

CHAPTER I

THE CONCENTRATION OF POWER

'Là, l'aristocratie a pris pour elle les charges publiques les plus lourdes afin qu'on lui permît de gouverner; ici elle a retenu jusqu'à la fin l'immunité d'impôt pour se consoler d'avoir perdu le gouvernement.'

De Toqueville has set out in this antithesis the main argument that runs through his analysis of the institutions of ancient France. In England the aristocracy had power and no privileges: in France the aristocracy had privileges and no power. The one condition produced, as he read history, the blending of classes, a strong and vigorous public spirit, the calm of liberty and order: the other a society lacking vitality and leadership, classes estranged and isolated, a concentration of power and responsibility that impoverished private effort and initiative without creating public energy or public wealth.

De Toqueville's description of the actual state of France during the eighteenth century has, of course, been disputed by later French writers, and notably by Babeau. Their differences are important, but for the moment we are concerned to note that in one particular they are in complete agreement. Neither Babeau, nor any other historian, has questioned the accuracy of De Tocqueville's description of the position of the French nobles, from the day when the great cardinals crushed their conspiracies to the day when the Revolution destroyed the monarchy, whose heart and pulse had almost ceased to beat. The great scheme of unity and discipline in which Richelieu had stitched together the discords of France left no place for aristocracy. From that danger, at any rate, the French monarchy was safe. Other dangers were to overwhelm it, for Richelieu, in giving to it its final form, had secured it from the aggressions of nobles but not from the follies of kings. *Tout marche, et le hasard corrige le hasard.* The soliloquy of Don Carlos in *Hernani* contains an element

of truth and hope for democracy which is wanting in all systems of personal government, where the chances of recovery all depend on a single caprice. It was the single caprice that Versailles represented. It was the single caprice that destroyed Richelieu's great creation. When Louis XIV. took to piety and to Madame de Maintenon, he rescinded in one hour of fatal zeal the religious settlement that had given her prosperity to France. Her finance and her resources foundered in his hurricanes of temper and of arrogance. Louis XV. was known in boyhood as 'the beloved.' When he fell ill in the campaign of 1745 in Flanders, all France wept and prayed for him. It would have been not less happy for him than it would have been for Pompey if the intercessions of the world had died on the breeze and never ascended to the ear of Heaven. When thirty years later his scarred body passed to the royal peace of St. Denis, amid the brutal jeers and jests of Paris, the history of the French monarchy was the richer for a career as sensual and selfish and gross as that of a Commodus, and the throne which Richelieu had placed absolute and omnipotent above the tempests of faction and civil war had begun to rock in the tempests of two sovereigns' passions.

One half-hearted attempt had indeed been made to change the form and character of the monarchy. When he became regent in 1715, Orleans played with the ideas of St. Simon and substituted for the government of secretaries a series of councils, on which the great nobles sat, with a supreme Council of Regency. As a departure from the Versailles system, the experiment at first excited enthusiasm, but it soon perished of indifference. The bureaucrats, whom Orleans could not afford to put on one side, quarrelled with the nobles: the nobles found the business tedious and uninteresting: the public soon tired of a scheme that left all the abuses untouched: and the regent, at the best a lukewarm friend to his own innovation, had his mind poisoned against it by the artful imagination of Dubois. One by one the councils flickered out; the Council of the Regency itself disappeared in 1723, and the monarchy fell back into its old ways and habits.

As at Versailles, so in France. If the noble had been reduced to a trifling but expensive cypher at the Court, the position of seigneur in the village was not very different. In the sixteenth century he had been a lithe king. His relations with the peasants, with whom his boyhood was often spent in the village school, were close and not seldom affectionate.

But though he was in many cases a gentle ruler, a ruler he undoubtedly was, and royal ordinances had been found necessary to curb his power. By the eighteenth century his situation had been changed. There were survivals of feudal justice and feudal administration that had escaped the searching eye of Richelieu, but the seigneur had been pushed from the helm, and the government of the village had passed into other hands. It was the middle-class intendant and not the seigneur who was the master. The seigneur who still resided was become a mere rent receiver, and the people called him the '*Gobereau*.' But the seigneur rarely lived in the village, for the Court, which had destroyed his local power, had drawn him to Paris to keep him out of mischief, and when later the Court wished to change its policy, the seigneur refused to change his habits. The new character of the French nobility found its expression in its new homes. Just as the tedious splendour of Versailles, built out of the lives and substance of an exhausted nation, recorded the decadence and the isolation of the French monarchy, so in the countryside the new palaces of the nobles revealed the tastes and the life of a class that was allowed no duties and forbidden no pleasures. The class that had once found its warlike energy reflected in the castles of Chinon and Loches was now only at home in the agreeable indolence of Azay le Rideau or the delicious extravagance of Chenonceaux. The nobles, unable to feed their pride on an authority no longer theirs, refused no stimulant to their vanity and no sop to their avarice. Their powers had passed to the intendant; their land was passing to the bourgeois or the peasant; but their privileges increased. Distinctions of rank were sharper edged. It was harder for a plebeian to become an officer under Louis XVI. than it had been under Louis XIV., and the exemptions from taxation became a more considerable and invidious privilege as the general burdens grew steadily more oppressive. Nature had made the French nobleman less, but circumstances made him more haughty than the English. Arthur Young, accustomed to the bearing of English landlords, was struck by the very distant condescension with which the French seigneur treated the farmer. The seigneur was thus on the eve of the Revolution a privileged member of the community, very jealous of his precedence, quarrelsome about trifles, with none of the responsibilities of a ruler, and with few of the obligations of a citizen. It was an unenviable and an uninspiring position. It is not surprising that Fénelon, living in the frivolous prison of

Versailles, should have inspired the young Duke of Burgundy with his dream of a governing aristocracy, or that Mademoiselle de Lespinasse should have described the public-spirited members of this class as caged lions, or that a nobleman of the fierce energy of the Marquis de Mirabeau should have been driven to divide his time between the public prosecution of his noisy and interminable quarrels with his wife and his sons, and the composition of his feeling treatise on *L'Ami des Hommes*.

For in the France whose king had no thought save for hunting, women and morbid disease, there was endless energy and intellectual life. France sparkled with ideas. The enthusiasms of the economists and philosophers filled the minds of nobles who in England would have been immersed in the practical duties of administration. The atmosphere of social sensibility melted the dry language of official reports, and the intendants themselves dropped a graceful tear over the miseries of the peasants. Amid the decadence of the monarchy and the uncivilised and untamed license of Louis XV., there flourished the emancipating minds of Voltaire, Montesquieu, Diderot and Quesnai, as well as Rousseau, the passion and the spirit of the Revolution. On the one side is Versailles, abandoned to gross and shameless pleasures, on the other a society pursuing here a warm light of reason and science with a noble rage for progress and improvement, bewitched there by the *Nouvelle Héloïse* and *Clarissa*, delighting in those storms of the senses that were sweeping over France. The memoirs, the art, the literature of the time are full of these worlds, ruled, one by philosophy and illumination, the other by the gospel of sensibility and tender feeling, the two mingling in a single atmosphere in such a salon as that of Julie de Lespinasse, or in such a mind as that of Diderot. A kind of public life tries, too, to break out of its prison in the zealous, if somewhat mistaken exertions of agricultural societies and benevolent landowners. But amid all this vitality and inspiration and energy of mind and taste, the government and the fortunes of the race depend ultimately on Versailles, who lives apart, her voluptuous sleep undisturbed by the play of thought and hope and eager curiosity, wrapt and isolated in her scarlet sins.

When Louis XVI. called to office Turgot, fresh from his reforms at Limoges, it looked as if the intellect of France might be harnessed to the monarchy. The philosophers believed that their radiant dreams were about to come gloriously true.

Richelieu had planned his system for an energetic minister and a docile king; Turgot had not less energy than Richelieu, and Turgot's master was not more ambitious than Louis XIII. But the new régime lasted less than two years, for Louis XVI., cowed by courtiers and ruled by a queen who could not sacrifice her pleasures to the peace of France, dismissed his minister, the hopes of the reformers were destroyed, and France settled down to the unrolling of events. The monarchy was almost dead. It went out in a splendid catastrophe, but it was already spent and exhausted before the States-General were summoned. This vast, centralised scheme was run down, exhausted by the extravagance of the Court, unable to discharge its functions, causing widespread misery by its portentous failure. The monarchy that the Revolution destroyed was anarchy. Spenser talks in the *Faerie Queene* of a little sucking-fish called the remora, which collects on the bottom of a ship and slowly and invisibly, but surely, arrests its progress. The last kings were like the remora, fastening themselves on Richelieu's creation and steadily and gradually depriving it of power and life.

It was natural that De Tocqueville, surveying these two centuries of national life, so full of mischief, misdirection and waste, seeing, too, in the new régime the survival of many features that he condemned in the old, should have traced all the calamities of France to the absence of a ruling aristocracy. It was natural that in such a temper and with such preoccupations he should have turned wistfully and not critically to England, for if France was the State in which the nobles had least power, England was the State in which they had most. The Revolution of 1688 established Parliamentary Government. The manners and the blunders of James II had stripped the Crown of the power that his predecessor had gained by his seductive and unscrupulous politics, and when the great families settled with the sovereign of their choice, their memories of James were too recent and vivid to allow them to concede more than they could help to William. The Revolution put the law of the land over the will of the sovereign: it abolished his suspending and dispensing powers, and it obliged him to summon Parliament every year. It set up a limited monarchy with Parliament controlling the Crown. But though the Revolution gave England a constitutional Parliamentary government, that government had no homogeneous leadership, and it looked as if its effective force might be dissipated in the chaos and confusion of ministries.

In such a situation one observer at least turned his eyes to France. There exists in the British Museum a paper by Daniel Defoe, written apparently for the guidance of Harley, who was Secretary of State in 1704. In this paper Defoe dwelt on the evils of divided and dilatory government, and sketched a scheme by which his patron might contrive to build up for himself a position like that once enjoyed by Richelieu and Mazarin. Defoe saw that the experiment meant a breach with English tradition, but he does not seem to have seen, what was equally true, that success was forbidden by the conditions of Parliamentary government and the strength of the aristocracy. The scheme demanded among other things the destruction of the new Cabinet system. As it happened, this mischievous condition of heterogeneous administration, in which one minister counterworked and counteracted another, came to an end in Defoe's lifetime, and it came to an end by the consolidation of the system which he wished to see destroyed.

This was the work of Walpole, whose career, so uninviting to those who ask for the sublime or the heroic in politics, for it is as unromantic a story as can be desired of perseverance, and coarse method, and art without grace, and fruits without flowers, is one of the capital facts of English history. Walpole took advantage of the fortunate accident that had placed on the throne a foreigner, who took no interest in England and did not speak her language, and laid the foundations of Cabinet government. Walpole saw that if Parliamentary supremacy was to be a reality, it was essential that ministers should be collectively responsible, and that they should severally recognise a common aim and interest; otherwise, by choosing incompatible ministers, the king could make himself stronger than the Cabinet and stronger than Parliament. It is true that George III, disdaining the docility of his predecessors, disputed later the Parliamentary supremacy which Walpole had thus established, and disputed it by Walpole's own methods of corruption and intrigue. But George III, though he assailed the liberal ideas of his time, and assailed them with an unhappy success, did not threaten the power of the aristocracy. He wanted ministers to be eclectic and incoherent, because he wanted them to obey him rather than Parliament, but his impulse was mere love of authority and not any sense or feeling for a State released from this monopoly of class. Self-willed without originality, ambitious without imagination, he wanted

to cut the knot that tethered the Crown to the Cabinet, but he had neither the will nor the power to put a knife in the system of aristocracy itself. He wished to set back the clock, but only by half a century, to the days when kings could play minister against minister, and party against party, and not to the days of the more resolute and daring dreams of the Stuart fancy. The large ideas of a sovereign like Henry of Navarre were still further from his petty and dusty vision. He was so far successful in his intrigues as to check and defeat the better mind of his generation, but if he had won outright, England would have been ruled less wisely indeed, but not less deliberately in the interests of the governing families. Thus it comes that though his interventions are an important and demoralising chapter in the history of the century, they do not disturb or qualify the general progress of aristocratic power.

In France there was no institution, central or local, in which the aristocracy held power: in England there was no institution, central or local, which the aristocracy did not control. This is clear from a slight survey of Parliament and of local administration.

The extent to which this is true had probably not been generally grasped before the publication of the studies of Messrs. Redlich and Hirst, and Mr. and Mrs. Webb, on the history of local government or the recent works of Dr. Slater and Professor Hasbach on the great enclosures. Most persons were aware of the enormous power of the aristocracy, but many did not know that that power was greater at the end than at the beginning of the century. England was, in fact, less like a democracy, and more remote from the promise of democracy when the French Revolution broke out, than it had been when the governing families and the governing Church, whose cautions and compromises and restraint Burke solemnly commended to the impatient idealists of 1789, settled their account with the Crown in the Revolution of 1688.

The corruptions that turned Parliamentary representation into the web of picturesque paradoxes that fascinated Burke, were not new in the eighteenth century. As soon as a seat in the House of Commons came to be considered a prize, which was at least as early as the beginning of the sixteenth century, the avarice and ambition of powerful interests began to eat away the democratic simplicity of the old English franchise. Thus, by the time of James I, England had travelled far from the days when there was a uniform franchise, when

every householder who did watch and ward could vote at a Parliamentary election, and when the practice of throwing the provision of the Members' wages upon the electorate discouraged the attempt to restrict the franchise, and thereby increase the burden of the voters. Indeed, when the Whig families took over the government of England, the ease for Parliamentary Reform was already pressing. It had been admitted by sovereigns like Elizabeth and James I, and it had been temporarily and partially achieved by Cromwell. But the monopolies which had been created and the abuses which had been introduced had nothing to fear from the great governing families, and the first acts of the Revolution Parliament, so far from threatening them, tended to give them sanction and permanence. Down to this time there had been a constant conflict within the boroughs between those who had been excluded from the franchise and the minorities, consisting of burgage-holders or corrupt corporations or freemen, who had appropriated it. These conflicts, which were carried to Parliament, were extinguished by two Acts, one of 1696, the other of 1729, which declared that the last determination in each case was final and irrevocable. No borough whose fate had been so decided by a Parliamentary committee could ever hope to recover its stolen franchise, and all these local reform movements settled down to their undisturbed euthanasia. These Acts were modified by a later Act of 1784, which allowed a determination to be disputed within twelve months, but by that time 127 boroughs had already received their final verdict: in the others, where the franchise was determined after 1784, there was some revival of local agitation.

The boroughs that were represented in Parliament in the eighteenth century have been classified by Mr. Porritt, in his learned work, in four categories. They were (1) Scot and lot and potwalloper boroughs, (2) Burgage boroughs, (3) Corporation boroughs, and (4) Freemen boroughs.

The Scot and lot boroughs, of which there were 59, ranged from Gatton, with 135 inhabitants, to Westminster and Northampton. On paper they approached most nearly to the old conditions as to the franchise. A uniform qualification of six months residence was established in 1786. In other respects the qualifications in these boroughs varied. In some the franchise depended on the payment of poor rate or church rate: in others the only condition was that the voter had not been a charge on the poor rate. The boroughs

of the second of these classes were called potwalloper, because the voter had to prove that he was an inhabitant in the borough, had a family, and boiled a pot there. This potwalloper franchise was a survival from the days when freemen took their meals in public to prove that they did not depend on the table of a lord. In the eighteenth century the potwalloper sometimes put his table in the street to show that he had a vote. But these boroughs, in spite of their wide franchise, fell under the control of the aristocracy almost as completely as the others, for the reason that when the borough itself developed, the Parliamentary borough stood still, and in many cases the inhabitant householders who had the right to vote were the inhabitants of a small and ancient area of the town. All that was necessary in such circumstances in order to acquire the representation of the borough, was to buy the larger part of the property within this area. This was done, for example, at Aldborough and at Steyning.

The Burgage boroughs were 89. They were Parliamentary boroughs in which the right to vote attached exclusively to the possession of burgage properties. The burgage tenants were the owners of land, houses, shops or gardens in certain ancient boroughs. The holders of these sites were originally tenants who discharged their feudal obligations by a money payment, corresponding to the freeholder in the country, who held by soccage. They thus became the men of the township who met in the churchyard or town hall. In many cases residence was unnecessary to the enjoyment of the franchise. The only qualification was the possession of title-deeds to particular parcels of land, or registration in the records of a manor. These title-deeds were called 'snatch papers,' from the celerity with which they were transferred at times of election. The burgage property that enfranchised the elector of Old Sarum was a ploughed field. Lord Radnor explained that at Downton he held 99 out of the 100 burgage tenures, and that one of the properties was in the middle of a watercourse. At Richmond, pigeon-lofts and pig-styes conferred the franchise. In some cases, on the other hand, residence was required; at Haslemere, for example, Lord Lonsdale settled a colony of Cumberland miners in order to satisfy this condition. Sometimes the owner of a burgage property had to show that the house was occupied, and one proof of this was the existence of a chimney. In all of these boroughs the aristocracy and other controllers of boroughs worked

hard, through the seventeenth and eighteenth centuries, to restrict the number of properties that carried the right to vote. The holder of burgage property and the borough patron had a common interest in these restrictions. The burgage boroughs provided a great many cases for the decision of Parliamentary committees, and the borough owners mortgaged their estates under the strain of litigation of this kind. Parliamentary committees had to determine for example whether the Widows' Row at Petersfield really stood on the foundation of the house which conferred the franchise in the reign of William III. The most successful borough-monger was the patron who had contrived to exclude first the non-burgage owners, and then the majority of the burgage owners, thus reducing his expenses within the narrowest compass.

The Corporation boroughs, or boroughs in which the corporation had acquired by custom the right to elect, independently of the burgesses, were 48. In days when Parliamentary elections were frequent, the inhabitants of many boroughs waived their right of election and delegated it to the corporations. When seats in the House of Commons became more valuable, the corporations were tenacious of this customary monopoly, and frequently sought to have it established by charter. These claims were contested in the seventeenth century, but without much success, and the charters bestowed at this time restricted the franchise to the corporations in order to prevent 'popular tumult, and to render the elections and other things and the public business of the said borough into certainty and constant order.' It is easy to trace in these transactions, besides the rapacity of the corporations themselves, the influence of the landed aristocracy who were already beginning to finger these boroughs. There was, indeed, an interval during which the popular attacks met with some success. When Eliot and Hampden were on the Committee of Privileges, some towns, including Warwick, Colchester, and Boston, regained their rights. But the Restoration was fatal to the movement for open boroughs, and though it was hoped that the Revolution, which had been in part provoked by the tricks the Stuarts had played with the boroughs, would bring a more favourable atmosphere, this expectation was defeated. All of these boroughs fell under the rule of a patron, who bribed the members of the corporation with money, with livings or clerkships in the state departments, cadetships in the navy and in India. Croker complained that he had further to

dance with the wives and daughters of the corporation at 'tiresome and foolish' balls. There was no disguise or mistake about the position. The patron spoke not of 'my constituents' but of 'my corporation.' The inhabitants outside this little group had no share at all in Parliamentary representation, and neither the patron nor his nominee gave them a single thought. The members of the corporation themselves were often non-resident, and the mayor sometimes never went near the borough from the first day of his magistracy to the last. His office was important, not because it made him responsible for municipal government, but because it made him returning officer. He had to manage the formalities of an election for his patron.

The Freeman boroughs, of which there were 62, represent in Mr. Porritt's opinion the extreme divergence from the old franchise. In these boroughs restrictions of different kinds had crept in, a common restriction being that in force at Carlisle, which limited the franchise to the inhabitants who belonged to the trade guild. For some time these restrictions, though they destroyed the ancient significance of 'freeman' as a person to be distinguished from the 'villein,' did not really destroy the representative character of the electorate. But these boroughs suffered like the others, and even more than the others, from the demoralising effects of the appreciation of the value of seats in Parliament, and as soon as votes commanded money, the corporations had every inducement to keep down the number of voters. In many boroughs there set in a further development that was fatal to the elementary principles of representation: the practice of selling the freedom of the borough to non-residents. There were three classes of buyers: men who wanted to become patrons, men who wanted to become members, and men who wanted to become voters. The making of honorary freemen became a favourite process for securing the control of a borough to the corporation or to a patron. Dunwich, which was a wealthy and famous seaport in the time of Henry II., gradually crumbled into the German Ocean, and in 1816 it was described by Old-field as consisting of forty-two houses and half a church. This little borough contained in 1670 forty resident freemen, and in that year it largessed its freedom on four hundred non-residents. The same methods were applied at Carlisle, King's Lynn, East Grinstead, Nottingham, Liverpool, and in many other places. A particularly flagrant case at Durham in 1762, when 215

freemen were made in order to turn an election, after the issue of the writ, led to a petition which resulted in the unseating of the member and the passing of an Act of Parliament in the following year. This Act excluded from the franchise honorary freemen who had been admitted within twelve months of the first day of an election, but it did not touch the rights of ordinary freemen admitted by the corporation. Consequently, when a Parliamentary election was impending or proceeding, new freemen used to swarm into the electorate whenever the corporation or the patron had need of them. At Bristol in 1812 seventeen hundred and twenty freemen, and at Maldon in 1826 a thousand freemen, were so admitted and enfranchised. Generally speaking, corporations seem to have preferred the method of exclusion to that of flooding the electorate with outside creations. On the eve of the Reform Bill, there were six electors at Rye and fourteen at I)unwich. At Launceston, early in the eighteenth century, the members of the corporation systematically refused freedom to all but members of their own party, and the same practices were adopted at East Retford, Ludlow, Plympton, Hastings, and other places. Legal remedies were generally out of reach of the excluded freemen. There were some exceptions to the abuses which prevailed in most of these boroughs, notably the case of the City of London. A special Act of Parliament (1774) made it a condition of the enjoyment of the freemen's franchise there, that the freeman had not received alms, and that he had been a freeman for twelve calendar months. But in most of these boroughs, by the end of the eighteenth century, the electorate was entirely under the influence of the corporations. Nor was the device of withholding freedom from those qualified by custom, and of bestowing it on those who were only qualified by subservience, the only resource at the command of the borough-mongers. Charities were administered in an electioneering spirit, and recalcitrant voters were sometimes threatened with impressment.

Of the 513 members representing England and Wales in 1832, 415 sat for cities and boroughs. Fifty members were returned by 24 cities, 832 by 166 English boroughs, 5 by single-member boroughs, 16 by the Cinque Ports, and 12 by as many Welsh boroughs. The twelve Welsh counties returned 12 members, and the forty English counties 82, the remaining 4 members being representatives of the Universities.

The county franchise had a much less chequered history than the various franchises in boroughs. Before the reign of Henry VI., every free inhabitant householder, freeholder or non-freeholder, could vote at elections of Knights of the Shire. The Act of 1430 limited the franchise to forty-shilling freeholders. Many controversies raged round this definition, and by the eighteenth century, men were voting in respect of annuities, rent-charges, the dowries of their wives and pews in church. Mr. Porritt traces the faggot voter to the early days of Charles I. Two changes were made in the county franchise between 1430 and 1832. The residential qualification disappears by 1620: in 1702 a tax-paying qualification was introduced under which a property did not carry a vote unless it had been taxed for a year. In 1781 the year was cut down to six months. Great difficulties and irregularities occurred with regard to registration, and a Bill was passed into law in 1784 to establish a public system of registration. The Act, however, was repealed in the next year, in consequence of the agitation against the expense. The county franchise had a democratic appearance but the county constituencies were very largely under territorial sway, and by the middle of the fifteenth century Jack Cade had complained of the pressure of the great families on their tenants. Fox declared that down to 1780 one of the members for Yorkshire had always been elected in Lord Rockingham's dining-room, and from that time onwards the representation of that county seems to have been a battle of bribes between the Rockinghams, the Fitzwilliams and the Harewoods.

It is easy to see from this sketch of the manner in which the Parliamentary franchise had been drawn into the hands of patrons and corporations, that the aristocracy had supreme command of Parliament. Control by patrons was growing steadily throughout the eighteenth century. The Society of Friends of the People presented a petition to the House of Commons in 1793, in which it was stated that 157 members were sent to Parliament by 84 individuals, and 150 other members were returned by the recommendation of 70 powerful individuals. The relations of such members to their patrons were described by Fox in 1797, 'When Gentlemen represent populous towns and cities, then it is a disputed point whether they ought to obey their voice or follow the dictates of their own conscience. But if they represent a noble lord or a noble

duke then it becomes no longer a question of doubt, and he is not considered a man of honour who does not implicitly obey the orders of a single constituent.¹ The petition of the Society of Friends of the People contained some interesting information as to the number of electors in certain constituencies: 90 members were returned by 46 places, in none of which the number of voters exceeded 50, 37 by 19 places in none of which the number of voters exceeds 100, and 52 by 26 in none of which the number of voters exceeded 200. Seventy-five members were returned for 35 places in which it would be to trifle with the patience of your Honourable House to mention any number of voters at all,' the elections at the places alluded to being notoriously a matter of form.

If the qualifications of voters had changed, so had the qualifications of members. A power that reposed on this basis would have seemed reasonably complete, but the aristocracy took further measures to consolidate its monopoly. In 1710 Parliament passed an Act, to which it gave the prepossessing title 'An Act for securing the freedom of Parliament, by further qualifying the Members to sit in the House of Commons,' to exclude all persons who had not a certain estate of land, worth in the case of knights of the shire, £500, and in the case of burgesses, £300. This Act was often evaded by various devices, and the most famous of the statesmen of the eighteenth century sat in Parliament by means of fictitious qualifications, among others Pitt, Burke, Fox and Sheridan. But the Act gave a tone to Parliament, and it was not a dead letter.² It had, too, the effect of throwing the ambitious merchant into the landlord class, and of enveloping him in the landlord atmosphere. Selection and assimilation, as De Tocqueville saw, and not exclusion, are the true means of preserving a class monopoly of power. We might, indeed, sum up the contrast between the English and French aristocracy by saying that the English aristocracy understood the advantages of a scientific social frontier, whereas the French were tenacious of a traditional frontier. More effectual in practice than this imposition of a property qualification was the growing practice of throwing on candidates the official expenses

¹ House of Commons, May 26, 1797, on Grey's motion for Parliamentary Reform.

² The only person who is known to have declined to sit on this account is Southey.

of elections. During the eighteenth century these expenses grew rapidly, and various Acts of Parliament, in particular that of 1745, fixed these charges on candidates.

It followed naturally, from a system which made all municipal government merely one aspect of Parliamentary electioneering, that the English towns fell absolutely into the hands of corrupt oligarchies and the patrons on whom they lived. The Tudor kings had conceived the policy of extinguishing their independent life and energies by committing their government to select bodies with power to perpetuate themselves by co-opting new members. The English aristocracy found in the boroughs--with the mass of inhabitants disinherited and all government and power vested in a small body--a state of things not less convenient and accommodating to the new masters of the machine than it had been to the old. The English towns, which three centuries earlier had enjoyed a brisk and vigorous public life, were now in a state of stagnant misgovernment: as the century advanced, they only sank deeper into the slough, and the Report of the Commission of 1835 showed that the number of inhabitants who were allowed any share in public life or government was infinitesimal. In Plymouth, for example, with a population of 75,000, the number of resident freemen was under 300: in Ipswich, with more than 20,000 inhabitants, there were 350 freemen of whom more than 100 were not rated, and some forty were paupers. Municipal government throughout the century was a system not of government but of property. It did not matter to the patron whether Winchester or Colchester had any drains or constables: the patron had to humour the corporation or the freemen, the corporation or the freemen had to keep their bargain with the patron. The patron gave the corporation money and other considerations: the corporation gave the patron control over a seat in Parliament. Neither had to consider the interests or the property of the mass of burgesses. Pitt so far recognised the ownership of Parliamentary boroughs as property, that he proposed in 1785 to compensate the patrons of the boroughs he wished to disenfranchise. Every municipal office was regarded in the same spirit. The endowments and the charities that belonged to the town belonged to a small oligarchy which acknowledged no responsibility to the citizens for its proceedings, and conducted its business in secret. The whole system depended on the patron, who for his part represented

the absolute supremacy of the territorial aristocracy to which he belonged. Civic life there was none.

If we turn to local government outside the towns there is the same decay of self-government.

One way of describing the changes that came over English society after the break-up of feudalism would be to say that as in France everything drifted into the hands of the intendant, in England everything drifted into the hands of the Justice of the Peace. This office, created in the first year of Edward III., had grown during his reign to very great importance and power. Originally the Justices of the Peace were appointed by the state to carry out certain of its precepts, and generally to keep the peace in the counties in which they served. In their quarterly sittings they had the assistance of a jury, and exercised a criminal jurisdiction concurrent with that which the king's judges exercised when on circuit. But from early days they developed an administrative power which gradually drew to itself almost all the functions and properties of government. Its quasi-judicial origin is seen in the judicial form under which it conducted such business as the supervision of roads and bridges. Delinquencies and deficiencies were 'presented' to the magistrates in court. It became the habit, very early in the history of the Justices of the Peace, to entrust to them duties that were new, or duties to which existing authorities were conspicuously inadequate. In the social convulsions that followed the Black Death, it was the Justice of the Peace who was called in to administer the elaborate legislation by which the capitalist classes sought to cage the new ambitions of the labourer. Under the Elizabethan Poor Law, it was the Justice of the Peace who appointed the parish overseers and approved their poor rate, and it was the Justice of the Peace who held in his hand the meshes of the law of Settlement. In other words, the social order that emerged from mediæval feudalism centred round the Justice of the Peace in England as conspicuously as it centred round the bureaucracy in France. During the eighteenth century, the power of the Justice of the Peace reached its zenith, whilst his government acquired certain attributes that gave it a special significance.

At the beginning of the eighteenth century there were still many small men taking some part in the affairs of the village. The old manorial civilisation was disappearing, but Mr. and Mrs. Webb have shown that manor courts of one kind or another were far more numerous and had far more to do at

the beginning of the eighteenth century than has been commonly supposed. Such records as survive, those, *e.g.* of Godmanchester and Great Tew, prove that the conduct and arrangement of the business of the common fields--and England was still, at the beginning of this period, very largely a country of common fields--required and received very full and careful attention. Those courts crumble away as the common fields vanish, and with them there disappears an institution in which, as Professor Vinogradoff has shown, the small man counted and had recognised rights. By the time of the Reform Bill, a manor court was more or less of a local curiosity. The village vestries again, which represented another successor to the manorial organisation, democratic in form, were losing their vitality and functions, and coming more and more under the shadow of the Justices of the Peace. Parochial government was declining throughout the century, and though Professor Lowell in his recent book speaks of village government as still democratic in 1882, few of those who have examined the history of the vestry believe that much was left of its democratic character. By the end of the eighteenth century, the entire administration of county affairs, as well as the ultimate authority in parish business, was in the hands of the Justice of the Peace, the High Sheriff, and the Lord-Lieutenant.

The significance of this development was increased by the manner in which the administration of the justices was conducted. The transactions of business fell, as the century advanced, into fewer and fewer hands, and became less and less public in form and method. The great administrative court, Quarter Sessions, remained open as a court of justice, but it ceased to conduct its county business in public. Its procedure, too, was gradually transformed. Originally the court received 'presentments' or complaints from many different sources--the grand juries, the juries from the Hundreds, the liberties and the boroughs, and from constable juries. The grand juries presented county bridges, highways or gaols that needed repair: the Hundred juries presented delinquencies in their divisions: constable juries presented such minor antisocial practices as the keeping of pigs. Each of these juries represented some area of public opinion. The Grand Jury, besides giving its verdict on all these presentments, was in other ways a very formidable body, and acted as a kind of consultative committee, and perhaps as a finance committee. Now all this elaborate machinery was simplified in the

eighteenth century, and it was simplified by the abandonment of all the quasi-democratic characteristics and methods. Presentments by individual justices gradually superseded presentments by juries. By 1835 the Hundred Jury and Jury of Constables had disappeared: the Grand Jury had almost ceased to concern itself with local government, and the administrative business of Quarter Sessions was no longer discussed in open court.

Even more significant in some respects was the delegation of a great part of county business, including the protection of footpaths, from Quarter Sessions to Petty Sessions or to single justices out of sessions. Magistrates could administer in this uncontrolled capacity a drastic code for the punishment of vagrants and poachers without jury or publicity. The single justice himself determined all questions of law and of fact, and could please himself as to the evidence he chose to hear. In 1822 the Duke of Buckingham tried and convicted a man of coursing on his estate. The trial took place in the duke's kitchen: the witnesses were the duke's keepers. The defendant was in this case not a poacher, who was *fera naturæ*, but a farmer, who was in comparison a person of substance and standing. The office of magistrate possessed a special importance for the class that preserved game, and readers of *Rob Roy* will remember that Mr. Justice Inglewood had to swallow his prejudices against the Hanoverian succession and take the oaths as a Justice of the Peace, because the refusal of most of the Northumberland magistrates, being Jacobites, to serve on the bench, had endangered the strict administration of the Game Laws. We know from the novels of Richardson and Fielding and Smollett how this power enveloped village life. Richardson has no venom against the justices. In *Pamela* he merely records the fact that Mr. B. was a magistrate for two counties, and that therefore it was hopeless for Pamela, whom he wished to seduce, to evade his pursuit, even if she escaped from her duress in his country house.

Fielding, who saw the servitude of the poor with less patience and composure, wrote of country life with knowledge and experience. In *Joseph Andrews* he describes the young squire who forbids the villagers to keep dogs, and kills any dog that he finds, and the lawyer who assures Lady Booby that 'the laws of the land are not so vulgar to permit a mean fellow to contend with one of your ladyship's fortune. We have

one sure card, which is to carry him before Justice Frolic, who upon hearing your ladyship's name, will commit him without any further question.' Mr. Justice Frolic was as good as his reputation, and at the moment of their rescue Joseph and Fanny were on the point of being sent to Bridewell on the charge of taking a twig from a hedge. Fielding and Richardson wrote in the middle of the eighteenth century. In 1831 Denman, the Attorney-General in Grey's Government, commented on the difference between the punishments administered by judges at Assize and those administered by justices at Quarter Sessions, in the defence of their game preserves, observing that the contrast 'had a very material effect in confusing in the minds of the people the notions of right and wrong.' This territorial power was in fact absolute. In France the peasant was in some cases shielded from the caprice of the seigneur by the Crown, the Parlements and the intendants. Both Henry IV. and Louis XIII intervened to protect the communities in the possession of their goods from the encroachments of seigneurs, while Louis XIV. published an edict in 1667 restoring to the communities all the property they had alienated since 1620. In England he was at the landlord's mercy: he stood unprotected beneath the canopy of this universal power.

Nor was the actual authority, administrative or judicial, of the magistrates and their surveillance of the village the full measure of their influence. They became, as Mr. and Mrs. Webb have shown, the domestic legislature. The most striking example of their legislation was the Berkshire Bread Act. In 1795 the Berkshire Court of Quarter Sessions summoned justices and 'several discreet persons' to meet at Speenhamland for the purpose of rating husbandry wages. This meeting passed the famous resolution providing for the supplementing of wages out of the rates, on a certain fixed scale, according to the price of flour. The example of these seven clergymen and eleven squires was quickly followed in other counties, and Quarter Sessions used to have tables drawn up and printed, giving the justices' scale, to be issued by the Clerk of the Peace to every acting magistrate and to the churchwardens and overseers of every parish. It was a handful of magistrates in the different counties, acting on their own initiative, without any direction from Parliament, that set loose this social avalanche in England. Parliament, indeed, had developed the habit of taking the opinion of the magistrates as conclusive on all social questions, and whereas a modern elected local

authority has to submit to the control of a department subject to Parliament, in the eighteenth century a non-elected local authority, not content with its own unchecked authority, virtually controlled the decisions of Parliament as well. The opposition of the magistrates to Whitbread's Bill in 1807, for example, was accepted as fatal and final.

Now if the Crown had been more powerful or had followed a different policy, the Justices of the Peace, instead of developing into autonomous local oligarchies, might have become its representatives. When feudal rights disappeared with the Wars of the Roses, the authority of the Justice of the Peace, an officer of the Crown, superseded that of the local lord. Mr. Jenks¹ is therefore justified in saying that 'the governing caste in English country life since the Reformation has not been a feudal but an official caste.' But this official caste is, so to speak, only another aspect of the feudal caste, for though on paper the representatives of the central power, the county magistrates were in practice, by the end of the eighteenth century, simply the local squires putting into force their own ideas and policy. Down to the Rebellion, the Privy Council expected judges of assize to choose suitable persons for appointment as magistrates. Magistrates were made and unmade until the reign of George I., according to the political prepossessions of governments. But by the end of the eighteenth century the Lord Lieutenant's recommendations were virtually decisive for appointment, and dismissal from the bench became unknown. Thus though the system of the magistracy, as Redlich and Hirst pointed out, enabled the English constitution to rid itself of feudalism a century earlier than the continent, it ultimately gave back to the landlords in another form the power that they lost when feudalism disappeared.

Another distinctive feature of the English magistracy contributed to this result. The Justice of the Peace was unpaid. The statutes of Edward III. and Richard II. prescribed wages at the handsome rate of four shillings a day, but it seems to be clear, though the actual practice of benches is not very easy to ascertain, that the wages in the rare instances when they were claimed were spent on hospitality, and did not go into the pockets of the individual justices. Lord Eldon gave this as a reason for refusing to strike magistrates off the list in cases of private misconduct. 'As the magistrates gave their services gratis they ought to be protected.' When it

¹ *Outline of English Local Government*, p. 152.

was first proposed in 1785 to establish salaried police commissioners for Middlesex, many Whigs drew a contrast between the magistrates who were under no particular obligation to the executive power and the officials proposed to be appointed who would receive salaries, and might be expected to take their orders from the Government.

The aristocracy was thus paramount both in local government and in Parliament. But to understand the full significance of its absolutism we must notice two important social events--the introduction of family settlements and the abolition of military tenures.

A class that wishes to preserve its special powers and privileges has to discover some way of protecting its corporate interests from the misdemeanours and follies of individual members. The great landlords found such a device in the system of entail which gave to each successive generation merely a life interest in the estates, and kept the estates themselves as the permanent possession of the family. But the lawyers managed to elude this device of the landowners by the invention of sham law-suits, an arrangement by which a stranger brought a claim for the estate against the limited owner in possession, and got a judgment by his connivance. The stranger was in truth the agent of the limited owner, who was converted by this procedure into an absolute owner. The famous case known as Taltarums case in 1472, established the validity of these lawsuits, and for the next two hundred years 'Family Law' no longer controlled the actions of the landowners and the market for their estates. During this time Courts of Law and Parliament set their faces against all attempts to reintroduce the system of entails. As a consequence estates were sometimes melted down, and the inheritances of ancient families passed into the possession of yeomen and merchants. The landowners had never accepted their defeat. In the reign of Elizabeth they tried to devise family settlements that would answer their purpose as effectually as the old law of entail, but they were foiled by the great judges, Popham and Coke. After the Restoration, unhappily, conditions were more propitious. In the first place, the risks of the Civil War had made it specially important for rich men to save their estates from forfeiture by means of such settlements, and in the second place the landowning class was now all-powerful. Consequently the attempt which Coke had crushed now succeeded, and rich families were enabled

to tie up their wealth.¹ Family settlements have ever since been a very important part of our social system. The merchants who became landowners bought up the estates of yeomen, whereas in eighteenth-century France it was the land of noblemen that passed to the *nouveaux riches*.

The second point to be noticed in the history of this landlord class is the abolition of the military tenures in 1660. The form and the method of this abolition are both significant. The military dues were the last remaining feudal liability of the landlords to the Crown. They were money payments that had taken the place of old feudal services. The landlords, who found them vexatious and capricious, had been trying to get rid of them ever since the reign of James I. In 1660 they succeeded, and the Restoration Parliament revived the Act of Cromwell's Parliament four years earlier which abolished military tenures. The bargain which the landlords made with the Crown on this occasion was ingenious and characteristic; it was something like the Concordat between Francis I. and Leo X., which abolished the Pragmatic sanction at the expense of the Gallican Church; for the landowners simply transferred their liability to the general taxpayer. The Crown forgave the landlords their dues in consideration of receiving a grant from the taxation of the food of the nation. An Excise tax was the substitute.

Now the logical corollary of the abolition of the feudal dues that vexed the large landowners would have been the abolition of the feudal dues that vexed the small landowners. If the great landlords were no longer to be subject to their dues in their relation to the Crown, why should the small copyholder continue to owe feudal dues to the lord? The injustice of abolishing the one set of liabilities and retaining the other struck one observer very forcibly, and he was an observer who knew something, unlike most of the governing class, from intimate experience of the grievances of the small landowner under this feudal survival. This was Francis North (1637-1685), the first Lord Guildford, the famous lawyer and Lord Chancellor. North had begun his career by acting as the steward of various manors, thinking that he would gain an insight into human nature which would be of great value to him in his practice at the bar. His experience in

¹ A clear and concise account of these developments is given by Lord Hobhouse, *Contemporary Review*, February and March 1886.

this capacity, as we know from Roger North's book *The Lives of the Norths*, disclosed to him an aspect of feudalism which escaped the large landowners--the hardships of their dependants. He used to describe the copyhold exactions, and to say that in many cases that came under his notice small tenements and pieces of land which had been in a poor family for generations were swallowed up in the monstrous fines imposed on copyholders. He said he had often found himself the executioner of the cruelty of the lords and ladies of manors upon poor men, and he remarked the inconsistency that left all these oppressions untouched in emancipating the large landowners. Maine, in discussing this system, pointed out that these signorial dues were of the kind that provoked the French Revolution. There were two reasons why a state of things which produced a revolution in France remained disregarded in England. One was that the English copyholders were a much smaller class: the other that, as small proprietors were disappearing in England, the English copyholder was apt to contrast his position with the status of the landless labourer, and to congratulate himself on the possession of a property, whereas in France the copyholder contrasted his position with the status of the freeholder and complained of his services. The copyholders were thus not in a condition to raise a violent or dangerous discontent, and their grievances were left unredressed. It is sometimes said that England got rid of feudalism a century earlier than the continent. That is true of the English State, but to understand the agrarian history of the eighteenth century we must remember that, as it has been well said,¹ whereas the English State is less feudal, the English land law is more feudal than that of any other country in Europe.'

¹

Lastly, the class that is armed with all these social and political powers dominates the universities and the public schools. The story of how the colleges changed from communities of poor men into societies of rich men, and then gradually swallowed up the university, has been told in the Reports of University Commissions. By the eighteenth century the transformation was complete, and both the ancient universities were the universities of the rich. There is a passage in Macaulay describing the state and pomp of Oxford at the end of the seventeenth century, 'when her Chancellor, the venerable Duke of Ormonde, sat in his embroidered mantle on his throne

¹ Holdsworth's *History of English Law*.

under the painted ceiling of the Sheldonian theatre, surrounded by hundreds of graduates robed according to their rank, while the noblest youths of England were solemnly presented to him as candidates for academical honours.' The university was a power, not in the sense in which that could be said of a university like the old university of Paris, whose learning could make popes tremble, but in the sense that the university was part of the recognised machinery of aristocracy. What was true of the universities was true of the public schools. Education was the nursery not of a society, but of an order; not of a state, but of a race of rulers.

Thus on every side this class is omnipotent. In Parliament with its ludicrous representation, in the towns with their decayed government, in the country, sleeping under the absolute rule of the Justice of the Peace, there is no rival power. The Crown is for all purposes its accomplice rather than its competitor. It controls the universities, the Church, the law, and all the springs of life and discussion. Its own influence is consolidated by the strong social discipline embodied in the family settlements. Its supremacy is complete and unquestioned. Whereas in France the fermentation of ideas was an intellectual revolt against the governing system and all literature spoke treason, in England the existing régime was accepted, we might say assumed, by the world of letters and art, by the England that admired Reynolds and Gibbon, or listened to Johnson and Goldsmith, or laughed with Sheridan and Sterne. To the reason of France, the government under which France lived was an expensive paradox: to the reason of England, any other government than the government under which England lived was unthinkable. Hence De Tocqueville saw only a homogeneous society, a society revering its institutions in the spirit of Burke in contrast with a society that mocked at its institutions in the spirit of Voltaire.

'You people of great families and hereditary trusts and fortunes,' wrote Burke to the Duke of Richmond in 1772, 'are not like such as I am, who, whatever we may be by the rapidity of our growth and even by the fruit we bear, flatter ourselves that, while we creep on the ground, we belly into melons that are exquisite for size and flavour, yet still we are but annual plants that perish with our season, and leave no sort of traces behind us. You, if you are what you

ought to be, are in my eye the great oaks that shade a country, and perpetuate your benefits from generation to generation.' We propose in this book to examine the social history of England in the days when the great oaks were in the fulness of their vigour and strength, and to see what happened to some of the classes that found shelter in their shade.