit right to sue in a court of law. Typical of the contrast between Holland and England was the fact that an English court actually doubted, in an action of 1724, whether the Dutch West India Company could appear as plaintiff, because it had never received a name from the States General.[52] Legally considered, therefore, the English company or corporation was really a supra-personal entity, a "body politic" to quote from the charters—one might say a mortal god, resembling Hobbes' construction of *his* Leviathan, the state.

From this point of view, English company development reveals characteristics which are only to be found in the Italian *maone* and *compere,* with their apparently negligible importance for later development. England was thus unique in transferring, from the beginning, corporativeness to its organization of sea trade, and not to that alone. And this must be regarded as one of the main reasons why the new kinds of association were so diffused in England that all other countries were left far behind.

Incorporation was by no means confined to the regulated companies: nor did other institutions obtain it indirectly through

[61] Van Dam 47.

[62] Dutch West India Company v. van Moses (1 *Stra.* 612), quot. in S. Williston, "The History of the Law of Business Corporations before 1800" *(Select Essays in Anglo-American Legal History* I I I , Camb. 1909) 206.

these companies. The first charter of the Russia Company (1555), making it a non-regulated company, was older than the charters of the Merchant Adventurers and Eastland Companies (1564 and 1579 respectively) making them corporations. The two earliest charters for mining companies, i.e. for the Mines Royal and the Mineral and Battery Works, neither of which was regulated, originated in 1568 and were thus just as old as the similar privileges for the regulated companies; all of them had a strongly developed corporative character.[53] This is clear proof that it was the medieval heritage which was the decisive factor, directly affecting all English companies. The regulated company differed from the others only in the fact that it remained not only partly but entirely medieval, in other words, that in its case the corporate body was not also an association of capital.

It must, however, be added that even the medieval corporations did not lack vestiges of a common capital. To fulfil his economic functions at all efficiently the medieval trader, who usually dealt on a very small scale, required assistance from his organization. The latter would take over such tasks as needed more means than a single craftsman or retailer had at his disposal, e.g. such expensive industrial appurtenances as fulling-mills. They sometimes took over the products of their members and put credits to their accounts, obliging the traders to deliver their goods only to the corporation warehouses, corresponding roughly to the arrangement in a modern cartel with a common selling syndicate. Finally the corporation much more frequently arranged for the purchasing in common of raw materials or the stock-in-trade. All this presupposed some form of capitalist association, and it was precisely the corporation which made itself responsible for these matters, even though, in the majority of cases, it was certainly not supplied with standing trading capital for these purposes, but was maintained by subscriptions, as can be verified in some instances. "Common bargains" of this kind were clearly customary both in England and in other countries, and the individual trader was often forbidden to act as a buyer on his own.

But from this latter fact, there also emerges the two-fold nature of the whole phenomenon. Had the purpose been to accumulate

[53] Charter of the Russia Co. 1555: in Hakluyt O. I 269, G. II 308; Charter of the Merch. Adv. 1564: in G. Cawston & A. H. Keane, *The Early Trading Companies (A.D. 1296-1858)*, Lond. 1896, 260 f.; Charter for the Mines Royal and for the Mineral and Battery Works: in *Select Charters* (ed. Carr) *6 f.*, 19 f.; Charter of the Eastl. Co. 1579: in *Eastl. Co.* (ed. Sellers) 144.

a larger amount of capital than a single merchant or craftsman possessed, it might have constituted the germ of an association of capital. Indeed, it could even be said that such an association had already come into being, with the only modification that the capital was not yet so durable as the corporations themselves. But obviously this was not usually the motive. The idea of buying raw materials or a stock-in-trade through the corporation was to obviate competition among the members, that is, the organization was used as a (buyers') cartel. The main cause of the arrangement was thus not the greater need of capital but a wish to prevent the members from trading individually. If the former purpose had predominated, companies with fixed capital might have followed, but for the latter ends, they were unnecessary, as is shown by modern cartels.

The corporative business arrangements in the regulated companies are thus chiefly interesting as a proof that it was a short step, from a theoretical point of view, from the medieval corporations to the associations of capital. The interest in this relationship is not however entirely theoretical, for it is possible to trace an influence upon actual developments: e.g. Elizabeth (1560 and also later) on Gresham's advice, distrained on the outgoing fleets of the Merchant Adventurers and seized their cargoes of cloth, so as to force a loan from them which would cover the crown's debts on the continent and influence the exchanges in England's favour. The loan was considered one from the company itself, to be assessed upon its members. When the company later played an important part in political events, on the side of parliament in the Puritan Revolution, it again took over considerable debts in its corporative capacity. After the Restoration, this led to long and wearisome dissensions with the local branches, which refused to bear their fair share of the burden. Though this is characteristic, the process of transition from a regulated company to an association with fixed capital was facilitated far more when the organization as such did not merely incur debts on accounts of purchases or loans, but also carried on trade in its capacity as a corporation. If a petition of the Eastland Company of 1660, quoted in a report of the Commissioners of the Navy, be taken literally, this was done by that company, for according to the report, it put forward a claim to a considerable sum (more than £15 000) for hemp and timber.

Still, even if the most pronounced of these features are stressed, i.e. the existence of a community of capital among the regulated companies, this did not amount to anything more than a tendency,

which was by no means able to transform the regulated companies into commercial undertakings.[54]

Vitality

Medieval organization thus provided many possibilities for further development even outside the sphere of the regulated companies. How then did it come about that this particular type of company formation proved so tenacious; why, in other words, was the corporative capital company not immediately evolved, and why, having once come into being, was it so frequently abandoned? The phenomenon is accounted for by many factors, all of which are important for the *de facto* development.

In the first place, the cause was undoubtedly the fortuitous circumstance that the associations which, under the Tudors and the early Stuarts, had been responsible for English maritime trade and the export of cloth, were invested with powerful and honourable traditions; and this applied above all to the Merchant Adventurers' Company. It led to a natural conservatism which hardly requires further explanation. But in conjunction with this sentiment, there arose another kind of conservatism, a regard for the personal element in trade, which in true medieval fashion dominated the regulated companies, and found its most important economic expression in the supervision of apprentices and their training, the cardinal point in the Elizabethan regulation of industry. It was believed that apprentices could only be properly trained by merchants trading on their own account, and that they must be subjected to a strict control, whereas an impersonal company was unsuited to such a task.[55] This medieval bias had its greatest significance in the attitude of various types of company to monopoly. Here it is sufficient to note the manner in

[54] Common Store house: Company of Cutlers of Hallamshirc 1680/8 *(Lloyd Cutlery Trades* 117 f.).—"Common bargains": Gross I 25 f., 136-39; in *Newcastle Merck. Adv.* (ed. Boyle & Dendy) I 5 f., 52 ff., 85, 104, 107.—Security of loans and acceptances of debts of the Merchant Adventurers: Burgon I 35[1] ("requite you *and your Company* of our Merchant Adventurers . . . to pay for us to our creditors . . .", 1560), 489 ("the Marchants Adventrors payeth . . .", 1561) *et passim;* cp. Lipson I I I 246 f.; *York Mercers* (ed. Sellers) 162 (year 1560); Lingelbach in the Intro, to *Merch. Adv.* xx note 1, xxxiv; *Newcastle Merch. Adv.* II xvi ff.—Eastl. Co. 1660: *Calendar of State Papers, Domestic, 1660-61,* 403 f.—Another example (Ironmongers' Co.): Burgon II 341.—Cp. for Germany E. Wege, Die Zünfte als Träger wirtschaftlicher Kollektivmassnahmen *(Vierteljahrschr. f Soz- u. Wirtsch.-gesch.,* "Beiheft" X X, 1930).

[55] An argument of the Levant Co. in its struggle with the East India Co. 1681 (in Anderson, *Historical and Chronological Deduction of the Origin of Commerce,* Lond. 1787, I I [2] 554).

which the factors discussed at length in the preceding chapter reacted on the trading companies.

The regulated companies were in a strong position as long as monopoly was objected to on the grounds that "the rich eat out the poor". The basic principle of these companies, the principle that every merchant must trade independently, was irreconcilable with a monopoly in the literal sense of a concentration of activity in the hands of a single person or of a group trading jointly. John Wheeler, the Merchant Adventurers' able secretary, thus in 1601 defended the company when it was banished from the German Empire for promoting monopolies. He began with a Latin quotation according to which monopoly meant trading concentrated into one hand, and he considered the charge sufficiently refuted when he pointed out that the Company had no "bank or common stock[55] and no common factor for buying and selling. Not only, he asserted, was it not a monopoly, but its "stint" even rendered it diametrically opposed to any monopolistic tendency, for it prevented the rich from taking bread from the poor. The medieval definition of monopoly contributed in no small degree to the favouring of the regulated companies at the expense of the associations of capital.[56]

Even on its own premises the argument, however, had little to do with reality. An organization could completely exclude many traders even if its members all traded on their own account and enjoyed a rough equality of status. Regulated companies as such were no guarantee on that point. It is true that representatives of the regulated companies were also fond of emphasizing that the companies were open to everyone and to merchants of every part of the Kingdom and for this reason could not possibly be called monopolies, although outsiders were not admitted to trade. Wheeler employed the same argument in his impassioned plea for his company, and it was used again later in 1659 in defence of the Eastland Company; it was also reproduced as an official reason for granting a charter to the Levant Company in 1605 and a company for trading with France in 1611.[57] The

[66] Cp. note 50 above.—Wheeler, *A Treatise of Commerce,* ed. G. B. Hotchkiss (N.Y. 1931) 78 f., 142 ff., 146 (this quotation and also the following ones refer to the pagination of the Middelburg 1st edition, which has been copied facsimile by the side of a reprinted annotated text in the edition mentioned).

[67] Charter of the Levant Co. 1605: "not to appropriate the said trade . . . to any limited nomber of marchants nor to any one city, town or place . . . nor to suffer the same to be used or enjoyed in any degree of monopoly, but to lay open the same to all our loving subjects using only the trade of marchandise" (in Epstein 154; almost literally like the charter of 1611 for trade with France,

facts of the case were, however, rather more doubtful. The companies could not possibly remain open to everyone, quite irrespective of whether they admitted merchants from every city or not. This followed from its principle of limiting competition which was inherent in its medieval origins. Many facts can be adduced to substantiate the point. The fine was often extortionate. In the Merchant Adventurers' Company, according to its codified by-laws of 1608, it was no less than £200 sterling for "redemptioners", i.e. those who were not sons or apprentices of members. It was only gradually lowered in the following period by a series of official proclamations *(v.i.* 421 ff.). In time, however, the fundamental ruling that only "legitimate merchants[55] were to be enrolled became of greater importance as a restrictive measure. For such a position could not be reached without a system of apprenticeship in wholesale trade which fewer and fewer people submitted to, irrespective of the fact that it was also required by Elizabeth's Statute of Artificers.

Several examples throw light on the actual state of affairs. In 1581 the Merchant Adventurers, with the permission of the Privy Council, limited the acceptance of new recruits exclusively to apprentices and completely excluded "redemptioners". In 1638, no less a person than Charles I endeavoured to get somebody into the Eastland Company. His wish was rudely denied by the anti-royalist governor of the company, although the candidate offered to pay "to the uttermost". We may therefore imagine what chance there was for anyone without so powerful a go-between. In 1661 the Newcastle branch of the company protested vehemently against the action of its government in London in accepting shipmasters. They asserted that it would soon lead to the whole company being in the control of such people. It was frequently maintained that it was even more difficult to gain admission to the regulated companies—as e.g. to the Levant Company—than to the joint stock companies, and that the conditions of admission were made stricter when one of the latter types of company changed to the regulated type, as in the case of the Russia Company, in which apparently no outsiders were accepted in twenty-five years after its final transformation into a regulated company in 1669. The traditional outlook however retained its influence on people's minds.[58]

in *Select Charters* 63).—Eastl. Co. 1659: *Calendar of State Papers, Domestic 1659-60,* 284.—Merch. Adv.: see below, note 187.

[58] Admission into the Merch. Adv. 1581: Unwin, *Studies in Econ. Hist.* 198 f., *do.* into Eastl. Co. 1638 and 1661: *Eastl. Co.* (ed. Sellers) xliiif., 80.—

Nevertheless there existed one important and objective economic fact which goes far in explaining the perpetuation of the regulated companies. The importance of an association of capital in foreign trade was smaller in actual fact than might easily be imagined to-day, when industrial expansion has altogether changed the demand for capital in general, and fixed capital in particular. Trade, and above all foreign trade, certainly demands a great deal of capital, that is, relatively to labour. But in comparison with industry, its absolute demand for capital is insignificant, and in particular it requires little *fixed* capital as a rule. And this is why the need in trade for capital associations of a corporative and permanent nature is, in spite of everything, fairly limited. It is no accident that the most common of all now-corporative companies, the ordinary partnership, bears in many countries the name of trading .company *(Handelsgesellschaft).* The taking up of capital for a single voyage or for a comparatively short period was in complete accord with the requirements of foreign trade, at least so long as trade was with European countries, in which it was mainly the countries and cities and not the traders themselves who maintained the establishments necessary for the protection of trading merchants.

It would thus be rash to assume that trade inside the Old World experienced any discomfort by reason of the lack of capital associations among the corporations. There is neither proof nor even plausibility to support such an assumption. The situation took on another complexion only when it was a question of such establishments as needed a great deal of fixed capital, chiefly, that is, in mining and metallurgy, and also in trade to countries where the merchants themselves had to set up some form of administration, either because their government afforded no protection to Europeans or because the Europeans did not recognize it—in short in colonial trade. Even in colonial trade, corporative capital associations found difficulty in taking root, although all the necessary legal foundations were in their favour.

On the other hand it was very difficult to maintain a regulated company where an administration on a considerable scale or

On the point regarding admission to the Levant Co. and in general to both types of companies, the two opposing points of view are brought out clearly in the correspondence mentioned in note 55. Of modern students of the subject, Arup (124 f., 179, 187 f., 214) and Scott (I 125), without knowing one another, have each taken up the cudgels on behalf of one point of view, both on insufficient documentation; Russia Co.: Scott II 68 f.

expensive establishments were required. It is true that the Levant Company acted as England's diplomatic and consular representative in Turkey for 200 years, until 1803—not only during its brief spell as a joint stock company, but more particularly after that time—and naturally made a great to do about the costs this function entailed.[59] But this was negligible in comparison with what some companies had to do in the Far East. Immediately large-scale capital investment on common account became necessary, it was difficult to cater for it in this way. Economic factors thus provide an important part, but not the whole, of the explanation.

Partnerships

If the regulated company was to carry out its proper functions, the individual merchants would have to supply as much capital as foreign trade demanded, and though small according to modern standards, this was in many cases too much for the individual. And so in England as in other countries, it became necessary to have some kind of non-corporative capital association. England had the same opportunities of evolving this kind of association as any other country, through the simple company or partnership.

The fortuitous and unofficial nature of these companies renders it difficult to follow their development, especially in England, where there was a lack of statutory codification and no registration such as was provided for by the French *Ordonnance pour le commerce* of 1673. Furthermore, these private companies have not yet been sufficiently investigated. But the general impression is that they were of smaller importance in England in the 16th century than in Germany, and that expansion of the various corporative associations pushed them still farther into the background, so that they do not really develop except when the privileged companies, for some reason or other, had lost their hold. On the other hand, the usual kind of partnership between a merchant and his agent or his apprentice, especially prevalent in the Hanseatic territory in the Middle Ages, also flourished in the English regulated companies. Both the Merchant Adventurers and the Levant Company had detailed regulations on the point. Apparently, too, independent merchants in England often entered into partnerships with one another, at least from the beginning of the 17th century onward. An iron concern of Edward VI's reign appears to have been run by such a partner-

[69] See e.g. Epstein 33, 58 note, 61, 72-99, printed in 179 f., 258 f.; Cunningham II[3] 252.

ship, and the same is true of the original African trade which commenced about the same time (1553). The first instance pointed out, to my knowledge, of an enterprise giving itself the designation of X & Co. dates from 1579 and, indeed, in the trade with France. Shortly after, if not earlier, comparatively large capital associations must have arisen within the regulated companies, as may be seen from a passage in the Merchant Adventurers' codification of 1608. It is stated there "Of late divers men combine themselves in partnership in far greater number of partners than heretofore hath been accustomed, namely three, four, five or six in a company, which oftentimes turneth to the prejudice of the whole fellowship". Non-corporative capital associations of an altogether different stamp arose in Elizabeth's time when Sir Francis Drake and others banded together for privateering and piracy purposes. They prospered, and contributed to making Mercury the "God of trade and theft". The queen was not above taking a hand in these ventures, sharing in the gains, employing her men-of-war and injuring the Spaniard. The great expansion of the simple partnership was, however, a later phenomenon and began in Charles I's reign, though it increased further in the time of the Puritan Revolution. Its prosperity was due less to the regulated company than to the altered treatment of the joint stock companies. In the American colonies, again, it was due to the fact that the Crown granted no company charters there.

There was no essential reason why the non-corporative capital associations and the corporations without capital, that is the regulated companies, should not exist side by side. They each fulfilled different functions and supplemented one another in important matters. And there is little doubt but that they did often occur together. But the passage from the Merchant Adventurers by-laws quoted above proves none the less that the development was regarded with mistrust on the part of the latter. On closer examination the reason for this is not far to seek.

In the first place, there was always the danger that a member of the company could enter into partnership with an outsider, generally no doubt with the shipmaster—a contamination which the Hansa had already strictly prohibited at a very early date, because it allowed the newcomer to share in the jealously preserved privileges of the organization and betrayed their strictly guarded secrets. But a more general and profounder difficulty lay in the actual nature of the capital associations, in so far as they increased the amount of capital at the disposal of some of

the merchants and thus gave them a superiority over the rest, Even in modern cartels, a considerable growth in the importance of a unit or a small group of members spells danger to the organization. In a "fraternity" of the medieval kind, this danger was much greater, for there the monopoly was maintained not merely for material but also for ethical reasons, and equality among members was a ruling principle so that the rich might not "eat out the poor". In the above quotation taken from the by-laws of the Merchant Adventurers, the point was that the partnerships had far too much influence on decisions in matters of shipping, which shows that it referred to partnerships between members. It was therefore decided that only *one* partner in every partnership participate in the passing of resolutions. Thus in the non-corporative capital associations there was undoubtedly a certain tendency to undermine the standing of the regulated companies, though indeed on account of the medieval character of the latter rather than on account of any fundamental incompatibility between the two types of organization. The partnership was therefore one item in the development towards other forms of enterprise.[60]

At the beginning of the 17th century, the break with the older forms was far from complete in this respect. The regulated companies, supplemented where necessary by non-corporative capital associations, made up of their own members or outsiders, were still predominant in English foreign trade. Their structure was entirely medieval, and yet they persisted for a long time and, in many respects, were perfectly well adapted to cope with the trade. Mercantilism thus introduced no vital change here. Side by side with them, however, institutions could be found here and there which could possibly be traced to the Dutch "directions". Thus a council was established in Plymouth in the year 1620 to take over the work of the second (North) Virginia Company. A fishing company which emerged under various guises sometimes (in 1630, 1632 and possibly in 1661) had an organization of the

[60] In general *vide:* Scott I 11, 22, 227, 246 f., 270, 300, 337 f., II 4, 7, 463 (I 13 is modified by what has been stated in the text); on the associations of merchants, their functionaries and apprentices: Arup *passim.*—The Russian trade 1553: in Hakluyt O. I I : 11 55, G. VI 262.—The first name of a partnership firm ("Thomas Cordall and Company"): *Select Charters* (ed. Carr) xxvi note 2.—*Mereh. Adv.* (ed. Lingelbach) 56 f.—On the privateering associations, besides Scott I 73-90: Unwin, *Studies in Econ. Hist.* 175-79.—Colonies: S. E. Baldwin, "History of the Law of Private Corporations in the Colonies and States" *(Essays in Anglo-Amer. Legal Hist.* Ill) 243 f.—Hansa: Daenell II 408-11.

"council" kind in name and possibly in actual fact. For example, it had a common council and provincial "courts of assistance" (1630). The latter is especially reminiscent of the Dutch organization in the same industry—*gecommitteerde van het groote visscherij* ,[61] But these were small matters.

The first important kind of organization in the rapidly expanding English foreign trade of the 16th and 17th centuries had no parallel on the continent. It was the uncapitalized corporation of merchants which, though fortified and extended, was yet essentially medieval. Its trade was carried on by individuals or small partnerships, whose affairs were closely supervised and regulated and whose competition was limited by their own organization, supplied for the purpose with characteristics transcending the individual.

6. ENGLAND: THE JOINT STOCK COMPANIES

Origins

The English joint stock companies—capital associations of a corporate character—arose almost unnoticed out of the combination of the English medieval corporations and the continental capital associations, when the need for them made itself felt. But it was a much more gradual process for them to develop permanent trading capital.[62]

Of the two constituent elements, the English and the continental, the latter was on the whole by far the weaker. Two of the earliest joint stock companies, the Mines Royal and the Mineral and Battery Works (both granted charters in 1568 and actually existing even a few years before), were, indeed, directed mainly by Germans—Hochstetter, Schutz, Ulstatt, Speydel, Steinberg, etc. In the Mines Royal ten of the twenty-four shares were in German hands. And so it is very probable that these companies were influenced by the numerous and well-developed capital associations in German mining. The most prominent of the

[61] Council established at Plymouth . . . for the Planting . . . of New England in America: Scott II 302.—Fishing Companies: Ordinance for the commission of the year 1630 in *Foedera* (ed. Rymer) O. X I X 211 ff., H. VIII: in 136 f.; 1632 : Scott II 363 f.; 1661 : Anderson II 470 (but cp. Scott II 372). Cp. above 355 f.

[62] The material in Scott's book is by far the most important in this connection, and his explanation of the rise of joint stock companies (I ch. 1) appears to me to be on the whole to the point, although he rather minimizes the foreign influences.—The treatment in Hunter (see note 44 above) is also very useful.

German names, Hochstetter, was the name of a great and influential South-German commercial house which had been involved in many of the Austrian mining concerns, especially in the Idria quicksilver mines. The firm had certainly declined in Germany some thirty years before the rise of the English joint stock companies under discussion. One branch of the family, however, had been tending the concerns which it had established in Great Britain some time before. One of the then surviving South German trading-houses, David Haug, Hans Langenauer & Co., was similarly very closely connected with the Mines Royal. All English mining undertakings of the 16th century show some connection with Germany. The Germans were everywhere the initiators and so *a priori* it is likely that they exercised an influence on the form of organization too.

But the nature of the German mining concerns themselves is not particularly clear, apart from so late an enterprise as the Steyr iron company of 1581. That capital in the two earliest English mining companies was more permanent than in most other joint stock companies may be due not only to the fact that capital was more fundamental in mining than in commerce but also to imitation of German mining concerns, if the Steyr company may be regarded as typical of them all. If it was German influence which led to permanence of capital, this constituted a major factor in the development; but conjecture is the only basis for this conclusion. Professor Scott traces some German influence in the fact that it was precisely these English companies in which the fixed number of trading shares were divided up into small fractions. This is possibly true, but from the point of view of the general character of business organization, it is of lesser importance.[03]

[63] Company charter: in *Select Charters* (ed. Carr) 4 ff., 16 ff.—Scott I 45, II 384 if., 413 ff., *et passim.* Hochstetter and the other German capitalists in English and German mining: Ehrenberg, *Hamburg and England im Zeitalter der Konigin Elisabeth* (Jena 1896) 5 f. note and *Zeitalter der Fugger* I 217 f., 234 *et passim;* Strieder (note 13 above) 7, 41, 81, 106, 247, 270 note *2,* 296 ff., 346 ff., 353 ff.—See above 338.—It must be pointed out that one of the German firms, Daniel Ullstatt & Co., took over the great English re-coinage of 1560 (Burgon I 354-59) and that its financial relations with the Count von Mansfeld, the principal copper producing German prince, was sometimes very intimate although finally without result *(ib.* I 334-46, II 338)-—The influence of the Germans in the English copper and brass industry is also illustrated by H. Hamilton, *The English Brass and Copper Industries to 1800* (Lond. 1926) ch. 1; the German influence was vital here.

A further, though subordinate peculiarity of the organization of the English joint stock companies might well have followed continental lines. I refer to the sub-shareholders or "under-adventurers" found in Germany who also, incidentally, elucidate many points in Dutch company organization. They also were to be found in England. In 1564, for example, the Guinea Company (Africa Company) resolved that each of the five "chief adventurers" whose names were mentioned was to ask his own partners to subscribe a definite amount for every £100 sterling; and they themselves were each to contribute £50 sterling. As Professor Scott points out, the reason for this may have been the desire to keep the number of shares unchanged; for an increased demand for capital would then naturally lead to the shareholders raising capital from others. But the same thing recurred in the East India Company, in spite of the fact that at first it did not fix definite amounts at all. The following example is especially significant (1608). Two members of the company who had themselves subscribed £550 and £600 respectively towards the fourth expedition of the company rendered £100 and £150 respectively as received from their sub-shareholders, with the obligation to repay in proportion to the general division at the close of the voyage. These sub-shareholders, too, were explicitly specified as company members and it was stated, regarding the sums they had paid, that they were made over "in such manner as all other under-adventurers have done".[64] It is clear from this that the system was practised throughout and required no special explanation, not even the need for raising capital from outsiders. The reason was probably that some investors did not want to be troubled with the fitting out of the expeditions. Continental influence is here apparent.

Of course, the partnerships, the non-corporative companies also exerted an influence. This point hardly requires any confirmation, since the character of a capital association was common to both. The fact that Drake and other reckless gentlemen of fortune carried on their piratical ventures in the form of companies and that Queen Elizabeth took a hand in them is, moreover, a direct illustration that there was a link between the private companies and the privileged joint stock companies, as these differed from the regulated companies by reason of the part played in them by the court and the aristocracy. It is occasionally possible to demonstrate from this a direct typological connection as well. The first charter of the Levant Company (1581) before it became a regulated company, laid down that four people, mentioned by name, were to accept at the most twelve others to be "partners

[64] Guinea Co. in Hakluyt O. I I : 11 55, G. VI 262; cp. Scott I 45, II 7.—East India Co.: *Register of Letters* (ed. Birdwood & Foster) 271 ff.

and adventurers". The phrasing is clearly reminiscent of the ordinary partnership. Professor Scott, too, has shown that the Guinea Company originally appeared as a simple partnership.

The influence of the private partnership, which happened to be flourishing just at that time, must possibly be sought in the fact that the Levant and the East India Companies, which two were intimately connected from the outset, were corporative only to a very limited degree in the early period of their existence: they were given only "succession" and not "perpetual succession". The first charter to the Levant Company (1581) hardly granted it any corporative status. Any change in the membership of the company, other than such as followed from hereditary succession, required new patents, which it is true, were to be granted automatically. The position was indeed altered in the very next charter, that of 1592. The charters of the two companies, granted simultaneously on the last day of the 16th century, limited their duration rigidly to fifteen years, and this limitation referred not only to the particular privileges of the company—as was the case, for example, in the charter granted to Gilbert in 1583 for the discovery of the North West passage—but also to the actual life of the organization itself. Remembering in addition the Levant Company's link with the customary type of partnership, the conclusion is permissible that it was believed that a capital association should not be permanent. That it was the nature of the capital association which brought this about or, at least, contributed to it, appears probable because, in contrast to these companies, the local corporations of the regulated company type were granted "a perpetual succession" by charters granted at the same time. Things took this latter course in the Levant Company too, when its transformation into a regulated company was confirmed by the charter of 1605; it, too, was made permanent on that occasion, which brings out the contrast with especial force. On the other hand it should not be taken that it had not always been found necessary to limit the duration of the joint stock companies. The very first of them, the Russia Company, revealed a remarkable solidity and was given "perpetual succession" in its first charter, dating from 1555, before Elizabeth's reign. It was the same, after her reign, with the East India Company (1609). Thus the tendency to place a definite time limit on the duration of the capital associations appears to be confined to Elizabeth's reign.[65]

[65] Russia Company: in Hakluyt O. I 243, G. II 240; O. I 269, G. II 308.—Gilbert's Co.: in *op. cit.* O. I l l 97, G. V I I 378 f.— Levant Co.: in *op. cit.* O. I I : 1 146, 148; G. V 193, 198; O. I I : 1 296 f., G. VI 76; *Select Charters* (Carr) 32; Epstein, 161.—Charter of the East Ind. Co. 1600: in *Register of Letters* (Birdwood & Foster) 167, 175; cp. Hunter II 330.—Later charters of the E. I. Co. are quoted by Hunter and Scott.—Examples of "perpetual succession" in local corporations: in Gross II 112, 281, 362.

The fact that the joint stock company originated in the medieval non-capital corporation of entirely native growth, however, was of greater importance to it, from every point of view, than was the influence of the individualistic partnerships. It is precisely this which brings out the peculiar features in the English development.

From the time when the state began to pay attention to the corporate capital associations, i.e. from the middle of the 16th century onwards, they found at their disposal very much the same mechanism as the regulated companies *(v.s.* 383 f.); *in* fact the state recognized the strictly corporative organization of both groups almost simultaneously. Of course, this must not be taken to mean that the distinction between the two types of organization was hidden to the world. A memorandum concerning a company for the African trade (dated about 1582) discussed and described very aptly the pros and cons of the regulated and joint stock company; as an instance of the latter, the oldest one was cited, that for trade with Russia, whose merchants [a]are not the unexpertest of trade". But nevertheless they were completely alike in form and legal constitution. The charters followed the same lines whether they applied to the capital associations or not, for what they guaranteed was corporate status and a series of privileges bound up therewith. Even in the East India Company, the most typical of all the joint stock companies, the wording in its first charter of 1600 was such as left practically no clue to its character. The charter did indeed mention, incidentally, a right to exclude those who did not pay the sum agreed upon in time for the first expedition from London, but side by side there appear statements which point to the fact that individual trade was not excluded. Thus, e.g. "The said Governor & Company . . . and every particular person that now is or that hereafter shall be of that Company or incorporation shall have full and free authority, liberty, faculty, license and power in form aforesaid to trade and traffic to and from the said East Indies". The shareholders' right to engage in private trade to the extent of one-fifth of their subscribed capital may be traced back to this clause. In any case, the close connection with the common tradition is quite clear on this point.[60]

[66] Levant Co. in Hakluyt O. I I : 1 146, G. V 193.—African trade: in *Tudor Econ. Docs.* II 59, 61; a similar discussion on the Levant trade: *Calendar of State Papers, Domestic, 1591-94,* 89.—E. I. Co.: *Register of Letters* (ed. Birdwood & Foster) 186, 181 f., 183 f.—Cp. Lehmann (see above note 10) 39 and Carr's introduction to *Select Charters* xxi.—Hamilton (see above, note 63) 17 note 2

The medieval character

This connection was also expressed *in* the fact that the pronounced medieval character of the trading bodies was not merely confined to the regulated companies, but was also extended to the capital associations. That this state of affairs was not prevalent at that time outside England appears probable from the fact that nothing of the sort is known with regard to the contemporary Dutch companies. A pamphlet published as late as 1702 emphasized that "the general intent and end of all civil incorporations is for better government, either general or special", i.e. the same argument as that commonly adduced for the legality of the gilds; and to illustrate the point, its author quoted indiscriminately from municipal charters on the one hand and trading charters and various other sources on the other. In the joint stock companies, too, the members were "brethren", those accepted were "free of the company" or "freemen", just like the members of the innumerable medieval corporations, including the municipalities, which abounded throughout the country. Thus the East India Company, like the regulated companies, levied a special fee of admission from new members, without regard to the fact that the latter had purchased their share from a previous member. In other matters, too, the recruitment of new members corresponded to the principles prevailing in the regulated companies, with only such differences as were inevitable. Above all, new members were to be trained and brought up within the corporation and were not to be accepted haphazardly on a "capitalist" and impersonal basis.

It is an irony of history that the East India Company, which was most representative of the new and ultimately revolutionary spirit, should have had this ancient trait developed with particular strength. In the basic charter of 1600 the acceptance of new members was also discussed and,just as in the regulated companies, it was the company's apprentices who were mentioned first. Next came employees and agents, a category which was naturally absent in the regulated companies, it is true; but the fact that they were mentioned is another expression of the powerful personal tie predominating even here. Finally "all others" were

emphasizes the medieval character of the title of the Mines Royal: "the Governors, Assistants and *Comminalty* of the M. R." (1568).—A reply of the E. I. Co. before the Privy Council in 1681 contains the following: "With respect to the indulged and private trade every adventurer hath as full a liberty, in proportion to his stock, as the governor and deputy, or any of the committees, the sum being not to exceed one-fifth part of his stock: and even that has gradually been reduced every year though per saltum it cannot be done" (in Anderson II[2] 556).

disposed of with these two words. At one point the charter stated that trade should be carried on by members and by every member's son who was over age, which certainly indicates that the latter were expected to succeed as members in the first place. In complete agreement with the practice of the regulated companies and the craft gilds, the entrance fee for freemen's sons who were under age at the time of their fathers' admission was lowered, and was lowered still more for any younger sons. Equally typical was an early order issued by the East India Company to its agents. They were to collect their whole "family", i.e. their whole staff, for morning and evening prayers. The expression "mingled business with piety" which the historian on British India, Sir W. W. Hunter, has made current here, neatly characterizes the medieval heritage which English merchants preserved more carefully than did the merchants of other countries, and which was later imbued with new life, first by puritanism and then by the evangelical movement. Even the East India Company's rules for the good behaviour of its members at meetings were entirely in the spirit of the gilds and are reminiscent rather of the treatment of classes of school children. For instance they were forbidden to whisper and so on; and fines were imposed on the various infringements of these rules.

These medieval characteristics were, moreover, not confined to the East India Company but were at first the normal thing. Even so aristocratic a company as the African had similar regulations: its charter of 1618, in which only five of the thirty-eight members were called merchants, prescribed for instance that all sons of members should be accepted when of age, that employees and apprentices of the company or of its members should be admitted after their apprenticeship, and that both groups should pay a certain admission fee which was apparently reduced for their benefit. More striking still were the conditions laid down by the first charter of the very much later Hudson Bay Company (1670). This company indeed was, in other respects, of an advanced kind. Each £100 share entitled its holder to a vote; and it was even more aristocratic than the Africa Company. Prince Rupert, the king's cousin, was its first governor. Here, too, when it came to a question of accepting members, the employees and agents came first according to the charter, with "all others" following behind. All this illustrates how persistent was the medieval tradition.[67]

[67] The pamphlet of 1702, "The Law of Corporations", 2, quot. by Williston (see above, note 52) 201.—E. I. Co.: in *Register of Letters* (Birdwood etc.) 174 f.,

Position of capital

The most salient and characteristic feature of the older joint stock companies was the peculiar position of their capital.[68] The corporation, equipped with its own capital, was made indissoluble by the charters, but this did not hold with regard to the company capital itself. The capital was not subscribed for an indefinite period, or until the winding-up of the company, but for a single voyage or at the most for a series of voyages. It was paid back to the shareholders with the profits due to it, and then the same people or others subscribed between them another capital amount. The joint stock companies therefore were not, in practice, the originators of that most important peculiarity of the impersonal enterprise, capital indivisible from the undertaking, although their legal position would have allowed of this arrangement. The deviation from the modern type was much more marked than in the Dutch companies, but for this very reason the growth of the English joint stock companies out of their double root is all the more striking.

The regulated companies thus had no common capital, the capital associations lacked the guarantee of permanence; and both elements had occurred side by side in so far as capital associations had existed within the regulated companies. It was a very short step from this older stage to the newer, embodied in the primitive joint stock company. The capital association continued to exist only for the period of a particular trading operation, and was in this form fitted into the general framework of a permanent company; but the unity of the new form of company was emphasized in that several companies were no longer allowed to operate *simultaneously* in the same field of activity, while they had been doing so inside the regulated companies. In practice the joint stock companies of the more primitive kind confined themselves to this innovation. They acted as regulated companies, with the single exception that mutually independent merchants or associations were not permitted. The change, in spite of its drawbacks, constituted a great advance from the merchants' point of view. For every manifestation of competition within the primitive joint stock company

185,323; Scott I 152 f.; Hunter I 264 f., 273.—Africa Co.: in *Select Charters* 105.—Hudson Bay: in Cawston & Keane 291 and B. Willson, *The Great Company {1667-1871)*, Lond. 1900, II 332.—Other examples: Carr in *Select Charters* xcix and note 1.

[68] On the generally known facts it is enough to refer to Scott's work. I myself am largely responsible for their interpretation.

was thoroughly uprooted with a success which the various measures concerning "stint" had never been able to achieve in the regulated companies. Since, with few exceptions, the companies in their capacity of corporations enjoyed monopoly rights, it is easy to understand both the members' preference for joint stock companies and the outsiders' aversion from them, even where the regulated companies had not made it by any means easier for others to join them. Companies with fixed capital, however, were not established in this way; and it cannot be assumed *a priori* that it was these which the merchants strongly desired.

The whole phenomenon as manifested within the East India Company has attracted particular attention. That this enterprise with its world-wide ramifications should have been able to function for so many years with such an ephemeral enterprise capital is truly paradoxical. Between 1601 and 1612 capital was always collected anew for every single expedition—the so-called "separate voyages". The next stage was the "joint stocks" or "general voyages", i.e. the investment of capital for a series of voyages, though with occasional relapses into the older methods. It was not until well after half a century had elapsed since the company had been created and after its importance in India had long been established, that an end was made (1658) to the system of repaying capital plus profits after each voyage or series of voyages; and only then was the method of having fixed capital with dividend payments definitely adopted. Yet even after the transition to fixed enterprise capital had been made, there were practices strongly reminiscent of the old methods, for example the regulation that the company's assets were not to be valued until after the first seven years and then after every third year, and that every shareholder had the right to withdraw his share on every such occasion. No doubt it was expected that others would replace the ones who left and that the total amount of enterprise capital would remain unchanged, but nevertheless the right of withdrawal was there.

This was the same system as had prevailed, for instance, in the Steyr Iron Company, according to its regulations of 1581, and in the Dutch East India Company according to its charter of 1601 *(v.s.* 338 and 368 f.). That it then appeared in England proves, in the first place, how difficult it was for the idea of capital indissolubly tied to an abstract entity, a "body politic", to assert itself. But it also proves how very much later, in com-

parison with the continent, England developed this form of company capital as a result of the far greater importance of the purely non-capital corporation in England. Both in England and on the continent the final outcome was that, in practice, demands for capital repayments were ruled out, because the share market, on the whole, met the needs of individuals who wished to liquidate their capital holdings. Thus from the year 1658 onwards the capital of the English East India Company was in fact kept intangible.[69]

It is true that Professor Scott has drawn attention to the fact that the absence of permanent capital in the East India Company was not typical; in this, as in some other respects, the Russia Company was more advanced. But actually there was only this difference between the two, that the practice of the Russia Company in regard to its capital from its inception was the same as that which the East India Company employed in its *second* phase, that is after 1612, when it used to raise capital for a series of expeditions. The Russia Company never really reached the stage of fixed enterprise capital, for it soon became regulated. To my knowledge there is no early case of fixed enterprise capital to be found within the trading companies proper. To find instances of it, it is necessary to turn to concerns of another kind, to mining companies such as the Mines Royal (1568) and waterway undertakings such as the New River Company (1618). In these as in the colonial companies, moreover, subsidiary companies of shorter duration discharged many of the functions of the principal enterprises, which tended to a certain degree to bring about the same result as that of capital retained only for short periods.[70]

There is no ground for supposing that the impermanence of the capital enterprise normally clashed with the economic demands of the period. The need for permanent capital presupposed a permanence in the actual material objects of the undertaking; and modern writers tend to exaggerate this, as has already been pointed out. Before the end of the 17th century, the joint stock companies played a negligible part, on the whole, in those branches of economic activity which made use of large amounts of fixed capital. The only important exceptions were those just mentioned, a few joint stock companies in mining of a respectable antiquity, and the New River Company, which

[69] Adequate surveys on this development: Hunter II 177 ff., note; Scott II 123-28 (decision of 1658 conforming to an invitation of the company for share subscriptions: Hunter II 135, and continuation: Scott II 132).

[70] Scott II 45-49, 52 f., 96 f., 39 ff. and the following two footnotes below.

also had long-term capital investment. It thus testifies to a regard for actual economic conditions that the charters for the Mines Royal and the New River Company were unique among early company charters in making membership of the company dependent on the holding of claims to a certain minimum number of shares (-J- or -J- of -2\ of the total, i.e. i^-6- or y-J-y of the total in the first, and -3\ in the second in which, for special reasons, only half of the capital was reckoned). In the New River Company, this practice was linked up in the charter with the ' 'perpetual continuance" of the enterprise, which incidentally exists to the present day.[71]

Most peculiar of all was the long series of colonial companies and those of a similar pattern which arose in rapid succession during the first few decades of the 17th century, and usually declined with equal rapidity. They had no successors and their interest therefore lies chiefly in illustrating the general tendency of the period. There was no question of capital costs incurred in entering into legal tenure of land for the colonists, for the charters conceded the land gratis. The first outlay was the cost of the voyage and the personal equipment of the colonists; and in addition the trade in European products for the requirements of the colonies and the sale of colonial products had to be financed. The commercial problems which confronted them were not essentially different from those confronting the other trading companies, although at first they usually had to wait rather longer before they received the value in exchange for goods which had been sent out. These problems were taken in hand mainly by the subsidiary companies already mentioned. Colonization itself, however, was obviously a long-term capital investment—in fact, for an almost unlimited period. Had the companies taken charge of colonizing, they would undoubtedly have required permanent capital. But the problem of colonization was not resolved in practice on a company basis. In the case of the so-called South Virginia Company, the capital was raised partly through lotteries, which had this advantage for the promoters of the lottery that after the distribution of the lottery profits, nothing further was demanded of them. A different course was adopted in raising capital in the majority of colonial companies

[71] Printed in *Select Charters* (ed. Carr) 10 f., 114 f. ("to the end that the said Company"—New River Co.—"may have perpetual continuance and the persons unto whom any parts or portions . . . shall come or fall . . . may in equal and respective measure for every part and share . . • have a several voice and dealing in the said Company and work" etc.); cp. xlix note 3.

and in Irish enterprises, as well as in draining undertakings in England itself. The shareholders were granted land, whether for their own use or not, in exchange for their shares in the company and for their subscription to the cost of the voyages and the equipping of the colonists. In this way the difficulties of raising capital were resolved, and for the same reason the development in the case of the so-called Somers Islands or Bermuda Islands was strikingly similar to that of the *maone* in Italy engaged in colonizing Chios and Phocaea. The most famous of all the companies was, perhaps, the New Plymouth Company (subsidiary), to which, incidentally, the Pilgrim Fathers belonged. There the land remained the company's property and, as a result, difficulties arose on account of the long-term investments without interest payments, difficulties which were finally resolved by the colonists themselves buying out the shareholders in the mother country and bringing the company to an end.[72]

The principal field of activity of the joint stock companies was undoubtedly overseas trade. The trading companies proper were in a completely different position from that of the undertakings treated above, but for them the effects of the system were rather complicated. To disentangle these effects it is essential to differentiate strictly between trade in the narrow sense of the word and its requirements on the one hand, and the requirements of military, political and other not directly commercial organizations on the other.

From the purely commercial point of view, the East India trade did not require considerably greater permanence of capital than did Levantine trade. And in the latter the absence of corporative capital associations clearly did not act as a drawback, as a comparison between the various nations which took part in it clearly proves. France, the most successful country in the Levantine trade, remained without any common organization whatever for most of the time, whereas the Dutch had only a board or "direction", and England had joint stock companies in the first few decades of its trade and then for more than two centuries only a regulated company. As in the Levant trade so in the East India trade ships were equipped anew for every single expedition and the products sold on its return. There was thus no very strong continuity between the various expeditions.

Most permanent was the capital outlay on the ships themselves, but this did not necessitate a permanent organization of the trading companies; their development leaves no doubt on this

[72] Scott II 241-357 and the frontispiece of the volume; cp. above 334.

point. For after the English East India Company had been building its own boats for twenty years, it adopted the expedient of freighting other people's ships. Shortly afterwards, again, by giving preferential treatment to shipowners who built their ships according to the company's specifications, it evolved a permanent system, which freed the company from having any capital tied up in shipbuilding. The new system was set on foot from 1657 onwards, at the very time when the company's capital was made permanent, and this is evidence that it was not evolved as a method for solving the difficulties of short-term capital in the company. That the permanent nature of the capital embodied in the ships, regardless of ownership, did not necessitate any permanent capital association, may also be concluded from the fact that the shipowners for their part never expressed any desire for corporative undertakings.

But the above considerations by no means exclude the possibility that other parts of the actual business of fitting out the trade might have had a greater degree of permanence, extending beyond the duration of the individual voyages. Before 1658, when ships were still part of the capital requirements of the company, a new association always had to take over the durable capital goods of its predecessors, but even this did not cause any serious inconvenience. Still less could this have been the case when the ships later passed out of the company's possession.[73]

In the first half of the century, the East India Company experienced a much graver difficulty. The affairs of one expedition were not wound up before several new expeditions were launched and in their turn arrived at the stage when they required liquidating. In this way, particularly in the 1630's and the 1640's, a host of simultaneous and mutually independent administrations sprang up, all of which, taken together, represented the unified trade of the company over a number of years. This led to such a confusion that it was sometimes absolutely impossible to disentangle the relationship between one and another. This shows that the capital had to remain outstanding several years after the actual expedition, but it does not necessarily prove any connection among the various expeditions. The difficulties largely arose because the organization of the joint stock company as such *presupposed* some such connection between the expeditions, without providing a corresponding system of capitalization. In a regulated

[73] On the shipping industry, see Hunter II 168-71; the others are generally well-known facts which only appear not yet to have been clearly interpreted. The same applies to the next paragraph.

company, each expedition was wound up separately, so that there could be no ambiguity as to who the profit should go to. The confusion was consequently due to the fact that the early joint stock company fell between two stools. If the regulated type had been either entirely retained or entirely abandoned, the position would have been simpler.

Political problems

The vital difficulty, however, was the other and more deep-seated matter that the overseas companies were not and could not be exclusively commercial undertakings. About the time that the East India Company abandoned its very first kind of organization—the raising of capital for individual voyages—it had acquired its first definite settlement in India, Surat, in the extreme north, on the west coast of the peninsula. Some decades later, there followed the establishment of their stations on the east coast, especially Madras, which were more important from the point of view of capitalization, since they required fortifications. Then came Bombay on the west coast with the most expensive fortifications of all. This went on, until finally the British Empire in India evolved out of it. The company's own reports, it is true, must be accepted with some reservations, but the fact remains that the "dead stock" for fortifications and such-like was valued at £216 000 in the 1670's and £719 000 in the following decades. A whole system of treaties and bargains with native princes of various kinds lay at the basis of the trade, and the company declared in 1654 that it had establishments in the domains of fourteen of these potentates. Finally, we must add the cost of armed ships for the protection of the sea trade.

The need for durable capital for these purposes is not surprising; it is rather a wonder how the foundations of such an entirely political organization could be established at the time when the associations had short-term capital. At the meeting of the company in 1634 it was stated on the question of the very considerable debt of the company in India, which amounted to about £100 000 sterling, "which of these voyages owes it no man can tell". As has been shown, gradually, however, durable enterprise capital was built up. But between 1698 and 1708 an attempt was made to create a regulated company for the East Indian trade, consisting of several—in reality two—associations carrying on transactions within its framework. On this occasion the directors of the old company pronounced that such an experiment was as impossible as "two kings at the same time regnant in the same Kingdom". This remark hits the nail on the

head, for it was precisely the political problems which could not be settled in this way.[74]

Other companies were in the same position as the East India. The establishment and upkeep of forts played a particularly large part in the African slave trade and, with this in mind, several of the African companies, which were established one after the other, imposed charges for licences on outside merchants. And although they were disproportionately great, there is no doubt that, on principle, they had sound justification from this point of view. In 1698 the trade was thrown open by Act of Parliament; the company remained without a monopoly, but an import and export duty was imposed for the benefit of the company, on the condition that it proved that it spent the revenue thus raised exclusively on fortifications.

The circumstances in the case of the Hudson Bay Company, endowed with a charter in 1670, were very similar. It was one of the least controverted of organizations and developed very steadily. The backward state of the natives in its territory laid a very small burden on the capital requirements for military and other purposes. None the less, the fortifications and establishments of the company were made the excuse, in 1690, for a threefold increase in the nominal capital. Around all the permanent fortified stations in the northern tracts of America, there grew up an extensive organization for the fur trade. It was as impossible to withdraw one's capital from this as from the Africa Company; the only difference was that in the Hudson Bay Company, which had arisen very late, repayments of capital to the shareholders had never taken place at all, and that the demand was very seldom raised that it should throw open its trade to everybody.[75]

All this shows that the need for long-term capital was due not so much to the capital requirements of the trade itself as to the unavoidable semi-political, semi-military functions in non-European countries to which it gave rise. This view is confirmed by the fact that the joint stock companies with legal charters always found great difficulty in protecting their trade against the

[74] Scott II 138 and note 6.—Hunter II 122, 173, 327 f.—*Calendar of State Papers, Colonial: East Indies and Persia 1630-34,* 572.—Cp. Adam Smith, *Wealth of Nations* book 5 ch. 1 pt. 3 art. 1. (ed. Cannan) II 223, 228 f.

[75] Africa Co.: 9 & 10 Will. 3 c. 26 §§2, 7, 16, 17.—Scott II 21 f., *et passim;* G. L. Beer, *The Old Colonial System* (N. Y. 1912) I: 1 335 f., 369 f.—Hudson Bay Co.: Willson I 185, II 17-20; cp. II 313-17 *et passim.*—The whole problem Scott I 272 f., *et passim.*

"interlopers", i.e. casual and loosely organized outside enterprises; their success proved that trade itself *could* be profitably carried on by such enterprises. So long as any overseas trade was carried on outside the companies, it was a thorn in their flesh; it would not have troubled them if the interlopers had not been successful.

A considerable part of this outside trading was, moreover, perfectly legal and official, based on licences granted by the companies, for which the charters often explicitly provided, as for instance in the Russia, East India and the original Levant companies, and which were also often granted quite apart from that. In the Africa Company these licences, as we have already pointed out, played an important part. "Permission ships" were likewise a common phenomenon in the East India Company; and the members themselves had certain limited rights to trade on their own accounts. The whole practice was international, and was to be found equally in the Dutch West India Company and in the various French companies, where the tendency was very strong. And in addition to the licences granted by the companies themselves, there were all kinds of permits given by impecunious monarchs, who distributed them without regard to their pledges to the contrary, made when the charters were drawn up.

The operation of the system in practice as outlined above makes it clear that these two kinds of capital were not entirely subscribed by the same groups of individuals. The joint stock companies, besides their activity as economic undertakings for the benefit of their members, also filled the role, whether intentionally or unintentionally, of regulated companies for the benefit of outsiders and, in exceptional cases, even of members. *A priori* it is therefore difficult to reject the possibility that the fixed costs might have been borne entirely by a regulated company, and that under its control trade might have been carried on by a number of independent merchants.

Most particularly in the East India trade, however, this system would have involved obvious risks. The commerce carried on by the "interlopers" is sufficient evidence that the delicate system, built up as it was on various agreements with native princes, was dislocated by the activities of private merchants; for the attacks of the outsiders on the natives and local rulers were placed at the door of all Englishmen, the native potentates being unable or unwilling to distinguish between one Englishman and another. The position would naturally have been even

more serious if *all* merchants had thus operated independently, subject only to the probably ineffective control of a regulated company, which itself abstained from all trading. What has now been said, therefore, is not meant to prove that the joint stock company was unnecessary for the capital requirements of overseas trade, but merely that its necessity was not due to the demand for capital in trade proper; in other words, that it was the companies' *political* functions which made it necessary.[76]

It has sometimes been said that this weakness in the old type of English organization in the joint stock companies was their failure to provide "reserves", but that was not the deciding difficulty. To accumulate reserves is only to increase the capital of the concern by means of its own profits. The vital need in this case was not to increase the amount of capital, but to furnish fixed capital. It any case whether the increase in the amount of capital was drawn from profits or from fresh contributions was only a secondary consideration.[77] The fundamental difficulty was the circumstance that the capital was at the disposal of the company only for a particular voyage or series of voyages, while the military and political side of the organization was calculated to last as long as the company itself.

The argument outlined hitherto has, so far, been concerned primarily with the durability of the capital, but on the whole it is also applicable to the size of the capital. When overseas trade made great demands on capital for political and military establishments, the amount of capital was involved just as much as its durability. True the East India trade required larger ships than did, say, the Levantine trade, and consequently more capital. But, as pointed out, after the middle of the 17th century, this need was met by the shipowners, *without* any capital outlay on the part of the company, and the shipowners moreover

[76] Company Charters: in Russ. Co.: Hakluyt O. I 272, G. II 315; Lev. Co.: Hakluyt O. I I : 1 148, G. V 197 f.; O. I I : 1 299, 301, G. VI 83 f., 87; *Select Charters* (ed. Carr) 40; E. I. Co.: *Register of Letters* 184 f.—Trade of interlopers and other outsiders, and of the employees of the East India Company, also the consequences of this: Hunter *passim* e.g. I 284, II 54, 64 ff., 107, 120, 161-68, 230, 281 f., 289 ff., 294-99; Scott I 324, II u8f., 149.—Africa Co.: Beer, *Old Col. Syst.* 1: 1 378 and ch. 5 as a whole; Scott II 9, 13 f., 18, 24, 26 f.; Cunningham IP 272-79.—Dutch cos.: van Brakel 36.—French cos.: Bonnassieux 274, 373, 389 f.; Dahlgren 175 f., 179f.—On the problem as a whole: Scott I 454 f. (hardly reconcilable with the data of the author himself, given in other places, or with other well-known facts).—Cp. note 66 above.

[77] Contrary to Scott I 147, 154, 195, 242 f., *et passim**

had no corporative associations. Even if the cost of the ships had to be met by the merchants themselves, there were several possible alternatives to the joint stock company. Thus both the Merchant Adventurers and the Levant Company were in the habit of fitting out ships in common. Individual merchants consigned their goods to the ships and bore their share of the freight costs. In this way, independent merchants had no difficulty in loading large ships to their full capacity. The system could also have been applied to the non-European trade.[78] Nor is it known whether "interlopers" and other unorganized traders found any difficulty with ships furnished individually, so that even this possibility does not appear to have been excluded in the case of smaller undertakings. The great capital requirements for the expeditions did not therefore render corporative capital associations indispensable.

Again, the real explanation must be sought in political requirements. Size was, presumably, an even greater obstacle for a regulated company in the Far East than durability, for although in Europe the regulated companies were accustomed to the responsibility of permanent and more or less indissoluble establishments, they had never faced anything even comparable to an administration of the size required in the East India trade. Even a joint stock company such as the East India Company was frequently unable to cope with embezzlement, extortion and private trading on the part of their agents stationed in India; and a regulated company would in all probability have had to capitulate on this point altogether.

In conclusion, it goes almost without saying that it would have been impossible to establish that stupendous political structure, the British Empire, in India or anywhere else, if trade had been organized in regulated companies, dependent on the activity of the individual merchant. This has influenced the outlook of present-day research on the development of the different kinds of companies, which is only natural and justifiable. But as already pointed out in the case of the Dutch, it does not explain why the development took this turn, for the company governors desired anything but expensive administrative and military functions. Their choice of the joint stock company was due to their reluctant recognition that a solution of these problems was a necessary precondition for their commercial success. In all probability, however, the bias in favour of this kind of association originated primarily in something quite different, namely that, even in its

[78] See below 426 f.

incompletely developed form, the joint stock company provided an almost perfect guarantee against competition among the members themselves.

The development between 1660 and 1720

Hitherto we have concentrated chiefly on the preliminary stages of English company development, and have, on the whole, confined ourselves to the period up to the Restoration—a period of sixty years following on the most important event in this development, the foundation of the East India Company. The subsequent period until 1720 constituted the most eventful time in the history of English enterprises during the *ancien régime,* although the centre of interest is mainly the development after 1688.[79] Many factors co-operated to bring about an unprecedented acceleration in the tempo of economic life, but to establish with any degree of certainty the relation between cause and effect is, as may be expected, to attempt a wellnigh impossible task. As far as business organization is concerned, there were three particularly prominent factors.

The first was the greater degree of mobility in all human activities. One of the most remarkable products of this new era was the Coffee House. It was directly linked up with trading and speculation in shares and was likewise connected with the spread of the capital associations. Lloyd's to this day remains as a souvenir of this curious phenomenon. Secondly there was the growing system of bank credit and insurance, which drew its vitality from many sources. Finally the peculiar new methods of financing the needs of state by means of loans reacted on the other factors; this third point will be elaborated when dealing with the influence of the state on the growth of the various types of undertakings *(v.i.* 440 ff). All that need be stated on the matter at this juncture is that the state made use of the companies for purposes of credit, as this must have tended to the advantage of the joint stock companies as against the regulated companies; at the same time, it must have led to greater durability of capital in the former. It is true that the regulated companies were also called upon to supply the state with credit, but they were by no means so well adapted for this purpose, on account of the lack of enterprise capital of their own. And so it was primarily the joint stock companies that were utilized for this purpose. In their case

[79] For the facts a reference to Scott will suffice, esp. I chs. 17-20, on the saleability of shares I 161, 284 f., 303 f., 443, II 154, 416 note 2. (The date of the operations in Min. and Batt. works at the last-named place, compared with *Calendar of State Papers, Domestic, 1547-80* 311.)

the result was that a dissolution of the capital and its distribution among their members was practically ruled out once a considerable part of it was tied up in state loans, which the state was not exactly anxious to repay.

There were three main undertakings dominating the world of commerce after the revolution of 1688 and owing their position to the financing of state loans: the East India Company, by then of respectable antiquity, the Bank of England, endowed with a charter in 1694, and the South Sea Company, similarly recognized in 1711. Of the three, only the third really confined itself to the financial operations which gave it such notoriety. The other two were the mainstays of English economic life for many generations and exercised an important influence on the development as a whole. In addition to these great undertakings, the joint stock company was adopted in more and more branches of business, for the most part without any direct connection with the financing of state loans.

In the first place there were still the great trading companies, among which the East India Company was decidedly pre-eminent, though during its brief hour of glory, the South Sea Company easily surpassed all others in the size of its capital. Also joint stock concerns for waterways, mining and fishing, which had been represented before, became more numerous. And side by side with them there emerged undertakings in other departments of industry and commerce. In the provision of capital, besides the Bank of England, there appeared a host of other banks, some of which proved to be fantastic institutions, others more solid and by no means ephemeral. At the same time the insurance system experienced a decided expansion, though there were extremely varying degrees of solidity in its different branches. Even industrial undertakings on a joint stock basis became of some importance, although it was long before they became pre-eminent. The greatest industrial enterprise of the joint stock company type existing in 1695 took fifth place in point of size, and of the twelve greatest companies only three were industrial, a paper factory, a silk-weaving mill and a glass factory.

In Professor Scott's survey of the subject, from which the above data are reproduced, there are 140 companies mentioned with a total share capital of apparently £4¼ millions sterling. Certainly most of these undertakings foundered during the subsequent crisis, but none the less the figures are amazingly high. They were even surpassed during the period of expansion which took place

down to 1719/20, the year of the South Sea Bubble. The share capital of the South Sea Company alone was twice as great as the figures quoted above, and the total capital of all the various companies in 1717 has been calculated at £202/3 million sterling. It is true that this figure does not mean very much, for the greater part of the total was made up of loans to the state. To form some idea of what percentage of the capital in the companies found its way into economic activity, it would be necessary to know the various amounts of capital which the companies employed for their own uses, and this is impossible. Nevertheless they undoubtedly did amount to considerable sums, without considering the mushroom growth of fraudulent companies which sprang up during the period of wild speculation. The list given by Professor Scott of such companies as arose at the time of the South Sea Bubble comprises upwards of two hundred. Those among the number which declared their share capital usually put it at two million pounds sterling each.

Even apart from such figures all this meant a tremendous expansion of companies compared with previous times. Of the companies which existed in 1695, 85 per cent had arisen after 1688, indicating that England gained a great lead, at least in numbers of companies, over all other countries during that time and in fact during the whole of the *ancien re'gime.* There is certainly the danger of over-estimating England's importance simply because Professor Scott has investigated the history of English enterprises in a way which has not been equalled even approximately in any other country. But even allowing for this, the joint stock companies had become a normal phenomenon in England in a manner unlike their growth on the continent, and their extension to spheres other than foreign trade is a point in illustration, for as far as is known, this did not occur in other countries. Thus the outcome of the growth of joint stock enterprises in England during the mercantilist period was remarkable.

It was not in numbers alone that England led the world, for qualitatively too the flourishing company system, far more than any other department of economic life, had outstanding modern characteristics in both the good and the bad sense of the word. Certain effects of the company system were of the greatest importance for the general economic development of the 19th century. Trading in shares was an older phenomenon that one is inclined to realize, as Professor Scott has pointed out. There is at least a hint of a sale of shares of the Mineral and Battery works as early as 1568, and much more than a hint at the beginning

of the following century under James I, particularly in the East India Company, though presumably in the Russia Company too. Although the former demanded an admission fee of new members, it organized the sale of shares itself "by inch of candle", that is, on the usual occasions when goods were auctioned as, in fact, in 1615, when it attempted to rouse the shareholders[5] interest through the favourable quotation which it hoped to secure. After the Restoration, dealings in shares of the East India Company were very common, and after the revolution of 1688 the trade in shares was organized and acquired a modern form, and even attained modern proportions.

This transference of shares in the company made it impossible to maintain the feeling of solidarity among the members, which had been inherited from the Middle Ages. Nor was it possible to maintain the system of recruiting the companies from among the sons and apprentices of members and from employees, under conditions in which anyone could acquire membership by investing capital and no one could become a member without doing so. And with the disappearance of the older practices, there vanished also the demand for an admission fee from new members. From the point of view of the undertakings themselves, the greater stability of the capital association was one of the principal factors in their development, and this stability came about by the fact that the regulated companies receded in importance in comparison with the joint stock companies, and the latter no longer allowed their members to withdraw any paid-up capital. To prevent such withdrawals was much easier, in England as in the Netherlands, once trading in shares had become usual.

The Levant Company was the only regulated company which displayed any great activity in the 18th century, although even in its case a decline is noticeable, in spite of the fact that it persisted until 1825. Of the medieval organizations, nothing is known of the Eastland Company after 1698. The Merchant Adventurers continued to exist and maintained an overseas establishment at Hamburg until Napoleon's troops occupied this ancient Hanseatic town in 1806; but in any case the company had sunk into obscurity early in the 18th century. Of the joint stock companies which had been transformed into regulated companies, the East India Company found it a practical impossibility to adopt the new form, and this phase of its development was very short-lived. The Africa Company was pursued by the same malignant fate whether organized in one form or the other. At least on one occasion, in 1777, its reversion to a joint stock

company was called for in parliament. The Russia Company, like the original regulated companies, appears to have sunk into oblivion.[80]

Professor Scott is certainly correct in suggesting that this transformation of regulated into joint stock companies constituted a rupture with the medieval institutions, which had dominated foreign trade so long as membership of the companies was confined to only those "mere" or "legitimate" merchants who had served their apprenticeship in the trade. All that need be added is that the same change occurred even within the joint stock companies themselves, as soon as they abandoned the system of recruitment which had prevailed from the outset in the regulated companies. Sir Josiah Child, in his defence of the East India Company, took pride in pointing out that aristocrats and merchants could meet and work together in the English joint stock companies. This undoubtedly tended to dispel the medieval atmosphere.

The ground was thus laid for the kinds of enterprise which were to dominate economic life of the 19th century. On the other hand the banks, the waterway and canal companies, and so on, and particularly the large-scale industries, still played a very subordinate part. This was a vital limitation even with the expansion of the form of the joint stock company. In spite of this it might have been expected that the rapid development from 1660, and especially from 1688, to 1720 would have continued throughout the rest of the 18th century and that the modern forms of enterprise would have become even more widespread down to the actual outbreak of the Industrial Revolution towards the end of the century.

There has been no thorough investigation of this later period and all conclusions must therefore be tentative. But it is clear that the development did not take the course which might have been expected. Adam Smith's great work of 1776 provides

[80] Levant Co.: Arup 172-202, esp. 180-86; Cunningham IP 254f.—*Eastl. Co.:* Sellers in *Eastl. Co.* ix.—Russian Co.: a very summary mention in M. Postlethwayt, *Universal Dictionary of Commerce* (Lond. 1766) under "Russia Company"; its members petitioned the government in 1783 on the matter of Russian iron (Ashton, *Iron & Steel in the Industrial Revolution* 138); J. I. Oddy, *European Commerce* (Lond. 1805), describes himself on the title-page as "Member of the Russia and Turkey or Levant Companies", but as far as I have been able to ascertain he does not mention the first company in any place in his description of trade with Russia, although it occupies a major part of the book. See also Lipson II 333.—African Co.: an instructive parliamentary debate of 1777 in *Parliamentary History* X I X 291-316; Cunningham I I [8] 277 f.

important evidence on the state of the country directly before the Industrial Revolution. The extremely narrow limits set by him to the applicability of the joint stock company type would have been impossible if, at the time, these companies had occupied an important position in the actual business life, which he always valued very highly. The numerous new industrial formations, which sprang up in the following half-century, until 1830, had practically no corporative character but were constituted as individual enterprises or as partnerships. People were more or less suspicious of the joint stock company as a form of enterprise well into the 19th century, and a respectable business-man endeavoured to keep well away from them.[81] Undoubtedly there were many contributory factors, but these cannot be elucidated without methodical research into the subject such as has not yet been made. It requires little insight, however, to see at once that one of these factors was the repressive legislation against joint stock companies, occasioned by the South Sea Bubble, namely the Bubble Act of 1719. This Act is relevant to a discussion of the importance of the state in the development of the forms of enterprise, and attention may now be turned to it, although it is first necessary to turn back to the earlier stages in the history of English company organization.

7. ENGLAND: UNIFICATION

A treatment of the influence of the state on the development of forms of enterprise must primarily establish what was done or remained undone to overcome local disintegration and to give different parts of the country the same institutions. For England the general problem resolves itself into two diametrically opposite questions; on the one hand, the treatment of the local organizations in the provincial towns, and on the other, the tendency for trade to concentrate in London. The second was decidedly the more important and it enjoyed corresponding attention. But the other is of symptomatic interest in that it enables us to some extent to assess its relationship with the old town economy.

The long-standing connection between merchants in foreign trade and the purely local corporations—both the general trade gilds and the craftsmen associations of limited scope like those of the mercers and others—must have impeded the uniform organization of foreign trade. One would therefore have expected the

[81] **Adam Smith, *Wealth of Nations* book 5 ch. 1, part 3, art. 1 (ed. Carman II 246 ff.); cp. note 103 below.**

monarchy, bearing the brunt of the work of unification, to have taken it upon itself to dissolve this connection and to have attempted to include the provincial merchants in the national organizations which came into being long before the end of the Middle Ages. This would have constituted a work of unification, in the direction of a conscious mercantilism. But in fact it did not take place, as a few examples will suffice to show.

Provincial companies

The best known and indeed the most extreme example of the break-up of unity occurred in Newcastle-upon-Tyne, where there had long existed a general trade gild, which retained its ancient monopoly for the whole of trade in the city for the greater part of the 18th century. At the same time, however, the seafaring merchants of the city belonged, as early as the beginning of the 16th century, to a common organization abroad "in Brabant in the parts of beyond the seas", i.e. the organization which early acquired the name of Merchant Adventurers of England. By a decision made in Antwerp in 1519, they were enjoined to pay a certain common fee to the organization. None the less these Newcastle merchants received a royal charter in 1547 giving them a corporate organization and the status of a company of "Merchant Venturers'[5] in that city, thereby equipping them for overseas trade, although the charter itself mentioned their previous membership of the English association on the continent. This was obviously calculated to hinder, rather than to encourage, the formation of a national organization, all the more because nothing was done to restrict the authority of the local company as against the national association. In reality the former company did not merely exercise the functions of a general local trading gild, but was also a local branch of the Merchant Adventurers of England, although strictly speaking the charter mentioned nothing of the kind. As might have been expected the local company clamoured to be placed on the same footing as the national company, and for a long time the two were continually at loggerheads.

The same thing occurred in other towns with minor variations. The charters of Hull (1577) and York (1581), both based on older predecessors, created local corporations which explicitly covered both local and foreign trade. Unlike Newcastle, they were not local branches of the national company but must have been independent. In the case of Hull, this is evidenced by the fact that the two organizations used different seals, in York because a special clause was required to make the governors of the local company belong at the same time to the national company.

An Exeter company was granted a charter in 1559 which gave it a very similar status. In the following year another charter for trade with France was granted to an Exeter company which, at least in practice, must have overlapped the first. The Exeter company was specially favoured, in that a special Act of Parliament (4 Jac. I c. 9) exempted it from the abolition of such companies in the trade with France by another Act of Parliament carried in the previous year (3 Jac. I c. 6). When several years later (1611) a national regulated company was instituted, a reservation was again made in deference to the rights of this local corporation. Bristol (1552) and Chester (1554) were granted charters for local companies to carry on foreign trade alone, though with due regard for the rights of the Merchant Adventurers Company. These local charters were later frequently renewed, though that of Bristol was abolished by Act of Parliament in 1571. In Chester a charter was renewed in 1584 for the purpose of trading with Spain and Portugal.[82]

The monarchy and parliament, in short, did not promote the unification of foreign trade, but rather unwittingly discouraged it by extending and confirming many local charters. The treatment of the Newcastle and Exeter companies outlined above is particularly characteristic. None the less a wide measure of uniformity was in the end achieved, for not one of the local corporations really played a part in foreign trade. They all contented themselves with fulfilling the dual function of a trade gild for local purposes and a local branch of the national companies, where they did not completely lose all importance. Mercantilistic unification, then, was not achieved by any planning on the part of the state, but by quite another means.

[82] Newcastle: *Records of M. Adv. of N.* (see note 44 above) : charter I 282-93; relationship to the national co. II 3-139; general nature I 1-6.—Hull (Kingston-upon-Hull) : By-laws of 1499 and local charter 1567, printed (the latter transd.) in J. M. Lambert, *Two Thousand Tears of Gild Life* (Hull 1891) 157-61. Charter of 1577 in Gross II 110-14; seal copied by Lambert on p. 177.—York: charter of 1430 in *York Mercers and M. Adv.* (ed. Sellers—cp. note 9), 35 f.; charter of 1581 in Gross II 244-54, cp. first-named work livf.—Exeter: charter of 1559 and 1560 (the former reprinted) Gross II 87 ff., 371; statutes: see text above; that the two charters applied to the same company may be seen in the fact that the latter company, according to 4 Jac. I c. 9, worked the same charities which, according to the charter, had been imposed on the former (contrary to Gross I 152 note 3).—Bristol: charter of 1552 Gross II 355; Statute 13 Eliz. "c. 22" (a different designation than the one customary later) mentioned though not reproduced in *Statutes of the Realm*; Latimer, *History of the Merchant Venturers[9] Society, Bristol* (1903) was not available to me.—Chester: charter of 1554 and later renewals in Gross II 360 ff.

The dominant influence of London

The most important new factor in the 16th century was the predominant position of London in English economic life; and from the 16th century onward this predominant position of London became progressively pronounced. It has been calculated, though with no claim to accuracy, that in the 16th century the population of London was approximately quadrupled, which in proportion to the increase over the rest of the country is really astounding.[83] This meant primarily that the economic forces which drew the business life of England to the capital were much more powerful than the fairly insignificant state measures working in the opposite direction. But it meant something else too. The tendency to provincial sectionalism was not arrested by giving all parts of the country the same opportunities, but by favouring London at the expense of the provincial towns. This was in harmony with the usual tendency of mercantilist governments; but this too was obviously municipal policy, militating against the uniform development of national economic life.

The twofold origin of the animosity and the jealousy towards London, displayed from the start by the merchants and shipowners of the "outports", complicates the survey of the situation. On the one hand the unorganized traders, the provincial "interlopers", tried their utmost to make life unpleasant for their officially favoured competitors in London. On the other hand, there was the opposition between the provincial and the metropolitan members of the organizations themselves. This distinction is frequently overlooked; but the very fact that it could be overlooked arouses the suspicion that the interest of London was largely a company interest, in other words that the companies' advantage as such involved the favouring of London at the expense of the provinces. At the same time it must not be assumed that no distinction was made between these two kinds of opposition, and in fact the organized merchants in the provinces sometimes explicitly distinguished between their fight with the directors of their own company in London and the interlopers[3] fight with the companies as such.

The best example is perhaps the attitude adopted by the stubborn Newcastle Adventurers' Company, when their attorney in London asked them, in 1669, whether they wished to make common cause with the attack directed by the interlopers of Bristol, Exeter and other provincial towns against the large company. The company replied: "Although the Marchants

[83] See prev. ch. note 51,

Adventurers"—it is noteworthy that the Newcastle Company did not include itself under this heading—"have dealt very unkindly with us (to give it no worse term) and put us to very much and needless charge . . . yet in this case we do hold it more conducing to the common good of trade and the maintaining of our general privileges to join with the Merchants of London rather than with these interlopers." Conversely, company interests did not necessarily mean London interests. In the previous chapter, mention was made of the famous and much-debated report of Sir Edwin Sandys' parliamentary committee of 1604, the "Instructions touching the Bill for Free Trade". The greater part of it was concerned with refuting the reasons for maintaining the existing order of things. In this very illuminating, though not necessarily unprejudiced, document, the objection against the "free trade" proposal was reproduced as follows: "This Act is against London and the Wealth thereof, which is necessary to be upheld, being the head City of the Kingdom." To which the answer was returned by the committee: "Nay, it is for London, unless we will confine London into Some Two Hundred Men's Purses; the rest of the City of London, together with the whole Realm, sue mainly for this Bill; and they cry, they are undone if it shall be crossed."[84]

On the other hand, this quotation shows that the attacks on the companies were readily *believed* to be directed against London and this belief was undoubtedly often correct. Parliamentary franchise, such as it was until the Reform Bill of 1832, gave the representatives of the provincial boroughs an incredible preponderance in the House of Commons, and this too had a bearing on the question. Before the Reform Bill of 1832 there were no less than 403 borough representatives out of 489 for the whole country, 399 being sent from urban constituencies in the provinces, of which again the majority came from the coast. Formerly this preponderance had been even greater. In *A Tour through the Whole Island of Great Britain* (1724/6), Defoe continually repeated that every "miserable", "dirty", "decayed", "poor", "pitiful" little town sent two representatives to parliament, or half as many as the whole city of London. The consequence was some tendency in parliament to give support to London's competitors. But this was much less important than one would have been led to imagine from the figures quoted, as is sufficiently evidenced by the fact that the victory of parliament and the House of

[84] **Document of 1669: printed in *Records of M. Adv. of Newcastle* II 136 f.—Sandys: *Journals of the House of Commons* I 220.**

Commons over the monarchy failed to put a stop to the favouring of London and failed to substitute any other policy. The explanation is partly that conceptions of economic "justice" asserted themselves besides the sectional interests, in this case to London's advantage. The explanation is also partly, and probably even more, the well-known fact that the franchise in the provincial boroughs was usually not in the hands of their merchants but in those of a heterogeneous band of people, who happened to own the property or privileges with which the franchise was, according to the increasingly grotesque franchise clauses, bound up. To an ever greater extent these were the great lords and other personages who had no natural connection with the constituencies.[85]

The regulated companies

The endeavour to restrict the influence of London within or outside the companies found little support from the state. In so far as support was forthcoming at all, it was so beset by obscurities that it is difficult to reduce it to any coherent form.

The attack launched in 1478, by the cities of the North against the extortions alleged to have originated with the leader of the Merchant Adventurers in the Netherlands, elected by the Londoners *(v.s.* 331), was followed after a couple of decades by an Act of Parliament (12 Hen. VII c. 6, 1496/7), arising out of another petition of the provincial merchants. But it is extremely difficult to make the different pieces of evidence agree. Almost at the same time as this act was passed, the governor, who had been severely rebuked in 1478, was reinstated by the king, evidently as a single governor, though the old order had required two governors, of whom one was elected by the provincial merchants. The Act of Parliament did not refer to the general or overseas organization at all but to a purely London body, the "feliship of the mercers and othre merchants and adventurers dwelling and being free within the City of London". This London association was said to have exercised a detrimental influence in the Netherlands by levying charges on those who traded there, using as a pretext the "feigned holiness" of supporting the fraternity of the patron saint of the Merchant Adventurers, Thomas à Becket. The

[85] On the composition of the House of Commons: E. & A. G. Porritt, *The Unreformed House of Commons* (Camb. 1903) *passim,* on the text party- I 29 f., 85, 90.—Defoe's *Tour passim.* The quotation refers to Queenborough, but Sandwich is mentioned in almost the same words and others, e.g. East and West Loo, in a milder form though with the same sense. (Ed. Everyman's Library I 110, 120, 236.) The work of A. Friis (see above, note 44 *et passim)* has, as an underlying idea, the contrast between the outports and London, and the tendency of the House of Commons to favour the latter; however the book exaggerates both points of view, e.g. on the first, 132, on the second, 162, 164, 166; cp. my review in *Vierteljahrschr.f. Soz.- u. Wirtsch.-gesch.* X X I , 1929, 463.

charges were said to have been gradually increased and now amounted to the prohibitive sum of £20 sterling for "every Englishman or young merchant being there at his first coming", and were thus a condition for the practice of the craft in the English trading marts in the Netherlands.

The relationship between this London fellowship of mercers &c. and the organization in the Netherlands is obscure. If interpreted literally, the two documents of 1478 and 1496/7 each refer only to one organization, and the picture given of the character of the two is also rather different. That the charges for membership mentioned in the petition of 1496/7 are much higher than those in the petition of 1478 might possibly be explained by the recent increase in them, alleged in the later of the two documents; but even this does not show why these charges were graded in accordance with the training of the candidate for membership, according to the 1496/7 petition, but not according to that of 1478. It is not altogether impossible that the two petitions referred to really different bodies, so that in the earlier case the payment referred to had to be made to the Merchant Adventurers in the Netherlands, and in the later to the London organization. But in any case the two bodies were so inextricably interwoven, as appears from their recently discovered records, that the very obscurity of the sources reveals the difficulty of bringing local organizations into line with the national. The Act of Parliament, which was never repealed, laid down that nobody was to be obliged to pay more than ten marks sterling (six and two-thirds pounds sterling) for the right to trade, and that membership of neither the one nor the other organization was necessary.[86]

The confusion between the London and the overseas organization remained during the 300 years and more of the Merchant Adventurers' existence. In 1505, Henry VII attempted a more thorough regulation of the company abroad. His interpretation of the statute was that the entrance fee to the organization itself should amount to ten marks, which was different from what had been decided; nor was it consistent with the act that membership was made compulsory. The character

[86] *York Mercers & Merchant Adventurers* (ed. Sellers) 74-78, cp. xxxvii note 3. J. A. Froude (*A History of England from the Fall ofWolsey to the Death of Elizabeth* V. Lond. 1860, 469) and, following him, L. Brentano *(Eine Geschichte der wirtschaftlichen Entwicklung Englands* II, Jena 1927, 142) rightly emphasize the difference between the two organizations, but the account, particularly of the latter, is in direct opposition on a whole series of points to the statute of 1496/7. —See now, further (also for what follows), the paper of Miss Cams-Wilson, quoted in note 9 above, I am, however, unable to agree with her interpretation of the statute of 1496/7, when she says (170) that "the right of the Fellowship to compel all to join was tacitly admitted". 12 Hen. VII c. 6 expressly lays down that "every Englishman . . . have free passage . . . to the marts . . . without . . . contribution . . . to, for or by any English person . . . to his or their use, or to the use of the said fraternity or feliship, or of any othre like, except only X mark sterling", i.e., anyone paying that amount was to be admitted to trade.

of the Merchant Adventurers as a federation was brought out, incidentally, in this case by requiring the twenty-four "assistants"—that is, the Board of the company—to be "persons of divers fellawships of the same Marchants Adventurers"; according to a by-law of the company itself, passed in 1517, the assistants were on the other hand to be twelve, eight of whom were to represent different London fellowships and the remaining four the provincial cities. Haphazard and conflicting as these different rules were, there cannot be any doubt about the facts; more than ever, they have recently been shown to mean that the Londoners had the decisive influence all along the line.

In 1564 Elizabeth first granted the organization abroad corporative status and an official title, which it had not previously had. This title stressed the national character of the organization: "Governor, Assistants and Fellowship of Merchants Adventurers of *England".* The term Merchant Adventurers thus became the proper name for a specific corporation, where before it had only designated seafaring merchants in general. But the national character which should have been guaranteed by the title, and was eagerly vaunted by the spokesmen of the company, was in reality non-existent. Elizabeth's great charter in unmistakable terms left the conditions of entry to the arbitrary decision of the company. At the same time the charter gave the company authority against outside merchants, similar to that given fifteen years later to the Eastland Company. The charter of 1586 that followed endeavoured to organize local interests. The supreme direction abroad acquired the right of choosing local directors, and they came to exist not only in London but in other places also, at any rate in Exeter, York, Hull and Newcastle, though it is by no means easy to define this connection with the local corporations. In 1601 the company's able secretary and spokesman, John Wheeler, published a defence of the company entitled *A Treatise of Commerce,* where he pointed out that the company included a large number of rich and experienced merchants in various ports and other places, and, apart from those already named, mentioned Norwich and Ipswich. The same attitude was later expressed in a defence against provincial criticism at the beginning of the 1660's. But Henry VII's act of 1496/7 throwing the Dutch trade open to everybody paying six and two-thirds pounds sterling, was quietly ignored, for according to Wheeler's codification of the company's by-laws (1608), interlopers were rigorously forbidden, and at the same time a prohibitive entrance fee of £200 was fixed for those who were not members' sons or apprentices.

The success of the government's attempts at unification in the subsequent period can hardly be summarized in a few words, for it was determined by the varying strength of opposing interests, which on several occasions gained the upper hand, sometimes within parliament and sometimes outside it. There was a total lack of systematic planning.

Parliament concerned itself just as much with the treatment of interlopers as with measures calculated to facilitate entry into the company itself. The relationship between the company's local branches and its central government was controlled only indirectly, through measures of the first two kinds. After parliamentary pressure had, in 1624, caused various facilities to be given to interloper trading, the prohibition of such trade was again intensified in 1634 and 1639 under Charles I and under the Long Parliament in 1643 ? on the other hand the company's entrance fees were reduced as compared with those fixed in the codification of 1608, in the case of the "outports" to half the amount prevailing in London, but they still remained higher than those prescribed in the Act of Henry V I I . After the export of woollen goods had been tentatively thrown open in 1662/3, it was again reserved to the company, and this measure was accompanied by a new reduction of the entrance fees, so that they now became the same as those provided for in Henry VII's Act, though it is true that this only applied to the provincial ports; London merchants were to pay double. Finally the Merchant Adventurers' monopoly was altogether repealed soon after the revolution of 1688 (1 Will. & Mar. c. 32 §10). Its political history was thus brought to a close, though a modest remnant of its commercial activity continued for another century.[87]

We must now turn to the other regulated companies. By its charter of 1579, the Eastland Company was enjoined not to refuse admission to qualified merchants of Bristol, Exeter and seven other provincial cities, provided that they had been engaged in the Baltic trade for at least ten years. The sanction provided in the charter for holding meetings of the company outside London and even outside England

[87] Patent of 1505 in Schanz ii 549-53; cp. *York Mercers* xlix.—Charter of 1564 in Cawston & Keane 257, 263.—Codification of 1608 in *Merchant Adventurers* (ed. Lingelbach) 36, 55.—Events of 1624: A. Friis 429 ff.—Ordinances of 1634 & 1639: *Foedera* (ed. Rymer) O. XIX 583 f., H. VIII: iv 97, and O. XX 342 f., H. IX: 11 221 f. resp.—Ordinance of 1643: *ib.* O. XX 547, H. IX: in 106, and *Merch. Adv.* (ed. Lingelbach) 247 f.—Local divisions: Lingelbach in *Trans. R. Hist. Soc.* (see above, note 4) 61-66.—Wheeler, *Treatise* 22.—Struggle in the i66o's: Anderson, *History of Commerce sub anno* 1661 (IP 466 ff.).—Measures 1662/3: *Calendar of State Papers, Domestic, 1661-62,* 294, 371; *ditto 1663-64,* 103.—See also Lipson's detailed description which coincides with my own: II 249-69; only the attempt to balance usefulness and injury against one another has not succeeded more than any other similar endeavours, where the norm for any such judgments is lacking.

hardly detracted from the preponderance of the capital. As with the Merchant Adventurers, local branches were formed within the company, though they proved rather weaker than those of the senior concerns. The Eastland Company still claimed complete freedom from local exclusiveness, and in a memorandum at the end of 1659 it declared: "And no port town is excluded from the trade, as it is not confined like most others to London only."

The Levant Company on the other hand was called "Governor and Company of Merchants of London" while it was still a joint stock company. Its transformation to a regulated company, effected by the charter of 1605, was explicitly based on the consideration that trade must not be limited to a small number of merchants or to any particular city, but must be thrown open to every subject of the realm. The name of the company was accordingly changed to "Governor and Company of Merchants *of England* trading in the Levant Seas".

On paper what happened in the case of the Levant Company was also experienced by two other regulated companies of 1605 and 1611 trading with the Iberian Peninsula and France respectively. Of the large number of members—there were more than 500—the majority were not Londoners. In the first of the two companies, thirty of the sixty-one assistants were to live outside London. The government of the second company was transferred to London and only one of the deputies was to be elected from outside the capital. Owing to the resistance of parliament, however, these companies were never actually launched and never acquired more than a certain symptomatic interest.[88]

The state certainly made various attempts to enable the "outports" to participate in the regulated companies' commerce. Provincial merchants, however, were not convinced of the national character of the companies. Their ill will towards London was certainly to some extent pure jealousy, of the kind so common in those days. Company representatives of four northern cities met together in 1651, for example, and instituted prohibitions

[88] Charter of the Eastland Co.: in *Eastland Co.* (ed. Sellers) 144 f., 147, cp. lx f. Miss Sellers finds a reference to the meetings of local branches in the following passage: ". . . assemble . . . and cause to be kept courts . . . of *all* the said Fellowship . . . or of twenty at least . . . within some convenient place within our City of London or else within our dominions as also within the said *realms* . . . of the *East parts* . . . when it shall seem expedient to the said Governor or his Deputy or Deputies"; but the italics I have put in will show that such an interpretation is inadmissible, as meetings of the whole company inside or outside England are clearly indicated.—1659 reference: in *Calendar of State Papers, Domestic, 1659-60* 284.—Charter of the Levant Co, 1600 & 1605: in *Select Charters* (ed. Carr) 32 and Epstein 154, 161 resp.—Other charters: *Select Charters* xxv note 4, 67 note 1, 63-68 resp.—For the whole: A. Friis 156-72.

against Londoners who came into northern towns for purposes of competition. But most conflicts were occasioned by the exclusively London complexion of the company governments. In an undated record, concerning the commercial embarrassment of the city of Hull, probably dating from the middle of the 1570's, the existing difficulties were explained in the following terms: "The merchants are so tied unto Companies, the heads whereof are Citizens of London"; "by means of the said Companies (the Government whereof is ruled only in the City of London) all the whole trade of merchandize is in a manner brought to the City of London.[55] Sandys[5] committee report of 1604 noted, with acerbity, that all cloth merchants, "and, in effect, all the Merchants of England[55] had bitterly complained before the committee that the rich London merchants had drawn trade to themselves to the detriment of all the others. In the following year, when the idea of a Spanish company was broached, it was stated, in opposition to the proposal, that the result would be subjection to the Londoners, even if they cut their own throats in the process. At the beginning of the 1660's similar complaints were made pointing to the obstructions in the way of direct shipments from the cloth-producing areas.[89]

How things stood in *actual fact* is rather more difficult to say.

As has already been shown, the local associations often established their own local branches, sometimes even with their own companies and their own governments. In the case of the Merchant Adventurers, their status of equality with the London Company should have been still further guaranteed by the fact that the head office of the company was situated on the continent. But this, in fact, meant very little, for the London branch counted as the real company. Naturally the dissensions between the Merchant Adventurers of England on the one hand, as represented by their London branch, and the Newcastle Company on the other became particularly bitter. The local corporation claimed absolute equality with the London branch, in fact, with the company as a whole, because it believed itself to have sprung from the local Gild Merchant which had been granted a charter as early as the beginning of the 13th century, a year before the Merchant Adventurers of England, according to their own statement. There is no doubt that the Newcastle Company was entitled to claim privileges giving it independent status, though the large company none the less considered it a local branch and treated it as such. There were bitter

[89] Printed in, respectively, *Newcastle M. Adv. Records* I 167; *Tudor Econ. Docs.* II 49; *Jnls. of H. of Comm.* I 218; *Select Charters* (ed. Carr) xxv note 1; Anderson II 466; cp. Unwin, *Studies in Econ. Hist.* 288 ff.

quarrels over honorifics and other matters, lasting throughout the greater part of the 17th century. In the Eastland Company, the transference of the government to London was guaranteed from the start and indeed it was only the York branch which opposed it. It is no mere chance that in the York court book the central body was always called "the Company of London", the York branch "Court of Assembly on Eastland Merchants", and the other local branches "Brethren of" Newcastle or Hull. But on the other hand these perpetual dissensions often raged around mere trifles in addition to the usual questions of finance. One quarrel only within the Eastland Company had anything to do with a trading matter, and it was finally decided by a decision of the Privy Council in 1616, which was religiously adhered to.[90]

The main question was how far the trade and shipping of the companies was forced to take the London route, as was asserted with regard to the Merchant Adventurers, though the company energetically denied it at the beginning of the 1660's. It was only in the case of this company, the most important of the regulated companies, that it was in any way a practical question.

The enemies of the Merchant Adventurers asserted in 1661/2 that the company "confines the vent of this great staple commodity (cloth) to a few places at home, as the trade of all the west countries to London". These enemies appear to have been, in the main, unorganized merchants in Exeter and cloth-dealers from the rest of the West of England. They demanded permission to ship their goods from the nearest port, but the company declared in reply that every "freeman", that is, every member of the company, was already allowed to ship from the nearest port. The company mentioned thirteen towns outside London, but strangely enough this list did not include a single West of England town. The reply further stated that the company in Exeter had only one member left, whereas it had formerly had an important local branch. It is permissible to conclude that for some reason or other the company wanted to keep the West of England merchants out and this explanation is much more natural than to say that these merchants were not interested in the company's trade, for it was precisely they who most energetically attacked the Merchant Adventurers' London monopoly at the beginning as well as at the end of the 1660's. In the codification of the company's by-laws (1608) there was also a clause

[90] The relevant matter here is largely the publications already quoted on the Newcastle Company (II, on the text especially xiv, 57-62, 115ff.) and the Eastland Company.

conferring on the Exeter members the right of sending four ships annually *via* London, but it was a right hedged in by so many conditional guarantees that the Exeter merchants would very wisely have decided to ship through their own ports had that been permissible. For this reason we conclude that this did occur.

The rights of the local branches to ship independently were, even in other ways, most curiously treated in the Merchant Adventurers' by-laws. It is true that the clauses did not prohibit the use of other ports than London, and Newcastle even enjoyed special facilities for its goods, which differed somewhat from those of the London branch. But with this exception, the clauses were occupied almost exclusively with shipping from the London office. The codification of 1608 expressly stipulated that no prescriptions relating to shipping could be allowed without the advice of the London members. On the ground that decisions on the freighting of common ships must be kept under strict control of officials, members "of whatsoever place or port of England" were also forbidden to remove a commodity from London or the surrounding district, once they had brought it in. In the words of Wheeler (1601) who was the force behind the codification, "the most part of the commodities which the Merchants Adventurers carry out of the Realm, being shipped in appointed ships at London". In other words, the common shipping of the company in his day played a large part in its affairs. There was thus an unmistakable desire on the part of the Merchant Adventurers to concentrate trade and shipping in London.[91]

The Eastland Company hardly showed any of these tendencies and this seems to explain why the company never, to my knowledge, adopted the system of common shipping. It may be, of course, that the nature of the trade may have made concentration in London more difficult in this case than in that of the Merchant Adventurers. The Levant Company, the third of the great regulated companies, actually made the companies' own shipping compulsory on all English exports, presumably from the birth of the company onwards and systematically enforced from 1631 to 1744, with comparatively minor interruptions. In practice,

[91] Anderson *op. cil.—Merch. Adv.* (ed. Lingclbach) 56, 57, 62, 125 f. (shipping conditions), 76 f. (Exeter), 122 ff. (Newcastle).—Wheeler, *Treatise* 82.—The problem is dealt with in the above-mentioned (note 44,) work by Lucas 121-41. Illustrations are also given there of the company's occasional close relationship with London.

this arrangement established London as the centre of the whole company's activity, for provincial members would have found it difficult always to send their goods by way of the port of departure of the company's ships, which was of course London. In spite of the clauses in the charter of 1605, quoted above, the Levant Company therefore remained predominantly a London company. The charters of 1661 provided that (with the exception of the nobility) members established in London, or within a radius of twenty miles around the capital, were to be freemen of London.[92]

The effects of the measures

Finally, it must be examined whether these and other measures really succeeded in enticing trade and shipping away from the "outports" to London. Even if it can be proved that the development tended in this direction, it does not necessarily follow that it was a result of the economic policy pursued; in the same way, the contrary does not necessarily prove that the economic policy did not favour London. None the less it provides a useful pointer for the general development, especially when combined with what has already been stated on the economic policy.

The available statistics, as a matter of fact, allow surprisingly conclusive inferences to be drawn. Researches recently instituted into English customs registers of the reign of James I, prove in the first place that the export of woollen goods to those countries in which the Merchant Adventurers enjoyed a monopoly was centred essentially in London. Of the other six cities which Wheeler mentions as centres for the Merchant Adventurers' trade, only two were of any importance, namely the closely connected cities

[92] On the facts for the Levant Co.: *Index to Remembrancia* (prev. ch., note 22) 262; Arup 95-100, 124 note 3, 186-89 *et passim.* Arup rightly points out that the charter of 1661 did not limit the membership to freemen of London; but he appears to minimize the importance of the limitations which actually occurred. It is, in addition, striking to note the manner in which the Charter of 1661 was generally conceived as a limitation of the Company to London freemen (and "noblemen and gentleman of quality"), e.g. Adam Smith, *Wealth of Nations* book V, ch. 1 pt. 3, art. 1 (ed. Cannan II 227); Anderson *sub anno* 1627 (II §11); Cawston & Keane 78; Carr in *Select Charters* xli note 9 (though otherwise xxii note 16). The reason may perhaps be found in the misunderstanding of a correct, but somewhat involved, passage in the preamble to 26 Geo. II c. 18 (1753), whichwas, at least in form, framed with the intention of increased freedom of trade. The passage runs: "Whereas the trade into the Levant Seas has very much decreased and . . . the not restraining of the freedom thereof . . . to such persons as residing within twenty miles of the City of London are free of the said City . . . are the most probable means of recovering the said trade. . . ."

of York and Hull. But the insignificant share, even of these cities, in the Merchant Adventurers[5] trade, becomes clear from the following twofold comparison. The cloth exports of these two cities in the marketing territory of the Merchant Adventurers were only 6 per cent of the exports of London; and this part of their cloth export was less than a third of their total cloth export, while for London it was more than three-quarters of the London cloth export. The export of cloth from the western counties held a prominent place in the figures for London, which confirms the view that the Merchant Adventurers drew the products of these counties into London. As for the trade with the Levant and Italy, we are presented with an even more uniform picture. To export cloth to these countries through other ports than London appears to have been quite unknown in the early part of the 17th century.[93]

These and other similar figures also prove something more. They show that the tendency to attract trade to London was, on the whole, confined to the Merchant Adventurers, with a possible addition of the Levant Company. The Danish toll accounts of commodities shipped through the Sound, published for every tenth year between 1565 and 1655, enable us to confirm this conclusion as regards the Eastland Company over a considerably longer period. For although they refer mainly to London, Hull (including York) and Newcastle, yet at the same time they include the most important ports.

As for textiles, which term here certainly signifies cloth for the most part, the accounts show that ships from Hull predominated in six years out of ten. In three cases they provided more than half the total amount registered. London was first in importance on the four remaining occasions, and only once did it register more than half of the total. Even the Newcastle ships played a considerable part in the export of textiles, and in three out of the ten cases an even greater part than London. The subordinate position of London which is evidenced by this, is confirmed by the English figures as far as they are accessible. The London cloth export in the staple of the Eastland Company was, in 1606, approximately only two-thirds of the joint export

[93] Figures in A. Friis 61-68 and app. C. The total figure for London in 1606 ("about 125 000 cloths") does not very well coincide with the fact that the figures for all the countries mentioned comes to 126 081 and several countries are missing, though it should be assumed that the error is not great; I have taken it that "The London Merchant Adventurers' cloth exports" (app. C) means their export *via* London.—Wheeler, *Treatise* 22.

from York and Hull in 1614, and only twice as great as that from Newcastle in 1616; it should however be added that the 1615 figures for Ipswich, which must to some extent be regarded as a port for London, were not far below those for Newcastle. Clearly this gives London a much smaller percentage in the Eastland than in the Merchant Adventurers' trade.

It is true that the figure given in the Sound toll accounts showing the number of ships—as against the number of cargoes—travelling east, that is outgoing traffic from England, indicates a rather larger share for London, its average total being roughly equal to that of the other three ports. Ipswich also played a considerable part as a domicile for ships or rather for shipmasters. That London played a more prominent part in the Baltic Sea in shipping than in the cloth trade is partly explained by the fact that it almost completely dominated the trade in the other principal exports to the Baltic, that is in hides and skins. Ships hailing from London made up more than half the total export of the articles, and the same was true as regards a few less important commodities. Still London was not at all as predominant in the Baltic trade as it was in the trade of the Merchant Adventurers.

On the remainder of the sea trade with European countries, there are no such comprehensive figures. But data concerning the cloth export at the beginning of the 17th century indicate that the most important cloth-market for the towns on the south coast was France. The figures for several of these towns (Exeter, Weymouth) are not far behind those for London.[94]

The conclusion appears to be clear. It requires little insight to realize that economic policy contributed much to the effecting of these results. It is true that the great importance of the northern ports in the Baltic Sea trade was linked up with the fact that the demand of the latter was mainly for the coarser cloths produced in the North-Eastern counties. On the other hand, it was just this kind of cloth which was so frequently exported through London, and the tendency in the capital to attract to itself West of England cloths proves that the place of production was

[94] *Tabeller over Skibsfart og Varetransport gennemoresund 1497-1660,* ed. N. Ellinger Bang, I (Copenhag., 1906) II A (Copenhag. 1922) Tab. 16, cp. A. Friis, "Bemaerkninger til Vurdering af 0resundstoldregnskaberne" *(Dansk Hist. Tidsskr.* I X : iv, 1925) 109-82. The material is so easily accessible and so extensive that I refrain from reproducing the complete figures. It should, however, be added that recent research has shown that the records of the Sound toll for before and after 1618 are not comparable.

not the decisive factor. Nor did the geographical situation of London make it any more convenient for her to trade with the Netherlands and the German North Sea coast than to trade with France; if anything it was rather less convenient. The difference in distance of London on the one hand and of Hull and Newcastle on the other from the Baltic, where the two latter were predominant, was no greater than was the case with Hamburg where London was all-powerful. The difference between the two finds its natural explanation in the difference in company influence. The Merchant Adventurers' Company, which was as a rule favoured by the state, was able to attract the trade of the North Sea ports of the continent to London, whereas the Eastland Company had no such tendencies, and the Baltic trade could therefore go to the North of England towns; the French trade, like the less important trade to the Iberian Peninsula, being usually able to steer clear of company influences, could be carried on by places in the South of England.

However, the first of these three branches of trade, the sale of cloth to the staple centres in the Netherlands and Hamburg, was the most important feature in the English export trade to the continent, even through a large part of the 17th century. Consequently, London's development received a powerful stimulus at the expense of the other towns, by means of the regulated companies and chiefly the Merchant Adventurers; and the state took no decided steps to hinder it.

As regards these companies, there is therefore no doubt that the economic policy of the state gave London a greater preponderance than it would have otherwise had; it is possible to prove this fact statistically more conclusively than is usually the case for early times.

The joint stock companies

In many respects the growth of joint stock companies took a somewhat different and rather paradoxical course. Both as regards unification and otherwise, they paved the way for a development which no one could have foreseen. Fortunately, this may be summarized more briefly than the features in the development of the regulated companies, with their complicated and conflicting effects from the point of view of unification.

As a general statement, which will of course require modification, it may be said that the joint stock company was a creation of two or at the most three categories of individuals; of London merchants, of courtiers or other men of influence in political quarters, and of inventors, discoverers and others who were

specially qualified for such activities. Only in exceptional cases were they private citizens and provincial merchants. Nor was this at all unnatural. The great risk run by the earlier enterprises of this kind; the close link between the later enterprises and the stock exchange and capital market; and the intimate connection of the old and the new enterprises with the activities of the state, all co-operated to exclude provincial merchants, thoroughly rooted as they were in medieval trading usages.

Among the exceptions to the general rule, however, was the oldest of all joint stock companies, the Russia Company, not according to its first charter of 1555, but according to its second, granted by parliament in 1566. The interlopers of the East Coast towns had begun, in the interval between the first and second charter, to compete with the company and, with this in mind, the merchants of four provincial cities were given the right to subscribe shares if they had carried on the same trade for ten years, a ruling very similar to that prevailing in the Eastland Company. In the charter for the company trading with Guinea or Senegal, in 1588, six provincial merchants were mentioned by name as against only two London merchants, and in the colonial companies, too, there do occur a few instances of provincial influence. Thus the so-called second or northern Virginia Company of 1606 was made up of inhabitants of Plymouth and other "outports" of the West and South of England. In 1620, there followed a "council", likewise in Plymouth, and it was in the territory of this company that the Pilgrim Fathers, in the same year, founded the most famous of all colonies, New England. Finally the Newfoundland Company's charter of 161 o provided for shareholders in London and Bristol though, of course, under the government of London.

But in actual fact, all this did not indicate a great degree of co-operation with the provinces, with the possible exception of the Russia Company, which, perhaps, incorporated the original interlopers, although nothing is known on the point and trade by outsiders occurred even after 1566. None of the other last-named companies attained any great importance, not even the second Virginia Company, since the company's territory was colonized independently of the organization in the mother country, and moreover the latter was dissolved in 1635.[95] The

[95] Charter of the Russia Company and of the Senegal Adventurers: in Hakluyt O. I 372, G. I l l 91, and O. I I : 11 123 ff., G. VI 443 ff. resp.—Ditto of the Newfoundland Co.: in *Select Charters* (ed. Carr) 52, 54.—For the rest Scott II 41 ff., 299-306.

companies which laid the foundations of England's colonial empire and of the evolution of the new forms of enterprise were not of this group.

There can be no doubt that the joint stock companies were imagined to be new London projects for the purpose of attracting trade to the capital. A convenient summary of this view is to be found in a Scottish complaint of the period after the Union (1711), arising out of an attempt on the part of the Africa Company to induce parliament to give it a monopoly as a joint stock company. According to the Scottish pamphlet this would have excluded all provincial ports from participating in the African and American trade—the latter presumably because the exclusion from the African trade hindered the slave trade with America—in the same way as they were kept out of all trade with Asia, so that the only trade left over would then be the European.[96]

In this discussion on the localization of trade in London, just as in that on the regulated companies, it is necessary to distinguish carefully between the shareholders' home and the trading centre. With regard to the joint stock companies, for London to enjoy a monopolistic position almost went without saying. For trade had to be carried on by the company as a complete entity, not by individual merchants trading on their own account; and there was no other English town which could possibly have controlled such extensive trading operations by itself. The joint stock companies, organized as monopolistic entities, did in their sphere of activity what the common shipping of the regulated companies had done in theirs, though obviously in a more concentrated form, since the joint stock companies were concerned not only in the lading and unlading of goods, but also in purely commercial operations. The famous "candle auctions" of Indian goods, held by the East India Company, made London the centre for that part of the spice trade which was not commanded by Amsterdam, as also for the trade in such other East India goods as were not forwarded to any large extent by the Dutch settlements. It followed naturally from the nature of the East India Company that this should be so. To prevent it would have required as fanatical a policy of particularism as was practised in the Netherlands—and, be it noted, in favour of *other* cities than the greatest and most important in the country. Even then it would probably not have neutralized to any extent the effect of the monopolistic forces in favour of London. In comparison with these forces the direct ordinances favouring London were

[98] Cunningham IP 249 note 4 (cp. 275 note 6).

of comparatively little significance, though they were not entirely absent. The customs advantages given to the East India Company, for example, presumed that imports and exports came through London. In other cases this was explicitly commanded. The East India Company's exports of precious metals and the obligation imposed on another company to deliver precious metals and precious stones were tied down to London and to two other ports. But the principal factor was, as pointed out, the very existence of monopolistic joint stock companies. It was precisely the imposing expansion of these which provides a partial explanation for the unique growth of London.

London's position as the staple for the colonial trade under the old colonial system, as it was called, must also be added; and it was very similar in character. It represented the most powerful, most important and most enduring effect of the staple policy, that is of that aspect of medieval municipal policy which is dealt with in that connection *(v.i.* part 3, ch. 2). There was no other distinction, in theory, between London's position in the old colonial system and its position in the oceanic trade, organized in companies, than that the first was an outcome of conscious economic policy, whereas the second was, in the main, the unpremeditated result of the monopolistic forms of enterprise which were retained on quite different grounds.

The opportunities for merchants and capitalists in various parts of the country to take part in the joint stock companies was an entirely different matter.

In that respect the enterprises originally were almost exclusively London companies. The most famous of them all, the East India Company, from the beginning ostentatiously and of right bore the title of "Governor and Company of Merchants *of London* trading into the East Indies". It was not until 1698 that the name given in its charter showed any indication of national unification ("The *English* Company trading to the East Indies"), and in practice, indeed, this name was hardly ever justified. The fact that the East India Company originated in the Levant Company had something to do with this; of the original 101 shareholders, twenty-three also belonged to the older company, and the first governor of the East India Company was also the governor of the Levant Company. Now the latter, in its old form as a joint stock company, was reserved, as its full name indicates, to London merchants. Its change of name in 1605 to a so-called national, regulated company did not alter its purely London character any more than similar changes did in the other

companies of this kind; and so there were no traditions of a national kind for the East India Company to inherit. Though merchants of the West of England are said to have attempted to take up shares in the East India Company, nothing is known about their having actually assisted in the company; and all shareholders concerning whom there is any information were either settled in London or were noblemen. Furthermore the East India Company was so conceived from the outset as to recruit its new members from sons and apprentices of the original shareholders and its own employees, beside those whom the company chose; under these conditions the opportunities for provincial merchants to join the company later were likewise presumably very few. The position was not so simple in the other joint stock companies. From the time of their inception, and even from an earlier date, they generally included many eminent personages and were therefore less bound to any definite locality; but only in the exceptional cases already mentioned is there proof of any intention to co-operate with the provincial merchants.

The whole situation was changed, however, when the novel and remarkable phenomenon of the transferability of shares made its appearance and loosened the whole system of hard-and-fast relationships. As soon as it had manifested itself on a large scale, which as we have seen was the case at least from the Restoration onwards, it became impossible to confine shareholding in the companies to particular localities or to particular groups of individuals. The legislation of the last century has amply proved the futility of any such attempts, once the transferability of claims to capital had become widespread. Thus an undoubted unification took place in the sense that no locality enjoyed any preference over any other in the matter of holding shares in an enterprise. It was due *to this* and not to any definite measures that a considerable incursion was made in the long-preserved system of medieval particularism.[97]

[97] For the East India Company, see its charter of 1600: the customs preference applied to goods from India "unto the port of London or any of the creeks members or places to the said port belonging" and likewise at least in one case to goods "from our port of London" etc. (a less precise formulation in another place; in *Register of Letters 1600-1613*, ed. Birdwood & Foster, 176 ff.). The list of persons contains among others, nine "citizens and aldermen of London" *(op. cit.* 164), in the latter records there occur also several traders of London (e.g. *op. cit.* 271 f.) etc.; the limitation of silver export to London, Dartmouth and Plymouth *op. cit.* 187; see further Hunter I ch. 6.—On the E. I. Co. and the other companies Scott I 122, 147 f., II 91 f., 103, 123 ff.; G. L. Beer, *The Origins of the Brit. Col. Syst. 1578-1660* (N. Y. 1908) 179-88, 197 ff., 201 f.,

But the change was confined entirely to shareholding. The localization of trade and shipping in London was not affected. The tendency of the joint stock companies to attract long-distance trade to the capital was probably by no means weakened by the mobility of share capital. At the same time, London's evolution into a capital market naturally received a powerful impetus. The aversion of the "outports" to the joint stock companies thus had an obvious explanation, in that it was they who prevented any uniform diffusion of economic activity throughout the various cities in the country, to a far larger extent, apparently, than the regulated companies, which at least had a number of not entirely insignificant local branches.

Results

Broadly speaking, the results were probably unavoidable. The grave and difficult functions attendant upon the "great voyages" also presupposed a certain concentration of activity in one locality or another. It is difficult to say whether such concentration was developed to an unnecessary degree, but the general impression, at least from my own point of view, is that it was. Be that as it may, there was no deliberate economic policy at all aiming at unification on any point. In fact, the very reverse was often the case, the prevailing policy favouring both certain provincial towns and, primarily, London, sometimes simply because the interests of the moment demanded it, and sometimes because of the belief in the advantages of a staple policy. The actual events which did tend towards national unification and to place the various parts of the country on an equal footing were the unforeseen effects of profound economic changes, which were entirely independent of any conscious economic policy.

8. ENGLAND: FURTHER ASPECTS OF STATE INFLUENCE

It is comparatively simpler to illustrate the state's influence on the work of unification than to gauge its effects on the other aspects of the development of the forms of enterprise. Every investigation of the consequences of an individual factor involves a train of experimental reasoning and an answer to the question

205, 343, 347 *et passim.*—Cp. R. Coke, *Treatise III: England's Improvements* (Lond. 1675) 61: "Since our ports are so much better and convenient for foreign trade than those of France and the United Netherlands, why must the Turkey, East Indie and Guiny trades (and for aught I know the trades to Hamburg, Muscovy and into the Sound) be driven from this one port of London?"

of what conditions would have been like had the particular factor not been present, or had it taken some different form. Historians who have no use for such conjectural reasoning must therefore refrain from passing judgment on the effects of individual forces in a common development. But the problem thus posited is so essential to the central theme of the present work that I have no choice but to attempt to find an answer. The task is all the more difficult because, externally, the state exercised a powerful influence on the undertakings; to eliminate the influence of the state is therefore to postulate such kinds of enterprises and such a development of them as differs widely, at least from a superficial point of view, from the actual facts.

The first question refers to the state's influence on the form of the undertaking itself, or, in other words, to the existence of the regulated and joint stock companies.

The existence of the companies

As far as the regulated companies are concerned, the answer is not difficult, for their first beginnings reach so far back into medieval forms of organization that there is every reason to assume *a priori* that the state's influence was fairly small.

The organization of the Merchant Staplers was presumably an exception to the general rule, but the most that can be said for it is that it had a feeble and indirect bearing on modern enterprises by reason of its relationship with the Merchant Adventurers' Company; and it is the latter which is of primary importance. The charters granted to English merchants by the Duke of Brabant in 1296 and 1305 have been mentioned above (330) and they clearly show that the merchants had some kind of organization even at that early period. The English charter to those merchants trading in the Hanseatic territory, dated 1391, about a hundred years later, gave royal assent to the choice of representatives which the organization had selected on its own initiative. A whole series of English charters of the following decade (1404, 1407 and 1408) granted rights to institutions which certainly did not owe their origin to them.[98] During the next century, the co-operation of the king and to a certain degree also of parliament was demanded, to confirm the standing of the organizations and to settle their internal dissensions in the manner described in connection with the quarrels between London and the provincial towns.

In Elizabethan times, the monarchy's influence took a new turn when it granted the Merchant Adventurers and the Eastland

[98] **See above, note 9,**

Company their first charters of incorporation, and conferred similar privileges on many other less vigorous companies. Whether or not this legally important recognition by the state had any real significance in fact depends on the answer to the question of what might have occurred without it. It appears obvious that the most active regulated companies had so long a history behind them, even at that period, that the legal bestowal of incorporation could not have had any real creative force, though it would, no doubt, have been awkward to do without it. To discover the state's importance for the development of enterprises, it is therefore necessary to consider first and foremost the joint stock companies.

There is no doubt that the advent of those undertakings which evolved as joint stock companies was not the work of the state. It is precisely this which distinguishes the English and Dutch enterprises from the French. The driving force behind these institutions came from private sources, from enterprising merchants, pugnacious and profit-hunting adventurers and pirates such as Raleigh, Drake and Hawkins and from courtiers and members of the aristocracy who were as eager as anyone else to extract personal profit from the circumstances of the moment.

For all that, neither the monarch nor the ministers of state were indifferent to what was going on. Nor did they have any desire to abstain from participating in the profitable expeditions. On the contrary, Elizabeth endeavoured to benefit herself and the treasury as much as possible, and she took part not only in the privateering companies of Sir Francis Drake, but also for example in the Africa Company. A third of the profit was to be the Queen's share in return for the loan of four men-of-war. Her successors followed in her footsteps. In 1624 James I tried to become a shareholder in the East India Company. The directors tactfully refused the honour by declaring that in the opinion of the company's legal adviser, the king's participation would render the whole concern state property, because it was impossible to have a company to include the king and his subjects. This, of course, was only an excuse, for James I had long since become half-owner of the New River Company without any such consequences. Charles I repeated his father's overtures to the East India Company in 1628 and he wanted a fifth share without paying for it. When his effort failed, he, together with several London merchants and one of his courtiers, formed a competing company in 1635—contrary to the charter granted to the East India Company—called Courten's Association, and he thereby

hoped to make a similar profit. In the charter of the renewed Africa Company in 1660, Charles II reserved the right to a sixteenth of the whole; but when a new charter was issued two years later, this limitation on the king's share disappeared. After the Restoration, it was customary for members of the Royal Family to participate in the companies, and in 1671, for example, Prince Rupert, the first Governor of the Hudson Bay Company and a cousin of Charles I I, received a sum of money, the amount of which has never been established, although he contributed nothing at all."

Fiscalism

The English companies, it might therefore appear, were just as much a product of the state or of the monarchy as were the French; but in fact it was not so at all. The English companies owed their rise as well as their capital to private initiative. The king's good-will was manifested only in the attempt to share in the profits as far as possible, without making any contribution. The company directors considered the favour of the monarch indispensable both for procuring the charters in the first place, and to avoid having them either formally or actually repealed at a later date, but they preferred not to "pick cherries with great lords", as Axel Oxenstierna put it on a similar occasion,[100] for they had little doubt as to who would get the fruit and who the stones. In other words the companies served as milch cows to the government in its perpetual financial straits. They were subject to unashamed and obvious fiscal treatment which was anything but a helpful solution to their commercial problems. The contrast on this point between England and France is almost spectacular. From an early date the financial plight of the French monarchy was much more desperate than that of the English, and it led to much more doubtful fiscal expedients; but in spite of this the French trading companies always figured in the expenditure and not the revenue of the state.

To say that the participation of the English kings in the undertakings was confined to attempts at shareholding is to draw rather artificial distinctions. There was no real difference between

[99] Elizabeth: Scott I 30, 74ff., 80, 82 *et passim.*—James I: Hunter I 406, II 29, Scott II 108; Charter of the New River Co. 1619: in *Select Charters* (ed. Carr) 109 f., cp. Scott II 20 ff.—Charles I: Hunter II 37-45, Scott II 109 f.—Charles I I: Company Charters in *Select Charters* 176, 180.—Prince Rupert: Willson I 63 f., 70.—In general: Scott I 174-176, 183 *et passim.*

[100] Records of the Swedish Treasury 6 Sept. 1636, quot. C. T. Odhner, *Sveriges inre historia under drottn. Christinas förmyndare* (Sthlm. 1865) 250 note 2.

this kind of participation and the other attempts to force money payments from the successful companies. Sometimes it was called participation, sometimes loans, occasionally gifts and sometimes, though rarely, taxes. The history of the East India Company, the most successful of the older joint stock companies, contains numerous examples of such fiscal encroachments. They, it must be presumed, determined the relationship of the state to this powerful corporation in the majority of cases. Obviously the state was, for this reason, interested in the form taken by the companies, for this form was particularly well adapted for opening up such sources of revenue as the contemporary ministers of finance were always at pains to discover. The East India Company became the means, together with the Bank of England, and later, to an extremely large extent, the South Sea Company, for taking over systematically the debts of the state. This has already been mentioned *(v.s.* 410), but it merits a rather more thorough description, since it was the most important point at which the state influenced the expansion of the companies, and it throws light, at the same time, on the nature of state help.

As pointed out at the beginning of this long chapter, there was a great resemblance between the English system—as well as that emanating from Scotland, that is from John Law's famous French Mississippi Company—and the Italian *compere* of the Middle Ages. The resemblance lay in the fact that the enterprises were creditors of the Crown, either directly by advances or indirectly by taking over Crown debts. In either case, they allowed the state more favourable rates of interest than it would otherwise have been able to secure. In the latter case the effect was, moreover, a strengthening of state credit, for it freed the market of state securities, the quotations of which had fallen, thus exercising an adverse influence on the willingness to take up new state loans, or to renew old. In the former case, new savings or capital investments were absorbed, while in the latter, the companies stepped in as creditors in the place of the private individuals who had previously made advances. In both cases the general public subscribed the shares to the companies. It thus received shares in the East India Company, the South Sea Company and so on, in the last-named company in direct exchange for holdings of state securities. In both cases, again, claims on the state flowed into the companies where they formed assets against their share capital. And so when people invested their savings in the companies, they were indirectly subscribing to state loans. The most flagrant example of the kind was the Bank of England,

where the same thing held good not only for those who subscribed shares but also for those who deposited their money in the bank. This exchange of one class of paper claims for another is especially well known to-day under the name of "stock substitution". The international capital operations of the Swedish Match Trust, for instance, were a fairly faithful reproduction of what took place in England between the revolution of 1688 and 1720.

The point in question, however, is the precise influence of the whole system on the concerns themselves. It obviously did *not* lead to an increased amount of capital being applied to commerce, for what was loaned to the state could not at the same time be used by the business concerns for their own activities. The money which went into artillery, munitions, uniforms, subsidies and so on could not possibly finance expeditions and cargoes to the East Indies. And so for their own commercial purposes the companies had to procure capital in excess of the sums they had loaned to the state, either by issuing further shares or by incurring more debts, and this in fact was the usual practice. Their favoured position no doubt then stood them in good stead, and it is by no means unlikely, moreover, that their credit was also improved by a mistaken notion that the claims on the state constituted a "fund of credit", so that the capital could simultaneously be lent to the state and serve the companies' own commercial activities. But apart from this circumstance which, as a rule, was of minor significance, the companies had much to gain by the system, and an analysis of it affords a good picture of the actual part played by the state in their development.

The formal relationship between the companies and the state consisted in this, that the state paid for the advantages it received from the companies by issuing charters. But the actual profit derived from the company charters was twofold, and there was an important difference between the two.

One part of the benefit was made up of a monopoly, in the usual sense of the word—exclusive rights granted to the companies in their various fields of activity. The monopoly, of course, was employed by its owner to demand higher prices than he would otherwise have been able to get, which meant, in effect, that the customers paid for the credit which the state had secured through the companies. The system thus involved an indirect taxation of consumers' goods in the financial interests of the state. It was an indirect taxation of consumption by means of a monopoly, not in the hands of the state but wielded by private individuals.

Again there is a marked similarity with the modern Swedish Match Trust (or Kreuger & Toll).

The second aspect was of a totally different kind, consisting as it did in the right to corporative status. It might appear as though the state in this case granted a favour costing nothing at all and as though the companies gained something for which no one had to pay; but that is a mistake. Where the actual advantage lay was in the fact that the arrangement was not extended to everybody. The state could demand payment in return for its permission to form corporative associations, simply because it withheld the same privilege from all the other concerns which could have made use of it. In reality these privileges, too, were exploited as private monopolies by the state for fiscal ends. The general effect on economic life and on the consumers was that the other non-corporative undertakings did not provide the public with as good a service as they might have done had they been allowed corporative status; and consequently the privileged enterprises made the public pay not only for their specific privileges, but also for their more suitable organization. For this reason they were prepared to pay the Crown for these advantages by allowing it favourable terms for loans.[101]

The state therefore influenced the development of the forms of enterprise in a very peculiar way. The privileges granted to the companies tended to diminish, rather than increase, the capital available for their own operations, for obtaining privileges presupposed lending capital to the state. It was only by raising more capital than they needed for their own purposes that the companies could fulfil their economic functions. At the same time the effects of the new forms of enterprise were restricted by the monopolistic limitation of conferring the advantage of corporative status to those concerns willing to finance the state.

On the other hand, however, there is no denying that in precisely this fashion, the state acquired an interest in the development of the joint stock company. Between 1688 and 1720 it was the requirements of the state more than anything else that acted as a spur on the enterprises and led to mobility in the

[101] The material used here originates chiefly in Scott (I ch. 19-21, I I I div. 10). His treatment is the first scientific analysis of this general problem and cannot be too highly praised. This does not prevent it from containing, in my opinion, some mistakes on subordinate points; I have dealt with one of them in a short paper called "A Note on South Sea Finance" in *Journal of Economic and Business History* I I I , 1931, 321 ff.

capital market and to speculation. Certainly it was not a conscious effort to encourage economic activity, but this by no means diminished its tendency to propel economic development along certain lines.

The state was directly linked up with the development of the joint stock companies by the two expedients employed for profiting by them—the right of corporative organization and monopolistic privileges. From a dynamic point of view, the first is the more important, and the question therefore arises of the extent to which corporative capital associations could be developed without the co-operation of the state.

Incorporation

The legal effects of "incorporation" are perfectly clear. The charters, it is true, were formulated in the usual verbose and unsystematic legal phraseology, but they were by no means ambiguous. As the preceding outline has shown, two factors were primarily involved; on the one hand "(perpetual) succession", that is the perpetuation of the company beyond the lives of the individual members; on the other hand, the right to perform various functions and bear various duties, to sue and be sued, to possess property and so on. Both aspects may well be included in the popular expression "legal personality". The value to the enterprise of such personality is far too obvious to require further discussion, and it was just as apparent to people at the time. As early as 1568, in the charter granted to the Mines Royal, reasons for corporation were given as "thereby to avoid divers and sundry great inconveniences which by the several deaths of the persons above said (i.e. the shareholders) or their assigns should else from time to time ensue". An important consideration was the corporation's independence of the private property of its members, for without this, each and every shareholder was considered liable not only for the debts of the company as a whole, but also for the debts of every individual shareholder. This too was occasionally given as a reason for incorporation. It was very much more doubtful whether the granting of this status carried with it limited liability for the company's own obligations; for this question was never clearly resolved at the time. Thus in the case of the so-called Million Bank of 1695, the company itself declared that the liability of the share subscribers was limited to the actual amount of stock subscribed, and so some sort of limited liability did occur. Of less theoretical import was the fact that an Act of Parliament of 1662 (14 Car. II c. 24) freed people from being treated as merchants, within the scope

of the law of bankruptcy, for the only reason that they were shareholders of a company.[102]

For our purpose, the important point is not so much incorporation in itself as the influence of the state on it, for it is not at all clear why the advantages enjoyed by individual concerns could not be made general, since it certainly cost nothing to grant them. The fact that the state made the granting of corporative status a privilege discouraged rather than promoted its wider extension. If the rule that only the king could "incorporate" a company had been abandoned, no economic difficulties would have arisen, as can be seen in Scottish history, for Scotland was granted such liberty by statutes of 1661 and 1662.

Whether the urge towards the creation of corporative capital associations could have evolved without state assistance is less obvious. But whether or no, it is clear that the state's influence cannot be considered very great. For in the first place, it has already been shown how the joint stock companies, in their primitive form, grew insensibly out of the medieval non-capital corporations and the purely private non-corporative capital associations. Secondly, the possession of fixed capital, the creation of transferable shares, and of shares of fixed amounts, and similar phenomena which prepared the way for the modern joint stock companies were, as far as can be seen, the outcome of semi-unconscious trial-and-error experimentation by the undertakings themselves, and were not the result of any state initiative whatsoever. Thirdly, and most important, the structure of economic life itself showed a powerful spontaneous tendency towards capital associations. A whole series of concerns without any recognized corporative status emerged wherever joint stock companies had existed, as soon as obstacles were placed in the way of the development of the latter. Especially was this the case in the Puritan Revolution, and, with disturbing force, during the great period of speculation in the 1690's and before the

[102] See in general Sir Edward Coke's very conclusive definition of a "corporation" in Sutton's Hospital Case 1612 (*Reports* fol. X 29b), quoted in detail by Williston (see above, note 52) 204, 207 f., and Carr in intro. to *Select Charters* xvi ff.—The Mines Royal: in *op. cit,* 5.—Responsibility for solvency and debts of the shareholders: Carr *op, cit.* & Scott II 466 cp. I 338.—Responsibility for company debts: Scott I 344, II 61 ff., 64 note 1, III 276. What Scott touches on in I 228 is, on the contrary, an expression of the earlier incompleteness of the corporative character of the company capital. Scott's commentary on the Act of 1662,1 270, 283, disagrees in any case with its wording, and Holdsworth's criticism on the point, *History of English Law* VIII 205 note 1, appears to me to be perfectly justified.

South Sea Bubble in 1720. The English promoter and capitalist of the 17th century needed no assistance to encourage him to create new speculative enterprises, as was the case in France; rather did he embark recklessly on any undertaking which, to his somewhat uncritical imagination, seemed to promise easy profits. Under such conditions there was very little left for the state to do as far as company promotion was concerned.

In point of fact, private non-privileged companies were so common a phenomenon after the revolution of 1688 that one cannot but wonder why anybody paid the state ready money in return for the privileges of incorporation, when large numbers of similar concerns did very well without them. The explanation is mainly to be found in the legal uncertainty surrounding the unprivileged undertakings, which could well lead to their downfall. The risk was probably all the greater in proportion to the size of the undertaking and the envy it aroused; but just this is clear proof that the achievement consisted in refusing corporative status and not in encouraging its diffusion.

If the state had any direct influence on the development of the forms of enterprise, such influence occurred in a contrary direction, i.e. in attempting to regulate and discipline private initiative, which was a great and difficult problem in itself. This activity led to a marked *decline* in the growth of modern forms of enterprise, as a result of the Bubble Act of 1719 (6 Geo. l c. 18) which, for a hundred years, dominated English legislation in this sphere (repealed in 1825 by 6 Geo. IV c. 91). The Bubble Act was the culmination of various attempts to limit speculation in shares (1696/7 by 8 and 9 Will. I l l cc. 20 and 32) which, for instance, took the form of restricting the number of stockbrokers to a hundred. The act of 1719 itself was of course occasioned by the abnormal growths of the South Sea Bubble era, but, to follow Professor Scott's convincing argument, it had the effect of aiding the big enterprises and above all the South Sea Company itself against their many competitors for capital.

On paper, the new law of 1719 was an attempt to uproot the luxuriant growths of unprivileged, speculative enterprises which had arisen incidentally and, apparently, in opposition to the current law. The special preamble of the relevant sections of the act stigmatized the usurpation of corporative status by such undertakings, and the transferability of their shares. They were, under threat of exceedingly heavy penalties, prohibited to pose as corporations, to allow transferable shares to be subscribed, to make the shares transferable and, a practice that was very common, to make use of charters which had

been granted for other purposes or had lapsed (§§18-19). Plaintiffs were to receive threefold damages besides costs, brokers who assisted in infringing the law were to lose their status as brokers and to pay heavy fines and so on (§§20-21). The whole onslaught was, however, directed entirely against corporative undertakings and not against private partnerships (§25). Moreover, of the former, all such enterprises were excepted as had been established before the beginning of the actual South Sea Bubble, that is before the middle of 1718 (§22); in addition, the South Sea Company itself, by explicit mention (§24), and also any such as had cultivated the sort of trade for which it was originally established (§27). Finally the privileges of the East India Company were expressly protected (§28).

The law wanted to prevent the joint stock companies from becoming a normal kind of undertaking; but at the same time it took under its wing the large privileged corporative and all the non-corporative enterprises.

The peculiar thing is that this aim, as already hinted, appears to have been attained *(v.s.* 415 f). It might have been expected that the whole incursion of the state would have proved illusory, on account first of the expansion of economic activity in itself, and secondly of the growing habit of evading inconvenient legislation carried out by an inefficient administration. That this was not so may probably be due to the fact that the hothouse growth of joint stock companies between 1688 and 1720 did not, generally speaking, correspond to any great need in the country.

That the state no longer required the companies for financial purposes undoubtedly exercised a decisive influence on developments, and this in turn was connected with the changes in the methods of English public finance. One year after the South Sea crisis, Walpole finally settled into office and remained in power for twenty-one years. Although many aspects of the practices employed in revenue-raising even in this period appear very doubtful in modern eyes, this period was nevertheless the turning-point in English financial history. The basis was laid for a sound system of state credit, there was an increase in voluntary subscriptions to state loans, and the rate of interest for the loans could be lowered. As early as 1733, no one could deny Walpole's assertion that the public had changed its opinion of state loans, and whereas formerly people had been all too anxious to have their money repaid, they now endeavoured to postpone the time for repayment as long as possible. This view was confirmed four years later when the proposal for conversion and redemption of state loans was turned down because it was considered that it would be unfair

on the capitalists. England had thus arrived at the stage which, seventy years previously, Sir William Temple had held up as a model to his countrymen when, as the English ambassador, he recorded his observations on the Dutch situation. In such circumstances the companies were no longer required as channels for absorbing the savings of the public. Although the most important company, the East India, still had to make occasional payments to the treasury for its privileges, the granting of privileges to monopolistic enterprises ceased completely from being a normal practice of public finance.[103]

Until 1720 the influence of the state on the development of the forms of enterprise was incontestable, even though it was indirect and without set purpose. But to the stagnation, or rather the retrogression, which followed, the state appears to have contributed both directly and indirectly, directly by means of the Bubble Act and indirectly by the fact that the state no longer required the companies as a source of financial assistance.

Monopolies

So far we have dealt only with the development of incorporation. The other aspect of the granting of company privileges was the special, customary, monopoly rights bestowed on the favoured organizations. This matter is on an entirely different plane, in so far as it deals with only a limited sphere of undertakings and not with their development as a whole. Most closely related to it are foreign trade and colonization, and throughout the company history of the mercantilist period both in England and everywhere else, it was this aspect which was given the strongest political emphasis. In order not to burden the exposition with an unnecessary treatment of points of view which have already been described in detail, I propose to omit the question of how the common-law courts and hostile public opinion became reconciled with the company monopolies. More often than not, Acts of Parliament were passed in these cases, giving the companies legal protection against interference by the courts. That parliament agreed to uphold the monopolies in so many cases was due to its interest in foreign trade and colonial policy; but the antagonism to monopolies none the less made it more difficult for them to

[108] *Parliamentary History* VIII 1202, cp. 1208, 1219.—N. A. Briscoe, *The Economic Policy of Robert Walpole* (N.Y. 1907) 64 f., 71-74, 77, 78, 82 f.—Sir Wm. Temple, *Observations upon the United Provinces of the Netherlands* ch. 7 (2nd edn. London 1673, 252 f.).—On the course of events after the Bubble Act: H. A. Shannon, "The Coming of General Limited Liability" (*Economic History*, supplement to the *Economic Journal*, 1931, 268 ff.).

exist and even during the *ancien régime* brought about the downfall of the majority, as may be judged from what has already been shown in this chapter.

Even in England, in spite of limited state initiative in matters of trade, there occurred the same kind of state trading after the great discoveries as is found in all the other countries described. It was however less manifest in England than in any continental state with the exception of the Netherlands, and was to be seen in two forms, first in the state intervention in the activity of private enterprises, secondly in a delegation of what is now considered state functions to private enterprises. Of the two the latter was by far the more important.

The state rarely claimed any right to lay down the law for the enterprises. It is not easy to see why they did in some cases and not in others. The most typical example with which I am acquainted was the very loosely organized Levant Company, after its earliest 1581 charter, according to which the queen reserved the power to dismiss the governor independently and to appoint someone else in his place; in this case the Crown was also to have the power to elect two members to the company who were to have the same rights and duties as the rest. The opportunity for keeping check on the companies' conduct was provided in the right, which the Crown regularly reserved, of withdrawing its grant of corporative status after a certain number of years, usually very few, irrespective of whether the "incorporation" had been fixed for a limited time. The most famous case in which this right was actually applied is that of the original ("old") East India Company. In 1698 its charter was revoked upon three years' notice, although the company had already had "perpetual succession" for many decades. Where a time limit had been included in the original charter, provision was sometimes also made for the undertaking to be examined, to determine whether it was fit for renewal, as for instance in the Levant and East India companies, according to the charters of 1592 and 1600 for the first, and of 1600 for the second. Compared with the scope of the granted privileges, provisions for state interference were, with few exceptions, very modest, the only important one being the opportunity for rescinding the privileges—apart from the assiduously practised habit of ignoring the rights which formally were left untouched; the history of the East India Company provides many such examples.[104]

[104] Lev. Co.: printed in Hakluyt O. I I : 1 147, 149, G. V 195, 200 f.; O. II : 1 303, G. VI 91 f.; *Select Charters* (ed. Carr) 42.—E. I. Co.: in *Register of Letters*

Far more important was the opposite tendency to transfer state authority to the companies. To some extent this already occurred in the regulated companies and originated in the same principles as had created the medieval, compulsory, gild monopoly. In its simplest form it appeared as an exclusive right of members of the company to practise the particular trade. Associations were then formed of all legitimate members of the profession or trade, their corporative activity developed into a control over the manner in which the members fulfilled their allotted functions, the whole business following the well-known model.

Nor was this all. It happened even in cases of really great theoretical importance, that the companies' authority was extended to trade by *outsiders,* which logically presupposed that such outsiders existed, or in other words, that the members did not have a monopoly. The most important instance of the kind was that of the Merchant Adventurers after their first charter of incorporation granted by Elizabeth in 1564. According to this, outsiders were essentially under the same obligations as members, that is, they had to pay duties in conformity with the prescriptions of the ordinance, under pain of the same punishment as members.

It has been assumed that this peculiar system rested on the old Act of 1496/7 regarding trade with the Low Countries (12 Hen. V I I c. 6 *v.s.* 420 f., &c.) because this law prohibited charges of more than ten marks (six and two-thirds pounds sterling). But it is patent that the clause in the charter of 1584 was occasioned by the desire to create a controlling authority for this branch of commerce as a whole; otherwise it would not be possible to explain why a similar prescription was enacted on at least two other occasions for no specific reason—in the charter of the Eastland Company of fifteen years later, and in that of the Levant Company when it was chartered as a regulated company in 1605. In the latter case it even occurred, despite the fact that, strictly speaking, a monopoly had been granted to the members of the company for the district assigned to it.

According to this clause in the 1564 charter of the Merchant Adventurers, therefore, the control was delegated from the state to private merchants to be exercised even over other merchants who were not members of the corporation. This in fact amounted to a devolution of public authority into private hands or, if you will, to *feudalism.* It is not difficult to find contemporary parallels, as for example the Stuart control of industrial regulation in England

(ed. Birdwood & Foster) 186 f.; Hunter II 36 flf., 324 *et passim.*—Cp. Carr in Intro, to *Select Charters* xix, with references.

and, to a certain extent, the "directions" in the sphere of foreign trade itself in Holland. But presumably all this had only symptomatic importance, for there is nothing to indicate that the hated interlopers were at all tolerated by the company governments. In the case of the Merchant Adventurers, interlopers were expressly forbidden in the 1608 codification of their by-laws, and this prohibition was later formally confirmed by the monarchy. The same virtually applies to the Eastland Company. A close modern parallel may be seen in voluntary unemployment insurance, which has unsuccessfully attempted to draw unorganized workers into insurance societies which are practically identical with the trade unions. The charters of the regulated companies meant in reality, though not in form, that the state abandoned not merely the control but also the actual pursuit of trade to the people whom the companies wished to adopt as members.[105]

In the apportioning of rights over the traders themselves, there was no essential difference between regulated companies and joint stock companies, although the importance of the first was necessarily greater since private merchants occurred only there. The rights applied to functions which, in the modern view, are inherent attributes of the central authority. The companies were able not only to impose money fines but also to confiscate and imprison, and they had power to appoint their own agents with complete authority in enforcing the prescriptions as far, at any rate, as they did not conflict with local privileges. But apart from the privileges concerning traders, the joint stock companies, particularly in the Eastern trade, had powers which in modern eyes have an even more strongly marked governmental character and, what is more, they could be applied indiscriminately. This as we know was not peculiar to England: supported by such *jura regalia*, the great joint stock companies in the mercantilist period became everywhere something more than mere bearers of trade; they were concerned in fact with purely political expansion. They more than any other institution were responsible for the extension of European hegemony over other continents.

[105] **Charter of the M. Adv.: in Cawston & Keane 268 ff., the two others, respectively, in *Ads & Ords. of Eastl. Co.* (ed. Sellers) 145 f., and Epstein 179 ff., 186 f., 189, 192, 194, 207. The supposed connection with the Act of 1496/7: A. Friis 279 f.—Parallels in the sphere of members' rights—see next paragraph in the text—e.g. Russia Co. 1555 (in Hakluyt O. I 270 f. G. II 316) and E. I. Co. 1600 (in *Register of Letters* 175).—Prohibitions against interlopers: in *M. Adv. of Engl.* (ed. Lingelbach) 55 f.; *Foedera* (ed. Rymer) O. X I X 583 f., H. VIII: iv 97 *et passim.***

Political functions

The rights involved varied; but according to modern conceptions they were definitely political in character. The companies had the right to administer newly discovered or appropriated territories, set up law-courts there, make local laws, grant titles, build fortresses, mobilize troops, wage war and conclude peace with non-christian princes and nations, ruthlessly crush whatever threatened their privileges and arrest and deport anybody trading in their territory without permission, in certain cases even the right to have coinage struck for local currency. We find this with variations again and again, particularly in the case of the East India and Africa Companies, as well as the various colonial companies trading with America; one of the best examples being provided by the charter of the Hudson Bay Company (1670). Added to all this there were monopoly rights in economic matters and grants of land, water and mines, altogether a control of power which could hardly have been more complete and which sufficiently explains how it was disobedience could, in 1632, be described as an offence against "God and the company".[106]

The connection between the great privileged companies and the economic policy of the state is therefore clear. Without the charters and privileges granted by the state, they could not have developed along the lines they did, and therefore could not have provided the state with a means for extending its power to every corner of the globe. The companies[5] activities were due as little to the original initiative of the state as to its subsequent active co-operation, and they largely consisted in the exercise of functions which according to modern notions really belonged to the state. This does not alter the fact, however, that the charters were a *sine qua non* for the development that actually took place.

A fact so obvious hardly leaves room for differences of opinion. If we take it for granted that the development of the colonial empire was in itself an aim worth striving for, only one question remains outstanding, i.e. whether the companies were the best instruments for a function with so marked a political and military character.

It was not only in later times that doubts began to be felt on this point. Even when the charters of the first Virginia Company were repealed and the colony was made directly subject to the

[106] Examples in Carr in his intro. to *Select Charters* xxvii, lii, lxxxviif. & note; further in *Select Charters* 176 f., Cawston & Keane 292-95, Willson 332-35.— "God & the Company": Providence Island Co., Scott II 330 f. Date according to the *Calendar of State Papers, Colonial, 1576-1660,* 147.

Crown in 1625, *the* proclamation stated that the task was not one which could be entrusted to any company or corporation "to whom it may be proper to trust Matters of Trade and Commerce, but cannot be fit or safe to communicate the ordering of State Affairs be they of never so mean Consequence".[107] Undoubtedly this consideration also contributed to the rapid liquidation of company administration in the American colonies, from which the United States were eventually to arise and where a real settlement of Englishmen took place. But the principle was much more widely applicable to colonies in lands peopled by Eastern nations. That this inference was not drawn or, perhaps, that the principle was so widely conceived was certainly due chiefly to the fact that the English trading stations in India, Africa, the Hudson Bay territories etc. had no "state affairs" ascribed to them, but were considered purely and simply as commercial settlements. It was a long time before the course of events forced a different conception on the reluctant merchants and statesmen.

When in 1776 Adam Smith attacked the old colonial system *in toto* and trading companies of every kind, one of the mainstays of his diatribe was the same principle as that formulated in the decree of 1625. He applied it all along the line with a mastery of formulation and exposition which made him the foremost theorist of economic policy of all time. Needless to say he was not unbiassed. His judgment is: "To be merely useless, indeed, is perhaps the highest eulogy which can ever justly be bestowed upon a regulated company." He drew his information, with certain exceptions, from two easily accessible sources, Adam Anderson's *Historical and Chronological Deduction of the Origin of Commerce* and Abbé RaynaPs *Histoire philosophique des etablissemens dans les deux Indes,* with the result that his knowledge of the facts was probably superficial. But his reasoning was clear and consistent. He argued that it was wrong to hand over political tasks to commercial organizations and their employees, and this coincided with the fundamental principle of *laissez-faire* which ascribed a high place to the might and integrity of the state *within* a strictly limited sphere. Adam Smith's object was to show that the delegation of state authority to private monopolistic trading organizations was inconsistent with this principle. "The protection of trade in general has always been considered as essential to the defence of the commonwealth and, upon that account, a necessary part of the duty of the executive power. . . . But . . . particular companies of merchants have had the address to persuade the legislature

[107] Printed in *Foedera* (ed. Rymer) O. XVIII 72 f., H. VIII: 1 52 f.

to entrust to them the performance of this part of the duty of the sovereign, together with all the powers which are necessarily connected with it."

He repeatedly insisted that "The government of an exclusive company of merchants is, perhaps, the worst of all governments for any country whatever." From the standpoint of economic theory, this view was based on the fact that the interests of monopolistic merchants and their companies ran directly counter to the interests of the inhabitants in the territories they administered. In their capacity of monopolistic sellers of European products, they were bound to try to force up their prices and might do so by limiting the supply. As monopolistic buyers of colonial produce, they were, on the contrary, inclined to force down prices and might do so by limiting the demand. Adam Smith therefore wanted to see commerce carried on by independent merchants and he would have had the European settlements, especially in the East Indies, subjected directly to the authority of the European state concerned. In other words he sponsored the system instituted in British India after the Indian Mutiny of 1858 and which now prevails in all non-self-governing colonies. A pregnant passage from his work illustrates the actual position as well as his own argument.

"In almost all countries the revenue of the sovereign is drawn from that of the people. The greater the revenue of the people, therefore, the greater the annual produce of their land and labour, the more they can afford to the sovereign. It is his interest, therefore, to increase as much as possible that annual produce. But if this is the interest of every sovereign, it is peculiarly so of one whose revenue, like that of the sovereign of Bengal, arises chiefly from a land-rent. That rent must necessarily be in proportion to the quantity and value of the produce, and both the one and the other must depend upon the extent of the market. . . . It is the interest of such a sovereign, therefore, to open the most extensive market for the produce of his country, to allow the most perfect freedom of commerce, in order to increase as much as possible the number and the competition of buyers. . . .

"But a company of merchants are, it seems, incapable of considering themselves as sovereigns, even after they have become such. Trade, or buying in order to sell again, they still consider as their principal business, and by a strange absurdity, regard the character of the sovereign as but an appendix to that of the merchant, as something which ought to be made subservient to it, or by means of which they may be enabled to buy cheaper in India, and thereby to sell with a better profit in Europe. . . . Their mercantile habits draw them in this manner, almost necessarily, though perhaps insensibly, to prefer

upon all ordinary occasions the little and transitory profit of the monopolist to the great and permanent revenue of the sovereign. . . . As sovereigns, their interest is exactly the same with that of the country which they govern. As merchants, their interest is directly opposite to that interest."[108]

Adam Smith's conclusion was that the possibilities of non-monopolistic trading companies were strictly limited. According to him they were only adapted to banking and insurance, to the construction and maintenance of a "navigable cut or canal" and to waterworks. This was connected not only with his general "atomistic" outlook but also with the hard economic facts with which he was familiar and which seemed to him to apply much more universally than actually they did. These facts were partly due to the cramping of company development following on the Bubble Act of 1719 which only wore off a century later. But this obviously does not prove that Adam Smith was wrong in asserting that the mercantilist companies had usurped functions which could only be exercised by the state in the interests of the governed.

In opposition to Adam Smith's view, it has been shown that in the mercantilist period states did not possess the necessary financial and administrative strength for the exercise of these functions. This particular excuse, which was already made in Adam Smith's time, has much to recommend it. As has been shown in the previous chapters, administration was never so inefficient—considering the tasks it had to perform—as in the mercantilist period.[109] If so, it follows that the companies, in the absence of an effective state authority, were indispensable. *This* explanation certainly has a grounding of truth, but it must be added that such a delegation of functions to private individuals —functions which to us, as well as to Adam Smith, seem obviously

[108] Adam Smith, *Wealth of Nations,* book 4 ch. 7 pts. 2 & 3 (ed. Cannan II 72, 77, 133, 136 f., 140) cp. also art. 1 of book 5 ch. 1 pt. 3 which does not appear in the first two editions (ed. Cannan II 224, 226, cp. 243), where also the limitation of the opportunities for the joint stock companies discussed in the following paragraph of the text finds mention *(ib.* II 246 ff.).

[109] Scott I 448-63, esp. 445 ff., Beer, *Old Colonial System* I 370 *et passim.*—*Parliamentary History* X I X 304, 306 f. ("I think that trade would, constitutionally considered, be much safer, much better managed for the public interest, were it under the governance of a company trading with joint funds, than under the Commissioners of Trade and Plantations or either Secretary of State"—"too complicated, too weighty and diffuse for the Ministers of the Crown to wield" etc. Temple Luttrell in the House of Commons 1777 on the African trade.)

to fall within the state's purview of duties—was not only the result of inescapable necessity, but was also bound up with the general outlook of mercantilism, with its tendency, through subsidies and other inducements, to employ private interests as the best implements of its policy. In other words, mercantilism from one particular angle was more individualistic than *laissez-faire* itself. I shall return to this question in the fifth and last part of the present work.

It is in the nature of the case that the vital influence exercised for political, military and economic reasons by the great joint stock companies upon the expansion of the colonial system was not directly related to the general development of the forms of business organization which matured in the course of the 19th century. That development meant rather that the granting of privileges and the delegation of political power, characterizing the surviving joint stock companies, were abolished. It indicated too that their expansion was continued from the point reached in 1720, when the thread had been broken. In this non-colonial development, in the development, that is, of the purely commercial enterprises, no essentially positive interference by the state occurred in the country where business life had already travelled farthest along the road to modern organization.

VIII

THE EXECUTORS OF MERCANTILISM

A fitting motto for the unification affected by mercantilism might be found in Ovid's line *Ut desint vires, tamen est laudanda voluntas*—even though it lacked the power, its efforts are deserving of praise. Mercantilism had to leave much of its work of unification for its successors to complete. Their work consisted to a large extent in completing that which mercantilist statesmen had striven for but did not achieve and they became, as it were, its executors. Vandal says of Napoleon that from the administrative point of view he organized not the Revolution but the *ancien régime.* This can be applied to the new phase in the economic history of Western Europe. It was the 19th century which co-ordinated and realized mercantilism as an agent of unification. Why did mercantilism fail and its successors succeed in the endeavour common to both?

If the 19th century was successful where the previous era failed, it was due chiefly to two conceptions, the one negative and the other positive, transposed from human ideology to the realm of action. Like all practical, spiritual influences, these ideas were not sufficiently consistent to withstand serious theoretical analysis, and any description must remain unsatisfactory. They may be summarized in the terms "revolution" and "liberalism".

Revolution

The revolutionary principle took practical shape, with exceptional force and speed, in the French Revolution. From the point of view with which we are concerned the Revolution consisted in the negative result of a repudiation of the traditional legal order. The existing state institutions were stripped of their authority and denied any *a priori* validity. They were no longer considered sacrosanct by virtue of their mere existence or the fact that they were invested with the authority of the established order. The social outlook, revolutionary in this sense, had religious and philosophic antecedents. People sought a sovereign standard of external right in their inner reasoning consciousness. In the modern development this eventually normative demand took the form of "natural right", a conception which of course descended from a number of older spiritual currents. By its very nature natural right must always be a revolutionary concept for it does not render homage to any social order for the sole

reason that it is established, but only when it conforms with an ideal independent of external reality.

To a conception of this kind the whole edifice of institutions, laws and traditional rights erected in the course of centuries appeared as an irrational monstrosity, due to a haphazard and careless adaptation to changing political and social influences. Not least did this apply to industrial legislation, strongly influenced as it was by such medieval features as the domination of the towns and the breakdown of the state, while here and there it had been casually and incidentally elaborated and altered in accordance with the diametrically opposite aims of state centralization. This system lost every *raison d'être* once people abandoned the idea that the established order was justified by the very reason of its existence. Goethe expresses the general outlook of the period at the end of the 18th century in the words of Mephistopheles to the young student, in the first part of *Faust,* published in 1790:

"Old laws and rights, inherited
From age to age, drag on and on
Like some hereditary disease,
Stealthily widening, growing worse.
Wisdom turns nonsense, good deeds prove a curse,
Your ancestors your doom!
The native right that's born with us,
For that, alas! no man makes room."[1]

Now that people had become interested in the "right that is born with us" the last hour of the old industrial order had struck, dragging with it, as it fell, the whole social edifice. A few words spoken during a brief debate in the French National Assembly (October 30, 1790) were sufficiently illustrative; the debate referred to a proposal designed to abolish at one stroke of the pen all the tolls in the kingdom. A member declared quite rightly, according to the demands put forward in the *cahiers* of his province : "The despotism has at various times shown that it respected the privileges of the province of Lorraine," upon which he was interrupted by shouts of "No more provinces, no more privileges" *[plus de provinces, plus de privilèges!).* The proposal was thereupon adopted after the majority had silenced a few more opponents from such provinces as had remained outside the national customs boundaries.[2]

[1] **From an unpublished translation by F. M. Stawell and G. Lowes Dickinson.**

[2] *Le Moniteur* **of November 1, 1790** *(Reimpression de Vancien Moniteur* **VI, Paris 1841, 256).—On the** *cahiers* **in this connection, see: Picard,** *Les cahiers de 1789 et les classes ouvrieres* **124 ff.**

"No provinces, no privileges!" This was precisely what Colbert was *not* able to say in his time, with the result that his work of reform went the way it did. The ancient French monarchy had absorbed so much medieval particularism that national unification could not be effected unless absolutism abjured its own foundations. Turgot had attempted to clear up the medieval confusion in those instances which he considered ripe for abolition and which were not so closely bound up with the rest of the social order as were the feudal rights. But immediately he attempted the work it led to his own overthrow. His opponents gained their point when they referred to the long chain in the social hierarchy leading from the gilds to the absolute monarch. They gained their point both before and after the Revolution; the gilds did not disappear so long as the absolute monarchy persisted, and when feudalism went, absolutism could no longer remain.

The revolutionary principle was clearest in France. Some of the corner-stones of the medieval order, which the monarchy had tried in vain to dislodge, fell of their own accord because the abolition of feudalism undermined the foundations. The importance of this may perhaps be best gauged from the fact that so revolutionary a change was by no means due to any considerable interest in the economic aspects of the problem. Without any conscious effort, a result was arrived at which the *ancien régime,* for all its efforts, had *not* been able to attain.[3]

The famous resolution of August 4, 1789, abolishing feudal rights, largely did away with internal disintegration and with' ail that it implied. Provincial and municipal privileges, particularly those of Paris, Lyons and Bordeaux, as well as the practice of selling offices, were declared abolished. Taxes were equalized over the whole country. One week later decrees were drawn up to abolish the sale of offices and provincial privileges. Of outstanding importance for the economic unification of the country was the fact that the division into *départements* replaced the old provinces as early as 1790, thereby cutting the ground from under the hitherto ineradicable toll confusion. On August 27 of the same year, a report was presented which more Than any other reform of the Constituent Assembly, meant the realization of the monarchy's

[3] The following refers to well-known facts, outlined best perhaps in Levasseur's *later* work, *Histoire des classes ouvrieres et de Vindustrie en France de 1789 a 1870* (Paris 1903) 1st chapter of bk. 1. The texts of the laws are usually to be found in the *Bulletin des lois,* proceedings of the National Assembly in *Le Moniteur,* the reports of the sub-committees of the National Assembly partly there and partly and in fact primarily in *Prods-verbal de Vassemblee nationale.*

age-old endeavours, for it abolished tolls inside the country, transferred them all to the national boundaries and introduced the first general customs tariff in France. It was two months later, when this proposal was being discussed, that the altercation quoted above took place. Bertrand du Guesclin had bought his fortress from an English commander in the Hundred Years War and Henry IV had done almost the same thing in the Huguenot wars; four hundred and two hundred years respectively had thus elapsed before these actions ceased to be a decisive factor in internal French trade. In 1790/1 the National Assembly standardized weights and measures on the basis of the metric system. A more radical change it would be difficult to imagine; the old order, built up of a thousand accidents, was replaced overnight by a logical and self-consistent system. On the other hand, the road in this case was beset with difficulties and it was not until the Directorate that all the resolutions were taken, while the new order did not become compulsory until 1840. But of feudal disruption there remained practically nothing.

The changes in the sphere of medieval town policy were not so radical, but it largely disappeared wellnigh as rapidly. The gilds were already undermined in practice by the resolution of August 4. When they were formally declared abolished by the law of March 2-17, 1791, simultaneously with the drawing up of the uniform customs tariff, this was carried through without any appreciable opposition, accompanied by devout references to Turgot's attempt of fifteen years earlier. It is true however that even then certain exceptions were introduced, and that later more were added. In fixing the prices of food, in particular, caution had to be exercised. The administrative achievement of the monarchy in this sphere—the inspection and regulation of manufactures—naturally came under the hammer as well, partly at that time and partly by a law passed six months later.

Despite all healthy and necessary scepticism of fine words and flowing rhetoric, both represented *ad nauseam*, it cannot be denied that the Constituent National Assembly carried through in the course of two short years a tremendous work of reform. It is true that the limits to this work were not insignificant, particularly as regards food-stuffs; the rights of bakers and butchers, even under the Restoration, were purely monopolistic and were bought for as much as 100-150 000 francs.[4] And there were certainly

[4] Stieda, "Zwangs- und Bannrechte" in the *Handwörterbuch der Staatswissenschoften* VIII (3rd edn.,Jena 1911) 1169.

many reactions in the period that followed. Thus, for example, a municipal toll, which has persisted to the present day, was reintroduced on food-stuffs and other commodities *(octroi)*, the marking of gold and silver articles reappeared under the Directorate, and even a short-lived attempt to regulate the cloth industry under the Empire. All this, however, was insignificant compared with the spring-cleaning, effected by the Constituent Assembly; for local disintegration had been uprooted and remained so. History has few examples of so profound and incisive a series of changes, previously so difficult to achieve and yet effected in so short a time and with such enduring results.

It reacted on the whole continent of Europe, which obtained, as it were, a "borrowed" revolution by the direct or indirect influence of France. The after-glow of the fire was naturally weaker than the fire itself and the change, therefore, proceeded at a slower pace than it did in the country of its origin; but the results were decisive for all that. Of the neighbouring countries, Belgium and Italy were especially influenced by France and thus took up the work of clearance initiated by the Revolution.

Belgium is of outstanding interest, for it has become one of the most highly industrialized countries of the present day. Looking back on its development it might be expected to afford a proof of the connection between the irruption of industrialism and the uprooting of the old industrial code; for in Belgium measures similar to the French were being applied in an industrial country typical of the 19th century, such as France is not.

Not only on account of the human suffering it has entailed but also from a purely scientific point of view, it is regrettable that such excellent material has suffered so much through the disturbing influence of political changes. Belgium, more than any other country, has been the battlefield of Europe and the conqueror's spoil. After the armies of the French Revolution had carried the new policy unchanged to its northern acquisition, the Belgian cotton industry experienced a period of great prosperity fostered by the artificial conditions created there more than anywhere else by Napoleon's Continental System. But the end of the Continental System and the union of Belgium and Holland were followed by devastating crises. When Belgian industry finally began to expand about 1825, almost thirty years had elapsed since the great reform of the old industrial code. It is thus difficult to establish a causal nexus between these events, although such probably did exist. In any event, Belgium was

certainly the country which felt most keenly the impact of revolutionary ideas on economic policy.[5]

More complicated and even more important was the effect of the Revolution on Germany. I do not propose to deal with its direct influence on that western part of Germany directly under French domination, nor with Napoleon's influence on the Confederation of the Rhine, but I shall dwell for a moment on the slower, though more important, work of unification in Germany as a whole.

Its influence was not only political, it was political in a *territorial* sense. In France under the *ancien régime* the various provinces and their rulers, it is true, had preserved and extended their special rights; but that they were subservient to the authority of a universally recognized state was never for a moment a matter of doubt. In Germany on the other hand, absolute independent political entities had arisen, recognizing no sovereign authority. Their number, and the complete arbitrariness of the geographical boundaries of even the greatest and mightiest of German states—with the partial exception of Austria—precluded every possibility of economic unity without territorial reform. A glance at an historical map is sufficient to give an idea of the situation, and without such a map, in fact, the situation can hardly be appreciated at all. Forty-six out of the fifty-two imperial cities, and practically all the ecclesiastical principalities, numbering about a hundred, were abolished by the principal decree of the so-called Imperial Deputations *(Reichsdeputations-Hauptschluss)* of 1803, while more than fifteen hundred sovereign imperial knights were mediatized in 1805. The impulse towards unification was provided by the Revolutionary and Napoleonic wars, the Peace of Lunéville and the Confederation of the Rhine. In this respect the victorious princes after Napoleon's fall were his apt pupils. The German *Bund* reduced the number of states to thirty-eight; and the North German Confederation after Austria's overthrow in 1866, the foundation of the German Empire in 1870 and finally the German Revolutions of 1918 and 1933-4 completed the process. The German territories, with the exception of Austria, have thus come under a common leadership and their number has been reduced, so that after 1918 there were only eighteen and even these, at the present moment, have been completely merged into the Reich.[6]

[5] Pirenne, *Histoire de Belgique* VI (Bruss. 1926) 150-82, 337-48; Heckscher, *The Continental System* 270 ff., 278 ff., 285.—Cp. Clapham, *The Economic Development of France and Germany 1815-1914* (Cambr. 1921) 56 f.

[6] The following, too, refers to well-known facts; I limit myself to references to: W. Sombart, *Die deutsche Volkswirtschaft im Neunzehnten Jahrhundert* (Jena

The unification in economic matters at the beginning of the 19th century was thus more than usually conspicuous by its absence. Before 1815 little could be done. The period of the Stein-Hardenberg reforms, for that part of Prussia which Napoleon had passed by, began soon after the Battle of Jena of 1806. But it was not until after the Congress of Vienna that the two parts of Prussia became territorially unified, at least each within its own bounds. The Prussian tariff of 1818, in doing away with domestic tolls, resembled the French tariff of 1791, and in many respects it constituted an even greater break with tradition. The formation of the *Zollverein* in 1834 further abolished the customs barriers between most German states, and this process was continued by the spread of the *Zollverein* and finally ended in its merging into the North German Confederation and the German Empire.

But traces of toll disintegration persisted for many years longer. Mecklenburg was not included within the unified German customs system until 1867, and Hamburg and Bremen not until 1888. The domestic tolls within each individual territory persisted with their usual tenacity, particularly in Mecklenburg again, where they did not disappear until 1861. In Germany there was the additional difficulty that the rivers were, to some extent, international, so that the abolition of the river tolls was a problem which even the German states collectively could not solve; the abolition of the Rhine tolls meeting with particularly obstinate resistance. Although the Congress of Vienna had abolished them in principle, its decree was not put into effect in the case of the Rhine until the 1830's, and the last of the Rhine tolls and of the river tolls in general did not disappear until 1866. In the commercial realm the work of unification did not achieve its purpose until the re-establishment of the German Empire after the defeat of Austria in 1866. The disintegration in the general legal system was even more difficult to overcome. Five different systems of civil law prevailed in Germany until the application of the *Biirgerliches Gesetzbuch* at the beginning of 1900. It was thus many years before Germany reached the goal which Colbert had set up for his own country more than two centuries previously.

1903); A. Sartorius von Waltershausen, *Deutsche Wirtschaftsgeschichte 1815-1914* (Jena 1920) and a series of informative articles in the 3rd edn. of the *Handwo͝rterbuch der Staatswissenschaften* (which have, strange to say, largely disappeared from the 4th edn.) esp. arts. "Binnenzölle"; "Rheinschiffahrt"; "Stapelrecht"; "Zwangs- und Bannrechte"; "Zoĭle, Zollwesen"; "Zollverein". A good atlas, even so small a one as Putzger's *Historischer Schulatlas* (in its later form), illustrates the facts better than copious verbal descriptions. Purely territorial changes can be studied still better in Droysen's *Historischer Handatlas.*

The executor of mercantilism had a particularly difficult task in Germany, not only because of the territorial break-up of the state, but also because of the strong hold of municipal policy over the minds and disposition of the people. The incorporation of almost all the free imperial cities, with the exception of the Hanseatic cities, effected in 1803 by the decree of the Imperial Deputation, involved no appreciable change, for as we have seen the territorial princes had adopted and even extended the principles of municipal policy. As a consequence little was to be expected from political unification, and the medieval order held on with the utmost tenacity. Staple rights were easiest to uproot, for they could be treated as part of domestic toll reform. They disappeared on the Elbe, the Weser and the Rhine with the abolition of the river tolls. Leipzig was the last German city to retain its staple right and did not have to give it up until Saxony entered the *Zollverein* in 1834. Outside Germany, Riga retained its staple right until 1861.[7]

Much more difficult to eradicate was the power of the towns over rural areas. Even as late as 1770, Justus Möser in his *Patriotische Phantasien* complained that the towns of Westphalia, unlike those of Saxony, were not provided with the right to subject the circumjacent rural population to the requirements of the towns *(Bannmeilenrecht).* In line with this a proposal for an industrial code in Saxony even as late as 1858 contained a prohibition of handicrafts in rural areas without licences. It was only with the industrial code for the North German Confederation in 1869 that the distinction between town and country within that area disappeared. Once again Mecklenburg was the most tardy of states in introducing the change. The town of Wismar took proceedings in the 1820's and the 1830's against landowners who dared to ship their own corn, and, as late as 1862, won a lawsuit regarding a licence to a baker who had settled outside the town.[8] But these most persistent survivals in the territories least affected by French and Prussian liberal tendencies had parallels in other parts of the country which were only a little less pronounced. Step by step the medieval conceptions yielded before the new forces in the decades before the rise of the North German Confederation.

[7] Hafemann, *Das Stapelrecht* 112 ff.; Daenell, *Die Blütezeit der deutschen Hanse* II 259 note 1.

[8] See, besides the literature quoted in this chapter: H. Rachel, "Die Handelsverfassung der norddeutschen Städte im 15. bis 18. Jh." *(Schmoller's Jahrbuch* XXXIV, 1910, 186 ff.).

There remained, however, one European country which was largely outside both the direct and the indirect influence of the revolutionary idea. That country was England. This was partly due to the fact that England had had its revolutions one or two centuries before. One hundred years before the French Revolution, the English were generally thought of as the revolutionary nation of Europe. They had beheaded one king and had driven out another. In chapter six it has been shown how interrelated was this with the breakdown of the old industrial principles. Nevertheless England did not achieve a *modern* political revolution, and this had important consequences.

It explains in the first place why England, even to the present day, retains so much more of what is odd, inconsistent and haphazard in its social customs and industrial practices than any other civilized country. The phenomenon is not peculiar to England in the sense that something of the sort has not occurred elsewhere. Most states, and France not the least of them, had parallels during the *ancien régime.* The persistence of these conditions in England is explicable mainly by the fact that she did not undergo any political revolution, whether native or borrowed, during the period under discussion. Whether this was characteristic of England or not is a question outside the scope of the present work.

And so we find the paradoxical result that the country with the smallest degree of local disintegration and which was the first to overcome medieval industrial principles retained more medieval survivals than any other country.

This applies, first and foremost, to the formal changes undertaken in England and Scotland so much later than in France. As pointed out in the sixth chapter, very few innovations were made in the 18th century; and not until 1820 were the reforms set on foot: the real improvements occurred in the period after the victory of the Whigs, together with the parliamentary reforms of 1832. The single important measure within the sphere of industrial legislation in the first two decades of the 19th century was the repeal, in 1813 and 1814, of the wage and apprenticeship clauses of Elizabeth's Statute of Artificers. The regulation of textile production and other manufactures was repealed by parliament only in the 1820's. It was only in 1835 in England and in 1846 in Scotland that the municipal reforms made a clean sweep of the old order. These reforms found the Scottish gilds in a very much more lively state than the English, and the gilds were therefore found to persist in Scotland at least fifty-five years

after they were abolished in France. Chapter six has shown, too, that the prohibitions against forestalling and other forms of trade condemned by medieval legislation did not disappear in common law, until abolished by Act of Parliament in 1844.

The same conditions prevailed in other spheres of legislation. One example will suffice. Down to 1822, almost all the vagrancy laws made an exception on account of the rights pertaining to the heirs of John Dutton and the "Minstrels of Cheshire". In the early years of the 13th century, in the reign of King John, the minstrels and vagrants of Cheshire had assisted the Earl of Cheshire when the Welsh laid siege to his castle. In return he placed them under the jurisdiction of his own land and they were given the right to wander freely over the whole country. Less picturesque but equally capricious was the state in which legislation as a whole found itself. The death penalty was due for 160 different crimes—for example, for cutting down a hop vine or felling a young tree in a gentleman's pleasure-ground; although it must be said that it was enforced for "only" about twenty-five of this number. The state of law and the prison system as they prevailed well into the 19th century have been immortalized by Dickens, and in fact, conditions were no better than his description makes out; and so on. It was but natural that a legal system built up on precedents of many centuries could scarcely find room for so late a phenomenon as "the right that is born with us"[55 9].

From the point of view which we have been developing, it is more interesting to note the most characteristic feature, namely that so much could persist even after the great reforms had been made in written law.

The gild system is particularly typical of this. The very country which was the first to minimize the importance of the gilds is the same which still retains them in principle. The Municipal Corporations Act of 1835 contained no obligation, such as is to be found in French legislation, for the abolition of the gilds. All it did was to withdraw their right to exclude others from practising a craft. The Scottish law definitely declared that all "corporations" retain their legal status and their usual names. Thus a considerable number of these institutions have remained.

[9] See above ch. 6 notes 85 and 95.—Regulation of production: Clapham, *Econ. Hist, of Modern Britain: The Early Railway Age* 337-41.—Scotland: Cunningham IP 323 note.—Minstrels of Cheshire: Leonard, *History of English Poor Relief* 138 f.— The condition of Penal Law: Dicey, *Relation between Law and Public Opinion in the igth Century* 29; Smart, *Economic Annals of the igth Century 1801-1820,* 699 f.

The most famous among them are the London Livery Companies, seventy-two in number, including the twelve great companies usually comprehended in this name. In the year 1505 one of them, the Mercers Company, began holding its meetings every Monday, and at least until 1908, they had seen no reason for changing this custom. The London companies indirectly nominate the Lord Mayor of London every year and have certain other functions. But their actual remaining work is limited to the administration of large properties and the eating of formal annual dinners. Only one of them, the Watermen's Company, still functions as a professional corporation (or did in 1908). But none of these survivals shows any tendency to disappear. The oldest corporation in foreign trade, the Merchants of the Staple, is also still in existence. Of the actual trading companies, it was still possible, a few years ago, to find the original Russia Company in the London Directory. The Hudson Bay Company still plays an important part.

The position was similar in the provincial towns. In the first place it was long before the Municipal Corporations Act took effect. The Oxford gild of barbers was not dissolved until 1859, the Ludlow "Hammer Men" persisted until 1887, and an associated textile company in Exeter elected officials even in 1872, while in 1877 the Chester tanners still enrolled new members. Even to-day there are several companies. When the proceedings of the trading company of York were published in 1918, the company was still in existence. At the end of the publication there is a list of its governors beginning in 1432 and continuing, without any break, down to 1918. When the history of the original English gild merchants was written in 1890, there still existed an instance even of this oldest form of corporation in Preston, where a formal meeting was held as late as 1882. Newcastle has long been known for its attachment to ancient forms. Three times a year the citizens are still called to the "common gild", though this body has no longer any authority. The Merchant Adventurers of the city still hold their annual assemblies in a meeting-house which is 480 years old. The most picturesque of all is perhaps the forum of Medieval merchants, "the court of Piepowder[55], which is still (or at any rate still was in 1895) annually called in the market-place. In Bristol and elsewhere the Court of Piepowder is said to be still held annually, in Bristol in conjunction with an even more ancient court.[10]

[10] London Companies: Unwin, *Gilds and Companies of London*, 219,352 *et passim;* W. A. S. Hewins, "Companies (City of London)" in Palgrave's *Dic-*

Anyone at all acquainted with English conditions knows how many similar features still exist in other departments of social life. England alone has clung to the Carolingian system of coinage based on the *libra* or pound, consisting of 20 *solidi* of 12 *denarii* each (£ s. d.). In the same way there is still the dual system of weights, troy and avoirdupois. The system of weights and measures is completely archaic. The country which in the Middle Ages was, next to Sweden and Norway, least split up by feudalism has retained more features of feudal disintegration than any other. It comes as something of a shock to find that the commanders in the exempted districts, like that of the Tower of London, could even in 1620 simply throw London citizens into prison by way of reprisal for offences alleged to have been committed by the town, according to the Anglo-Saxon law of "withernam". Still more surprising is the experience of a French lady who, as late as the end of the 19th century, having committed a misdemeanour in the island of Jersey, was condemned to death, according to an extraordinary law of the island. When the Queen reprieved her, the government of the island declared that, failing the confirmation of its own legislative assembly, which had just adjourned, the reprieve was illegal, and it shut up the Frenchwoman in a fortress, whence she was forcibly removed by an English man-of-war and thus saved. The Channel Islands still have hereditary feudal lords, and independent legislation, jurisdiction and taxation controlled by their own representative assemblies, independent of the authorities of the mainland. They also have their own courts and officials and their own coinage, as well as a very ancient agrarian system. The peculiar position of the Isle of Man has been touched upon in the second chapter, and examples could be multiplied.[11] To Englishmen this is by no means news, but it must be emphasized to bring out the contrast with other countries.

All this shows what can happen in the absence of the revolu-

tionary of Political Economy; Scott, *Joint Stock Companies to 1720* II 69.—Provincial Companies: Kramer, *Gild Studies* 180 *et passim*; Gross, *Gild Merchant* I 164 ff. and II *passim; York Mercers & Merck. Adv.,* ed. Sellers (Surtees Soc. Publ. CXXIX), 322-8; *Merch. Adv. of Newcastle-upon-Tyne,* ed. Boyle & Dendy (ditto XCIII), Ixlviii.—In general (also for the following): G. C. Williamson, *Curious Survivals* (2nd ed., Lond. 1925).

[11] Withernam: *Index to Remembrancia* 429, 435 f., 439 f., 446 f.—Jersey: R. B. (Lord) Haldane, *Autobiography* (Lond. 1929) 59 f.; Haldane later became legal counsel for Jersey and won the case, which is also typical.—The Channel Islands for the rest: Art. "Channel Islands" in *Encyclopedia Britannica;* Brodnitz, *Englische Wirtschaftsgeschichte* I 99 etc.—Isle of Man: see 53 f. above.

tion, and also, negatively as it were, illustrates the importance of revolution in other countries. We see that the revolutionary reforms in other countries have been largely instrumental in clearing away from modern society most of the external traces of the *ancien régime.*

But the contrast between England and the rest of the world appears in an entirely different light if we consider the content rather than the form. Most of the English anachronisms touched upon are mere curiosities, of which perhaps only one in a thousand has any practical importance, and are really only retained on the condition that they have no practical significance. It is precisely this contrast that is typical of English development and, in general, indicative of the development which would have taken place elsewhere without a formal and visible revolution. The comparison between England and France in modern times has been expressed as follows: in France *plus fa change, plus c'est Ia meme chose* while in England *plus c'est Ia meme chose, plus ca change.* The same idea is expressed in the words which H. G. Wells puts in the mouth of a young American observer on his visit to England in his novel *Mr. Britling Sees it Through,* published during the war: "My first impression of England which appears to me to matter in the least is this: that it looks and feels more like the traditional Old England than anyone could possibly have believed, and that in reality it is less like the traditional England than anyone could ever possibly have imagined." This is not a bad summary of the situation.

In spite of the fact that it did not have a revolution, either native or borrowed, England has thus been able to set its house in order even more thoroughly than France, the classic country of revolution. It is a clear proof that other forces than political revolution have been more important in the creation of modern society, though it cannot be denied that revolutions, where they occurred, were also most important. Most people would be inclined to deduce from this that the principle of change is inherent in the economic system; in other words that England had thoroughly altered its institutions because she was the first country to undergo a thorough *industrial* or economic revolution. This too is true, but it is not the whole truth, for simultaneously and in constant interaction with the technical and economic changes, England also experienced a spiritual revolution, even though it was superficially not so obvious as on the continent. Economic thought was more profoundly revolutionized in England than anywhere else, and England more than any other country

became the fount of new social ideals and new social conditions; it was from England that the new ideas spread from one country to another. Not only was this just as important as the formal revolution, but, far more than the revolution, it created the *substance* of the new economic policy.

Liberalism

The new ideas may be represented by the term ' 'liberalism." It is not our purpose to describe this conception in detail. Generally speaking, it is a loose complex of ideas and sentiments. The aspects of the liberal ideas which became most important in deciding the fate of mercantilism were as follows. First the principle of *laissez-faire* or the idea of the unfitness and harmfulness of state intervention. Closely connected, though not quite identical, therewith was the principle of individualism, which made the needs of the individual the basis of economic policy, where formerly it had been the *raison d'etat.* Bound up with the latter and, again, not identical with it was Utilitarianism or Benthamism, with its basic maxim of the "greatest happiness of the greatest number".

The work of reform started by mercantilism was more radically prosecuted by this complex of ideas than would otherwise have been possible, but with the corollary, unfortunate from the mercantilist point of view, that its *own* positive achievements were at the same time discarded. The results of the state-controlled policy were bound to fall in with the products of the medieval municipal policy and local disintegration. In spite of all the justifiable criticism levelled against Bentham's principle by the philosophers of the last century, he none the less advocated, as Dicey has convincingly pointed out, a practical reform of the legal system which, for simplicity, can hardly be overrated. Owing to the fact that his ideas were perfectly simple and largely free from inconsistency (if only superficially so), he overcame the old order in a manner which a more subtle philosopher would probably never have succeeded in doing. Individualism cut the ground from under the philosophy *of raison d'état* and the principles of non-intervention led to the rejection of state interference, even where the representatives of the new spirit themselves openly admitted that the development, through which society would have to go, was undesirable. This will come out more clearly in the conclusion of the present work.

It goes without saying that the new ideas were not able to take society by storm but could only establish themselves **step by step in so far as they associated themselves with some con-**

venient aim or with the interests of some powerful social group. This is precisely what is meant by their not being revolutionary, that is in method. When on the other hand the final results are considered, it may be said without exaggeration that it constituted a revolutionary change, in content though not in form. Since the 17th century, England has had no native or borrowed political or social revolution, and the English have never believed that salvation could be found in a logical "system"—and it is precisely that country which was to carry out economic liberalism more completely and retain it longer than any other country.

While the absence of "revolutionary concepts" allowed the facade to preserve its old appearance, the actual interior of the building underwent more alterations than did that of any continental country. If it be asked precisely why England should have been the starting-point of all that was new in economic development, the question is again one which the historian of mercantilism must leave unanswered, or, at the most, can merely outline. That there was an interdependence between the actual economic development and people's ideas as to how this development could best be achieved, is undoubted, for all social phenomena react upon another. In the case in point, this means that England's lead in economic and technical reform was partly due to factors other than economic policy and ideas, but that it was also and to an important extent linked up with them. The difference pointed out before between the English and the French development, which had already manifested itself before the introduction of coal and the steam engine, is an indication of the relationship to economic policy. On the other hand the change in economic conditions was largely independent of this and obviously exerted a strong influence on the evolution of ideas and the elaboration of policy. But, as we have seen, both these series of phenomena had roots in the same political and legal conditions, they were partly the results of a third set of circumstances. Technical changes, economic policy, and political conditions were three closely related causes, none of them independent of the others, but none to be explained exclusively by any of the others.

The result, at any rate, was that no definite economic policy arose with the deliberate purpose of guiding the new forces on lines considered socially advantageous. The older economic policy would not have offered much assistance, for it had never really devised any other way of dealing with economic change than denying its validity. The new policy on the other hand

rejected, on principle, every state intervention.[12] The old methods would have attempted to curb the changes; the new and victorious methods gave them free rein, and as a consequence they asserted themselves with a force unparalleled in previous history. The third possibility would have been neither to check the course of events nor to leave it entirely unregulated, but rather to direct it according to a definite plan. This solution was never attempted. Much reproach has therefore been levelled against the English statesmen of the beginning of the 19th century, and it is undoubtedly true that their passivity influenced the nature and direction of the development.

Whether they could possibly have made use of a system of regulation which, in the previous centuries, had proved itself incapable of dealing with far lesser changes—that is an entirely different question. To fulfil the demands which in retrospect have been placed on them, they would have had to evolve an entirely new kind of economic policy.

The correct solution to the problem would have maintained great human values. It is to be hoped that economic and political talent and skill will so develop that in the future something of the sort will be possible. But it must be admitted that history, as we know it to the present, has had few instances of forceful and constructive action behind the profound economic and social upheavals. Not only would it require a great supply of economic and political genius; even where such existed, it has seldom been able to convince the authorities of the desirability of uncommon and unsympathetic measures. The amount of work which remains to be done even to the present day before this attitude changes is common knowledge.

Whatever turn events may take in the solution of these problems in our own time or in the future, English statesmen at the end of the 18th and the beginning of the 19th century were not in a position to evolve appropriate and sufficiently effective means for dealing with the new conditions in industry and society. For thousands of years and longer economic life had been static and then came the changes of a magnitude never before conceived. Even such statesmen of the time who were not overpowered by the vastness of the changes and the benefits which they brought in their train stood helpless in the

[12] An early example is significant in this connection, especially on the basis of experience of our own time, namely the treatment—or absence of treatment—of the acute depression towards the end of the Napoleonic wars 1811/12 in England. On this, see my book *The Continental System* 332 ff.

face of the situation. And not the least reason for adherence to *laissez-faire* principles was the fact that they offered a very welcome pretext for doing nothing when nobody knew what to do. Cecil, Strafford or Laud would certainly have taken action, though it may well be doubted whether they would have effected very much. It may be doubted even more whether their action would have facilitated the transition to 19th-century forms of society with a smaller degree of human suffering. If the great changes are blamed for causing so much disturbance, the French saying should not be forgotten that you cannot make an omelette without breaking eggs. If the number of broken eggs was particularly great in this case, which no one can deny, it should at least be remembered that the outcome was a really big omelette.

END OF VOLUME I