A HISTORICAL SKETCH OF LIBERTY AND EQUALITY AS IDEALS OF ENGLISH POLITICAL PHILOSOPHY FROM THE TIME OF HOBBES TO THE TIME OF COLERIDGE[1].

(*a*) LIBERTY

THE simplest meaning of the word "Liberty" is absence of restraint. To the political philosopher it means absence of restraint on human action, and, since we are not speaking of the metaphysical freedom of the will, we may say absence of external restraint on human action. Further, as politicians, we are not concerned with those restraints which are due to causes over which we have no control; we have only to deal with those external restraints on human action which are themselves the results of human action. But we cannot say that the Liberty which our philosophers praise is an absence of *all* such restraints: the minimization of all restraints on human action is an ideal of politics which has but lately made its appearance. No, the Liberty which our earlier philosophers praise is—

(1) The absence of restraints imposed by certain persons;

or (2) The absence of certain forms of restraint;

or (3) The absence of restraints on certain classes of actions.

To examine at some length the history of Liberty as a political ideal is the object of this present chapter.

[1] Submitted as a dissertation for a Fellowship at Trinity and privately printed in 1875.

Naturally enough, the political question which most attracted philosophers in the seventeenth century was the question:—How can one man or body of men obtain a rightful title to rule other men? The great demand for political theory produced a somewhat injurious effect on the supply. Coleridge has remarked how, in times of great political excitement, the terms in which political theories are expressed become, not more and more practical, but more and more abstract and unpractical. It is in such times that men clothe their theories in universal terms, and preface their creeds by the widest of propositions. The absolute spirit is abroad. Relative or partial good seems a poor ideal; it is not of these, or those men that we speak, of this nation, or that age, but of Man. Philosophers in the seventeenth century were not content with shewing that this or that government would be the best for our nation, that it would make Englishmen good, or virtuous, or happy; they sought to strengthen their position by shewing that some form of government is universally and eternally the only right one. God and Nature, said the friends of the Stuarts, have decreed that we should submit to an absolute monarch. God and Nature, replied their opponents, have decreed that the consent of the governed can alone give a title to the governor. Both parties tried to answer the question as to what is the right form of government, without first answering more fundamental questions. They did, of course, occasionally refer to some standard, such as the good or welfare of the community; but their main effort was to transcend such considerations, and to give a summary decision as to the right form

of government, without first considering the end for which all government should exist. They did not wish to compare, as Aristotle had done, the good and evil of various polities, but rather to shew that such a comparison is unnecessary. Such a procedure was unphilosophical. It is not possible to decide who ought to govern until we know what a government ought to do. By reversing the natural order of these questions political philosophy involved itself in a maze of fictions.

These fictions were introduced as substitutes for an answer to the question :—What is it that governments ought to do? They were really ethical doctrines disguised as pieces of history. This mixture of ethics and history was very disastrous. When the limits of the royal power are under discussion, it is often hard to say whether the question is as to the limits which *have been* placed to the royal power, or as to the limits which *ought to be* placed to the royal power. In fact we can distinguish no less than four questions as involved, viz.: What limits do (1) positive law, (2) positive morality, (3) ideal law, (4) ideal morality, set to the royal power? At the present day it would be easy to distinguish these. We can say what power law and opinion allow to the king, without trespassing on the realm of what ought to be. But in the seventeenth century this was harder to do, for several reasons—

(1) The constitution of this country was not nearly so well defined as it now is; there were gaps in it—points on which there was no case to appeal to. The question, "Who is sovereign?" could scarcely be answered, the fact being that sometimes the king,

sometimes the king and Parliament had behaved as sovereign, and been acknowledged as such.

(2) The confusion as to who was sovereign was increased by that curious doctrine of our Constitution which was being slowly formulated, namely, that though the king is subject to no law, he cannot absolve any other person from the laws made by king and Parliament; that royal immunity is coupled with ministerial responsibility.

(3) The legal fiction of the perfection of the English Common Law, the supposition that there is somewhere a code of perfect law, by means of which an English judge may supplement the statutes (though at one stage of our progress necessary for the administration of substantial justice), produced injurious effects on political theory. Controversialists could so easily pass from the existing law to that law of perfect reason to which our judges appealed when in want of a new principle. This should be remembered when we hear Austin talking of "jargon" and "fustian." It may now be inexcusable to confuse law as it ought to be with law as it is, the ideal with the positive; but in the seventeenth century it was almost impossible to draw this line, for the ideal was constantly becoming the positive. Our judges were obliged to introduce new principles, and were obliged to introduce them *as if they were parts of a pre-existing law.*

In all these ways ethics were mixed with history, the ideal with the positive, until it is difficult to see how far an author is describing what is, how far he is giving an opinion as to what ought to be.

The main question which the philosophers of the

seventeenth century had to answer was, How can one man, or body of men, acquire an authority over others which these latter ought to obey, and ought to be made to obey? The answers which were given to this question were two. (1) God (or nature) has given to some men a title to rule, independent of all consent. (2) A title to rule can only be acquired by consent. These answers took many different forms, and sometimes we find intermediate theories, but the twofold division must serve our present purpose. These two theories of the rightful title to rule we may call *the natural* and *the conventional*.

I. Those who asserted that some men have a title to rule others, which does not depend upon consent, were frequent in their appeals to Aristotle. Aristotle was, for many reasons, the most popular of the classical writers on politics. In no department of philosophy, except perhaps that of deductive logic, has the influence of Aristotle been so long and so strongly felt as in that of politics. No history of the British Constitution would be complete which did not point out how much its growth has been affected by ideas derived from Aristotle. The common sayings about the excellence of a mixture of the simple forms of government, about subjecting the rulers to the laws, have an Aristotelian as well as an empirical origin, and accepted commonplaces are powerful agents in moulding a constitution. We cannot indeed ascribe any one very definite tendency to Aristotle's influence, for his Politics are singularly undogmatic; but his disinterested curiosity discovered many-sided truths, some portions of which every school of political philosophers has been willing

to accept. On this very question of the title to rule he could not fairly be appealed to by any of our seventeenth century controversialists, save perhaps Algernon Sydney. It is true that Aristotle held that some men have a title to rule others even when the consent of the latter has not been asked, but his idea of a natural title to rule scarcely suited the Caroline divines and lawyers. The classical, ideal polity, whether as conceived by Aristotle or as conceived by Plato, is an aristocracy, or monarchy of merit. The test of a man's natural title to rule is the possession of the power and will to rule well. No other test of a natural title was (as far as I know) ever dreamt of by a Greek philosopher. Now Sir Robert Filmer and his friends were glad enough to find Aristotle maintaining that some men are born to rule, and others to serve; but this doctrine has its dangerous side—it leads to such speculations as those of Sydney, about the right of the virtuous man to rule. What Filmer and his colleagues had to justify was the feudal notion of hereditary right. A justification of feudalism was not to be obtained from Aristotle, so they turned to the other great source of authority—the Bible.

It was said that God has given the sovereignty of the whole world to Adam and his heirs (or heirs males) for ever; that the heir of Adam, or failing him, the heir of the last person who filled the place of Adam's heir, is rightfully king. This is as accurate a statement as I can make of a theory which, though legal in its pretensions, was never stated with legal accuracy. With this was combined the theory that civil power is in its origin paternal or patriarchal power. Now, as

far as history is concerned, the Divine Right School were nearer the truth than their opponents. Modern writers have taught us that the first rulers are fathers of families, that the fiction of relationship between the governors and the governed is kept up long after the fact has ceased, and that, on the death of the father of the family, common consent allows his power to devolve upon his eldest son. The Bible supplied these facts, and was supposed to supply them as precedents. But much more than this was wanted. It was necessary to shew that God has decreed that the power of a dead monarch shall devolve according to certain ascertainable canons of inheritance; to shew (*e.g.*) that the Salic law is or is not such a canon, or that it is so in France, but not in England. It is needless to say that nothing of the sort could be done. The law which regulates the Royal Succession in England is only a law of God, if the whole of our common and statute law is a law of God. It is not even a part of *Jus Gentium*, the law common to all nations. Every Christian, it is true, looks upon his duties as divinely appointed; obedience to rulers is, within certain limits, a duty, and, a Christian would say, a duty set us by God; but this does not imply that God has singled out this or that man to rule, unless we use the words in a sense which makes every event, good or bad, the result of Divine will. The appeal to the Bible was singularly unfortunate. The Old Testament is the history of a nation which sinned in asking for a king, and which more than once interfered with the hereditary succession of the royal line. Many Puritans believed that they had precisely the same justification for killing Charles that Jehu had

for killing Ahab. The New Testament contains many commands of obedience to *de facto* governments, not one rule for selecting a sovereign *de jure*; it is the powers that be, not the powers that ought to be, that we are to obey; indeed, quotations from the New Testament come better from Hobbes, the supporter of *de facto* governments, than from the preachers of the Divine right of hereditary monarchy. It is almost impossible to believe that some of the arguments drawn from Scripture by the friends of the Stuarts were put forward in good faith. In the whole history of delusion there is nothing stranger than the claim of sovereignty for Adam's heir. Many people seem to think that this claim was a fiction of Whigs like Locke, got up to discredit the Tories; but as a fact we find the argument repeated by writer after writer of undoubted probity. Failing the support of the Scriptures, there was nothing for the theory to rest on save expedience, and this was too low a ground for the preachers of Divine right. No one (as far as I know) has asserted that we perceive intuitively that hereditary monarchy is at all times, and in all places, the one right form of government. The nearest approach to such an assertion that I can find is in the *Jus Regium* of Sir George Mackenzie, a reply to Buchanan's *De Jure Regni*, where it is said that hereditary succession is according to the law of nature; but, after all, the law of nature appears only to give us the truism that in a *hereditary* monarchy the *heir* should succeed[1]. This book of Mackenzie's, for which he received the thanks of the University of Oxford, is a most extraordinary

[1] *Mackenzie's Works*, vol. II. p. 472.

display of the weakness of the Divine Right School, and makes the grave faults of Locke's works seem venial. If the purely Scriptural argument fails, then the whole question of the best form of government is again thrown open. If its defenders cannot shew that hereditary monarchy has been expressly commanded by God, they may be required to shew that it answers to some standard of political good, that it would make a nation moral or happy.

We may notice two forms of the theory: the stricter, which, giving to Adam absolute power, did not admit that any part of this had been alienated by him or his successors; and the milder, which allowed that successive kings had granted away portions of the originally complete power which could not be resumed by themselves or their successors. The first form was advocated by Filmer, the second by Clarendon.

Filmer was an acute controversialist, and hit both Hobbes and Milton some hard blows. But even he is obliged to admit that a prince is bound by his "own just and reasonable conventions"; the prince however being the judge of their justice[1]. This concession renders his apology for absolute monarchy weaker than that of Hobbes, who, by making the prince the fountain of morality as well as of law, sought to deprive the subjects of any ground from which they might criticise the prince's acts.

The more moderate believers in Divine hereditary right found a spokesman in Clarendon. Filmer had read the *De Cive* "with no small content[2]," Clarendon

[1] *The Power of Kings*, etc.

[2] *Observations on Aristotle's Politics*, etc.

had never read a "book containing so much sedition, treason, and impiety as this *Leviathan*[1]." Like Roger Coke, and others, he thought that Hobbes had damaged the king's cause. The king, he held, had been invested by God and Nature with complete power, but some of this had been irrevocably granted away by charters, and so forth; he speaks of monarchical power as a trust, and holds the king bound by his own and his ancestors' promises[2]. Sir George Mackenzie made a similar damaging admission; he goes further; the king may not interfere with the rights of property[3]. Now this is to surrender the stronghold of Divine right. If power be a trust, if it be possible to diminish it by grant, we must, as Hobbes knew well, retire from the high ground of natural right to the low ground of advisability. For the question arises—Is *cestui que trust* to have no remedy against his trustee in case of a breach of trust? What if the king attempt to regain his surrendered rights? Thus unless we can accept the strictest form of the theory, and go beyond Filmer himself in freeing kings from all their promises, the question is again thrown open. Though God may have given the sovereignty upon trust to Adam and his heirs, may they not forfeit it? Clarendon's book was really a heavy blow to the straiter sect of the Divine Right School, for he brings into prominence the discrepancies between Hobbism and common sense, and Hobbes' conclusions, though not his premises, were dear to the most thorough of the monarchical party. In many respects it is a very just criticism of

[1] *A brief View...the Leviathan*, p. 319.
[2] pp. 72, 122. [3] Vol. II. p. 451.