Henry Hallam

The Constitutional History of England

(Vol. 1-3)

Henry Hallam

Constitutional History of England, Henry VII to George II (Vol. 1-3)

Complete Edition

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INTRODUCTION

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Few historical works have stood the test of time better than Hallam's *Constitutional History*. It was written nearly a century ago—the first edition was published in 1827—and at a time when historians were nothing if not stout party men. The science of history, as we now know it, was in its infancy; apologetics were preferred to exegesis; the study of "sources," the editing of texts, the classification of authorities were almost unknown. History was regarded as the handmaid of politics, and the duty of the historian was conceived as being, in the language of Macaulay, the impression of "general truths" upon his generation as to the art of government and the progress of society. Whig and Tory, Erastian and High Churchman, debated on the field of history. The characters of Laud and Cromwell excited as much passion and recrimination as if they were contemporary politicians. That a history written in such times, and by a writer who was proud to call himself a Whig, should still hold its place is not a little remarkable. The reason for its vitality is to be found in the temperament and training of the author. Hallam was a lawyer in the sense in which that term is used at the Bar; that is to say, not so much a seductive advocate as a man deeply versed in the law, accurate, judicious, and impartial. Macaulay, who was as much the advocate as Hallam is the judge, described the *Constitutional History* as "the most impartial book we ever read," and the tribute was not undeserved. Hallam is often didactic, but he is never partisan. Although a Whig he was by no means concerned, like Macaulay, to prove that the

Whigs were never in the wrong, and, as he shrewdly remarks, in his examination of the tenets of the two great parties in the eighteenth century: "It is one thing to prefer the Whig principles, another to justify, as an advocate, the party which bore that name." No better illustration of his attitude of mind can be found than the passage in which, treating of the outbreak of hostilities between Charles I. and the Long Parliament, he sets himself to consider "whether *a thoroughly upright and enlightened man* would rather have listed under the royal or the parliamentary standard." In these days when, as the distinguished occupant of the chair of Modern History at Cambridge tells us, "history has nothing to do with morality," Hallam's grave anxiety to solve this problem may sound quaint and, indeed, irrelevant; but there is no denying the high purpose, the sincerity, and the passion for truth which characterise the passage in question. To-day the historian's conception of truth is purely objective: his aim is to discover what former generations thought rather than to concern himself with what we should think of them. The late Lord Acton[1] stood almost alone among the modern school of historians in insisting that it is the duty of the historian to uphold "the authority of conscience" and "that moral standard which the powers of earth and religion itself tend constantly to depress." It is more fashionable to contend that the moral standard is relative; that we cannot judge the men of the past by the ethical rules of the present; that conscience itself is the product of historical development. It may be questioned whether this scepticism has not been carried too far. Hallam had no such doubts. For him "the thoroughly upright and enlightened man" of the seventeenth century was not intrinsically different from the thoroughly upright and enlightened man of the nineteenth; the one concession he

makes to time is that the historian is probably in a better, not a worse, position to judge than the men of whom he writes—if only because he is more detached. He condemns the obsequiousness of Cranmer, the bigotry of Laud, the tortuousness of Charles I., the ambition of Strafford, with the same reprobation as he would have extended to similar obliquities in a contemporary. Unless we are to exclude conduct altogether from our consideration and to deny the personal factor in history, we shall find it hard to say he is wrong. Gardiner, the latest historian of the Stuarts, does not hesitate to pronounce similar judgments, though he expresses himself more mildly. Sorel, perhaps the most illustrious of the modern school of French historians and a scholar who spent his life among the archives, has not hesitated—in writing on the Partition of Poland—to speak of the Nemesis which always waits upon such "public crimes."

Hallam's predilection for moral judgments is the more intelligible if we remember that his conception of "constitutional" history is somewhat wider than ours is to-day. He included in it much that would now be called "political" history. One has only to compare his work with the latest of our authorities—the posthumous book of F. W. Maitland—to realise how the term has become specialised. Maitland confines his treatment to the results of political action as they are represented in the growth of institutions; with political action itself he is, unlike Hallam, not concerned. The rise and fall of parties, the issues of Parliamentary debate, the progress of political speculation interest him but little and disturb him not at all. But to Hallam these things were hardly less important than the statute book and the law reports. This liberal view of his subject is not a thing to be regretted. It enables the reader to appreciate the large part played in the development of

the English constitution by those "conventions" which are a gloss upon the law and without which the constitution itself is unintelligible. As Bagehot has pointed out, the legal powers of the king are as large as his actual authority is small. In strict legal theory the cabinet is merely an informal group of ministers of the crown who hold office during the king's pleasure. In fact and in practice it is a committee of the House of Commons dependent upon the support of the majority of the members. The fact is the outcome of a conventional modification of the theory, and this convention is due to the political changes of the eighteenth century and the growth of the party system. In the pages of Hallam these changes receive their due recognition, and without it the development of the English constitution is unintelligible. It was a favourite doctrine of Hallam that so far as the law was concerned the constitution was developed very early and that all that later generations contributed to it was better administration of the law and a more vigilant public opinion. He even goes so far as to say in his chapter in the *Middle Ages* that he doubts "whether there are any essential privileges of our countrymen, any fundamental securities against arbitrary power, so far as they depend upon positive institutions, which may not be traced to the time of the Plantagenets." This is something of an anachronism, but it represents a not unjustifiable reaction against the high prerogative doctrines of writers of his own day. What Hallam, however, was really concerned to prove was that constitutional law in this country rests upon the common law—upon the rules laid down by mediæval judges as to the right of the subject to trial by jury, his immunity from arbitrary arrest, his claim not to be arbitrarily dispossessed of his property, and his right of action against the servants of the crown when he has suffered wrong. In this conception

Hallam was undoubtedly right, and he urged it at a time when no one had made it as familiar as it has now become in the classic pages of Professor Dicey. But Hallam was perfectly well aware that these securities for the liberty of the subject were often abused, that the sheriffs who empanelled the jury were often corrupt and the judges who directed it were not infrequently servile; also that so long as the Star Chamber existed no jury could venture to give a verdict of "not guilty" in a prosecution by the crown without running the risk of being heavily punished. He is not insensible to these abuses and to the length of time it took to correct them, as the reader of the following pages will discover for himself, and he attaches due weight to the constitutional importance of the Act for the Abolition of the Star Chamber. But the truth of his main contention (as expressed in his chapter on "The English Constitution" in an earlier work[2]), that what chiefly distinguished our constitution from that of other countries was the "security for personal freedom and property" enjoyed by the subject, is undeniable. It was not so much the possession of representative institutions as the enjoyment of equal rights at common law that constituted the Englishman's advantage. Maitland[3] has recently pointed this out in language almost identical with that of Hallam when he insists that "Parliaments" or "Estates" were in no way peculiar to England; every country in Western Europe possessed them in the Middle Ages, but what those countries did not possess was a great school of law like the Inns of Court determined to uphold at all costs the claims of the customary law of the nation against the despotic doctrines of the civil law of Rome.

Hallam's attitude towards the constitution was that of Burke—he regarded it with a veneration little short of

superstition. He has expressed himself in his earlier works in words which can hardly fail to provoke a smile to-day:—

> "No unbiassed observer, who derives pleasure from the welfare of his species, can fail to consider the long and uninterruptedly increasing prosperity of England as the most beautiful phenomenon in the history of mankind. Climates more propitious may impart more largely the mere enjoyments of existence; but in no other region have the benefits that political institutions can confer been diffused over so extended a population; nor have any people so well reconciled the discordant elements of wealth, order, and liberty. These advantages are surely not owing to the soil of this island, nor to the latitude in which it is placed; but to the spirit of its laws, from which, through various means, the characteristic independence and industriousness of our nation have been derived. The constitution, therefore, of England must be to inquisitive men of all countries, far more to ourselves, an object of superior interest; distinguished especially as it is from all free governments of powerful nations which history has recorded by its manifesting, after the lapse of several centuries, not merely no symptom of irretrievable decay, but a more expansive energy."[4]

If his language seems extravagant, I may remind the reader that there would have been few in Hallam's day who were prepared to dispute it. England, almost alone among

the states of Europe, had escaped the infection of the French Revolution. Its constitution had survived the shock of a movement which, as De Tocqueville has remarked, was as widely destructive of the old order in Europe as the Reformation itself. The result was to give the English constitution such a prestige as it had not enjoyed since the days of Montesquieu. A school of thinkers, beginning with Guizot and hardly terminating with Gneist, grew up on the continent who made it their duty to follow Burke's advice and "study the British constitution" as the last word in political wisdom. Hallam's complacency may be naive in its expression, but its sentiment is sound, and Englishmen should be the last to disclaim it. Upon this rock many a political church has been built; the "law and custom of our Parliament" have, since he wrote, been studied in every university in Europe and adopted in almost all the legislatures of the civilised world. Hallam, like Thucydides, with whom in dignity and sententiousness he may not unjustly be compared, had a noble pride in the constitution of his country.

J. H. MORGAN.

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TO

HENRY MARQUIS OF LANSDOWNE

IN TOKEN OF HIGH ESTEEM

AND SINCERE REGARD

THIS WORK IS RESPECTFULLY INSCRIBED

BY

THE AUTHOR

PREFACE

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The origin and progress of the English Constitution, down to the extinction of the house of Plantagenet, formed a considerable portion of a work published by me some years since, on the history, and especially the laws and institutions, of Europe during the period of the middle ages. It had been my first intention to have prosecuted that undertaking in a general continuation; and when experience taught me to abandon a scheme projected early in life with very inadequate views of its magnitude, I still determined to carry forward the constitutional history of my own country, as both the most important to ourselves, and, in many respects, the most congenial to my own studies and habits of mind.

The title which I have adopted, appears to exclude all matter not referable to the state of government, or what is loosely denominated the constitution. I have, therefore, generally abstained from mentioning, except cursorily, either military or political transactions, which do not seem to bear on this primary subject. It must, however, be evident, that the constitutional and general history of England, at some periods, nearly coincide; and I presume that a few occasional deviations of this nature will not be deemed unpardonable, especially where they tend, at least indirectly, to illustrate the main topic of enquiry. Nor will the reader, perhaps, be of opinion that I have forgotten my theme in those parts of the following work which relate to the establishment of the English church, and to the proceedings of the state with respect to those who have

dissented from it; facts certainly belonging to the history of our constitution, in the large sense of the word, and most important in their application to modern times, for which all knowledge of the past is principally valuable. Still less apology can be required for a slight verbal inconsistency with the title of these volumes in the addition of two supplemental chapters on Scotland and Ireland. This indeed I mention less to obviate a criticism, which possibly might not be suggested, than to express my regret that, on account of their brevity, if for no other reasons, they are both so disproportionate to the interest and importance of their subjects.

During the years that, amidst avocations of different kinds, have been occupied in the composition of this work, several others have been given to the world, and have attracted considerable attention, relating particularly to the periods of the Reformation and of the civil wars. It seems necessary to mention that I have read none of these, till after I had written such of the following pages as treat of the same subjects. The three first chapters indeed were finished in 1820, before the appearance of those publications which have led to so much controversy, as to the ecclesiastical history of the sixteenth century; and I was equally unacquainted with Mr. Brodie's *History of the British Empire from the Accession of Charles I. to the Restoration*, while engaged myself on that period. I have, however, on a revision of the present work, availed myself of the valuable labours of recent authors, especially Dr. Lingard and Mr. Brodie; and in several of my notes I have sometimes supported myself by their authority, sometimes taken the liberty to express my dissent; but I have seldom thought it necessary to make more than a few verbal modifications in my text.

It would, perhaps, not become me to offer any observations on these contemporaries; but I cannot refrain from bearing testimony to the work of a distinguished foreigner, M. Guizot, *Histoire de la Revolution d'Angleterre, depuis l'Avenement de Charles I. jusqu'à la Chute de Jacques II.*, the first volume of which was published in 1826. The extensive knowledge of M. Guizot, and his remarkable impartiality, have already been displayed in his collection of memoirs illustrating that part of English history; and I am much disposed to believe that if the rest of his present undertaking shall be completed in as satisfactory a manner as the first volume, he will be entitled to the preference above any one, perhaps, of our native writers, as a guide through the great period of the seventeenth century.

In terminating the *Constitutional History of England* at the accession of George III., I have been influenced by unwillingness to excite the prejudices of modern politics, especially those connected with personal character, which extend back through at least a large portion of that reign. It is indeed vain to expect that any comprehensive account of the two preceding centuries can be given without risking the disapprobation of those parties, religious or political, which originated during that period; but as I shall hardly incur the imputation of being the blind zealot of any of these, I have little to fear, in this respect, from the dispassionate public, whose favour, both in this country and on the Continent, has been bestowed on my former work, with a liberality less due to any literary merit it may possess, than to a regard for truth, which will, I trust, be found equally characteristic of the present.

June 1827.

ADVERTISEMENT

TO THE

THIRD EDITION

The present edition has been revised, and some use made of recent publications. The note on the authenticity of the Icon Basilice, at the end of the second volume of the two former editions, has been withdrawn; not from the slightest doubt in the author's mind as to the correctness of its argument; but because a discussion of a point of literary criticism, as this ought to be considered, seemed rather out of its place in the *Constitutional History of England*.

April 1832.

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CHAPTER I

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ON THE ENGLISH CONSTITUTION FROM HENRY VII. TO MARY

Ancient government of England.—The government of England, in all times recorded by history, has been one of those mixed or limited monarchies which the Celtic and Gothic tribes appear universally to have established, in preference to the coarse despotism of eastern nations, to the more artificial tyranny of Rome and Constantinople, or to the various models of republican polity which were tried upon the coasts of the Mediterranean Sea. It bore the same general features, it belonged, as it were, to the same family, as the governments of almost every European state, though less resembling, perhaps, that of France than any other. But, in the course of many centuries, the boundaries which determined the sovereign's prerogative and the people's liberty or power having seldom been very accurately defined by law, or at least by such law as was deemed fundamental and unchangeable, the forms and principles of political regimen in these different nations became more divergent from each other, according to their peculiar dispositions, the revolutions they underwent, or the influence of personal character. England, more fortunate than the rest, had acquired in the fifteenth century a just reputation for the goodness of her laws and the security of her citizens from oppression.

This liberty had been the slow fruit of ages, still waiting a happier season for its perfect ripeness, but already giving proof of the vigour and industry which had been employed

in its culture. I have endeavoured, in a work of which this may in a certain degree be reckoned a continuation, to trace the leading events and causes of its progress. It will be sufficient in this place briefly to point out the principal circumstances in the polity of England at the accession of Henry VII.

Limitations of royal authority.—The essential checks upon the royal authority were five in number.—1. The king could levy no sort of new tax upon his people, except by the grant of his parliament, consisting as well of bishops and mitred abbots, or lords spiritual, and of hereditary peers or temporal lords, who sat and voted promiscuously in the same chamber, as of representatives from the freeholders of each county, and from the burgesses of many towns and less considerable places, forming the lower or commons' house. 2. The previous assent and authority of the same assembly was necessary for every new law, whether of a general or temporary nature. 3. No man could be committed to prison but by a legal warrant specifying his offence; and by an usage nearly tantamount to constitutional right, he must be speedily brought to trial by means of regular sessions of gaol-delivery. 4. The fact of guilt or innocence on a criminal charge was determined in a public court, and in the county where the offence was alleged to have occurred, by a jury of twelve men, from whose unanimous verdict no appeal could be made. Civil rights, so far as they depended on questions of fact, were subject to the same decision. 5. The officers and servants of the Crown, violating the personal liberty or other right of the subject, might be sued in an action for damages, to be assessed by a jury, or, in some cases, were liable to criminal process; nor could they plead any warrant or command in their justification, not even the direct order of the king.

These securities, though it would be easy to prove that they were all recognised in law, differed much in the degree of their effective operation. It may be said of the first, that it was now completely established. After a long contention, the kings of England had desisted for near a hundred years from every attempt to impose taxes without consent of parliament; and their recent device of demanding benevolences, or half-compulsory gifts, though very oppressive, and on that account just abolished by an act of the late usurper, Richard, was in effect a recognition of the general principle, which it sought to elude rather than transgress.

The necessary concurrence of the two houses of parliament in legislation, though it could not be more unequivocally established than the former, had in earlier times been more free from all attempt or pretext of encroachment. We know not of any laws that were ever enacted by our kings without the assent and advice of their great council; though it is justly doubted, whether the representatives of the ordinary freeholders, or of the boroughs, had seats and suffrages in that assembly during seven or eight reigns after the conquest. They were then, however, ingrafted upon it with plenary legislative authority; and if the sanction of a statute were required for this fundamental axiom, we might refer to one in the 15th of Edward II. (1322), which declares that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in parliament, by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed."[5]

It may not be impertinent to remark in this place, that the opinion of such as have fancied the royal prerogative under the houses of Plantagenet and Tudor to have had no effectual or unquestioned limitations is decisively refuted by the notorious fact, that no alteration in the general laws of the realm was ever made, or attempted to be made, without the consent of parliament. It is not surprising that the council, in great exigency of money, should sometimes employ force to extort it from the merchants, or that servile lawyers should be found to vindicate these encroachments of power. Impositions, like other arbitrary measures, were particular and temporary, prompted by rapacity, and endured through compulsion. But if the kings of England had been supposed to enjoy an absolute authority, we should find some proofs of it in their exercise of the supreme function of sovereignty, the enactment of new laws. Yet there is not a single instance from the first dawn of our constitutional history, where a proclamation, or order of council, has dictated any change, however trifling, in the code of private rights, or in the penalties of criminal offences. Was it ever pretended that the king could empower his subjects to devise their freeholds, or to levy fines of their entailed lands? Has even the slightest regulation as to judicial procedure, or any permanent prohibition, even in fiscal law, been ever enforced without statute? There was, indeed, a period, later than that of Henry VII., when a control over the subject's free right of doing all things not unlawful was usurped by means of proclamations. These, however, were always temporary, and did not affect to alter the established law. But though it would be difficult to assert that none of this kind had ever been issued in rude and irregular times, I have not observed any under the kings of the Plantagenet name which

evidently transgress the boundaries of their legal prerogative.

The general privileges of the nation were far more secure than those of private men. Great violence was often used by the various officers of the Crown, for which no adequate redress could be procured; the courts of justice were not strong enough, whatever might be their temper, to chastise such aggressions; juries, through intimidation or ignorance, returned such verdicts as were desired by the Crown; and, in general, there was perhaps little effective restraint upon the government, except in the two articles of levying money and enacting laws.

State of society and law.—The peers alone, a small body varying from about fifty to eighty persons, enjoyed the privileges of aristocracy; which, except that of sitting in parliament, were not very considerable, far less oppressive. All below them, even their children, were commoners, and in the eye of the law equal to each other. In the gradation of ranks, which, if not regally recognised, must still subsist through the necessary inequalities of birth and wealth, we find the gentry or principal landholders, many of them distinguished by knighthood, and all by bearing coat armour, but without any exclusive privilege; the yeomanry, or small freeholders and farmers, a very numerous and respectable body, some occupying their own estates, some those of landlords; the burgesses and inferior inhabitants of trading towns; and, lastly, the peasantry and labourers. Of these, in earlier times, a considerable part, though not perhaps so very large a proportion as is usually taken for granted, had been in the ignominious state of villenage, incapable of possessing property but at the will of their lords. They had, however, gradually been raised above this servitude; many had acquired a stable possession of lands

under the name of copyholders; and the condition of mere villenage was become rare.

The three courts at Westminster—the King's Bench, Common Pleas, and Exchequer—consisting each of four or five judges, administered justice to the whole kingdom; the first having an appellant jurisdiction over the second, and the third being in a great measure confined to causes affecting the Crown's property. But as all suits relating to land, as well as some others, and all criminal indictments, could only be determined, so far as they depended upon oral evidence, by a jury of the county, it was necessary that justices of assize and gaol-delivery, being in general the judges of the courts at Westminster, should travel into each county, commonly twice a year, in order to try issues of fact, so called in distinction from issues of law, where the suitors, admitting all essential facts, disputed the rule applicable to them.[6] By this device, which is as ancient as the reign of Henry II., the fundamental privilege of trial by jury, and the convenience of private suitors, as well as accused persons, was made consistent with an uniform jurisprudence; and though the reference of every legal question, however insignificant, to the courts above must have been inconvenient and expensive in a still greater degree than at present, it had doubtless a powerful tendency to knit together the different parts of England, to check the influence of feudality and clanship, to make the inhabitants of distant counties better acquainted with the capital city and more accustomed to the course of government, and to impair the spirit of provincial patriotism and animosity. The minor tribunals of each county, hundred, and manor, respectable for their antiquity and for their effect in preserving a sense of freedom and justice, had in a great measure, though not probably so much as in modern times,

gone into disuse. In a few counties there still remained a palatine jurisdiction, exclusive of the king's courts; but in these the common rules of law and the mode of trial by jury were preserved. Justices of the peace, appointed out of the gentlemen of each county, enquired into criminal charges, committed offenders to prison, and tried them at their quarterly sessions, according to the same forms as the judges of gaol-delivery. The chartered towns had their separate jurisdiction under the municipal magistracy.

The laws against theft were severe, and capital punishments unsparingly inflicted. Yet they had little effect in repressing acts of violence, to which a rude and licentious state of manners, and very imperfect dispositions for preserving the public peace, naturally gave rise. These were frequently perpetrated or instigated by men of superior wealth and power, above the control of the mere officers of justice. Meanwhile the kingdom was increasing in opulence, the English merchants possessed a large share of the trade of the north; and a woollen manufacture, established in different parts of the kingdom, had not only enabled the legislature to restrain the import of cloths, but begun to supply foreign nations. The population may probably be reckoned, without any material error, at about three millions, but by no means distributed in the same proportions as at present; the northern counties, especially Lancashire and Cumberland, being very ill peopled, and the inhabitants of London and Westminster not exceeding sixty or seventy thousand.[7]

Such was the political condition of England, when Henry Tudor, the only living representative of the house of Lancaster, though incapable, by reason of the illegitimacy of the ancestor who connected him with it, of asserting a just right of inheritance, became master of the throne by the

defeat and death of his competitor at Bosworth, and by the general submission of the kingdom. He assumed the royal title immediately after his victory, and summoned a parliament to recognise or sanction his possession. The circumstances were by no means such as to offer an auspicious presage for the future. A subdued party had risen from the ground, incensed by proscription and elated by success; the late battle had in effect been a contest between one usurper and another; and England had little better prospect than a renewal of that desperate and interminable contention, which the pretences of hereditary right have so often entailed upon nations.

A parliament called by a conqueror might be presumed to be itself conquered. Yet this assembly did not display so servile a temper, or so much of the Lancastrian spirit, as might be expected. It was "ordained and enacted by the assent of the Lords, and at the request of the Commons, that the inheritance of the crowns of England and France, and all dominions appertaining to them, should remain in Henry VII. and the heirs of his body for ever, and in none other."[8] Words studiously ambiguous, which, while they avoid the assertion of an hereditary right that the public voice repelled, were meant to create a parliamentary title, before which the pretensions of lineal descent were to give way. They seem to make Henry the stock of a new dynasty. But, lest the spectre of indefeasible right should stand once more in arms on the tomb of the house of York, the two houses of parliament showed an earnest desire for the king's marriage with the daughter of Edward IV., who, if she should bear only the name of royalty, might transmit an undisputed inheritance of its prerogatives to her posterity.

Statute for the security of the subject under a king de facto.—This marriage, and the king's great vigilance in

guarding his crown, caused his reign to pass with considerable reputation, though not without disturbance. He had to learn by the extraordinary, though transient, success of two impostors (if the second may with certainty be reckoned such), that his subjects were still strongly infected with the prejudice which had once overthrown the family he claimed to represent. Nor could those who served him be exempt from apprehensions of a change of dynasty, which might convert them into attainted rebels. The state of the nobles and gentry had been intolerable during the alternate proscriptions of Henry VI. and Edward IV. Such apprehensions led to a very important statute in the eleventh year of this king's reign, intended, as far as law could furnish a prospective security against the violence and vengeance of factions, to place the civil duty of allegiance on a just and reasonable foundation, and indirectly to cut away the distinction between governments *de jure* and *de facto*. It enacts, after reciting that subjects by reason of their allegiance are bound to serve their prince for the time being against every rebellion and power raised against him, that "no person attending upon the king and sovereign lord of this land for the time being, and doing him true and faithful service, shall be convicted of high treason, by act of parliament or other process of law, nor suffer any forfeiture or punishment; but that every act made contrary to this statute should be void and of no effect."[9] The endeavour to bind future parliaments was of course nugatory; but the statute remains an unquestionable authority for the constitutional maxim, that possession of the throne gives a sufficient title to the subject's allegiance, and justifies his resistance of those who may pretend to a better right. It was much resorted to in argument at the time of the revolution, and in the subsequent period.[10]