PRODUCTION AND POLITICS

VI.—The High Court of Parliament

WE saw in our last article how, during the period from the end of the 8th to the beginning of the 12th century the sovereign lords of the English land set on a firm and lasting basis the centralised system of monarchy, transforming their household functionaries (*ministri*=servants) into officers of State. We must now consider how their simple machinery of doing justice, collecting fines and the equivalents of feudal service gave birth to parliamentary institutions.

Many myths have come to pass muster as good history in connection with the High Court of Parliament and extraordinary are the notions which are current about its origins and function. Hence it is a serious defect about all constitutional history books—including Professor Pollard's recent *Evolution of Parliament**—that they are so expensive as to place them almost beyond the reach of the victims of such quack productions as *Parliament and Revolution* and *Socialism and Government*. The illusions of democracy are so many, and their beginnings so difficult to explore, that we can forgive Professor Pollard his rhapsody on the enduring necessity of parliament since he so pitilessly dispels the superstitions of seven dead centuries. We will deal with parliament in the present if he will show us parliament in the past. We want facts, and he, following worthily in the footsteps of Stubbs and Maitland, gives us just the facts we have been craving.

Professor Pollard makes plain the non-popular, indeed the anti-popular, character of the early parliament. Parliament commenced as a court and, says he, "a court is not a popular institution." Parliament was the court of the king (*curia regis*), and to it every tenant-in-chief, i.e. everyone holding his lands direct from the king, was liable to be summoned in precisely the same way as their tenants were liable to be summoned to the courts over which they presided as manorial lords. Every tenant-in-chief could be summoned to the court or *parliamentum*, but none had the right to attend. It was a matter of summons, of duty and not of right.

The king in his court might be seeking advice, dispensing judgments, or demanding attendance in the field or its equivalent in money. He summoned his tenants to secure their consent, for mediæval theory required that a subject should give his willing consent (though he might have to be tortured before he became "willing") to whatever the king had in hand. He chose his counsellors from amongst his tenants—barons, ecclesiastical or secular. He appointed some to try cases in the Court of Exchequer, others in the Court of Chancery, others in the Court of King's Bench. These Courts—his courts—sat in Westminster Hall. Thither, in time, with the growth of the King's power, came freemen who could not get satisfaction in other courts, to receive the judgments of these lords of parliament, who interpreted the customs, handed down new decisions in new cases (acts of parliament), which being promulgated came to be new law and the beginnings of legislation.

Only lords, barons, men who held land by baronial tenure direct from the king, could adjudicate in the king's courts. Law, whether as affecting

* Longmans, Green & Co., 21s. net.

judge or petitioner, was a matter for the free-tenant, for the freeman. Villeins had no place in the king's courts; they had no place in law.

Attendance in the "High Court of Parliament" was an incident, a burden of feudal tenure. The House of Lords developed out of the assembly of tenants-in-chief summoned to counsel the king. The House of Commons evolved out of a gathering of men sent forward—not necessarily elected—in response to a royal summons to the "communes" of the free-tenants of shires and boroughs.

"In dealing with mediæval representation," says Professor Pollard, "we have always to think in terms of feudal service rather than in those of democratic principle. The boroughs are represented because they are collective tenants-in-chief on the king's demesne. . . ." (page 157). Again, "It was the land rather than men that parliament represented." The "communes" avoided their parliamentary services as much as they could. Boroughs dodged the duty of sending representatives, and were overjoyed at being forgotten. They only came to parliament when they wanted some confirmation or extension of their charters. That gained they shook the dust of Westminster off their feet as quickly as possible.

Parliament commenced, then, as a court of law and justice. Justice was administered for its emoluments, and laws were made to embody and to standardise the judgments. The king desired freedom in judgments in so far as this made for increased revenue. The tenant-in-chief desired confirmation of the charters standardising the laws and customs affecting his tenure. The king and his officers strengthened the machinery of the shire-court with a view to "search the pockets" of his tenants in every shire, hundred and manor of the realm.

During two centuries after the Norman Conquest pious tenants-in-chief and kings themselves were settling throughout the realm daughter communities of religious orders having their parent monasteries in France and Italy. The monasteries had introduced sheep rearing and provided a movable crop in the wool yield, which formed a medium of contributions to the parent abbeys and to Rome. Italian and German merchants collected the wool, advanced loans upon its security, built up the Florentine banks on such a basis and caused money to flow into and out of England. The Church availed itself of this trade and its monetary reflex to levy contributions for extravagant building, ornament and ceremonial. King and Church, with their courtiers and clerics, made huge exactions to rear the architectural masterpieces of Westminster and other of our Gothic churches, the palaces of the Savoy, of Lambeth, and of St. Stephen's. The new mechanism of the money economy was worked relentlessly to provide the means of royal aggrandisement, clerical magnificence and baronial consequence.

It was this new economy of wool trade and money loans and contributions which made the politics of Archbishop Langton and Simon de Montfort. The struggle for the Great Charter—Magna Carta—was an endeavour on the part of the tenants-in-chief to force upon the Crown a calendar of feudal rights in a document "manifestly conceived in the interests of a class." "Magna Carta," says Pollard, "was designed to secure the local independence of barons rather than the national responsibility of kings."

The "struggle for Parliament" in the next reign was the continuation of the baronial endeavour to restrain the king from tampering with "the

liberties" of the tenants-in-chief, with their right to lord it over their tenantry and villeins as they would, their privilege of being kings on their own. In the eventual "Barons' War," Simon de Montfort's gesture towards democracy consisted merely in his rallying the mass of the tenants, tenants-in-chief and tenants in boroughs in royal demesne. He called together the landlords *as a class*—regardless of their tenure being in a town or out of a town. The "Mad Parliament" had the consciousness of "an upper ten." Simon de Montfort and his faction had the consciousness of a class.

Both of them, unlike Mr. J. H. Thomas, were extra-constitutionalists. Both of them, unlike the Labour Party, "plumped" for the good old English method, the method of *free-born* Englishmen—Direct Action. They improvised their own constitution and met together, like all good Englishmen, *maintaining revolutionary order under arms*. Under arms, the barons of England won and held the Charter. Under arms, the barons of England established the principle of the House of Commons. Under arms, the new Model Army made the House of Commons the instrument of their class. Under arms, the oligarchs of 1689 established the precious "Constitution" worshipped by the Labour Party. Under arms, *every* class that has risen and ruled in England has made and maintained its own constitution.

The constitutional historians are all busy hammering home that, in the past, the great events of English politics have been those wherein a class has thought and acted as a class. No constitutional historian can so falsify the facts as completely to disguise the *class* character of our unfolding island story. No constitutional historian can hide the fact that Parliament was won by the propertied classes *under arms*. No constitutional historian can mitigate the *bias* of the actors in our English revolutions. Here is Bishop Stubbs saying of De Montfort's assembly that it—

> was not primarily and essentially a constitutional assembly. It was not a general convention of the tenants-in-chief, or of the three estates, but a parliamentary assembly of the supporters of the existing government. This was a matter of necessity. (*Constitutional History*, Vol. II., pp. 92–3.)

"A parliamentary assembly of the supporters of the existing government." Bolshevism! Dictatorship! "A matter of necessity." Where? In England! When? Before Mr. MacDonald and Mr. Thomas were born!

Parliament, in so far as it existed and expanded in succeeding reigns, did so at the instance of the kings who used its judicial and legislative functions to strengthen the central power of the monarchy, and developed its financial activities with the sole idea of increasing the amount of money they could extract from their subjects with the least cost of collection and accompanying discontent. Parliament remained till Tudor times a High Court, the grand assize of all the realm, sought by those requiring alleviation of judicial grievances, avoided by all whom the king desired exceedingly to tax.

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(To be continued.)