DE REPUBLICA ANGLORUM

A DISCOURSE ON THE COMMONWEALTH OF ENGLAND

BY

SIR THOMAS SMITH

EDITED BY

L. ALSTON, Christ's College

WITH A PREFACE BY

F. W. MAITLAND, LL.D.
DOWNING PROFESSOR OF THE LAWS OF ENGLAND

Cambridge
at the University Press
1906
## CONTENTS.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface (F. W. M.)</td>
<td>...</td>
<td>v</td>
</tr>
<tr>
<td>Introduction (L. A.)</td>
<td>...</td>
<td>xi</td>
</tr>
<tr>
<td>To the Reader (1583)</td>
<td>...</td>
<td>3</td>
</tr>
<tr>
<td>A necessarie Table of all the principall matters contained in this Booke</td>
<td>...</td>
<td>5</td>
</tr>
<tr>
<td>De Republica Anglorum</td>
<td>...</td>
<td>9</td>
</tr>
<tr>
<td>Appendix A (The later editions)</td>
<td>...</td>
<td>144</td>
</tr>
<tr>
<td>Appendix B (Extracts from Harrison's Description of England)</td>
<td>...</td>
<td>168</td>
</tr>
<tr>
<td>Appendix C (Certain MSS. readings)</td>
<td>...</td>
<td>175</td>
</tr>
</tbody>
</table>
PREFACE.

Sir Thomas Smith’s discourse on the Commonwealth of England is a famous and in some sort a well-known book. No one would think of writing about the England of Elizabeth’s day without paying heed to what was written about that matter by her learned and accomplished Secretary of State. His little treatise comprises some sentences touching the powers of Parliament which have been quoted and transcribed times without number, and which will be quoted and transcribed so long as men take any interest in the history of the English constitution. But if in this sense it has been a well-known book, we cannot say that it has been exactly and accurately known. It has been possible, even for learned men, to mistake a Latin translation for the original text, and the copies of the English text which have been in the market differ materially from each other. Those of the oldest editions have commanded a somewhat high price, while those of later editions give us a good deal of matter which we cannot with any confidence ascribe to the pen of Sir Thomas.
PREFACE

It seemed then that the time had come when a new edition would be welcome. Also it seemed fit and proper that the new edition should proceed from the Press of that University of which Sir Thomas Smith was in his day one of the most illustrious sons. Mr Alston has kindly taken off my hands a piece of work that I was unable to bring to an end, and, though this is not the place in which I may praise him, I may even here be allowed to say that he has spared no pains in his endeavour to set before the public a good text of a good book.

His Introduction leaves me nothing to do save to call to remembrance the main facts of our author's life. It will not be forgotten that Sir Thomas found a biographer in John Strype, nor that in more recent times Professor A. F. Pollard has written an excellent article about him in the Dictionary of National Biography. Mr Mullinger also in his History of the University of Cambridge has spoken at some length of Smith's academic career. This being so, but very little need here be said.

Thomas Smith was born at Saffron Walden in 1513. In 1526 he entered Queens' College, Cambridge. At the beginning of 1530 he was elected a fellow of that college, being then B.A. He graduated M.A. in 1533 and shortly afterwards began to lecture on Greek. In 1538 he became public orator of the University. It was at this time that he won the honourable place that he holds in the history of scholar-
PREFACE

ship by endeavouring in concert with his friend John Cheke to introduce the ‘Erasmian’ method of pronouncing the Greek language; but he was also paying attention to Roman law. In 1540 King Henry founded the five regius professorships, and the chair of civil law was given to Smith. He went abroad to study and became a doctor in law of the University of Padua; also he saw something of the French universities, in which Roman jurisprudence was beginning to shake off its medieval garb. As in the case of scholarship, so in the case of law, he was on the side of the reformers, and he returned to speak with enthusiasm to a Cambridge audience of the work that was being done by Andrea Alciato and Ulrich Zäsi. In religion also he was with the reformers. He became chancellor to Goodrich, bishop of Ely. In 1546 he was ordained priest, and he held the rectory of Leverington in Cambridgeshire. Shortly after the accession of Edward VI. he entered public life and the service of the Protector Somerset. He became clerk of the privy council, steward of the stannary court, a master of the court of requests, provost of Eton, dean of Carlisle, and in 1548 one of the two secretaries of state. The fall of the Protector, to whom he had been faithful, brought some trouble upon him. He was deprived of the secretariship and the professorship. Mary's accession brought further trouble. A married priest, he had to resign Eton and Carlisle, but from any worse fate than a life in retirement he seems to have
PREFACE

been shielded by Stephen Gardiner, who, it is said, had reason to be grateful to him for similar services performed in King Edward’s reign. When Mary died, he once more emerged. He was at once placed upon a commission ‘for the consideration of things necessary for a parliament’—the momentous parliament of 1559, in which, notwithstanding his holy orders, he represented the borough of Liverpool. A committee of divines was to meet at his house to review the book of common prayer; but whether that committee ever met seems still to be an open question, and to a degree that is somewhat surprising Smith appears during the rest of his life to have behaved as though he had never been ordained. In 1562 he was sent as Elizabeth’s ambassador to France and there he remained until 1566 during a stormy time. While in France he wrote the little treatise that is here printed. He was admitted to the privy council in 1571 and once more became a secretary of state in 1572. He represented the county of Essex in the parliament of that year and became chancellor of the order of the garter. His health failed in 1576 and he died on the 12th of August 1577.

Altogether it is a remarkable career. Few Englishmen have held so many offices of such different sorts. Among his contemporaries his reputation for learning stood high. Not only was he regarded as an erudite ‘Grecian,’ but he knew something of Hebrew and the modern tongues. Not only was he regarded as an
PREFACE

eminent and enlightened ‘civilian,’ but he was accounted a master of history and mathematics and ‘natural philosophy.’ The chief works of his that have come down to us, beside the book on the Commonwealth of England, are a tract on the pronunciation of Greek and a tract on the reform of English spelling, both of which were published in his lifetime, and an interesting dialogue, printed by Strype, on the question whether it were well that Queen Elizabeth should marry a foreigner, an Englishman, or nobody. We have also many letters on affairs of state which proceed from him. His ‘Commonwealth’ or ‘De Republica’ was not published until 1583, some eighteen years after it was first written and some six years after his death. The rapidity with which new editions of it were issued shews that it was widely read, and we may say that it has won for itself a place among our constitutional classics. But at this point I may resign the pen to Mr Alston.

F. W. MAITLAND.

xi
INTRODUCTION.

Sir Thomas Smith was Elizabeth’s ambassador in France from 1562 to 1566, and it was in this period that he penned what was intended to be the first rough draft of his De Republica Anglorum. Perhaps we cannot do better than begin with a quotation from a letter written by Smith to his friend Walter Haddon. It is dated the 6th of April at Bordeaux, whither the English minister had followed the French court from Toulouse, but it was written on the journey. Queen Catherine, we may observe in passing, was on her way to that famous interview at Bayonne of which our historians tell us less than we should like to know. Haddon has asked how Smith employs his time; Smith, in a Latin epistle, which is printed in Haddon’s Lucubrationes, replies to his queries. The part of the letter which refers to our book may be rendered as follows. “And because in my absence I feel a yearning for our commonwealth, I have put together three books here at Toulouse describing it, taking as the title De Republica Anglorum; and in these I have set forth almost the whole of its form, especially those points in which it differs from the others. But it differs in almost all; with the consequence that the work has grown larger than I expected. I have written it moreover in the language of our own country, in a style midway between the historical and the philosophical, giving it the shape in which I imagined that Aristotle wrote of the many Greek commonwealths
DE REPUBLICA ANGLORUM

books which are no longer extant. I have furnished fruitful argument for those who would debate after the fashion of philosophers on single topics and raise nice points as to justice and injustice, and whether what is held yonder in England as law be the better, or what is held here and in those regions which are administered in accordance with the Roman Law. For all things, almost, are different, and I have set them forth on both sides in rough general outline. ‘Why not send the books to me?’ (you say). ‘I desire eagerly to see what you have done.’ They still lie among the rough scrawls of my note books; when they have been fully written out and given to the world in book-form, I shall send them to you. For you were accustomed to think (as the well-known writer puts it1) that our trifles had some value. You will certainly say, if I mistake not, when you read them through, that I am not ill-versed in our country’s institutions. But it needs must be that in this brief essay there should be gaps, and a few points not filled in, because I brought with me not a single book and had no men of law to consult. Accordingly I have written only as much as was supplied by my memory, for the time being, of matters I had seen or read. Those parts that are imperfect I shall be able to complete at my leisure when I have returned home.”

The work itself is dated with scrupulous exactitude, much in the fashion of Thucydides, in the last chapter of the third book. The author tells us that he has set forth the government of England as it stands “at this day the xxvij of March Anno 1565 in the vij yeare of the raigne and administration thereof by the most vertuous and noble Queene Elizabeth, daughter to King

1 Namque tu solebas nostras (ut ille ait) esse aliquid putare nugas. Cf. Catull. i. 3.
INTRODUCTION

Henrie the eight, and in the one and fifteeth yeere of mine age, when I was ambassador for her majestie in the court of Fraunce, the scepter whereof at that time the noble Prince and of great hope Charles Maximilian did holde, having then raigned iiiij yeares.” We shall see grounds for believing that Smith kept to his purpose of making additions to his treatise later on, and we might therefore be tempted to conclude that this epilogue—the British Museum MS. cuts it off as a separate chapter headed Epilogus—with its past tenses, “was ambassador,” “did holde,” “having then raigned,” is one of these later additions. But the similarity of the last sentences of the chapter to the sentences of the letter to Haddon makes it more probable that the two were written close about the same time; and that Smith is sympathetically putting himself in the place of the readers to whom this date will belong to the past. In describing the English constitution, he tells us, he has set before our eyes “the principall pointes wherein it doth differ from the policie or government at this time used in Fraunce, Italie, Spaine, Germanie and all other countries, which doe followe the civill lawe of the Romanes compiled by Justinian into his pandects and code.” He has dealt especially with the “pointes wherein the one differeth from the other, to see who hath taken the righter, truer, and more commodious way to governe the people aswell in warre as in peace. This will be no illiberall occupation for him that is a Philosopher and hath a delight in disputing, nor unprofitable for him who hath to do and hath good will to serve the Prince and the common wealth in giving counsell for the better administration thereof.” This explanation is very similar to that which he makes to Haddon in his letter dated less than a fortnight later.
DE REPUBLICA ANGLORUM

Sir Thomas Smith died on the 12th August, 1577, after an illness that had lasted over a year. The De Republica was not published till 1583, when it was brought out by Gregorie Seton (London) with a number of marginal notes, mostly of the nature of corrections, and not always couched in language complimentary to the author of the book. For these notes Smith is apparently not responsible. But the question naturally arises, had Smith in any way polished, or added to, his draft of March 1565?

Now in 1577, the year of Smith’s death, though presumably before the month of his death, appeared the first edition of Holinshed’s Chronicle, and in this was incorporated William Harrison’s well-known Description of England. Of this again a second and enlarged edition appeared in 1587, four years after the publication of the De Republica, and in Harrison’s section of the work in this second edition we find an additional chapter dealing with Parliament—a chapter which is a condensation and adaptation of certain chapters of Smith’s book. Parliamentary procedure is here described, as Harrison freely admits, in the same words “as sir Thomas Smith dooth deliver and set them downe, whose onelie direction I use, and almost word for word in this chapter, requiting him with a like borowage as he hath used toward me in his discourse of the sundrie degrees of estates in the commonwealth of England, which (as I hope) shall be no discredit to his travell.” Here is a confession, but also an accusation. And we turn with some interest therefore to the earlier edition of Holinshed to see what Harrison has had to say about the “sundrie degrees of estates,” and whether there is any truth in this remarkably courteous and friendly charge of plagiarism.

xvi
INTRODUCTION

The similarity of the two sets of chapters dealing with the nobility, gentry, yeomanry etc. is sufficiently striking. One of the two authors has “borrowed”; and if the “borrowage” was from a printed work, Smith was evidently the debtor in the transaction. Can it however have been Harrison who saw and used Smith’s manuscript? Possibly, but not probably. When we compare the earlier Holinshed (1577), the later Holinshed (1587), and Smith, we find many differences of a kind that point to Smith’s treatment being intermediate in time between the other two. For though he has lifted without acknowledgment the substance of whole paragraphs from his friend’s work, he has done so with discretion as regards rearrangement of the matter and also occasional literary improvements. And then when Harrison comes to rewrite his book for the later edition he re-borrows not a few of these improvements—taking over, for instance, the phrase about gentlemen being made “good cheap” in England—and he uses Smith’s work as freely as Smith has used his. Moreover, he never hesitates in making his acknowledgments. Smith’s name appears more than once in the enlarged chapters, and it is this fact, doubtless, that has caused commentators to overlook Harrison’s priority. Had Harrison stolen secretly in his first edition from an unpublished manuscript, he could scarcely have penned that genial sentence about the guilty Smith, nor should we expect to find him so scrupulous in acknowledging his later indebtedness.

If Smith plagiarised from the published Holinshed, and not from some unpublished MS., it must necessarily have been in the last few months of his life, in the course of his prolonged illness. With regard to this last illness, Strype (who, though by no means the most trustworthy
DE REPUBLICA ANGLORUM

of biographers, is not likely to have wilfully misstated what he has read) writes as follows (Life of Smith, 2nd ed. 1820, p. 148). “But he could not be idle, which he said was contrary to his nature: he was therefore minded to follow his study, and take a review of what he had formerly done. And in this loathful leisure, as he called it, among other occupations and pastimes, he would remember the days of his youth, and look back again to his doings then; and now being old, quasi repuerascere, i.e. hereby, ‘as it were to grow a child again.’ When he was secretary in King Edward’s days, he wrote a book of the value of Roman coins to our English standard, upon a question Cecil, his fellow Secretary, had moved to him, viz. what was the ordinary wages of a soldier at Rome. This book, as many others which he wrote in his youth, he had now lost....He desired therefore the Lord Treasurer to see for it, who he thought had not laid it up so negligently....This book, as it seems, the Lord Treasurer found out among his papers, and sent it to the Secretary, according to his request; which he had desired to see, as he said to the said Lord, tanquam filium postliminio redeuntem, perditum quasi, et iterum inventum.” Strype in this passage is quoting from some letter or letters of Smith, and though there is no mention here of the De Republica, we gather that Smith was revising at least some of his early writings. Among these he may well have taken in hand the book with which we are here concerned.

There is also a little internal evidence pointing to composite construction and revision of the De Republica. This however might conceivably be put down to the account of the editorial hand that prepared the work for publication after Smith’s death. But if so, the editor cannot be the commentator who has added the xviii
INTRODUCTION

marginal notes, for the corrective marginalia occur in what we may call the Harrison chapters as well as elsewhere. Moreover the editor must have been a man of considerable literary ability and have taken unusual trouble in the rearrangement. For the revision which I suppose to have been undertaken at some date between 1565 and 1583 seems to have extended beyond the additional chapters (16 to 24 of Book I.) which were taken over from Harrison. Notice, for instance, in Book II. chapter 2 the words, “Yeomen I call here as before...,” and yet there is no other reference to yeomen except in the Harrison chapters1. But more important for the settlement of the question of Smith’s plagiarism is a linguistic detail. Smith habitually uses “Prince” to stand for “King or Queen,” possibly because he is writing in the reign of a queen regnant, but has spent the first forty years of his life in the service of Henry VIII. and Edward, and is equally familiar with the name “King.” (Books published in the latter years of Victoria’s reign frequently speak of the Queen and her powers and prerogatives as if England had always been and always would be under the sway of a woman.) But in Book I. chapter 18 we are told that the “King’s eldest sonne is called καίτις ἡγεσίς the Prince,” and this use of the title appears

1 Just possibly however, it may be pointed out in passing, these chapters took the place of some earlier chapters which have been completely omitted. For the third chapter of Book II. opens with the sentence—“The Prince whom I nowe call (as I have often before) the Monarch of Englande, King or Queene,......”;—and yet the word “monarch” has only occurred once previously, namely in Book I. chapter 24; the word “monarchy” only twice, in chapters 7 and 9; and the Greek word μοναρχία but once also. And further, if we merely strike out chapters 16 to 24 as not belonging to the original text, and do not assume any earlier chapters to have stood in their place, the three books of the treatise would be of very unequal length, viz. 18 (instead of 33) pages, 53, and 32.
DE REPUBLICA ANGLORUM

elsewhere in only two places,—in another sentence of the same chapter, and once in chapter 16. In all other cases, even within the Harrison chapters, the other usage prevails.

We may notice also some reasons why Smith, while borrowing freely certain paragraphs of Harrison, may have thought well to leave other passages untouched. Harrison deals at some length with the merchants of England, whose great numbers he pathetically laments as the cause of high prices. Smith, who had written several pamphlets on monetary questions and had perhaps some claim to be called an economist, may well have disagreed with this sweeping statement. Harrison mentions the chief officers of state, giving their order of precedence, and Smith, himself twice secretary of state, may have omitted mention of them on grounds of personal modesty. On similar grounds we may account for his omission of Harrison’s description of the clergy. Smith was in holy orders, and may well have shrank from transcribing the eulogiums on the learning—Greek, Latin and Hebrew—of the English clergy.

Harrison has dealt also with other questions of which Smith treats elsewhere, such as the subdivisions of the county and the duties of sheriffs, justices, and constables, but all this matter Smith leaves severely alone. For an explanation of this, however, we need not go further than the words of Harrison himself, who closes his treatment of the shires in the following characteristic manner. “And this much have I thought good to set downe generallie of the said counties and their maner of governance, although not in so perfect order as the cause requireth, because that of all the rest there is nothing wherewith I am lesse acquainted than with our temporall regiment, which (to
INTRODUCTION

saie truth) smallie concerneth my calling.” It was hardly from an author of this stamp that Smith would take matter of legal or quasi-legal character.

One curious point with regard to the assumed plagiarism deserves a passing mention. At the end of Harrison’s account of the knights of the garter come the words—“and the rest by certeine statutes and lawes amongst themselves be taken as brethren and fellowes in that order, to the number of six and twenty, as I find in a certeine treatise written of the same, an example whereof I have here inserted word for word, as it was delivered unto me, beginning after this maner.” It is not quite clear whether this refers to some formula of admission to the order, which was intended to follow immediately, but for some reason was omitted, or whether Harrison is acknowledging another plagiarism affecting his whole description of the order. In either case it is a little strange that Smith, who was himself chancellor of the order and therefore presumably knew more about it than Harrison (or Harrison’s predecessor, if there was one), should in this also (see Book I. ch. 18) have made use of Harrison. But though it is a strange fact, and not to be lightly ignored, it is hardly sufficient in itself to upset the amount of positive evidence in favour of our theory.

Let us now look into the subject-matter of the various chapters more in detail.

Book I. begins with a discussion of the familiar sixfold division of commonwealths which we inherit from Aristotle, and of the question, what constitutes justice and law? (chapters 1—6). Incidentally we get a rough statement of what is meant by “the ruling and Sove-

1 Some additional evidences of divergence in view between the borrowed chapters and the rest of the book are noted later on.
DE REPUBLICA ANGLORUM

raigne part” of a commonwealth. (The abstract term “soveraignty” does not appear.) “To rule,” (we are told) “is understoode to have the highest and supreme authoritie of commaundement. That part or member of the common wealth is saide to rule which doth controwele, correct, and direct all other members of the common wealth” (I. i). This ruling part may be one man, the few, or the many; but in any case “common wealthe or gouvernements are not most commonly simple but mixt” (I. 6); and so democratic, aristocratic, and monarchical states differ from one another rather like men of “cholericke, sanguine, phlegmatique, and melancolique” temperaments, of which we seldom find “the one utterly perfect without mixtion of the other.” How then is our author going to treat England? Is it to be called predominantly democratic, aristocratic, or monarchical?

Smith seems to have hesitated. Chapters 7 and 8 deal with kingship in general, and chapter 9 with “the name king and thadministration of England.” This comparatively lengthy treatment of monarchical government, without any corresponding attention to the other forms, points to its being the most important for the purpose of the treatise as a whole—or in other words to England being classed as a monarchy. In chapter 9 he writes as follows. “By olde and auncient histories that I have red, I do not understand that our nation hath used any other generall authoritie in this realme neither Aristocratcall nor Democraticall, but onely the royall and kingly majestie which at the first was divided into many and sundrie kingses, ech absolutely reigning in his countrie, not under the subjection of other, till...at the last the realme of England grew into one Monarchie.” The word “absolutely” is probably not intended to
INTRODUCTION

carry any greater value than the succeeding phrase "not under the subjection of other"; but England is distinctly called, not an aristocracy, nor a democracy, but a monarchy.

Yet, later on, in one of the Harrison chapters, we get a statement from which the most natural deduction (in accordance with Smith's own statement of what constitutes the sovereign part of a state) would seem to be that England is a democracy. Chapter 24 deals with "the fourth sort of men which doe not rule." "These have no voice nor authoritie in our common wealth, and no account is made of them but onelie to be ruled, not to rule other, and yet they be not altogether neglected....Wherefore generally to speake of the common wealth, or policie of Englande, it is governed, administred, and manured by three sortes of persons, the Prince, Monarch, and head governre, which is called the King, or if the crowne fall to a woman, the Queene absolute....The gentlemen, which be divided into two parts,...The thirde and last sorte of persons is named the yeomanrie; each of these hath his part and administration in judgementes, corrections of defaultes, in election of offices, in appointing and collection of tributes and subsidies, or in making lawes, as shall appeare hereafter" (I. 24). Moreover, when he comes to use the word "monarch" in definite relation to the King or Queen of England (Bk. II. c. 3) he finds it necessary to draw attention to the fact that he is doing so, as if this were in some degree a debatable point.

Smith, then, would seem to have waivered in his treatment. He has not thought the question of sovereignty out to its logical issues, and the matter which he has taken from Harrison has not been so well
DE REPUBLICA ANGLORUM

assimilated to the rest of the essay as to allow of the removal of all inconsistencies.

To revert to the earlier chapters. The tenth we notice is a digression. It rules out of account what Seeley would call the “inorganic” state; for as regards such a government as that of the Sultan of Turkey “a man may doubt whether his administration be to be accomplished a common wealth or a kingdom, or rather to be reputed onely as one that hath under him an infinite number of slaves or bondmen among whom there is no right, law nor common wealth.”

In the eleventh, twelfth and thirteenth chapters we get an adumbration of the probable development of political institutions, beginning with the monarchical household and closing with the great democratic state. There is a natural progress, Smith thinks, from patriarchal kingship in the small community, through an intermediate aristocratic constitution, to the democratic government which is adapted to the community which has outgrown less mature forms of administration. But none of these, he goes on to point out in chapter 15, is necessarily suited to all stages in national character. Democratic institutions best fit one people, monarchical institutions another. And “when to ech partie or espece and kinde of the people that is applied which best agreeith like a garment to the bodie or shoe to the foote, then the bodie politique is in quiet, and findeth ease, pleasure and profit.”

Down to this point everything that Smith has written has been of the most general introductory character, with the exception of the single chapter on the English king. Now comes a completely new beginning. “To make all things yet cleare before, as we shal go, there ariseth another division of the partes of
INTRODUCTION

the common wealth. For it is not enough to say that it consisteth of a multitude of houses and families which make stretes and villages, and the multitude of the stretes and villages make townes, and the multitude of townes the realme, and that freemen be considered only in this behalf....This (as I sayde) is not enough. But the division of these which be participant of the common wealth is one way of them that beare office, the other of them that beare none: the first are called magistrates, the second private men” (I. 16). This introduces the interesting Harrison chapters, from I. 16 to the end of Book I. As these presumably do not belong to the original plan of the work we pass direct to the second book.

Book II. begins with the famous passage dealing with Parliament and the authority thereof (II. 1); an account of the forms observed by Parliament (II. 2); and a summary statement of the powers of the Crown (II. 3). Then follows an attempt to classify the forms of political activity with which a treatise on the constitution should deal. “Common wealthes and govern- mentes” (we are told) “be most occupyed, and be most diverse in the fashion of five things: in making of battell and peace, or truce with forraine nations: in providing of mony for the maintenance of themselves within themselves, and defence of themselves against their enemies: in choosing and election of the chiefe officers and magistrates: and lastly in the administration of justice. The firste and thirde we have shewed is done by the prince in parliament. The seconde and fourth by the prince himselfe. The fift remaineth to be declared” (II. 4). The remainder of the treatise, from this chapter to the end of Book III. (71 pages out of 119, or, omitting the Harrison chapters, 71 pages
DE REPUBLICA ANGLORUM

out of 104), Smith devotes to his main topic, which is, not the “constitution” as ordinarily understood by students of political science, but rather that which is usually treated under the heading of Justice and Police.

The De Republica is intended as a pioneer treatise in Comparative Politics, and ends with a call to the study of the new subject. But the limits and boundaries of the study are not yet clearly defined; and we need not be surprised therefore that Smith should waver in his views as to what should and what should not be included within it. One fact, however, stands out clearly. The “constitution” does not for Smith consist of the same elements as for Walter Bagehot or his imitators, and his work therefore is not felt by him as the forerunner of such treatises as theirs. For Smith the framework of a commonwealth consists almost entirely of its courts, its judicial system, and its methods of police.

Had his subject-matter been the same as that of Bagehot’s English Constitution, the form and balance of the essay would necessarily have been very different. No writer dealing with the “constitution” of Elizabethan England, in the ordinary sense of that word, could have ignored the powers and duties of the great officers of state—least of all a writer who had himself, in two reigns, held the high position of Principal Secretary of State. “The period of the Tudors and the early Stewarts was,” as Dr Prothero says (Statutes and Constitutional Documents, Introd. p. cl.), “the ‘period of government by Council.’” Yet the Privy Council receives only the briefest of passing mentions (in II. 3, —where it is treated as an appendage of the Prince). But the Star Chamber, which is practically the same xxvi
INTRODUCTION

body in its judicial aspect, is described at considerable length (III. 4). The relations of church and state were too prominent a question in Smith’s time, and convection was still a body of too great constitutional importance, for them to be ignored (however cautiously they might need to be handled) in an Elizabethan treatise on the constitution. Yet they are passed over without a mention; while the ecclesiastical courts are given the greater part of a chapter (III. 9) and their relation to the Crown is treated with simple directness.

To Smith, then, the constitution of a commonwealth consists primarily of its courts and its various forms of law—martial, ecclesiastical, and general. Nor is his book, though the treatment is intended to be comparative, greatly concerned with the contrast between “constitutional” England and “absolute” France, as we should expect if he were mainly interested in such questions as that of royal and parliamentary sovereignty. The regularly recurring contrast is that between England on the one hand and, on the other, those countries which “doe followe the civill Law of the Romanes compiled by Justinian into his pandects and code” (III. 9). This is the comparison which is foreshadowed in the letter to Haddon (“problemate facere ... utrum sit melius, id quod istich teneatur in Anglia pro lege, an quod hic, et in illis provinciis, quae Romano iure reguntur”) and appears in almost every chapter of the third book.

Why then does he devote those three lengthy chapters to the Prince and the Parliament? He does so because no account of the judicial system would be complete without them. The Prince is the head of that system; he “giveth all the chiefe and highest offices or magistracies of the realme, be it of judgement
or dignitie, temporall or spirituall”; “all writtes, executions and commandementes be done in the princes name”; and in time of war and during insurrections he has a certain absolute power called “marciall lawe”; while the Parliament (King, Lords and Commons) is itself the “highest and most authentickal court of Englannde”—not of course because of any jurisdiction that the upper house may exercise as a court of error (a jurisdiction which was hardly patent in Elizabeth’s day)—nor yet because of impeachments, for impeachments belong, not to Elizabethan times, but to the past and to the future.

That word “court” comes to our modern ears as a mere archaism when it is applied to Parliament. But to Smith the application seems a natural usage, expressive of a still living fact. He does not cut apart the legislative, judicial, and executive functions, and endeavour to assign each to a particular element in the constitution. Rather he tends to blur together the first two, and while of course clearly understanding the great practical difference between statutes and the sentences of lower courts, to treat them as being, for theoretical purposes, members of the same group. Both are the offspring of “courts”; and though Parliament is the greatest among these, and has many functions which the others have not, it is not therefore an element in the constitution which is *sui generis*.

Though we are all familiar with the presence of a court, nominally identical with the House of Lords, as the supreme court of appeal, we have come, with the development of political theory, to feel that the quasi-judicial functions of the full Parliament of King, Lords and Commons (“legitimating bastards, giving forms of
INTRODUCTION

succession to the crown, giving most free pardons and absolusions, restoring in blood and name as the highest court,” etc.) are incongruous excrescences, historical outgrowths that can best be excused by referring to our non-logical British methods. When the modern historian reminds us, for instance, that a bill of attainder is legislative in form but judicial in fact, we feel at once, as we read such a statement, that Parliament in passing bills of attainder would be encroaching on an alien sphere of activity. But to Smith Parliament is primarily a court, and if dealing with such bills is not its normal or most distinctive function, it is at least a function of prime importance for his particular purpose. “This is the order and forme,” he says, summing up the chapter, “of the highest and most authenticall court of Englands, by vertue whereof all those things be established whereof I spake before, and no other means accounted vailable to make any new forfaiture of life, member, or landes of any English man, where there was no lawe ordayed for it before.”

But has not Smith begun by declaring that “the most high and absolute power of the realme of Englands consisteth in the Parliament?” And does not this statement place Parliament on a totally different level from all other constitutional bodies, and in fact imply the existence of parliamentary “sovereignty”? Such is indeed the traditional interpretation. And writers on constitutional history have found herein Smith’s chief claim to a place in the history of thought. To illustrate the current view it will be sufficient to quote from that well-known *History of the Science of Politics* which we owe to the pen of Sir Frederick Pollock. “In the *De Republica Anglorum* or *English Commonwealth* of Sir Thomas Smith, first published
DE REPUBLICA ANGLORUM

after the author’s death in 1583, we find something much more like a forerunner of Hobbes. Indeed, so clear and precise are Smith’s chapters on Sovereignty that one is tempted to think he must somehow have had knowledge of Bodin’s work. At the outset he defines political supremacy in a manner by no means unlike Bodin’s. When he comes to English institutions in particular, he states the omnipotence of Parliament in the most formal manner, and so far as I know for the first time, as if on purpose to contradict Bodin’s argument that the monarchy of England is really absolute” (p. 54). And in discussing Locke, a little further on, the same author says that “he is nowhere so precise on the supreme authority of Parliament...as Sir Thomas Smith a century before him” (p. 74).

Yet in spite of the consensus of authority on the point there is room for considerable doubt as to whether this view of Smith’s position is the correct view. Whatever may be logically deducible from the facts stated in the first four chapters of Book II., it is questionable whether Smith had at all firmly gripped the ideas underlying the modern doctrine of sovereignty. Let us look a little more closely at the wording of these chapters. But notice first the frequent references to the contrasted requirements of war and peace, e.g. in the last chapter of the treatise—“to see who hath taken the righter, truer, and more commodious way to governe the people aswell in warre as in peace.” Now in Book II. chapter 1,—the critical chapter on Parliament,—Smith goes on, immediately after the downright statement so often quoted, to add the following sentence, which, rightly read, is a distinct qualification of that which precedes. “For as in warre where the king himselfe in person,