THE CONSTITUTIONAL DOCUMENTS OF THE PURITAN REVOLUTION

SAMUEL RAWSON GARDINER

The Constitutional Documents Of The American Revolution

1626 - 1660

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PREFACE TO THE SECOND EDITION

The documents in this volume are intended to serve either as a basis for the study of the Constitutional History of an important period, or as a companion to the Political History of the time. By far the greater number of them are printed in books which, though commonly to be found in large libraries, are, on account of their size and expense, not readily accessible to students in general. The MS. of the Constitutional Bill of the first Protectorate Parliament, in the handwriting of John Browne, Clerk of the Parliaments, is preserved at Stanford Hall in the possession of Lord Braye, with whose kind permission the copy used in this volume has been taken. It is possible that a great part of the document might have been recovered from the entries of clauses and amendments in the Journals of the House of Commons, but, as far as I know, this is the only complete copy in existence.

The documents in Part I of the present edition have been added at the suggestion of Professor Prothero, who very generously placed at my disposal the copies he had made with the intention of adding them to his own *Statutes and other Constitutional Documents illustrative of the reigns of Elizabeth and James I* (Clarendon Press, 1894). Though the Navigation Act of the Commonwealth has no claim to a place amongst Constitutional Documents, it is of sufficient importance to be printed in the Appendix.

S. R. G.

INTRODUCTION

I.: To the meeting of the Third Parliament of Charles I. [—— 1628.]

Revolutions, no less than smaller political changes, are to be accounted for as steps in the historical development of nations. They are more violent, and of longer duration, in proportion to the stubborn resistance opposed to them by the institutions which stand in their way; and the stubbornness of that resistance is derived from the services which the assailed institutions have rendered in the past, and which are remembered in their favour after they have ceased to be applicable to the real work of the day, or at least have become inapplicable without serious modification.

On the other hand, many who, throwing off the conservatism of habit, have bent themselves to sweep away the hindrances which bar the path of political progress, show an eagerness to put all established authority to the test, and to replace all existing institutions by new ones more in accordance with their ideal of a perfect State—an ideal which, under all circumstances, is necessarily imperfect. Revolutions, therefore, unavoidably teem with disappointment to their promoters. Schemes are carried out, either blundering in themselves or too little in accordance with the general opinion of the time to root themselves in the conscience of the nation; and, before many years have passed away, those who were the most

ardent revolutionists, looking back upon their baffled hopes, declare that nothing worthy of the occasion has been accomplished.

The historian writing in a later generation is distracted neither by these buoyant hopes, nor by this melancholy despair. He knows, on the one hand, that, in great measure, the dreams of the idealists were but anticipations of future progress; and on the other hand, that the conservative misgivings of those who turned back were but the instrument through which the steadiness of progress indispensable to all healthy growth was maintained. A Revolution, in short, as an object of study, has an unrivalled attraction for him, not because it is exciting, but because it reveals more clearly than smaller changes the law of human progress.

One feature, therefore, is common to all Revolutions, that the nation in which they appear is content, perhaps after years of agitation, with just so much change as is sufficient to modify or abolish the institution which, so to speak, rankles in the flesh of the body politic. In the French Revolution, for instance, the existence of privileged classes was the evil which the vast majority of the nation was resolved to eradicate; and after blood had been shed in torrents, the achievement of equality under a despot satisfied, for a time at least, this united demand of the nation. Not the taking of the Bastille nor the execution of Louis XVI, but the night of August 4, when feudal privileges were thrown to the winds, was the central fact of the French Revolution. It was of the essence of the movement that there should cease to be privileged orders. It was a secondary consequence that the King’s authority was restricted or his person misused.

In the English Revolution, on the other hand, it was of the essence of the movement that the authority of the King should be restricted. The Kingship had done too much service in the recent past, and might do too much service

again, to be absolutely abolished, and there was no widespread desire for any social improvements. The abolition of the House of Lords and the sweeping away of Episcopacy were secondary consequences of the movement. Its central facts are to be traced in the legislation of the first months of the Long Parliament, especially in the Triennial Act, the Tonnage and Poundage Act, and the Acts for the abolition of the Star Chamber and the High Commission. Then, just as in the French Revolution the Reign of Terror followed upon the abolition of privileges on account of the suspicion that those who had lost by the change were conspiring with foreign armies to get them back; so in the English Revolution there followed, first the Civil War and then the trial and execution of the King, on account of the suspicion that Charles was personally unwilling to consent to the loss of power and was conspiring with foreign armies to recover it.

The authority inherited by Charles at his accession was derived from the Tudor monarchy, which had come into power in defence of the middle classes against the great landowners, and had maintained itself in power as the champion of a National Church against a foreign ecclesiastical organisation backed by foreign governments. No such conflict could be successfully waged without reliance on spiritual forces, as well as on the craving for the material advantages to be obtained by casting off the oppressions of the nobility at home or by repelling invaders from abroad. To some extent the spiritual force grew out of the struggle itself, and the exaggerated expressions of loyalty to the wearer of the crown, which fall so strangely on modern ears, were but the tokens of a patriotic tide of feeling which was indeed very far from clearing away evil passions, but which at all events did something to elevate the men who were subject to them. In the main, however, the spiritual force which bore Elizabeth to triumph was

religious zeal, or at least zeal which was permeated by the influence of religion.

Of this combined effort of patriotism and religion the Tudor institutions bore the impress. Not only were the judges removable by the Crown, but the Court of Star Chamber, which could fine, imprison, and in certain cases sentence to the pillory, without the intervention of a jury, was composed of all the members of the Privy Council and of two of the judges, thus enabling the Sovereign to secure the decision in cases in which he was personally affected by a court in manifest dependence on himself. The same thing may be said of the Court of High Commission, which dealt with ecclesiastical offences and in which the judicial authority was practically exercised by the Bishops and the lawyers of the Ecclesiastical Courts, as the laymen named in the commission seldom or never attended to their duties. Again, the right exercised by Elizabeth of levying Impositions, or Customs-duties not voted by Parliament, was the germ of an unparliamentary revenue which might make it needless, except in times of great necessity, to consult Parliament at all. It is true that Elizabeth exercised her powers with extreme sagacity and moderation, and that the nation, confident in her leadership, had not been ready to take offence; but it was certain, that if the time should arrive when a ruler less trusted and less respected was on the throne, there would be a strong disposition to lessen his authority, especially if, as was the case at the opening of the seventeenth century, the reasons for entrusting the Crown with such extensive powers had ceased to exist.

This was precisely what happened during the twenty-two years of the reign of James I. James was out of touch with the national feeling, and though he was often wiser in his aims than the House of Commons, he usually sought to attain them in an unwise way. He was not tyrannical, but his policy and his conduct struck no roots in the heart of the nation; and it soon became impossible to regard him as

in any sense a leader of the national action. At the same time his financial difficulties, caused partly by an unavoidable growth of expenditure, but partly also by his lavish generosity to his favourites, led him to press the real or supposed rights of the Crown farther than Elizabeth had cared to press them. Twice in his reign he raised a Benevolence, not indeed by positive order under the Great Seal, but by invitation conveyed in letters from the Privy Council. The most important financial step taken by him, however, was the levy of largely increased Impositions. Elizabeth had, indeed, for special reasons, levied a few; and one of these, the Imposition on currants, was in 1607 the subject of a trial in the Court of Exchequer, known as Bates's case. Bates, a merchant who refused to pay the duty, on the ground that the King had no legal power to take it without a grant from Parliament, was declared to be in the wrong, and the Crown found itself, by the opinion of the Court which was constitutionally entrusted with the decision of such questions, entitled to raise, in addition to the Tonnage and Poundage—which, according to established precedent, had been voted to James for life by the first Parliament of his reign—as much revenue from exports and imports as the amount of the consumption of foreign articles would permit.

The claim of James to levy Impositions naturally raised opposition in the House of Commons, as it effected not merely the pockets of the members and their constituents, but the constitutional position of Parliament. According to the tradition of generations, the King ought in ordinary times 'to live of his own;' that is to say, to supply his needs from his hereditary revenue and from the Tonnage and Poundage which was intended to enable him to defend the realm by sea. In extraordinary times, when there was war or rebellion or any other demand for unusual expenditure, he might fairly expect Parliament to vote him subsidies, a form of direct taxation loosely resembling the modern

Income Tax. In the early part of James's reign, however, the increasing necessities of the Crown seemed likely to set at naught this old theory, and subsidies were sometimes demanded and even granted when there was neither war nor rebellion. The frequent convocation of Parliament became a necessity for the Crown, and the House of Commons, in proportion as the Crown entered on unpopular courses, saw its opportunity of bringing the Crown to act in accordance with its wishes by delaying or refusing a grant of subsidies. If however the King could substitute a certain revenue from Impositions levied by prerogative for an uncertain revenue from subsidies granted by Parliament, he would be relieved from the necessity of consulting Parliament except in really momentous crises.

The suspicion of danger which may have been entertained when Bates's case was adjudged in the Exchequer was converted into a certainty in 1608, when James ordered by letters patent the raising of new Impositions to the value of about £75,000, a sum which would increase in future years with the increasing trade of the country. When Parliament met in 1610 his right to do so was contested by the Commons, and a compromise was agreed to, by which James was to strike off about a third of the new duties as specially burdensome to the merchants, whilst the remainder, as matters then stood, about £50,000, was to be secured to him by an Act of Parliament in which words were to be inserted precluding him and his successors from ever again levying duties without Parliamentary consent. This compromise, however, was dependent on a larger bargain, known as the Great Contract, for the sale by the Crown in return of certain feudal rights, of which the principal was that of Wardship, for £200,000 a-year, and when the Great Contract failed, the compromise relating to the Impositions fell through as well. When the second Parliament of James I met in 1614,

the Commons renewed their protests against the Impositions, but the Lords refused to discuss the question, and an early dissolution prevented any further steps from being taken.

This dispute on the subject of taxation affected the whole constitutional edifice. It raised the question which is at the bottom of all constitutional struggles, the question between the national will and the national law. Whatever may have been the value of the statutes and precedents quoted at the bar and on the bench in Bates's case, the judges were the only authorised exponents of the law, and the judges had decided that James's claim was legal. Against this there was nothing to allege but a resolution of the House of Commons, and a resolution of the House of Commons could not change the law. Only an Act of Parliament could do that, and in those days an Act of Parliament was not to be had without the real assent of King, Lords, and Commons. In this case, however, the assent of King and Lords was not to be had.

When the national will is strongly asserted, some way is certain to be found, in spite of all constitutional difficulties, to change the law. It is not to be supposed that any such assertion was likely to be made in 1610 or in 1614. Though the members of the House of Commons were dissatisfied, they were not as yet disaffected to the Crown, and even their dissatisfaction was not fully shared by the nation at large.

Nor were difficulties about religion likely, at this stage of our history, to incite to resistance. The Church of England during the Middle Ages had been to a great extent national, and when Henry VIII threw off the Papal jurisdiction she became entirely national. More than any other Church, indeed, she retained a connection with the past historical development of Catholic Christianity, and she claimed that in casting off the innovations of the Middle Ages she appealed to the Scriptures, and, in cases of doubt, to their

interpretation by the Christian writers of the early centuries. Basing herself on this foundation, she retained the Episcopal office, which could be shown to have been in existence at least in very early times.

In theory a descendant of the Church of the first ages of Christianity, the Church of England cut off from Papal authority could not fail to be subjected to the influences of an age of religious change. On the one hand she was subjected to the Crown, because the nation was subjected to the Crown, and on the other hand her clergy and people were liable to be drawn this way and that by tides of opinion flowing in from the perturbed Continent. To enter into these matters in detail would be to write the religious history of the England of the sixteenth century, and it is enough to say that at the end of Elizabeth's reign, whilst the Queen had succeeded in maintaining Episcopacy and to a great extent the use of the Common Prayer Book as it had been settled soon after her accession, the doctrine taught and accepted by the vast majority of that part of the clergy which was in any real sense of the word religious was Calvinistic. Elizabeth was, however, slow to mark offences, and though she had insisted on the complete use of the Prayer Book and on conformity to the rubrics in important places such as Cathedrals and College Chapels, she had winked at refusals by the incumbents of country parishes to wear the surplice and to carry out certain other ceremonial rules. After the abortive Hampton Court Conference in 1604 James resolved to enforce conformity, and a considerable number of the clergy were deprived of their benefices for refusing to conform. These Puritans, as they were called, found support in the House of Commons on the ground that it would be well at a time when there was a dearth of good preachers to retain the services of men who were notoriously conscientious, and who were morally and intellectually qualified for the fulfilment of their ministerial office. The position of the non-conforming Puritans who

appeared at Hampton Court and of their lay supporters may at this time be easily defined. Both accepted the Episcopal constitution of the Church and its relations with the Crown. Both accepted the Prayer Book as a whole, and the Calvinistic doctrine commonly taught in the pulpits. On the other hand, whilst the laymen did not offer any direct opposition to such ceremonies as the use of the surplice, some of the clergy resigned their cures rather than conform to them. Obviously the temper of the laity who sympathised with the non-conforming clergy was still less likely to lead to resistance than the temper roused in them by the levy of the new Impositions. Yet, though internal peace was maintained, there was a rift between the Crown and the House of Commons, and the rift was widened during the latter part of James's reign by difference of opinion on foreign politics. The proposed marriage of the Prince of Wales with a Spanish Infanta, and James's desire to settle the troubles on the Continent caused by the outbreak of the Thirty Years' War by means of the Spanish alliance, was received with disapprobation by all classes of Englishmen; and when, in the Parliament of 1621, the Commons petitioned the King to abandon the Spanish marriage, James denied the right of the House to treat of matters other than those on which he asked its advice. On this the Commons drew up a Protestation, claiming the right to discuss all matters relating to the affairs of the kingdom. James dissolved Parliament, and tore the Protestation out of the Journal Book.

In 1624 another Parliament met, which at first seemed likely to come to terms with the King; as after the failure of his negotiations with Spain he was about to take arms for the restoration of his son-in-law, the Elector Palatine. Differences of opinion, however, soon arose between James and the House of Commons as to the principles on which the war was to be conducted. An expedition sent out under Count Mansfeld ended in desperate failure. Under these

circumstances James died in 1625. His successor, Charles I, was anxious to carry on war with Spain, but he was completely under the influence of the Duke of Buckingham, and all that went wrong was naturally attributed to Buckingham's mismanagement. Accordingly, the Commons in the first Parliament of Charles, which met in 1625, after showing their reluctance to grant supplies for the war, using Sir Nathaniel Rich as their mouthpiece in a last effort to find a compromise (No. 1, p. 1), proceeded to ask that the King should take the advice of counsellors in whom Parliament could confide. They did not indeed propose that he should dismiss Buckingham, but the granting of their request would have been a long step towards the establishment of a responsible ministry, and would have cut at the root of the Tudor system, under which the supremacy of the Crown was secured by the responsibility of ministers to itself alone. Charles, seeing the diminution of his authority which would result from the change, dissolved Parliament.

Charles's second Parliament met in 1626. An expedition to Cadiz had in the interval failed to accomplish anything, and there were reasons for believing that Buckingham was about to pick a quarrel with France in addition to the quarrel with Spain. All Buckingham's misdeeds were imputed to the most sordid motives, and the Commons had every inducement to believe the worst of his actions. Charges of crime in order to obtain the dismissal of a minister would commend themselves to a House which had no power to dismiss by simple resolution or petition, and Buckingham was therefore impeached as guilty, not of incompetence, but of high crimes and misdemeanours against the state (No. 3, p. 3). Charles, however, again interfered and dissolved his second Parliament as sharply as he had dissolved the first. Charles's failure in the same Parliament to keep under restraint the Earls of Arundel and Bristol (No. 4, p. 44), might have served as a warning to

him that there were limits to the devotion even of the House of Lords.

In the autumn of 1626 Charles, finding his financial necessities pressing, and having failed to persuade his subjects to present him with a free gift (No. 5, p. 46), issued a commission for the levy of tonnage and poundage by prerogative (No. 6, p. 49), after which he proceeded to levy a forced loan (No. 7, p. 51). In 1627 he engaged in a war with France, and sent out a fleet and army under Buckingham to relieve the Huguenot stronghold of Rochelle which was being besieged by the King of France. This expedition, like the preceding one, ended in failure, and public opinion was even more excited against Buckingham than before. In the meanwhile the execution of the forced loan had been resisted, and Charles had imprisoned leading personages who had refused payment. Five of their number had applied for a writ of Habeas Corpus, and the King's claim to imprison without showing cause,—and thus by stating no issue which could go before a jury, to prevent the imprisoned person from obtaining a trial—was argued before the Court of King's Bench in what is known as The Five Knights' Case (No. 8, p. 57). In the end the five knights were remanded to prison, but the judges expressed so much doubt as to the King's right permanently to imprison that Charles's authority in the matter was considerably shaken. The general result was that the judges treated the King's power as something exceptional, to be employed in special crises, and though they were willing to trust the King to judge when such a crisis existed, they were unable to regard arbitrary imprisonment as an ordinary instrument of government.

Meanwhile, the soldiers who had returned from Rhé were billeted in private houses in order that they might be kept in readiness for a fresh expedition in the following year, and were subjected to the discipline of Martial Law. Complaints were soon heard of the oppressive nature of the

system. The Courts Martial too did not content themselves with the punishment of soldiers, but also punished civilians upon the complaint of soldiers.

II.: From the Meeting of the Third Parliament of Charles I to the Meeting of the Long Parliament. [1628-1640.]

When Charles's third Parliament met in 1628, it immediately occupied itself with these grievances. After a long struggle, in which he refused to accept a Bill proposed by Wentworth and brought in by Coke, with the object of preventing the repetition of the conduct complained of without passing judgment on the King's conduct in the past (No. 9, p. 65), Charles consented to the Petition of Right (No. 10, p. 66), which after declaring that the law had been broken, demanded that the King should acknowledge the exaction of 'any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament,' all imprisonment without cause shown, all billeting of soldiers in private houses, and all exercise of Martial Law to be illegal (No. 10, p. 69).

The Petition of Right is memorable as the first statutory restriction of the powers of the Crown since the accession of the Tudor dynasty. Yet, though the principles laid down in it had the widest possible bearing, its remedies were not intended to apply to all questions which had arisen or might arise between the Crown and the Parliament, but merely to those which had arisen since Charles's accession. Parliament had waived, for the present at least, the consideration of Buckingham's misconduct. It had also waived the consideration of the question of Impositions. That this was so appears by a comparison of the language of the Petition of Right with that of the Tonnage and

Poundage Act of 1641 (No. 31, p. 159). The prohibition from taking without Parliamentary consent extends in the former to ‘any gift, loan, benevolence, tax, or such like charge,’ in the latter to any ‘subsidy, custom, impost, or charge whatsoever.’ The framers of the Petition of Right were the first lawyers of the day, and it can hardly have been through inadvertence that they omitted the decisive words necessary to include Impositions if they had intended to do so. Nor was it without significance that whilst the Houses in the preamble to the Petition of Right refer to the imaginary statute *de Tallagio non concedendo* as enacting that ‘no tallage or aid should be taken without consent,’ they make no reference to the clauses in the *Confirmatio Cartarum* which refer to the duties upon merchandise.

The motives of the Commons in keeping silence on the Impositions were probably twofold. In the first place, they probably wished to deal separately with the new grievances, because in dealing with them they would restrain the King’s power to make war without Parliamentary consent. The refusal of Tonnage and Poundage would restrain his power to govern in time of peace. In the second place, they had a Tonnage and Poundage Bill before them. Such a Bill had been introduced into each of the preceding Parliaments, but in each case an early dissolution had hindered its consideration, and the long debates on the Petition of Right now made it impossible to proceed farther with it in the existing session. Yet, for three years the King had been collecting Tonnage and Poundage, just as he collected the Impositions, that is to say, as if he had no need of a Parliamentary grant. The Commons therefore proposed to save the right of Parliament by voting Tonnage and Poundage for a single year, and to discuss the matter at length the following session. When the King refused to accept this compromise they had some difficulty in choosing a counter-move. They

were precluded from any argument from ancient statute and precedent, because the judges in Bates's case had laid down the law against them, and they therefore had recourse to the bold assertion that the Petition of Right had settled the question in their favour (No. 11, p. 70). Charles answered by proroguing Parliament, and took occasion in so doing to repudiate the doctrine which they had advanced (No. 12, p. 73).

Soon after the prorogation Buckingham was murdered, and it is possible that if no other question had been at issue between the Crown and the Commons than that of the Customs-duties the next session would have seen the end of the dispute. The Church question had, however, by this time reached a new stage. To the dispute about surplices had succeeded a dispute about doctrine and discipline. A school of theological students had arisen which rejected the authority of Calvin, and took up the principle advocated by Cranmer that the patristic writings afforded a key to the meaning of the Scriptures in doubtful points. In prosecuting their studies they learnt to attach special value to the doctrine of sacramental grace, and to regard Episcopacy as a divine institution and not as a merely human arrangement; whilst, on the other hand, they based their convictions on historical study, thus setting their faces against the plea that truth was divinely revealed in the Scriptures alone, without the necessity of supplementing it by the conclusions of human reason. In the *Ecclesiastical Polity* of the great Hooker these ideas were set forth with a largeness of mind and a breadth of charity which made his work memorable as a landmark in the history of thought. It was the starting-point of a change which was to substitute reasonableness for dogmatism, and which was ultimately to blend with the political and philosophical ideas of the latter half of the seventeenth century in putting an end to intolerance and persecution. The followers of Hooker were at first the few who, in spite of their appeal to antiquity,

were in their central convictions in advance of their age. To give such men their due is always hard for contemporaries, and it was especially hard at a time when the idea of an exclusive National Church had a firm hold on all minds. If there was anything likely to make it impossible, at least for the time, it would be an attempt to place them in positions of authority. Yet this was the very thing which Charles did. His trusted adviser in Church matters was Bishop Laud, and Laud, sharing Hooker's dislike of Calvinistic dogmatism, was fully penetrated with the conviction that he and his friends must either crush the Calvinists or be crushed by them, and that the only way to produce that unity in the Church which he desired to see was to be found in the authoritative enforcement of uniformity in the practices of the Church as laid down by law. Hence, both on the King's side and on that of his antagonists, political and religious considerations were closely connected. The Laudian clergy being in a minority exalted the Royal prerogative from which they expected protection, and declared themselves in its favour even in such purely constitutional questions as those relating to arbitrary taxation, whilst the Calvinistic clergy and laity, feeling themselves to be in a majority, exalted the authority of Parliament by which that majority was represented.

One of the questions at issue was Calvin's doctrine of predestination. The Calvinists held it to be one of the fundamental tenets of Christianity and condemned those who opposed it as Arminian heretics. Laud always asserted that he was not an Arminian, as he considered the question to be one beyond the reach of his faculties to resolve. It was doubtless upon Laud's advice, though ostensibly upon the advice of as many Bishops as could be got together upon short notice, that Charles prefixed a Declaration on the subject to a new edition of the Articles (No. 13, p. 75). The Commons on their re-assembly for the session of 1629 took offence not merely at the Declaration itself, but at the

growth of ceremonialism amongst the clergy favoured by the Court, and their feelings were doubtless expressed by the resolutions drawn up by their sub-committee (No. 14, p. 77), though in consequence of the early dissolution those resolutions were never put to the vote in the House itself. The quarrel about religion would certainly have embittered the quarrel about Tonnage and Poundage, but the latter was complicated by a fresh dispute about the liability of some Customs-officers who had seized the goods of a member of Parliament for refusal to pay unvoted Customs, to answer their conduct before the House of Commons. The King declared that his ministers were responsible only to himself, and dissolved Parliament. Before the dissolution took place, the Commons voted a Protestation (No. 15, p. 82), and a few days later the King discussed the quarrel from his point of view in a published Declaration (No. 16, p. 83). Eleven years passed before a Parliament was again summoned.

During those eleven years the breach between the King and his subjects grew constantly wider. Not only Puritans but ordinary Protestants were alienated by Laud's efforts to enforce uniformity in the Church by insisting on obedience to the law as interpreted by the Ecclesiastical Courts. When in 1633 Laud became Archbishop of Canterbury he was able to act with greater authority. The Declaration of Sports (No. 17, p. 99) and the Act of the Privy Council on the position of the Communion Table (No. 18, p. 103) may be taken as specimens of the proceedings to which, under the influence of the Archbishop, Charles lent his name. For these proceedings there was always some tolerable reason to be given. The real objection to them was that they took no account of the religious feelings of the majority of religious men in England. In 1634 Laud undertook a metropolitical visitation of the Province of Canterbury which lasted for three years, and which imposed the new system upon every parish in the Province,

whilst Neile, the Archbishop of York, took the same measures in the Northern Province. The authorisation of the circulation of books in which were set forth doctrines hardly distinguishable from those of the Roman Catholics, the intercourse of the King with the Papal agents established at the Queen’s Court, and the infliction of cruel punishments, by order of the Star Chamber, upon those who maligned the Bishops or assailed their jurisdiction, spread far and wide the belief that a vast conspiracy to bring about the submission of the Church of England to the Pope was actually in existence.

Taken by itself, the dissatisfaction of thoughtful and religious men would not have produced a Revolution. It is never possible, however, to set at naught the feelings of thoughtful and religious men without taking steps which rouse the ill-feeling of those who are neither thoughtful nor religious. After the dissolution of 1629 Charles had enforced the payment of Tonnage and Poundage as well as of the Impositions levied by his father, and with an increasing trade and rising revenue was nearly in a position to make both ends meet, so long as he did not incur any extraordinary expense. The effort to pay off the debts incurred in the late war and to obtain a surplus led to the introduction of unpopular monopolies granted to companies,—thus evading the Monopoly Act of 1624,—to the levying fines upon those who had neglected to take up their knighthood according to law, and to the imposition of fines on those who had encroached on the old boundaries of the forests. A more serious demand on the purses of the subjects was made by the imposition of Ship-money in 1634. The assertions made in the first writ (No. 19, p. 105) set forth so much of the King’s objects in demanding the money as could be made public, and there can be no doubt that a fleet was absolutely needed for the defence of the country at a time when the French and Dutch navies had so preponderant a force.

The reasons why the imposition of Ship-money gave more offence than the levy of Tonnage and Poundage are easy to perceive. On the one hand direct taxation is always felt to be a greater annoyance than indirect, and on the other hand Ship-money was a new burden, whereas Tonnage and Poundage, and even the Impositions, had been levied for many years. The constitutional resistance rested on broader grounds. To levy direct taxation to meet extraordinary expenditure without recourse to Parliament was not only contrary to the Petition of Right, but was certain, if the system was allowed to establish itself, to enable the King to supply himself with all that he might need even in time of war without calling Parliament at all. As there could be no doubt that Charles's main ground in omitting to summon Parliament was his fear lest his ecclesiastical proceedings might be called in question, the dissatisfaction of those who resented his attack on their religion was reinforced by the dissatisfaction of those who resented his attack on the Constitution, and of the far greater number who resented his attack on their pockets.

On the King's side it was urged that Ship-money was not a tax at all, but an ancient payment in lieu of personal service in defence of the realm by sea, and also that the King was himself the sole judge of the existence of the danger which would require such exertions to be made. In 1637 Charles took the opinion of the judges on his case (No. 20, p. 108), and the whole question was thrashed out before the twelve judges in the Exchequer Chamber in the case of Hampden in 1637-38. The arguments on either side bristled with precedents and references to law books, but a fair idea of the broader grounds on which each party took its stand may be gathered from the extracts from the speech of Oliver St. John, who was one of Hampden's counsel (No. 21, p. 109), and from the argument of Sir Robert Berkeley (No. 22, p. 115). In reading St. John's speech, it must not be forgotten that he was precluded by

his position as an advocate from adducing any considerations drawn from his suspicions of Charles's motives in levying Ship-money by prerogative rather than by Parliamentary authority.

Ultimately judgment was given for the King, only two of the judges dissenting on the main point at issue, though three others refrained from giving their support to the King on other grounds.

Whether, if England had been left to itself, any resistance would have ensued it is impossible to say. There were no signs of anything of the sort, and the whole organisation of the country being in the hands of the King, it would have been very difficult, unless the King chose to summon a Parliament, to obtain a nucleus for more than passive resistance. Passive resistance in the shape of a wide-spread refusal to pay Ship-money indeed existed, but however annoying may be the difficulties of a government exposed to general ill-will, they are not likely at once to endanger its existence. It is when dangers threaten it from abroad, and when it becomes necessary to rouse the national spirit in its defence, that the weakness of an unpopular government stands clearly revealed.

This danger was already approaching. In 1637 Charles attempted to force a new liturgy and canons upon the Scottish people, and in Scotland he had not the governmental organisation on his side which he had in England. The Bishops who had been set up by his father had far less influence than the English Bishops, and the members of the Privy Council which governed in his name, though nominated by himself, were for the most part noblemen whose position in the country was much stronger than that of the English nobility, and who were actuated by jealousy of the Scottish Bishops and by fear lest the King should give wealth and power to the Bishops at the expense of the nobility. In consequence, resistance not only broke out but organised itself; and in 1638 a religious manifesto,

the Scottish National Covenant (No. 23, p. 124), was signed by the greater part of the nation. It attacked the church system of Charles, though it nominally professed respect for his authority and avoided all direct attack on Episcopacy.

All attempts at a compromise having failed, and an Assembly which met at Glasgow in the end of 1638 having continued to sit after Charles's High Commissioner, the Marquis of Hamilton, had pronounced its dissolution, and having then declared Episcopacy to be abolished, Charles attempted in 1639 an invasion of Scotland. He was unable, however, to bring money enough together to support an army, and he agreed in the Treaty of Berwick to terms which involved a practical surrender of his claims to dictate the religion of Scotland. His subsequent attempt to construe the Treaty to his own advantage led to the threat of a new war, and on April 13, 1640, by the advice of Strafford, the Lord Lieutenant of Ireland, who had come to England in September, 1639, and had from that date become Charles's principal counsellor, an English Parliament met at Westminster.

The Short Parliament, as it was called, was soon dissolved. It was ready to grant supplies if the King would come to terms with the Scots, and this Charles refused to do.

A new war was the result. The Scots invaded England, defeated a large part of the Royal Army at Newburn, and occupied Northumberland and Durham. Charles had neither an army nor a people behind his back, and he was forced to treat with the invaders. The feelings of the English nation were expressed in the Petition of the Twelve Peers for a New Parliament, laid before the King on August 28, 1640 (No. 24, p. 134). In addition to the piled-up grievances of the past eleven years, was the new one that Charles was believed to have purposed making himself master of England as well as of Scotland by means of an

Irish army led into England by Strafford, and paid by subsidies granted by the Irish Parliament. So utterly powerless was Charles before the demands of the Scots for compensation for the expenses of invading England that, on September 7, he summoned a Great Council, or an assembly of the House of Lords alone (No. 25, p. 136), to meet at York to advise him and to guarantee a loan. On November 7, the Long Parliament met at Westminster.

III.: From the meeting of the Long Parliament to the outbreak of the Civil War. [1640-1642.]

For the first time in the reign of Charles I, a Parliament met with an armed force behind it. Though the Scottish army, which continued to occupy the northern counties till August 1641, was not directly in its service, it depended for its support upon the money voted by the English Parliament, and would consequently have placed itself at the disposition of Parliament if Charles had threatened a dissolution. Charles was therefore no longer in a position to refuse his assent to Bills of which he disapproved, and the series of Constitutional Acts passed during the first ten months of the existence of the Long Parliament (Nov. 1640-August 1641), bear witness to the direction taken by it in constitutional matters. The Triennial Act (No. 27, p. 144), enacting that Parliament was to meet at least once in three years, and appointing a machinery by which it might be brought together when that period had elapsed, if the Crown neglected to summon it, struck at Charles’s late system of governing without summoning Parliament until it suited him to do so, but it did nothing to secure the attention of the King to the wishes of the Houses. Whilst

measures were being prepared to give effect to the further changes necessary to diminish the King’s authority, the attention of the Houses and of the country was fully occupied by the impeachment, which was ultimately turned into the attainder of the Earl of Strafford.

No great constitutional change can take place without giving dire offence to those at whose expense the change is made, and Parliament had therefore from the very beginning of its existence to take into account the extreme probability that Charles, if he should ever regain power, would attempt to set at naught all that it might do. Against this, they attempted to provide by striking at his ministers, especially at Strafford, whom they knew to have been, for some time, his chief adviser, and whom they regarded as the main supporter of his arbitrary government in the past, and also as the man who was likely from his ability and strength of will to be most dangerous to them in the future, in the event of an attempted reaction. They imagined that if he were condemned and executed no other minister would be found daring enough to carry out the orders of a King who was bent upon reducing Parliament to subjection. They therefore impeached him as a traitor, on the ground that his many arbitrary acts furnished evidence of a settled purpose to place the King above the law, and that such a purpose was tantamount to treason; because, whilst it was apparently directed to strengthening the King, it in reality weakened him by depriving him of the hearts of his subjects.

Whether it was justifiable or not to put Strafford to death for actions which had never before been held to be treasonable, it is certain that the Commons, in imagining that Strafford’s death would end their troubles, under-estimated the gravity of the situation. They imagined that the King, in breaking through what they called the fundamental laws, had been led astray by wicked counsel, and that they might therefore fairly expect that when his

counsellors were punished or removed, he would readily acquiesce in changes which would leave him all the legal power necessary for the well-being of the State.

Such a view of the case was, however, far from being accurate. As a matter of fact, the Constitutional arrangements bequeathed by the Tudors to the Stuarts had broken down, and Charles could argue that he had but perpetuated the leadership of the Tudors in the only way which the ambition of the House of Commons left open to him, and that therefore every attempt now made to subject him to Parliament was a violation of those constitutional rights which he ought to exercise for the good of the nation. It is true that an ideally great man might have been enlightened by the failure of his projects, but Charles was very far from being ideally great, and it was therefore certain that he would regard the designs of the Commons as ruinous to the well-being of the kingdom as well as to his own authority. The circumstances of Strafford’s trial increased his irritation, and he had recourse to intrigues with the English army which still remained on foot in Yorkshire, hoping to engage it in his cause against the pretensions of Parliament. It was against these intrigues that the Protestation (No. 28, p. 155) was directed. It was drawn up by Pym, and was taken by every member of both Houses as a token of their determination to resist any forcible interference with their proceedings. It was rapidly followed by the King’s assent, given under stress of mob violence, to the Act for Strafford’s attainder (No. 29, p. 156).

On the day on which the King’s assent to Strafford’s death was given, he also consented to an Act against the dissolution of the Long Parliament without its own consent (No. 30, p. 158). It was the first Act which indicated the new issues which had been opened by the manifest reluctance of Charles to accept that diminution of his power on which Parliament insisted. Taking into account

the largeness of the changes proposed, together with the character of the King from whom power was to be abstracted, it is hardly possible to avoid the conclusion that nothing short of a change of Kings would meet the difficulties of the situation. Only a King who had never known what it was to exercise the old powers would feel himself at his ease under the new restrictions.

However reasonable such a conclusion may be, it was not only impossible, but undesirable, that it should be acted on at once. Great as was both physically and morally the injury inflicted on the country by the attempt of Parliament to continue working with Charles, the nation had more to gain from the effort to preserve the continuity of its traditions than it had to lose from the immediate evil results of its mistake. If that generation of Englishmen was slow to realise the truth in this matter, and suffered great calamities in consequence, its very tenacity in holding firm to the impossible solution of a compromise with Charles I, gave better results even to itself than would have ensued if it had been quick to discern the truth. A nation which easily casts itself loose from the traditions of the past loses steadiness of purpose, and ultimately, wearied by excitement, falls into the arms of despotism.

In spite, therefore, of the appearance of chaos in the history of the years 1640-1649, the forces which directed events are easily to be traced. During the first months of the Long Parliament there is the resolution—whilst retaining the Kingship—to transfer the general direction of government from the King to Parliament and more especially to the House of Commons, a resolution which at first seems capable of being carried out by the abolition of the institutions which had given an exceptional position to the Tudor and Stuart sovereigns. Later on there is the gradual awakening of a part of the nation to the truth that it is impossible to carry out the new system in combination with Charles, and this leads to the putting forth by

Parliament of a claim to sovereignty really incompatible with Kingship. Even those, however, who are most ready to break with the past, strive hard to maintain political continuity by a succession of proposed compromises, not one of which is accepted by both parties.

The Tonnage and Poundage Act, which became law on June 22 (No. 31, p. 159), bears the impress of the first of these movements. On the one hand, whilst it asserts the illegality of the levy of Customs-duties without a Parliamentary grant, it gives to Charles not merely the Tonnage and Poundage given to his father, but also 'such other sums of money as have been imposed upon any merchandise either outward or inward by pretext of any letters patent, commission under the Great Seal of England or Privy Seal, since the first year of his late Majesty King James, of blessed memory, and which were continued and paid at the beginning of this present Parliament' (p. 161). In other words, it followed the precedent of the abortive Bill of 1610 (see p. xiv) by including the Impositions in the grant, and thus enabled the King 'to live of his own' in time of peace. On the other hand, it shows how greatly Charles was distrusted by limiting the grant to less than two months, from May 25 to July 15 (p. 161).

The circumstances which caused this distrust are revealed in the Ten Propositions (No. 32, p. 163). The English army was still under arms in Yorkshire, and though it was about to be disbanded, the King proposed to visit Scotland with the intention, as was then suspected, and is now known, of stirring up the Scots to assist him in England. At such a time it may well have seemed unwise to make the King financially independent, and subsequent events increasing the feeling, the Tonnage and Poundage Act was renewed for short periods only, till the outbreak of the Civil War put an end to any wish to supply the King.

In spite of the King's hope of bringing about a reaction with Scottish aid, he did not feel himself strong enough to