

cratic model. A voice was given to all burghers, or persons of a certain fortune, or who exercised a trade or calling. In a word, with considerable diversity, this class of towns was independent, and possessed, in local matters, the power of self-government. From and after the fourteenth century, the political power and influence of the towns of France decayed. The causes of this decline have been traced with a masterly hand by M. Guizot, but they do not relate to our purpose.<sup>1</sup> In the course of change, we may remark that the royal power over them became predominant, and instead of being self-governed, they were administered by the intendants, or officers of the king or emperor, or the central authority at Paris.

Towns, or *communes in modern France* are governed by a mayor and council. By the law of 1855, in all *communes* of 3,000 inhabitants and upwards, these officers are appointed by the emperor; while in small *communes* the appointment is made by the prefect of the department, himself appointed by the emperor. The prefect may suspend municipal councillors, but the emperor alone can dismiss them.<sup>2</sup> Under the present republic the prefect is appointed by the president; and in the larger towns the mayor is nominated by the government at Paris, but he must be selected from the municipal council, which is chosen by universal suffrage.<sup>3</sup>

§ 7. It seems to be well established that the *towns and cities of Spain* acquired charters of freedom at an earlier period than those in France, England, or Germany.<sup>4</sup> The cities of Italy, as we have seen, owed their freedom, to a large extent, to their commercial importance and wealth; but those of Spain owed their privileges

<sup>1</sup> History Civilization in France, Lect. XIX.; see also Hallam's Middle Ages, chap. ii. Part II., and notes.

<sup>2</sup> American Encyclopedia, *Commune*.

<sup>3</sup> Encyclopædia Brit. (9th ed.), 509, 511, title *France*.

<sup>4</sup> The most ancient of these regular charters of incorporation now extant was granted by Alfonso V., in 1020, to the city of Leon and its territory. It preceded by a long interval those granted to the burgesses in other parts of Europe, with the exception, perhaps, of Italy. Acts of enfranchisement became frequent in Spain during the eleventh century, several of which are preserved, and exhibit with sufficient precision the nature of the privileges accorded to the inhabitants. Robertson (in his History of

Charles V., Introductory View), who wrote when the constitutional antiquities of Castile had been but slightly investigated, would seem to have no authority, therefore, for deriving the establishment of communities from Italy, and still less for tracing their progress through France and Germany to Spain. Prescott, Ferdinand and Isabella, Introduction, Vol. I. note 24.

Hallam, who, as well as Prescott, founds his judgment upon the historical works of Marina and Sempere, expresses a similar opinion as to the early period at which the towns of Spain were invested with chartered rights and privileges. Middle Ages, chap. iv.; Ib. chap. ii. Part II. and notes.

and jurisdiction to an entirely different cause. For nearly eight hundred years the Gothic inhabitants of Spain had been engaged in an almost uninterrupted struggle against the Moors, who occupied the southern part of the peninsula.<sup>1</sup> It was obviously the dictate of policy, as the Spaniards gradually narrowed the boundaries of their enemies' territory, to make provision for securing and holding the ground thus gained. With this view, and for the purpose of protecting themselves from the frequent raids of their Arab neighbors, liberal charters were granted to towns, with extensive districts of country subject to their municipal jurisdiction.

By these grants or charters the citizens selected their own officers, including judges and a common council, and enjoyed many of the essential rights of freemen. In return, the community or city paid a certain (no longer an arbitrary) tax or rent, and owed military service. For more effectual protection, the charters frequently prohibited the nobles from acquiring real property or erecting fortresses or palaces within the limits of the community, and subjected them to its jurisdiction when within its territory. Large sections of the adjacent country, as we have said, often embracing towns and villages, were annexed to the city or community and placed under its laws and jurisdiction. "Thus," says Mr. Prescott,<sup>2</sup> to whom we are indebted for this sketch of the early municipalities of Spain, "while the inhabitants of the great towns in other parts of Europe were languishing in feudal servitude, the members of the Castilian corporations, living under the protection of their own laws and magistrates in time of peace, and commanded by their own officers

<sup>1</sup> Mr. Irving's fine reflections, in his Alhambra, upon this protracted and famous contest between the Crescent and the Cross, are not inappropriate: "The singular fortunes of the Arabian or Morisco-Spaniards form one of the most anomalous yet splendid episodes in history. A remote wave of the great Arabian inundation cast upon the shores of Europe, they seem to have all the impetus of the first rush of the torrent. But repelled (by unsuccessful battle) within the limits of the Pyrenees, they gave up the Moslem principle of conquest, and sought to establish in Spain a peaceful and permanent dominion. Generation after generation, century after century passed away, and still they maintained possession of the land. With all this, however, the Moslem empire in Spain was but a brilliant exotic that took no per-

manent root in the soil it embellished. Severed from all their neighbors in the west by impassable barriers of faith and manners, and separated by seas and deserts from their kindred of the east, the Morisco-Spaniards were an isolated people. Their whole existence was a prolonged, though gallant and chivalric, struggle for a foothold in a usurped land. They were the outposts and frontiers of Islamism. The peninsula was the great battle-ground where the Gothic conquerors of the north and the Moslem conquerors of the east met and strove for mastery; and the fiery courage of the Arab was at length (after eight hundred years) subdued by the obstinate and persevering valor of the Goth."

<sup>2</sup> History Ferdinand and Isabella, Vol. I., Introduction, sec. 1.

in war, were in full enjoyment of all the essential rights and privileges of freemen."

§ 7 a. The *modern municipal institutions of PRUSSIA* and their workings are full of interest and instruction. The aim has there been to embody the principle of local self-government, with central limitations upon the exercise of certain of the more important powers. They are so constructed as to attempt to give to the citizen such a method of government as will enlist the best character and talent in the service of the municipality, and yet prevent it from inconsiderately engaging in enterprises which might unduly burden it with obligations too great to be borne. The scheme of organization gives to the municipality very general powers, with the limitation on the exercise of many of them, that they shall be approved by some superior administrative officer of the central government. This administrative control over the acts of the municipality does not in practice seem to be carried to so great an extent as the control actually although irregularly exercised by the State legislatures over our American municipalities; so that although the municipal administration is apparently more centralized than here, the Prussian cities in fact enjoy, it is said, a greater degree of freedom from central interposition than with us. In order to ensure the services of the best citizens, penalties are imposed on those who refuse to serve for at least half of the time for which they have been elected or appointed, that they shall lose their municipal suffrage and have their taxes increased. Suffrage, though very general, is not universal. A small property qualification is required, which may consist in the payment of taxes. But in order to give *property* a certain degree of influence or control, the voting population is divided into three classes: the first consisting of the largest taxpayers, who pay a third of all the direct taxes; the second class consisting of the next largest taxpayers, who pay the next third of the taxes; the third class consisting of the remaining taxpayers. Each of these classes elects a third of the members of the municipal council. This system is similar to that adopted in elections to the Prussian diet; and it is represented to work satisfactorily, and to account in a large measure for the great success of the municipal government of the Prussian cities.<sup>1</sup>

<sup>1</sup> See Political Science Quarterly, Vol. III., December, 1888, p. 714, where Mr. Goodnow reviews Steffenhagen's *Handbuch der städtischen Verfassung und Verwaltung in Preussen*.

An enlightened observer (Professor Ely)

has recently given it as his opinion that Berlin is the best governed large municipality in the world. Opinions may differ whether this high eulogium is merited; but undoubtedly it is a well governed city. The essential features of its municipal

§ 8. BRITAIN was one of the last conquests of the Cæsars, and was one of the first of the western provinces upon which they released their hold. The Latin language did not become the language of the people; nor did the Romans, as in many of the continental provinces, fill the country with memorials of their skill and arts. The impressions made by the mastery of the Roman were not destined to be permanent. According to an accurate explorer and philosophic modern historian,<sup>1</sup> Britain, when subject to Rome, was divided into thirty-three townships, with a certain share of local self-government; and *quasi* municipal institutions, for a long time after the withdrawal of the Roman power, constituted whatever of government the people possessed. At the time of the conquest of England by William of Normandy (A. D. 1066) the towns and

organization are in substance stated by Mr. Baxter (lecture on Berlin) as follows:

All male persons of the age of twenty-four, who pay a tax on an income of \$150, obtain the electoral franchise upon a year's residence. Over ten thousand citizens take part in the administration of municipal affairs. The most distinguished and substantial citizens consider it an honor to do so. Penalties are imposed for a refusal to serve in any position to which a citizen may be elected. The municipal assembly is composed of 126 members, representing 326 wards. One-half at least must be house-owners. The members are chosen for six years, one-third retiring every two years, thus giving permanency to the governing body by making the changes gradual. This body controls the affairs of the city. It chooses, also, the upper branch of the city government, known as the magistracy, composed of the mayor and the board of aldermen, 32 in number, 15 of whom are salaried, and 17 are honorary members. The term of the mayor is twelve years; the salary about \$7,500. It is regarded as a position of high honor. The salaried aldermen are elected for twelve years by the municipal assembly, with special regard to their qualifications. Their salaries are higher than those of the local judges. The custom is to re-elect good men. The term of the unpaid aldermen is six years, and they are usually chosen from men who have distinguished themselves for efficient public service. Voters who elect the municipal assembly are

divided into three classes, as stated in the text. The result is that a majority of the assembly is chosen by a minority of the voters. The next feature, so far as our observation goes, is almost wholly unknown in this country. These two chambers are supplemented in Berlin by a body of 70 citizen deputies, selected by the municipal assembly from leading citizens, to serve in joint committees for the administration of special affairs, such as the relief of the poor, schools, &c. At the meetings of these committees an alderman acts as chairman. Under this executive staff of 230 members, all honorary officials and men of independent means, there is a large staff of paid officials, appointed for life, as is the rule in the German civil service. The police is administered by the State instead of the city, the force consisting of about 3,000 men. The expense (about \$400,000 a year) is borne by the city. The streets of Berlin are now taken care of by the city instead of the State, which up to 1874 had the maintenance. The revenue of the city, so far as raised by taxation, comprises an annual income tax of three per cent on all incomes above a certain amount; house rent and tax, divided between landlord and tenant; and various minor special taxes. The net debt of the city is about four millions, a decrease of nearly two millions since 1876. This is a striking contrast to New York, whose debt is over one hundred millions.

<sup>1</sup> Sir James Mackintosh, *History of England*, Vol. I. p. 30.

boroughs were dependent upon the uncertain protection of the king or lord, to whom they owed rents or service, and were liable to discretionary, that is, arbitrary rates or talliages. They were not incorporated, and did not constitute bodies politic; and being composed mainly of tradesmen and the lower classes, were regarded by their feudal masters as possessed of no political and of but few civil rights. None of them enjoyed the right of representation in the council of the nation, and, with the exception perhaps of London and a few of the greater towns, did not have the right of internal or self-government. Sometime between 1100 and 1125 Henry I. granted to London the original charter, in which were conferred many valuable municipal privileges, with the right, among others, to choose certain of their own officers, such as sheriff, justice, and the like.<sup>1</sup> But the *right of local self-government* was not, in general, conferred upon towns and boroughs until the time of John, who reigned from 1199 to 1216.<sup>2</sup> Meantime the towns and cities continued to grow in population and wealth, and as these increased, their disposition to submit to arbitrary exactions proportionately diminished, and their independent spirit and desire for freedom from oppressive restraints became more manifest; but still they did not acquire sufficient influence or importance to be allowed a representation in the states of the kingdom for more than two centuries after the Conquest.<sup>3</sup> It was not until the time of Edward I. that cities and boroughs, then mostly incorporated, obtained the right of returning members to parliament. The legislative power of the kingdom was at this time vested in the king and the council, afterwards called the parliament. This council was constituted of the spiritual and lay peerage. The commonalty of England had no voice or part in the legislature. This wise and politic prince was greatly distressed for money, and instead of attempting to raise it by the levy of arbitrary taxes,

<sup>1</sup> This famous charter has no date. Its substance is given in Norton's Commentaries on the History, Constitution, and Chartered Franchises of the City of London; and its various provisions explained and commented on. Book II. chap. ii. p. 337. In the latter clause of this charter is an allusion to the very ancient custom of foreign attachment, in which is to be found the germ of all our foreign attachment laws. Pulling, Laws, etc., of London, 188; Hallam, Middle Ages, Vol. III. ch. viii. Part III. Mr. Norton gives the substance of all the charters of London from the time of William the Conqueror to the present.

<sup>2</sup> Hallam, Middle Ages, Vol. III. chap. viii. Stephen thus describes the municipal institutions of England in the time of John: "The principal liberties granted in the early charters are exclusive jurisdiction, a merchant guild, the appointment of the various officers for the administration of justice, fairs and markets, with freedom from all tolls; in fact all of the privileges granted by the borough charters were of a local character in every respect." 1 English Constitution, chap. iii. p. 62.

<sup>3</sup> "It is clear that at Runimede no representatives of cities or boroughs were present." 1 Stephen, English Constitution, chap. iii. p. 71.

which were submitted to with murmurs and yielded sparingly, preferred to obtain it by the prior voluntary consent of the cities, towns, and boroughs.<sup>1</sup> Accordingly he caused writs to be issued to about one hundred and twenty cities and boroughs, enjoining them to send to parliament, along with the two knights of the shire, *two deputies from each borough within their county*, with authority from their respective communities to consent to what the king and his council should require of them. As the experiment proved successful, more money being obtained, and with less trouble, than in the former way, the practice was continued. And this, according to the best opinions of learned and careful inquirers,<sup>2</sup> is the definite commencement of popular representation, and of the House of Commons itself, the latter constituting, as Macaulay well observes, "the archetype of all the representative assemblies which now meet, either in the old or new world."<sup>3</sup>

The political powers thus acquired by boroughs and cities gave them political importance. This power was courted and controlled by the crown. The king's judges decided that no corporation was valid without the sanction of the king, and most of the corporations from time to time applied to the crown for a grant or confirmation of privileges. Their dependence upon the crown was thus established, and the crown, as a check upon the nobles, encouraged *popular elections* by the *whole corporate assembly*.<sup>4</sup> In the course of time

<sup>1</sup> "In words that well became the noble King of a free people he acknowledged that 'what touched all should be approved by all.'" Prof. Hearn, Government of England, chap. xv. sec. iii. p. 423.

<sup>2</sup> Hallam, Middle Ages, Vol. III. chap. viii.; 1 Stephen, Eng. Const. chap. iii. p. 95 *et seq.*; Hearn, Government of England, pp. 428, 480, 539; Hume, England, Vol. I. App. II.; Dr. Adam Smith, Wealth of Nations, Book 3, ch. iii., whose account of the condition of the towns and boroughs at this period, and the decay of the power of the lords and the growth of the power of the inhabitants of the cities is, though brief, perspicuous and satisfactory. Norton, Com. Lond. 109. A distinctive feature of *boroughs*, in England, is the right of the borough to elect members of parliament. There the term "borough" includes cities as well as villages, but in the United States the term "borough" is not in very general use, and, when used, designates an incorporated

village or town, but not a city. American Cyclopædia, title, *Borough*.

<sup>3</sup> History England, Vol. I. chap. i.; "The Crown! it is the House of Commons!" said an English statesman in 1858; and the recent history of Great Britain, in several memorable instances, shows that against the declared and positive determination of the commons neither the crown nor the lords, in any struggle relating to popular rights, can make effectual resistance. In the United States all departments of the government ultimately respond, of course, to the public will, which is here the real sovereign power, and elects at short periods the executive and legislative branches.

<sup>4</sup> An English municipal corporation, as will be explained hereafter, consisted usually of one or more select or definite bodies, and an indefinite body, the latter being generally composed of the burgesses or citizens, that is, the inhabitant householders; and a corporate assembly was a meeting of all the bodies, and not of the

it was found that these representatives were more formidable to the power of the crown than the nobility had been. In Elizabeth's reign compliant judges decided that, although the right of election was, by the original constitution or charter, in the whole assembly, still from *usage*, even when within the time of memory, a by-law may be *presumed* giving the right of election to a select class (more readily controlled by the crown) instead of the whole body.<sup>1</sup>

Afterwards, to increase the power of the crown, James incorporated towns or boroughs, endowing them with the parliamentary franchise, but confining the exercise of the right to vote to select classes. The immense power of popular representation was a most active agency in the overthrow of Charles I. This power proving inimical to the arbitrary schemes of the Protector, he expelled the members by violence, and subdued their authority in parliament by force. He then secured this power in his own favor by expelling all hostile magistrates and officers and supplanting them with others of his own creation.

On the Restoration, Charles II. found the principal opposition to the court to come from the cities and boroughs. He commenced his reign by reconstructing the corporations and filling them with his own creatures. Judges, also creatures of the king, holding commissions during his pleasure, aided him in his scheme to acquire absolute control over the corporations of the realm. London, as the largest and most influential, was selected as an example, and in 1683 the famous *quo warranto* was issued against the city to deprive it of its charter, for two alleged violations, one of which was stale and both were frivolous. Judgment passed, of course, against the city, and its ancient charter was abrogated.<sup>2</sup> As a condition of its restoration, it was, among other things, provided that thereafter the mayor, sheriff, clerk, &c., should not exercise their office without the king's consent; and that if the king twice disapproved of the officers elected by the corporation, he might himself appoint others. In short, the city was deprived of the right of choosing its own officers, and was made dependent upon the crown. Such also was the fate of most of the considerable corporations in England. The whole power was in the hands of the king.<sup>3</sup>

select or definite bodies alone. *Post*, sec. 35.

<sup>1</sup> Willcock on Municipal Corp. 8; 3 Hallam, Const. History, 52; 1 Stephen, English Const. chap. vi. p. 277 *et seq.*

<sup>2</sup> *Rex v. City of London*, Mich. 33 Car. II.; 2 Show. 262, Pulling, Laws, &c. of London, 14. The history of the

seizure of the city franchises, by virtue of the writ of *quo warranto*, is given at some length by Norton, Com. on the History, &c. of London, Book I. chap. xx.; see also *The Case of the City of London*, 8 How. State Trials, 1340 *et seq.*

<sup>3</sup> There were eighty-one *quo warranto* informations brought against municipal

Nor were these arbitrary proceedings confined to England. In 1683 writs of *quo warranto* and *scire facias* were issued for the purpose of abrogating the *charter of MASSACHUSETTS*. Patriotism and religion mingled their fervors and combined in its defence, but in vain. Servile judges, in June, 1684, one year and six days after judgment against the city of London, adjudged the charter to be conditionally forfeited. The charter government was displaced, and popular representation superseded by an arbitrary commission. In 1687 similar writs were issued against the charters of Rhode Island and Connecticut; when, as is well known, the people of the latter colony unsuccessfully endeavored to preserve this cherished muniment of their liberties by concealing it in the charter oak. The colonies, as a result of the English Revolution of 1688, had their charters restored. Very shortly after the accession of William and Mary a bill to restore the rights of those English corporations which had surrendered their charters to the crown during the reigns of James II. and Charles II. was introduced into parliament, and became a law, with the general applause of men of all parties.<sup>1</sup>

Reference has already been made to the fact that in the time of Elizabeth, the controlling power of corporations was virtually vested in "select bodies." The abuses in the corporations arising out of select bodies continued after the revolution of 1688, and until act of parliament in 1835, next to be mentioned.<sup>2</sup> To remedy these and many other abuses, the MUNICIPAL CORPORATIONS REFORM ACT (5 and 6 Will. IV. ch. 76, A. D. 1835) (referred to more fully in a subsequent chapter<sup>3</sup>) was passed. This statute sought to restore corporations to their original design, as institutions for the local government of the place, to be controlled by those interested in it, and not by a favored few. It is undoubtedly true, as remarked by Mr. Hallam, that "no political institution can endure which does not rivet itself to the hearts of men by ancient prejudice or acknowledged interest." That is, it cannot permanently endure, although it may exist long after it ought to cease. If ever an institution outlived its usefulness — lived long after it became a positive evil — it was the municipal corporations of England, prior to the reform act of 1835. In many important places in England the number of corporators ranged as low as from ten to thirty. In a large majority of the municipalities, the corporations were close; that is, the govern-

corporations by Charles II. and James II. <sup>2</sup> 1 Stephen, Eng. Const. chap. vii. 2 Chandl. Com. Debs. 316; 1 Stephen, p. 479. English Const. chap. vii. p. 455. <sup>3</sup> Chap. III. *infra*, secs. 35, 36, and

<sup>1</sup> Macaulay, History of England, Vol. III. chap. xv., where a graphic account of the history of its passage is given.

ing body had the power to determine who should be admitted to freedom or membership; and often the privilege was conferred upon non-residents and the residents excluded. The most important franchise they possessed was that of electing members of parliament, and this, in many places, was the principal function of the corporation. Not only were the councils self-elective, but their tenure was for life. They were frequently controlled by a single party, and all persons entertaining other opinions were excluded. The corporations were not in sympathy with, nor did they reflect the wishes of, the people over whom they exercised local jurisdiction. There was no check upon mal-administration. The property was wasted; extravagance characterized the expenditures of money; officers were elected by the irresponsible councils from favoritism or devotion to party.<sup>1</sup> One of the first acts of the Reformed House of Commons was the overthrow, in 1835, of this intolerable system, by the passage of the above-mentioned Municipal Corporations Statute,<sup>2</sup> to which we shall have frequent occasion to refer in the subsequent pages of this work.

Lord Brougham has many claims to the regard of posterity. Few of these are stronger, however, than those which arise from his faithful and effective services in promoting the reform of the Municipal Corporations of Great Britain, by abolishing these self-elected and perpetual councils, by organizing the corporations upon a uniform model, and by establishing in the act the principle that the councils should be selected for short and fixed periods by the votes of the burgesses, thus recognizing and adopting the representative system based upon the vote of persons actually interested in the municipality. Mr. Willcock, in concluding his treatise,<sup>3</sup> had recommended a

<sup>1</sup> Glover on Corp. xxxviii. *et seq.*; Report of Commissioners of Corporate Inquiry, 32 *et seq.* On January 1, 1883, the *Municipal Corporations Act of 1882* (45 and 46 Vic. chap. 50) went into force, repealing, re-enacting, and consolidating the previous Acts. *Post*, sec. 35.

<sup>2</sup> *Post*, sec. 35, note, where the leading provisions of this important enactment are given.

<sup>3</sup> Willcock, *Municipal Corp.* 513, 514. London, with its "great and notable franchises, liberties, and customs," to treat of which, says Lord Coke (4 Inst. 250), "would require a whole volume of itself," was not embraced in the general act of 5 and 6 Will. 4, chap. 76, but there was subsequently passed an important statute

known as the London Corporation Reform Act of 1849. See Supplement to Pulling's *Laws, &c.*, of London.

On the 15th day of August, 1867, after a memorable struggle between the lords and the commons, what is known as the *Disraeli Reform Bill* became a law, by which the right to vote for members of parliament for boroughs was greatly extended. This right was, in boroughs, extended to all occupiers of dwelling-houses which were rated to the poor rates, and to lodgers occupying lodging-houses of the annual value of £10, unfurnished. It practically enfranchised the working class.

Referring to the English system of corporate local government and administra-

similar reform, but disclaimed being so visionary as to suppose it would soon be effected, since parliament would not willingly relinquish its influence over venal boroughs, and members elected by corporations would not be allowed by their constituents to abandon their ancient though unjust privileges; but within ten years from the time his language was written, the reform of which he almost despaired was accomplished. Fifty years' experience has vindicated its wisdom.

§ 8 a. Coming now, in this general survey, to the *municipal institutions of the UNITED STATES*, the great fact which first meets our view is that the common law is the basis of the laws of every State and Territory of the Union, with comparatively unimportant exceptions. It is indeed a most fortunate circumstance, that, divided as our territory is into so many States, each supreme within the limits of its power, a common and uniform general system of polity underlies and pervades them all. The common law, as well as the institutions which it developed or along side of which it grew up, IS PERVADED BY A SPIRIT OF FREEDOM, which distinguishes it from all other systems and peculiarly adapts it to the institutions of a self-governed people. It is established by the learned researches which have been more recently made that the germs and elements of this law and of English polity are of Germanic origin.<sup>1</sup> The Saxon conquerors of Great Britain were not mere bodies of armed invaders. They went to England, during two or more centuries, in families and communities. What manner of men were they? Guizot dwells upon the fact that the distinguishing character of the Germans was "their powerful sentiment of personal liberty, personal independence and individuality." He affirms and repeatedly reiterates, that it was they who "introduced this sentiment of personal independence, this love of individual liberty, into European civilization; that this was unknown among the Romans; unknown in the Christian Church; and unknown in nearly all the civilizations of antiquity. The liberty which we meet with in ancient civilizations is political liberty, — the liberty of the citizen, not the personal liberty of the man himself."<sup>2</sup>

§ 8 b. Thus conquering and colonizing England, the Saxons carried with them "from lands where the Roman eagle had never been seen, or seen only during the momentary incursions of Drusus and

tion, Mr. Gladstone declared that "Our municipalities produce qualities which are the best safeguards of England's greatness." Williams & Vine, *English Munic. Code*, p. 12.

<sup>1</sup> Stubbs, *Const. Hist.* chap. i. *et seq.*; Prof. Adams, *Germanic Origin of New England Towns*, in Johns Hopkins University Studies.

<sup>2</sup> *Hist. Civ. Europe*, Lect. II.

Germanicus,"<sup>1</sup> their language, their religion, their customs, their laws, and their organizations. These were indigenous, — homebred, without trace or tincture of the Roman law and institutions.<sup>2</sup> They borrowed nothing from antiquity or from surrounding peoples. They founded, and in the course of centuries their successors and descendants, the people of England, built up their institutions on their own model. Macaulay speaks of this with his accustomed vividness: "The foundations of our Constitution," he says, "were laid by men who knew nothing of the Greeks, but that they had denied the orthodox procession and cheated the Crusaders; and nothing of Rome but that the Pope lived there. Those who followed contented themselves with improving on the original plan. They found models at home; and therefore they did not look for them abroad."<sup>3</sup> This love of personal freedom and independence was impressed upon the institutions they founded, or adopted, or modified.

§ 8 c. Learned investigators differ concerning the extent to which Roman law existed and prevailed at the time of the Saxon conquest, and the extent to which it was adopted or incorporated into the English laws, usages, and institutions. But there is a general assent to these propositions, viz.: that the *Saxon spirit of freedom was embodied in the various local courts*; that it was in these popular tribunals that the principles of law and local government were cultivated and disseminated; that the Saxons breathed into the English government and institutions "a spirit of equity and freedom which has never entirely departed from them,"<sup>4</sup> and that in the course of time the common law intertwined its roots and fibres inseparably into the constitution, polity, local and municipal institutions, the civil and criminal jurisprudence, the family relation, and the rights of person and of property. So, as we have above seen, from an immemorial or early period the local territorial subdivisions of England, such as shires, towns, and parishes, enjoyed a degree of freedom, and were permitted to assess upon themselves their local burdens and to manage their local affairs. The ratepayers were thus dignified by being an integral part of the communal life; the foundations of municipal liberty were laid; administrative power was decentralized; knowledge of the laws and reverence for and obedience to them were constantly taught by a participation in their administration and enforcement. This was exactly the opposite of the systems which concurrently prevailed on the Continent, where the central

<sup>1</sup> Digby, Real Prop. 11, 12.

<sup>2</sup> Freeman, Norman Conquest, chap. i.

<sup>3</sup> Essay on History.

<sup>4</sup> Mackintosh, Hist. Eng. Vol. V.

chap. i.; Reeves, Hist. Com. Law, Introduction by Finlason.

power absorbed, governed, regulated everything, thereby destroying municipal freedom and the capacity to enjoy and exercise it, as well as the power to defend and preserve it.

§ 8 d. Our ancestors *in the settlement of this country* brought with them these notions of English liberty and polity, and they found here a field of unexampled extent for their free development. Accordingly the system of intrusting the direction of local affairs to the local constituencies, has from the earliest colonial periods been carried by us to a much greater extent than in England.<sup>1</sup> As you pass from one end of this country to the other, alike in the older regions and in the newest organized settlement, you find the affairs of each road-district, school-district, township, county, town and city, locally self-managed, including the administration of local justice. Every township in the United States has a local court with power to summon a jury of the vicinage, thereby bringing justice home to the business and bosoms of the people, and making it their own affair. It is in no slight degree instructive, and certainly in the highest degree interesting, to trace the institutions of this new country back to their germs in the Saxon or Anglo-Saxon polity; for when we touch to-day, even in our frontier settlements, the electric chain wherewith Providence hath bound the ages and the generations of men together, we discover that we are in historic communion with rude and remote ancestors although separated from us by seas, mountains, and centuries.

Each State binds together the local institutions which it creates and regulates independent of Federal control; thus happily preventing a concentration at the national centre of the power and duty of legislating for and regulating the affairs of local communities throughout a country of such extent, that with its exact situation, wants, and interests, it would be impossible for Congress to become adequately acquainted. So, in the ascending scale, THE FEDERAL CONSTITUTION constitutes the States and the people thereof into a National Government. It defines the relations of the States to each other and to the national government, and limits the power of the States to deprive any citizen, however humble, of the great essential rights of freedom and equality before the law.

MAGNA CHARTA remains to-day one of the main foundations of English liberty.<sup>2</sup> Its chief glory is the provision "that no freeman

<sup>1</sup> Post, sec. 45, note.

<sup>2</sup> "The whole of the constitutional history of England is little more than a commentary on Magna Charta." (Stubbs,

Const. Hist. Vol. I. chap. xii.) Magna Charta "is the keystone of English liberty." (Hallam, Middle Ages, Vol. II. chap. viii.)