

## Erskine May, Vol. III, Chapter XV, pp. 275-287

### English Parishes and Boroughs

[275] THAT Englishmen have been qualified for the enjoyment of political freedom, is mainly due to those ancient local institutions by which they have been trained to self-government. The affairs of the people have been administered, not in Parliament only, but in the vestry, the town-council, the board-meeting, and the Court of Quarter Sessions. England alone among the nations of the earth has maintained for centuries a constitutional polity,—and her liberties may be ascribed, above all things, to her free local institutions. Since the days of their Saxon ancestors, her sons have learned, at their own gates, the duties and responsibilities of citizens. Associating, for the common good, they have become exercised in public affairs. Thousands of small communities have enjoyed the privileges of self-government: taxing themselves, through their representatives, for local objects: meeting for discussion and business; and animated by local rivalries and ambitions. The [276] history of local government affords a striking parallel to the general political history of the country. While the aristocracy was encroaching upon popular power in the government of the state, it was making advances, no less sure, in local institutions. The few were gradually appropriating the franchises which were the birthright of the many; and again, as political liberties were enlarged, the rights of self-government were recovered.

#### The Parish and the Vestry

Every parish is the image and reflection of the state. The land, the church, and the commonalty share in its government: the aristocratic and democratic elements are combined in its society. The common law,—in its grand simplicity,—recognised the right of all the rated parishioners to assemble in vestry, and administer parochial affairs. But in many parishes this popular principle gradually fell into disuse; and a few inhabitants,—self-elected and irresponsible—claimed the right of imposing taxes, administering the parochial funds, and exercising all local authority. This usurpation, long acquiesced in, grew into a custom, which the courts recognised as a legal exception from the common law. The people had forfeited their rights; and select vestries ruled in their behalf. So absolute was their power, that they could assemble without notice, and bind all the inhabitants of the parish by their vote.

This single abuse was corrected by Mr. Sturges [277] Bourne's Act in 1818: but this same act, while it left select vestries otherwise un-reformed, made a further inroad upon the popular constitution of open vestries. Hitherto every person entitled to attend, had enjoyed an equal right of voting; but this act multiplied the votes of vestry-men according to the value of their rated property: one man could give six votes: others no more than one.

An important breach, however, was made in the exclusive system of local government, by Sir John Hobhouse's Vestry Act, passed during the agitation for parliamentary reform.(1) The majority of ratepayers, in any parish, within a city or town, or any other parish comprising 800 householders rated to the poor, were empowered to adopt this act. Under its provisions, vestries were elected by every rated parishioner: the votes of the electors were taken by ballot: every ten-pound householder, except in certain cases,(2) was eligible as a vestryman: and no member of the vestry was entitled to more than a single vote. This measure, however democratic in principle, did little more than revert to the policy of the common law. It was adopted in some populous parishes in [278] the metropolis and elsewhere: but otherwise has had a limited operation.(3)

## **Municipal Corporations, to 1689**

The history of municipal corporations affords another example of encroachments upon popular rights. The government of towns, under the Saxons, was no less popular than the other local institutions of that race; and the constitution of corporations, at a later period, was founded upon the same principles. All the settled inhabitants and traders of corporate towns, who contributed to the local taxes, had a voice in the management of their own municipal affairs. The community, enjoying corporate rights and privileges, was continually enlarged by the admission of men connected with the town by birth, marriage, apprenticeship or servitude, and of others, not so connected, by gift or purchase. For some centuries after the conquest, the burgesses assembled in person, for the transaction of business. They elected a mayor, or other chief magistrate: but no governing body, or town-council, to whom their authority was delegated. The burgesses only were known to the law. But as towns and trade increased, the more convenient practice of representation was introduced for municipal as well as for parliamentary government. The most wealthy and influential inhabitants being [279] chosen, gradually encroached upon the privileges of the inferior townsmen, assumed all municipal authority, and substituted self-election for the suffrages of burgesses and freemen. This encroachment upon popular rights was not submitted to without many struggles: but at the close of the fifteenth century, it had been successfully accomplished in a large proportion of the corporations of England.

Until the reign of Henry VII., these encroachments had been local and spontaneous. The people had submitted to them: but the law had not enforced them. From this time, however, popular rights were set aside in a new form. The crown began to grant charters to boroughs,—generally conferring or reviving the privilege of returning members to Parliament; and most of these charters vested all the powers of municipal government in the mayor and town council,—nominated in the first instance by the crown itself, and afterwards self-elected. Nor did the contempt of the Tudors for popular rights stop here. By many of their charters, the same governing body was intrusted with the exclusive right of returning members to Parliament. For national as well as local government, the burgesses were put beyond the pale of the constitution. And in order to bring municipalities under the direct influence of the crown and the nobility, the office of high steward was often created: when the nobleman holding that office became the patron of the borough, and returned its members to Parliament. The power of the crown and aristocracy was increased, at the [280] expense of the liberties of the people. The same policy was pursued by the Stuarts; and the two last of that race violated the liberties of the few corporations which still retained a popular constitution, after the encroachments of centuries.

## **1689 to 1835**

After the Revolution, corporations were free from the intrusion of prerogative: but the policy of municipal freedom was as little respected as in former times. A corporation had come to be regarded as a close governing body, with peculiar privileges. The old model was followed; and the charters of George III. favoured the municipal rights of burgesses no more than the charters of Elizabeth or James I. Even where they did not expressly limit the local authority to a small body of persons,—custom and usurpation restricted it either to the town council, or to that body and its own nominees, the freemen. And while this close form of municipal government was maintained, towns were growing in wealth and population, whose inhabitants had no voice in the management of their own affairs. Two millions of people were denied the constitutional privilege of self-government.

Self-elected and irresponsible corporations were suffered to enjoy a long dominion. Composed of local, and often hereditary cliques and family connexions, they were absolute masters over their own townsmen. Generally of one political party, they excluded men of different opinions, [281]—whether in politics or religion,—and used all the influence of their

office for maintaining the ascendancy of their own party. Elected for life, it was not difficult to consolidate their interest; and they acted without any sense of responsibility. Their proceedings were generally secret: nay, secrecy was sometimes enjoined by an oath.

Despite their narrow constitution, there were some corporations which performed their functions worthily. Maintaining a mediaeval dignity and splendour, their rule was graced by public virtue, courtesy and refinement. Nobles shared their councils and festivities: the first men of the county were associated with townsmen: and while ruling without responsibility, they retained the willing allegiance of the people, by traditions of public service, by acts of munificence and charity, and by the respect due to their eminent station. But the greater number of corporations were of a lower type. Neglecting their proper functions,—the superintendence of the police, the management of the gaols, the paving and lighting of the streets, and the supply of water,—they thought only of the personal interests attached to office. They grasped all patronage, lay and ecclesiastical, for their relatives, friends, and political partisans; and wasted the corporate funds in greasy feasts and vulgar revelry. Many were absolutely insolvent. Charities were despoiled, and public trusts neglected and misapplied: jobbery and corruption in every form were [282] fostered. Townsmen viewed with distrust the proceedings of councils, over whom they had no control,—whose constitution was oligarchical,—and whose political sentiments were often obnoxious to the majority. In some towns the middle classes found themselves ruled by a close council alone: in others by the council and a rabble of freemen,—its creatures,—drawn mainly from the lower classes, and having no title to represent the general interests of the community. Hence important municipal powers were often intrusted, under Local Acts, to independent commissioners, in whom the inhabitants had confidence. Even the administration of justice was tainted by suspicions of political partiality. Borough magistrates were at once incompetent, and exclusively of one party; and juries were composed of freemen, of the same close connexion. This favoured class also enjoyed trading privileges, which provoked jealousy and fettered commerce.

But the worst abuse of these corrupt bodies, was that which too long secured their impunity. They were the strongholds of Parliamentary interest and corruption. The electoral privileges which they had usurped, or had acquired by charter, were convenient instruments in the hands of both the political parties, who were contending for power. In many of the corporate towns the representation was as much at the disposal of particular families, as that of nomination boroughs: in [283] others it was purchased by opulent partisans, whom both parties welcomed to their ranks. In others, again, where freemen enjoyed the franchise, it was secured by bribery, in which the corporations too often became the most active agents,—not scrupling even to apply their trust funds to the corruption of electors. The freemen were generally needy and corrupt, and inferior, as well in numbers as in respectability, to the other inhabitants: but they often had an exclusive right to the franchise; and whenever a general election was anticipated, large additions were made to their numbers. The freedom of a city was valued according to the length of the candidate's purse. Corporations were safe so long as society was content to tolerate the notorious abuses of Parliamentary representation. The municipal and Parliamentary organisations were inseparable: both were the instruments by which the crown, the aristocracy, and political parties had dispossessed the people of their constitutional rights; and they stood and fell together.

### **Municipal Corporations Act, 1835**

The Reform Act wrested from the corporations their exclusive electoral privileges, and restored them to the people. This tardy act of retribution was followed by the appointment of a commission of inquiry, which roughly exposed the manifold abuses of irresponsible power, wherever it had been suffered to prevail. And in 1835, Parliament was called upon to overthrow these municipal oligarchies. The measure was fitly [284] introduced by Lord John

Russell, who had been foremost in the cause of Parliamentary reform. It proposed to vest the municipal franchise in rated inhabitants who had paid poor-rates within the borough for three years. By them the governing body, consisting of a mayor and common council, were to be elected. The ancient order of aldermen was to be no longer maintained. The pecuniary rights of existing freemen were preserved during their lives: but their municipal franchise was superseded; and as no new freemen were to be created, the class would be eventually extinguished. Exclusive rights of trading were to be discontinued. To the councils, constituted so as to secure public confidence, more extended powers were intrusted, for the police and local government of the town, and the administration of justice; while provision was made for the publicity of their proceedings, the proper administration of their funds, and the publication and audit of their accounts.

No effective opposition could be offered to the general principles of this measure. The propriety of restoring the rights of self-government to the people, and sweeping away the corruptions of ages, was generally admitted: but strenuous efforts were made to give further protection to existing rights, and to modify the popular character of the measure. These efforts, ineffectual in the Commons, were successful in the Lords. Counsel was heard, and witnesses examined, on behalf of several of the corporations: but the main principles of the bill were not contested. Important [285] amendments, however, were inserted. The pecuniary rights and parliamentary franchise of freemen received more ample protection. With a view to modify the democratic constitution of the councils, a property qualification was required for town councillors; and aldermen were introduced into the council, to be elected for life; the first aldermen being chosen from the existing body of aldermen. Those amendments were considered by ministers and the Commons, in a spirit of concession and compromise. The more zealous advocates of popular rights urged their unconditional rejection, even at the sacrifice of the bill: but more temperate councils prevailed, and the amendments were accepted with modifications. A qualification for councillors was agreed to, but in a less invidious form: aldermen were to be elected for six years, instead of for life: and the exclusive eligibility of existing aldermen was not insisted on. And thus was passed a popular measure, second in importance to the Reform Act alone.(4) The municipal bodies which it created, if less popular than under the original scheme, were yet founded upon a wide basis of representation, which has since been further extended.(5) Local self-government was effectually restored. Elected rulers have since generally secured the confidence of their constituents: municipal office has become an object of honourable ambition to public-spirited townsmen; and local administration,—if not free from [286] abuses, has been exercised under responsibility and popular control. And further, the enjoyment of municipal franchises has encouraged and kept alive a spirit of political freedom, in the inhabitants of towns.

### **The City of London**

One ancient institution alone was omitted from this general measure of reform,—the corporation of the City of London. It was a municipal principality,—of great antiquity, of wide jurisdiction, of ample property and revenues,—and of composite organisation. Distinguished for its public spirit, its independent influence had often been the bulwark of popular rights. Its magistrates had braved the resentment of kings and Parliaments: its citizens had been foremost in the cause of civil and religious liberty. Its traditions were associated with the history and glories of England. Its civic potentates had entertained, with princely splendour, kings, conquerors, ambassadors and statesmen. Its wealth and stateliness, its noble old Guildhall and antique pageantry, were famous throughout Europe. It united, like an ancient monarchy, the memories of a past age, with the pride and powers of a living institution.

Such a corporation as this could not be lightly touched. The constitution of its governing body: its powerful companies or guilds: its courts of civil and criminal jurisdiction: its varied municipal functions: its peculiar customs: its extended powers of local taxation,—all these

[287] demanded careful inquiry and consideration. It was not until 1837 that the commissioners were able to prepare their report; and it was long before any scheme for the reconstitution of the municipality was proposed. However superior to the close corporations which Parliament had recently condemned, many defects and abuses needed correction. Some of these the corporation itself proceeded to correct; and others it sought to remedy, in 1852, by means of a private bill. In 1863, another commission of eminent men was appointed, whose able report formed the basis of a government measure in 1856. This bill, however, was not proceeded with; nor have later measures, for the same purpose hitherto been accepted by Parliament. Yet it cannot be doubted that this great institution will be eventually brought into harmony with the recognised principles of free municipal government.

#### **Footnotes.**

1. Vestry Act 1831, 1 and 2 Will. IV. c. 60.
2. In the metropolis, or in any parish having more than 3,000 inhabitants, a £40 qualification was required. In the metropolis, however, the act was superseded by the Metropolis Local Management Act, 1855.—*Infra*, 297.
3. In 1842, nine parishes only had adopted it.—Parl. Paper, 1842, No. 564.
4. Municipal Corporation Act, 1835, 5 and 6 Will. IV. c. 76.
5. Municipal Corporations Act, 1859, 22 Vict. c 35.

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