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Paul Vinogradoff

Excerpt

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INTRODUCTION.

WHEN the time comes for writing a history of the nineteenth century, one of the most important and attractive chapters will certainly be devoted to the development of historical literature. The last years of a great age are fast running out: great has been the strife and the work in the realm of thought as well as in the material arrangement of life. The generations of the nineteenth century have witnessed a mighty revival of religious feeling; they have attempted to set up philosophical systems as broad and as profound as any of the speculations of former times; they have raised the structure of theoretical and applied science to a height which could hardly have been foreshadowed some two hundred years ago. And still it is to historical study that we have to look as the most characteristic feature of the period. Medieval asceticism in its desperate struggle against the flesh, and Puritanism with its sense of individual reconciliation with God, were both more vigorous forms of religious life than the modern restorations of faith and Church, so curiously mixed up with helplessness, surrender of acquired truth, hereditary instincts, and utilitarian reflection. In philosophy, Hegel's metaphysical dialectic, Schopenhauer's transformation of Kant's teaching, and the attempts of English and French positivism at encyclopaedical science may be compared theoretically with Plato's poetical idealism or with the rationalistic schools of the seventeenth and eighteenth centuries. But it would be difficult to deny, that in point of influence on men's minds, those older systems held a more commanding position than these: Hegel seems too arbitrary and phantastical, Schopenhauer too pessimistic, positivism too incomplete and barren as to ultimate problems to suit the practical requirements of philosophy; and people are already complaining

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of the decay of philosophical study. In science, again, the age of Darwin is certainly second to none, but it has to share its glory with the age of Newton, and it may be reasonably doubted whether the astronomer, following in the footsteps of Galileo and Kepler, was not actuated by even greater thirst and pride of knowledge than the modern biologist or geologist. It is otherwise with regard to history.

Progress of
historical
methods.

Students of science are wont to inveigh against the inexact character of historical research, its incoherence and supposed inability to formulate laws. It would be out of place here to discuss the comparative value of methods and the one-sided preference given by such accusers to quantitative analysis ; but I think that if these accusers were better acquainted with the subject of their attacks, or even more attentive to the expressions of men's life and thought around them, they would hardly dare to maintain that a study which in the short space of a century has led to a complete revolution in the treatment of all questions concerning man and society, has been operating only by vague assumptions and guesses at random. An investigation into methods cannot be undertaken in these introductory pages, but a general survey of results may be attempted. If we merely take a single volume, Tocqueville's *Ancien Régime*, and ask ourselves whether anything at all like it could have been produced even in the eighteenth century, we shall have a sense of what has been going on in the line of historical study during the nineteenth. Ever since Niebuhr's great stroke, historical criticism has been patiently engaged in testing, sifting, and classifying the original materials, and it has now rendered impossible that medley of discordant authorities in which eighteenth-century learning found its confused notions of Romans in French costume, or sought for modern constitutional ideas as manifest in the policy of the Franks. Whole subjects and aspects of social life which, if treated at all, used to be sketchily treated in some appendix by the historian, or guessed at like a puzzle by the antiquarian, have come to the fore and are recognised

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as the really important parts of history. In a word, the study of the past vacillates no longer between the two extremes of minute research leading to no general results and general statements not based on any real investigation into facts. The laws of development may still appear only as dim outlines which must be more definitely traced by future generations of workers, but there is certainly a constant progress of generalisation on firmly established premisses towards them.

What is more striking, the great change in the ways and results of history has made itself felt on all the subjects which surround it. Political economy and law are assuming an entirely new shape under the influence of historical conceptions: the tendency towards building up dogmatic doctrine on the foundation of abstract principle and by deductive methods is giving way to an exact study of facts in their historical surroundings, and to inquiries into the shifting conditions under which the problems of social economy and law are solved by different epochs. As a brilliant representative of legal learning has ironically put it, it would be better for one nowadays to be convicted of petty larceny than to be found deficient of 'historical-mindedness.' The influence of historical speculation on politics is yet more definite and direct: even the most devoted disciples of particular creeds, the most ardent advocates of reform or reaction dare not simply take up the high standing ground of abstract theory from which all political questions were discussed less than a hundred years ago: the socialist as well as the partisan of aristocracy is called on to make good his contention by historical arguments.

It may be urged that the new turn thus taken is not altogether beneficial for practical life. Men of fanatical conviction were more likely to act and die for the eternal truth revealed to them, than people reflecting on the relative character of human arrangements. But can one get blissfully onesided by merely wishing to be so? And is it not nobler to seek knowledge in the hope that it

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will right itself in the end, than to reject it for the sake of being comfortable? However this may be, the facts can hardly be denied: the aspiration of our age is intensely historical; we are doing more for the relative, than for the absolute, more for the study of evolution than for the elucidation of principles which do not vary.

Sketch of the literary development of social history as a necessary introduction to its treatment.

It will not be my object to give a sketch of the gradual rise of historical study in the present century: such an undertaking must be left to later students, who will command a broader view of the subject and look at it with less passion and prejudice than we do now. But Lord Acton's excellent article¹ has shown that the task is not quite hopeless even now, and I must try, before starting on my arduous inquiry into the social history of the middle ages in England, to point out what I make of the work achieved in this direction, and what object I have in view myself. Quite apart from any questions of detail which may come under consideration as the treatment of the subject requires it, I have to say in what perspective the chief schools of historians present themselves to my view, in what relation they stand to each other, to show how far they have pushed the inquiry, and what problems still remain unsolved. Such a preliminary sketch must not be carried out with a view to criticism and polemics, but rather as the general estimate of a literary movement in its various phases.

Late recognition of the value of social history.

It is a remarkable fact, that the vast importance of the social side of history has been recognised later than any other aspect of that study. Stating things very broadly, one may say that it was pushed to the fore about the middle of our century by the interests and forces at play in actual life: before 1848 the political tendency predominates; after 1848 the tide turns in favour of the social tendency. I mean that in the first half of the century men were chiefly engaged in reorganising the State, in trying to strike a balance between the influence of government and the liberties of the people. The second half of the century is

¹ English Historical Review, No. 1.

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engrossed by the conflict between classes, by questions of economical organisation, by reforms of civil order. Historical literature, growing as it was in the atmosphere of actual life, had to start from its interests, to put and solve its problems in accordance with them. But it is no wonder that the preceding period had already touched upon a number of questions that were fated to attract most attention in later research. The rise of the Constitution, for instance, could not be treated without some regard being paid to the relative position of classes; it would have been out of the question to speak of political feudalism without taking into account the social bearing of the system. And so a sketch of the literary treatment of social questions must begin with books which did not aim directly at a description of social history.

I shall not detain the reader over the work achieved in the seventeenth and eighteenth centuries. The learning of a Selden or of a Madox is astounding, and a student of the present day has to consult them constantly on particular questions; but they never had in mind to embrace the history of their country as a whole. Facts are brought into a system by Coke, but the system is strictly a legal one; undigested historical knowledge is made to yield the necessary store of leading cases, and, quite apart from the naive perversion of most particulars, the entire view of the subject is thoroughly opposed to historical requirements, for it makes the past an illustration of the present, and regards it as planned on the same lines. There is no lack of books setting forth historical proof for some favourite general thesis or arranging facts according to some general idea, but such attempts were distinguished by unbounded imagination and by endless sacrifices of fact to the object of the writer's devotion. The curious literary by-play to the struggle of political party which Aug. Thierry¹ has artistically illustrated in France from the writings of Boulainvilliers and Dubos, Mably and Lézardière, could

Characteristics of the work done in the seventeenth and eighteenth centuries.

¹ In his *Considérations sur l'histoire de France*.

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certainly be matched in England by a tale of the historical argumentation of Brady¹, or Petyt², or Granville Sharp. Nothing can be more eloquent in a sense than the title given by this last author to his book on the system of frankpledge:—"An account of the Constitutional English Polity of Congregational Courts, and more particularly of the great annual court of the people, called the View of Frankpledge, wherein the whole body of the Nation was arranged into the regular divisions of Tythings, Hundreds, etc. :—the happy effect of that excellent institution, in preventing robberies, riots, etc., whereby, in law, it was justly deemed 'Summa et maxima securitas:'—that it would be equally beneficial to all other nations and countries, as well under monarchical as republican establishments; and that, to the English Nation in particular, it would afford an effectual means of reforming the corruption of Parliament by rendering the representation of the people perfectly equal, in exact numerical proportion to the total number of householders throughout the whole realm³."

Historical research, in the true sense of the word, was indeed making its first appearance in the eighteenth century, and it was more fruitful in England than in any other country, because England was so far ahead of the Continent in its political condition: the influence of an intelligent society in political affairs had for its counterpart a greater insight into the conditions of political development. But the great English historians of the eighteenth century were looking to problems in other fields than that of social history. Robertson was prompted by an interest in the origins of that peculiar community called Western Europe, so distinctly dismembered in its component States and so closely united by ideal and material ties; Gibbon could see the shadows of the old world in which the new world was living; both had been attracted to research by an

¹ History of Boroughs.

² Ancient Rights of the Commons of England.

³ Quoted by Palgrave, English Commonwealth, i. 192, from the second edition of 1786. The first appeared in 1784.

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admirable sense of influences deeper and stronger than nationality, or State, or class, and both remained indifferent to the humbler range of English social history. Hume took his stand on England, but he had to begin with a general outline and the explanation of the more apparent changes in State and Church.

In this way current notions on our questions remained towards the close of the eighteenth century still undisturbed by writers of a high order. We may take as a fair sample of such current notions Sir William Blackstone's historical digressions, especially those in the second volume of his Commentaries¹. There is no originality about them, and the lack of this quality is rather an advantage in this case: it enables us through one book to glance at an entire literature. I may be allowed to recall its most striking points to the mind of my readers.

The key to the whole medieval system and to the constitution emerging from it is to be found in feudalism. 'The constitution of feuds had its original from the military policy of the northern or Celtic nations, the Goths,*the Huns, the Franks, the Vandals, and the Lombards, who poured themselves into all the regions of Europe, at the declension of the Roman Empire. It was brought by them from their own countries, and continued in their respective colonies as the most likely means to secure their new acquisitions, and to that end large districts or parcels of land were allotted by the conquering general to the superior officers of the army, and by them dealt out again in smaller parcels or allotments to the inferior officers and most deserving soldiers.' 'Scarce had these northern conquerors established themselves in their new dominions, when the wisdom of their constitutions, as well as their personal valour, alarmed all the princes of Europe. Wherefore most, if not all, of them thought it necessary to enter into the same or a similar plan of policy. And thus, in the

¹ The first edition of the Commentaries appeared in 1765. I have been using that of 1800.

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compass of a very few years, the feudal constitution, or the doctrine of tenure, extended itself over all the western world.'

'But this feudal polity, which was thus by degrees established over all the Continent of Europe, seems not to have been received in this part of our island, at least not universally and as a part of our national constitution, till the reign of William the Norman. This introduction, however, of the feudal tenures into England by King William does not seem to have been effected immediately after the Conquest, nor by the mere arbitrary will and power of the Conqueror, but to have been gradually established by the Norman barons, and afterwards universally consented to by the great Council of the nation.' 'The new polity therefore seems not to have been *imposed* by the Conqueror, but nationally and freely adopted by the general assembly of the whole realm.' 'By thus consenting to the introduction of feudal tenures, our English ancestors probably meant no more than to put the kingdom in a state of defence by establishing a military system. But whatever their meaning was, the Norman interpreters . . . gave a very different construction to this proceeding, and thereupon took a handle to introduce, not only the rigorous doctrine which prevailed in the duchy of Normandy, but also such fruits and dependencies, such hardships and services, as were never known to other nations.' 'And from hence arises the inference, that the liberties of Englishmen are not (as some arbitrary writers would represent them) mere infringements of the king's prerogative, but a restoration of the ancient constitution, of which our ancestors had been defrauded by the art and finesse of the Norman lawyers, rather than deprived by the force of the Norman arms.'

The structure of the component parts is (for Blackstone) as ancient as the constitution of the whole. The English manor is of Saxon origin in all its essential characteristics, but the treatment of the people within the manor underwent a very notable change in consequence of the Norman

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invasion. In Saxon times the common people settled on folkland were immersed in complete slavery. Their condition was improved by the Conquest, because the Normans admitted them to the oath of fealty. And the improvement did not stop there: although the peasantry held their plots only by base tenure and at the lord's will, the lord allowed in most cases a hereditary possession. In this way out of the lord's will custom arose, and as custom is the soul or vital principle of common law, the Courts undertook in the end to protect the base tenure of the peasantry against the very lord whose will had created it. Such was the rise of the copyhold estate of modern times.

Blackstone's work is a compilation, and it would be out of the question to reduce its statements to anything like consistency. The rationalistic mode of thought which has left such a peculiar stamp on the eighteenth century, appears in all its glory in the laying out of the wise military polity of feudalism. But scarcely has our author had time to show the rapid progress of this plan all round Europe, when he starts on an entirely new tack, suggested by his wish to introduce a historical justification of Constitutional Monarchy. Feudal polity is of late introduction in England, and appears as a compact between sovereign and subjects; original freedom was not destroyed by this compact, and later infringements of contractual rights by kings ultimately led to a restoration and development of ancient liberties. In the parts of the treatise which concern Private Law the keynote is given throughout by that very Norman jurisprudence on which such severe condemnation is passed with regard to Public Law. The Conquest is thus made to appear alternately as a source of danger, struggle, and hardship from one point of view, and as the origin of steady improvement in social condition from another. In any case the aristocratic cast of English life is deduced from its most ancient origins, and all the rights of the lower orders are taken as the results of good-humoured concession on the part of the lords of the soil and of quiet encroachment against them.

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ture. The
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Statements and arguments in Blackstone's style could hold water only before that great crisis in history and historical literature by which the nineteenth century was ushered into the world. The French Revolution, and the reaction against it, laid open and put to the test the working of all the chief forces engaged in historical life. Government and social order, nationality and religion, economic conditions and modes of thought, were thrown into the furnace to be consumed or remoulded. Ideas and institutions which had towered over centuries went down together, and their fall not only brought home the transitory character of human arrangements, but also laid bare the groundwork of society, which however held good in spite of the convulsions on its surface. The generation that witnessed these storms was taught to frame its politics and to understand history in a new fashion¹. The disorderly scepticism of the eighteenth century was transformed by Niebuhr into a scientific method that paved the way by criticism to positive results. On the other hand, the Utopian doctrines of political rationalism were shattered by Savigny's teaching on the fundamental importance of tradition and the unconscious organic growth of nations. In his polemic with Thibaut, the founder of the historical school of law enters a mighty protest against wanton reform on the ground of a continuity of institutions not less real than the continuity of language, and his 'History of Roman Law during the Middle Ages' demonstrated that even such a convulsion as the Barbarian Invasion was not sufficient to sweep away the foundations of law and social order slowly formed in the past. Eichhorn's 'History of German Public and Private Law' gave detailed expression to an idea which occurs also in some of Savigny's minor works—to the idea, namely, that the

¹ 'Es war eine Zeit, in der wir Unerhörtes und Unglaubliches erlebten, eine Zeit, welche die Aufmerksamkeit auf viele vergessene und abgelebte Ordnungen durch deren Zusammensturz hinzog.' Niebuhr in the preface to the first volume of his Roman history, quoted by Wegele, *Geschichte der deutschen Historiographie*, 998.