Corporations

A Study of the Origin and Development
of Great Business Combinations and
of their Relation to the Authority of the State

John P. Davis, Ph.D.

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Batoche Books
52 Eby Street South
Kitchener, Ontario
N2G 3L1
Canada
email: batoche@gto.net

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Preface.

As the following pages are about to be given to the public I am reminded of the story told of a professor in one of the German universities. He had announced for the semester a course of lectures on the political institutions of the Middle Ages; when the end of the semester was reached he had only just finished his introductory remarks. A few years ago I projected a study of the modern "corporation question," and intended to clear the ground for the subject by a short introductory chapter on the history of corporations. I am now congratulating myself that the introduction has consumed no more than three years and has demanded no more than thirteen chapters. The present volumes are intended to serve as an introduction to a volume on the subject of modern corporations, especially those in the United States, to be written during the next five or ten years. Chapter XIV is not intended to be exhaustive, but to show briefly the connection between the old and modern corporations.

In the early history of the United States and Canada many corporations are found that would have to be classified with the corporations described in the present volume; but few references have, however, been made to these, because I have conceived it more convenient to consider them in connection with modern corporations. To have made place for their consideration in connection with the classes of English corporations to which they belonged might have distracted the attention of the student and have interfered with the effectiveness of the main narrative.

It need hardly be suggested that the present volumes are to be considered not as a work of historical research, but as an interpretation of existing and accessible historical material. When particular classes of corporations have been adequately considered by scholars, I have been glad to accept the results of their labors, while I have frequently taken the liberty to disagree with these scholars in their interpretation of the facts. My indebtedness to others I have aimed to acknowledge fully in footnotes and references. It is unfortunate that so few classes of corporations have been critically studied by scholars. With the exception of certain kinds of gilds

and of the mediaeval universities, they have been greatly neglected. Why have authoritative histories never been written of the English municipalities, the monastic associations, of the Merchants of the Staple, the Merchant Adventurers, the Russia Company, the Turkey Company, the Eastland Company, the East India Company, the South Sea Company, the Hudson's Bay Company and the American Colonial Companies? An abundance of material is in existence, but only a small part of it is accessible to those who must confine their work to American libraries. As it has been my task to correlate and systematize the existing body of facts, taken for the most part from secondary sources, rather than to discover new facts, I have not often yielded to the temptation to indulge in research and investigation of original material.

A prerequisite to a study of corporations is a sound conception of their nature, itself derived from an extended study of their history. The technical legal conception of them is so clearly unscientific that it must sooner or later be greatly modified or entirely dispensed with. If I should find that I had contributed even in a small degree to the formation of a new and better conception of corporations, I should feel that my labor had at least in that respect borne good fruit.

I indulge the hope that my efforts to make a scientific study of corporations may stimulate others to investigate special classes of corporations or special features of corporate life. The field is almost entirely new, and so broad that it offers very many inducements to investigators.

Brooklyn, N. Y
May, 1897
John P. Davis.

Note.

Mr Davis's manuscript on corporations was completed April 8, 1897, and the preface written not later than six weeks after that date. Ill-health contracted during the period that he was engaged in the preparation of this work prevented him from writing the contemplated treatise on modern corporations. Leaving the East in 1897 in search of a climate where he might regain his health, he took up his residence at Nampa, Idaho, which place he claimed as his home until his death in December, 1903, at Asheville, N.J.

It must be regarded as a distinct loss to the literature of political science that a

writer so well equipped to deal with the modern corporation problem and so keenly alive to the significance of the present-day tendency toward the corporate form of organization did not live to complete the work which he had planned.

The painstaking work of reading the proofs of these volumes has been done by the author's legal representative.

December, 1904.
J. Allen Smith,
University of Washington.

I. Introduction.

The most important and conspicuous feature of the development of society in Europe and America on its formal or institutional side during the past century[1] (and particularly during the second half of it) has been the growth of corporations. The movement has been most noticeable in the domain of industry,[2] but has by no means been confined to it; only less influential has it been in religion, in the promotion of science, the arts and literature, in amusements, and in the satisfaction of the social-fraternal impulses of mankind. So rapidly have the industrial corporations increased in numbers and wealth in the United States that they are counted by the thousands[3] in the several States and are estimated to own from one fourth[4] to four fifths[5] of all the property, in the nation. Hardly a supreme court in the land does not vain that more of its time and attention is devoted cares involving corporations than to cases of any other kind.[6] The mass of laws, rules and decisions evolved from the creation of corporations and from the interpretation and enforcement of their rights and duties, both by legislatures and courts, has become so great and so confusing in its details, and at the same time the dependence of society on the activity of corporations has become so close and vital,[7] that special governmental bodies have been formed for the purpose of both restraining and protecting them, while the "corporation lawyer" has been clearly differentiated in the legal profession, and the corporation journal among publications. So extensively have the people become organized in corporations for almost every social purpose that, it is feared, the integrity of the individual as the unit of society within the state has been seriously impaired.[8] The anarchist views with, delight the growth of corporations because he considers them the framework for the aggregation and consolidation of wealth that will eventually end in the destruction of all institutions. The socialist, not averse to the submersion of the individual in the social group, is willing to believe that the flourishing of corporations is preparing society for the acceptance of a future socialistic regime.

The older "individualists" are apparently maintaining a hopeless struggle against

the social tendencies that make it impossible for them to gain a footing in society except through the medium of corporate organizations or in subordination to them. Even the apologists for corporations deplore the elimination from trade and industry of the individual as an efficient unit.[9] Notwithstanding their vital importance to modern society by reason of their great number and increasing resources, and of the universality of their presence in the several branches of social life, corporations have shared so fully in the complexity of the growth of society during the past century that a clear comprehension of their true relations to it has not been attained. Those who have given them critical consideration have usually begun and ended with an indistinct conception of their nature, even if it be conceded that they have made efforts to provide such a conception as the basis of their study or to attain one as the result of it.[10] Like most other criticism of immature social movements, the criticism of corporations has gone to one or the other of two extremes: it has been largely negative and destructive from a failure to recognize their permanent and enduring elements and to give them due weight, or it has credited to them social elements contributed by other social factors;[11] the result has been unqualified denunciation by one group of critics and unlimited approbation by another. An effort must be made to avoid the two extremes; to attain a conception of corporations that will include all their essential and permanent attributes and exclude such as are not essential or are merely temporary.

Possibly the failure to appreciate the true relations of corporations to society and social progress, that has caused unscientific criticism of them, is also accountable for the condition of the body of law intended for the interpretation and enforcement of their rights and duties.

The principles of the law of corporations, derived chiefly from the seventeenth and eighteenth centuries and formulated by Blackstone in 1758, are in the main the principles still applied, subject to modification by legislatures and courts. Both the modifying agencies have proceeded somewhat blindly but not entirely without wisdom. Legislative bodies, it hardly need be suggested, do not always act consistently; they do not always have policies founded on broad principles; they see a social need and see it distinctly, but they do not always supply it with due regard to the ultimate consequences of the remedy. In dealing with questions relating to corporations they have, in general, had in mind rather the needs of society than the

nature of the corporation, the means through which the needs were supplied. The result is a heterogeneous mass of laws from which it would be difficult to say what the legislative conception of a corporation is. The courts, on the other hand, seek a fundamental principle on which to base every decision; they aim at system and consistency. The fault of judicial interpretation of rights and obligations is inflexibility. The anxiety to conform to established principles carries the courts not infrequently beyond the point at which the principles cease to be wholesome. Principles are gradually abandoned, however, and new ones substituted for them, though, unfortunately for system and consistency, interdependent principles relating to the same subject-matter are not changed at the same time. As far as corporation law is concerned, the courts have succeeded in fairly administering justice, but only at the expense of injecting into the system represented by Coke and Blackstone a body of new principles, one at a time, until it has become necessary for the text writers to divide the law of corporations into separate bodies according to the varieties of corporations. It has been virtually conceded by the courts that the older principles of the law of corporations have become inadequate for the interpretation and regulation of their relations to present society, but they have been unable to do more than amend them or partially substitute others for them. The difficulty seems to be fundamental. The conception of a corporation badly needed by critical students of social institutions, is only a little worse needed by the legislatures and courts. Such a conception can hardly be attained otherwise than by a careful historical and statistical study of the past development and present condition of corporations in their relations to the society of which they have heretofore formed and now form a part. The new conception attained, the legislator and judge have a centre about which to group a system of laws and rules for their creation, control and protection.

The condition of the literary material for a study of corporations is unfortunately such as to impose on the student and investigator an unusual degree of self-reliance. The historical and statistical[12] material is scanty and unreliable, while the work of interpretation already done is of little service. Less enlightenment on the nature and history of corporations than one would be inclined to expect is given by jurists, either in legal treatises, opinions or judicial decisions, though they alone, with the exception of recent sociologists, have essayed to present a systematic treatment of the subject[13] When new social forces make their appearance and begin to be expressed in new

social relations, the jurist endeavors to explain and control them by the application of legal principles already established in analogous social relations rather than by the application of principles that might be discovered through scientific study in the workings of the new forces.[14] For most practical purposes, the lawyer must assume that society is not subject to historical development, though such an attitude, while it conduces to the stability and conservation of social institutions, requires for a study of institutions the necessity of exercising extreme caution in the use of technical legal material. Yet, without pretending to discard the established legal principles, legislatures and courts, as already suggested, have made so many modifications of the law of corporations that the principles formulated by Coke and Blackstone have become quite inadequate as a foundation for the modern law of corporations;[15] consequently the later legal writers that have undertaken to expound the law of private corporations have struck at the very root of the older law of corporations by discarding, in whole or in part, the cardinal theory of "artificial personality,"[16] though for very good reasons they have not been followed by the expounders of the law of public corporations.[17]

Writers of political history, it must be admitted, cast little light on the subject of corporations. Constitutional history, as written, may be relied on for a knowledge of the form or framework of the state, and popular history for a knowledge of national activity. Corporations, however, have constituted, for the most part, the framework of society subordinate to that of the state and have been largely overlooked or ignored by both classes of historians.[18] The results achieved by recent sociologists are more serviceable. In recognizing that all men and all combinations of men have their peculiar and appropriate social functions exercised in relations and sets of relations subject to constant change and development, they have been led to a comprehensive view of the formal or institutional side of society and have avoided the narrowness of both jurists and historians. But in their efforts to classify and systematize social forms and functions, it is feared that they have not infrequently chosen objectionable bases of classification and have somewhat arbitrarily exaggerated or disparaged particular attributes of institutions to make them fit into their system — tendencies for which more extended historical and statistical study of particular institutions must act as a corrective.

A study of corporations has primarily for its subject-matter a particular class of

subordinate social forms.[19] Like all other social forms, corporations are subject to modification: (1) internally, by the influence of their content, the social activity exercised within them, and (2) externally, by the influence of other social forms and other social activity. (1) Social forms and social functions are intimately interdependent. Lack of adaptation of either to the other must result in modifications in one or the other or in both. (a) If the form, whether originally or as the result of subsequent more or less arbitrary modification, is unsuitable for a particular function, it must be altered to conform to the character of the function, or perish, — unless it be adapted or adaptable to some other social function to which it may be readily transferred. (b) If a particular function may not be exercised, within a form provided for it, it must be either wholly unexercised, only partly exercised or fitted into another form. (2) Social forms have also a close relation to their environment, made even more intimate by the concurrent close relation of their functions to the same environment. (a) One social form may be superseded by another, may absorb it or may anticipate either result by internal modification; even when entirely efficient for its function, a form may be swept away by a public opinion that finds in it a want of harmony with some accepted type of social forms. (b) A form in being expanded to include new social functions, either in addition to or in place of those already included in it, is likely to undergo modification in the process. (c) A form may be indirectly influenced through changes in its own function caused by changes in other forms and functions with which its own comes in contact. Corporations must be studied, then, not merely in their own internal structure, — though their peculiarity of form is their distinguishing feature, — but in the relations of their structures to the functions exercised within them and in their relations to their formal and functional environment. Corporate forms and functions and the environment by which they are influenced are all products of time. They are all meaningless except as they register past experience or predict future social growth, stagnation or decay. They must therefore be subjected to historical treatment.

The purpose of the present work, then, is to trace the historical development of corporate forms, and, concurrently, of the social functions that have successively been performed within them. An effort will be made to lay a foundation for determining the character of the social functions that have seemed by the test of experience to be best fitted for exercise by corporations. The various relations

sustained by them to other social forms in which entire societies have been organized, the state and church, will be considered. As far as possible, the effects on corporate forms of the relations of corporate activity to the general activity of society will be observed.

For convenience of treatment, the subject of corporations will be divided into two parts on the basis of their relations to modern social life; those that have been of service to mankind under conditions prevalent in the past, but now obsolete or only exceptional, will be treated in the present volume; those that are part of our present social order will be left for future treatment (except as to the topic of ecclesiastical corporations). The study will be restricted to English and American corporations, because they have been more important than others, and the development of corporate life in England and the United States has been more orderly and complete; almost all that is worth knowing about corporations may be learned from English and American experience. The chief importance of Roman corporations lies in the body of Roman law amassed in their interpretation and regulation and afterwards incorporated almost bodily into the English system of law. However, for purposes of illustration, the history of corporations of other countries will be occasionally resorted to.

II. The Nature of Corporations.

All human activity has its social as well as its individual aspect. Man is so essentially a "social animal" that his every act, however insignificant, has its effect, directly or indirectly, on his fellows. All men sustain social relations to all other men. The effect of the social relations — social growth, stagnation, or decay — is a product of two factors, the content (function) of the human activity and the organization (form) within which it is exerted. The existence of each factor implies the existence of the other. Social functions are exercised only through the machinery of social forms; yet social forms, though indispensable to the exercise of social functions, are continually suffering modification to meet the demands of new or altered social functions. In general, function and form — each depends upon and reacts on the other; progress and retrogression in each are reflected in some degree in the condition of the other. The corporation is a group of natural persons embodied in a certain class of the many forms of organization within or through which certain classes of social functions are exercised. The delimitations of form and function will appear in the following review of the several generic attributes of the corporation:

1. *Associate Activity*. — The corporate form is one within whose limits associate, as distinguished from individual, activity[20] is exercised, and comprehends both the interrelations of the associated members and their relations with other organs of society. The early distinction of corporations as aggregate or sole is manifestly illogical and has been almost entirely abandoned in practice.[21] There are probably no corporations sole in the United States; with the possible exception of church parsons in Massachusetts.[22] If there are any, their powers and duties may be fully interpreted by the laws of trust and trusteeship. It is significant that the later text-books on corporations give no space to the subject of the corporation sole. The inclusion of certain individuals in a classification of corporations was undoubtedly considered necessary on account of the presence in some public officers (or offices) of attributes common to them and to corporations, such as the legal limitation of activity (found in all public offices) or of limited control over property held for public purposes.

From another point of view, the extended use of the term is explained by a particular application of the theory of artificial personality — a legal exaltation of the purpose for which property is held or powers exercised above the natural personality of the person or persons holding the one or exercising the others.[23]

Again, while the functions of corporations aggregate and corporations sole may be the same, the latter lack the continuity of existence that is so prominent a characteristic of the former. When it is said that the king never dies and that he thus resembles a corporation, the actual continuous group life of the latter is confused with the continuity of existence of the public office not possessed by its successive incumbents.[24] Groups may, but individuals may not, have continuous existence; social functions of both groups and individuals may endure continuously. Holding property for particular public purposes with incapacity to use it for other purposes or to alienate it does not alone constitute the holder a corporation, though it is one of the attributes of a corporation that its use of its property is limited by the terms of the charter to which it owes its creation and in accordance with whose terms it must exercise its activity. So-called corporations sole differ from true corporations, not in function but in form; the former lack the internal social structure of the latter.

2. *Creation by the State*. — The corporate form or sum of peculiar relations subsisting between the members of the corporate group and between them and other members of society is created by the state, or, after spontaneous origin and maintenance by the force of custom, is approved with the same legal effect as if originally created by it. Neither the group nor its functions, but only the internal and external personal and group relations under or within which the group exercises its functions are created by the state. The progress of civilization demands an increasing exercise of associate activity, but not necessarily in the corporate form. As compared with the state, a primary, sovereign group, the corporation is a secondary, derivative, subordinate group.

Likewise ecclesiastical corporations, under the earlier conception of the church as society primarily organized on its religious side (whether or not coextensive with the state) were sub-groups of the church, deriving from it their internal and external social relations. To be sure, all social activity, whether of individuals or groups, is limited and conditioned by the system of law under which it is exercised, for the state is itself, like the corporation, a group (though superior to all others), acting through

or within certain self-imposed forms; but the corporate form brings to the members of the group in possession of it internal and external relations different from the usual and regular social relations imposed on individuals by the existing system of law and artificial and exceptional as compared with them.[25] Not only is the corporate form artificial and exceptional, but the field of group functional activity is narrowed or widened, or otherwise artificially and exceptionally created or modified, by the act of the state. Nor need the corporate relations owe their existence to a direct and special creative act of the state; they may be created through any subordinate agency of the state that the state may see fit to select, or by virtue of general incorporation" laws, which have the effect of causing the erection of the peculiar legal relations on the performance of certain preliminary acts by incorporators.[26] Some fields of social activity, such as the construction and operation of railways[27] and the formation and management of banks, may by modern law be occupied only by groups of persons organized in the corporate form. Whatever may be the purpose of granting special group forms or of contracting or expanding the field of group-activity, the act is always that of the supreme social group organized as the state or church. This attribute of corporations has always been fully recognized by courts of law, and the enforcement of the rule of strict construction of corporate powers and acts has been consistent with the recognition of it.[28]

3. *Voluntary Inception — Compulsory Endurance*. — The assumption by a group of the corporate form and the acceptance by individuals of membership in the group are voluntary, as distinguished from the compulsory political status of citizens in the state and its subdivisions.[29] But this is not equivalent to saying that persons not members of the group may be voluntarily exempt from the external effects of the organization and activity of corporate groups. One must be a citizen of some state, though not necessarily a member of any corporation; in either case, however, his conduct must conform to the conditions imposed by the organized activity of the state, its subordinate institutions and the autonomous corporations created by it. There is a particular sense in which even the state organization may be described as voluntary; even if imposed by external force, it may be said to depend for its continued existence on the consent of the subjects upon whom it is imposed; but a society must have a political organization of some kind, — the "right of the state to be" has been placed beyond question. Once organized, the state may coercively

organize sub-groups of its citizens for the exercise in detail of the functions of government, but such coercively organized groups are not true corporations, though the name is often applied to them; legal writers have well described them as quasi-corporations, because they have many of the attributes of corporations, though lacking in the essential elements of voluntary inception and autonomy. After the corporate form has been assumed by a group, it is compulsory, from the side of the state, upon all its members until forfeited for misuser or non-user or regularly put aside in the manner provided by the state at the time of its creation or afterwards; from the side of the corporation, however, the corporate form may not be assumed or retained against the sovereign will of the state. The doctrine that"a charter is a contract" is vicious; the conception of a bargain between a state and a group of its citizens is illogical; the only final guaranty of the protection of rights and of the performance of duties is a sound social sentiment. The prevalence of corporations is therefore characteristic of a state of society in which individual (and not state) initiative is relied on and individual responsibility is expected to serve as a regulating force. In rapidly developing communities the individual initiative has often been unduly encouraged by making the maintenance of corporate relations (once assumed) less compulsory. Perpetual-lived corporations are usually born in epochs of social expansion; under settled social conditions, corporations having a definite and shorter term of life are usually created.

4. *Autonomy, Self-Sufficiency, Self-Renovation*. — The group of members within the corporation is (a) autonomous, (b) self-sufficient and (c) self-renewing.

(a) Within the limits of the particular corporate form and function imposed or granted by the state, the corporate group controls the conditions (of both form and function) of its own activity without direction, interference or revision by other persons or groups of persons, including the state itself.[30] In this respect the true corporation is distinguished from purely administrative or sub-governmental bodies, which possess and exercise only enough discretion to execute properly duties for the most part directed, controlled or revised by superior social groups. Thus the autonomy (and thereby the corporate character) of American municipalities is greatly decreased by the interference of state governments in their local affairs, by frequent modifications of their charters, the creation of state commissions for local purposes, and the almost excessive use of the writs of injunction and mandamus by the courts.

Though the courts theoretically recognize the element of autonomy by refusing to compel by mandamus the performance of other than purely ministerial acts or to prevent by injunction a reasonable exercise of a corporation's powers within the terms of its charter, the present tendency of legislation and judicial interpretation is to lengthen the category of ministerial acts and to interpret the"reasonable" more strictly. The limits of municipal activity are being narrowed, though the actual volume of activity within the narrower limits may be increasing. From the standpoint of historical social development, this characteristic of corporate relations has been most important; it is a proposition not difficult to establish that the early stages of nearly all the movements in the direction of what is comprehended in "personal liberty" have been organized in the corporate form.[31]

(b) During the period of existence granted to a corporation by the terms of its charter, its general powers must be sufficient to assure it existence and maintenance, and the ability to effectively exercise the particular powers granted it and the duties imposed upon it, independently of external social agents, except in so far as all members of society are dependent upon their social environment. Such powers, if not expressly granted, are uniformly held by the courts to have been granted by implication, some being considered as of the essence of the corporate organization itself and others as incidentally necessary to the exercise of the particular activity of the corporation described by its charter. For example, if a corporation should be permitted to elect officers necessary to perform its functions only when directed by some external agent so to do, it would not be self-sufficient; it might actually cease to exercise its functions for want of the necessary official organs through which to act; such a body would be merely an abortive, not a true corporation. In 1684, Charles II, by the threatened use of the writ of *quo warranto*, compelled the London Livery Companies to surrender their charters and accept in place of them new charters in which it was provided by a special clause that the wardens' and clerks' names were first to be presented to the King for his approval, and if rejected, that the courts of assistants were to elect others, and so on, from time to time, until his Majesty should be satisfied, any election contrary to such provisions to be void; the King also reserved the power of removing any warden, assistant or clerk; the wardens and commonalty were to be subject to the lord mayor and court of aldermen of the City of London (themselves to be appointed by the Crown), who were to approve of

all persons admitted to the clothing or livery.[32] The exaction of these concessions by Charles II and the attempt to enforce them by James II were readily recognized as tyranny, and had much to do with the expulsion of the Stuarts and the Revolution of 1688.

(c) A corporate group without power to renew its membership during the term of existence granted to it in its charter might cease to exist and thus fail of its purposes for want of members. The existence of a group at all implies a necessity (real or assumed) of plurality of persons for the due performance of some social function; if there were no such necessity, there would be no group. If by the grace of the state the group become a corporation by the assumption of a peculiar form, its character as a group does not cease to be necessary for the exercise of its social functions. The diminution of a very large number by th& loss of even a single member might, in an extreme case, so impair the group (as such) as to make it inefficient for its work. The purpose of conferring the corporate form, however, is not to destroy the character of the group as such, but to make it more efficient by providing it with a form appropriate for its peculiar activity. Failure to provide adequate means for the renewal of a corporation's membership, therefore, would be inconsistent with the original purpose of conferring the corporate form. If at the same time the necessity of autonomy and self-sufficiency be given due weight, the means of renewal must be within the group itself,[33] — it must be self-renewal. Thus it is an established principle that the loss by a corporation of an "integral part," in the absence of power to supply it, works its dissolution. It has also been held that when no provision is made in a charter for the filling of future vacancies, the power to do so by cooperation is conferred by implication. The three attributes here considered under one head (because each involves and implies the other) are in some cases very difficult to identify. They are all, however, found developed in some degree in every corporation, as well as in many bodies not usually regarded as corporations. When they are not highly developed, the corporation proper is not easily distinguished from the purely administrative body; indeed, it must be admitted that a critical analysis of most so-called quasi-corporations would reveal in them the presence of the three attributes. The question is one of degree of development; the corporation is in distinct, effective and clearly perceptible possession of them; the purely administrative body has them indistinct, rudimentary and almost imperceptible, and ordinarily depends on the state

for complementary activity to enable it to exercise its functions. The necessity of autonomy and self-sufficiency is the basis of the doctrine enforced by the courts (as an exception to the general rule of strict construction of corporate grants and powers) that such a construction, if possible, shall be applied in the interpretation of corporate powers and duties as shall permit the accomplishment by the corporation of the original purpose of its creation.[34]

5. *Compulsory Unity*. — The creation of a corporation contemplates that in all its relations with other organs of society it shall act and be acted upon as a unit. Accordingly it is provided by its charter (supplemented by its by-laws) with a means of determining the group-will of its members, with agencies through which the group-will shall be executed, and with agencies through which other social organs shall maintain their relations with it. In the element of compulsory unity, corporations are distinguished from most other associate bodies, and resemble most nearly the state itself. Blackstone very aptly called them "little republics," though he would have been more faithful to history if he had called republics "big corporations." This is one of the sources of the theory of "artificial personality"; the corporation is said to have a common name, and to be, "for certain purposes, considered as a natural person,"[35] "vested by the policy of the law with the capacity of acting in several respects as an individual."[36] There is nothing harmful in the recognition by the state in its system of law that a sub-group of it has distinct characteristics like men, if the fact that it is still a group be not lost to view. Though unified in action, the corporation is none the less a group; on the contrary, its unity of action preserves it as a group; if each member persisted in following his own will in preference to finding a common ground on which a group-will might stand, the group would not act as such, but would be inactive, and lawyers would readily determine it liable to forfeit its charter for non-user. The fact that the common group-will may not coincide completely with the will of any one member ought not to exempt the members from responsibility for the effects of its execution. It is purely a legal fiction that a corporation is an "artificial person," — "a conception, which, if it amounts to anything. is but a stumbling-block in the advance of corporation law towards the discrimination of the real rights of actual men and women."[37] The other source of the theory is formed in the nature of the functional activity of the corporation, which will be considered below.

It must be admitted, however, that the theory has been discredited in practice, in the rejection or modification of so many of the principles founded on it that it is quite unnecessary to refer to them in detail. One such principle has been the source of an unusual amount of confusion; it is a logical deduction from it that the members of a corporation have no right in debts due to it and are not liable for debts owing by it, — "si quid ultiversitati deltitur, singulis non debetur; nec, quod debit universitas, singuli debent." The principle has been so extensively applied that the corporate form has come to be used for the advantage of the limited liability afforded by it more than for any other purpose.[38] Yet there is nothing in the corporate form itself that affords a justification for the presence of this predominant element; though some social functions may be regarded as to such an extent public in character as to justify the setting a limit to the pecuniary risk of those who perform them, regardless of the social form (whether corporate or not) in which they are organized. The pernicious movement has decreased the personal responsibility on which the integrity of democratic institutions depends, and has introduced into both investments and social services a dangerous element of insecurity. Limited liability of members was not a feature of early corporate life in England, and its undue prevalence in this century has been due to an overestimation of the importance of national internal development.[39] More settled economic conditions have already resulted in some improvement, and the element of personal responsibility is gradually pushing its way back into the management of corporations so far that limited liability, instead of being an advantage, is often regarded by promoters and investors as a positive detriment.

6. *Motive in Private Interest.* — A corporation is composed of persons having a private or particular (or local), not merely public or general, interest in the subject matter of the group-activity, whether it be political, social (in the narrower sense), religious or economic. This is partly deducible from the voluntary inception of corporate relations, for if such relations are voluntary in their inception, only those will desire to assume them who have the satisfaction of a private interest as their motive. A county is not regarded as a corporation proper, but only as a quasi-corporation; what the citizens of a county do as such, they do as members of the inclusive society of the state, and their acts are limited (theoretically, at least) to such as it is necessary for them to do as members of the general society of the state, and do not include such as they have merely a particular, private or local interest in

doing. While the same may be said of the citizens of a municipality, there is a field of activity in which they are considered to be actuated by a particular, private or local interest not shared by society in general. Lower in the scale, members of a so-called private corporation, such as one for purposes of trade, are actuated almost entirely by private interest. In some cases, however, associations upon which a compulsory organization has been imposed by the state have become corporations by such a perverted use of the machinery of the imposed organization as to make it a fit form for the exercise of activity dictated by the private interests of the associated persons; such was the origin of the old English corporation of the Merchants of the Staple or Staplers. But "public" and " private" are relative terms. What is a public and what a private interest is determined only by the stage of development that has been attained by a particular society. In a rapidly growing community, a body of citizens so influenced by patriotic sentiment as to establish a business enterprise largely for the purpose of "booming" their country may be said to be actuated by something more than mere private interest; while a similar venture, under mature and settled social conditions, would have little of the public element in it. Public and private, social and individual, interests are always found in combination, and sometimes so blended and confused that it is extremely difficult to determine which is predominant. Legislatures and courts of law, in the application of the principle, have often been driven to assume apparently inconsistent attitudes towards very similar states of facts, though the correctness of the principle has not been denied. The principle must be adhered to, even if in many cases so hard to apply. In the corporation proper, then, private and particular interest is permitted to seek its own satisfaction, and public and general interest, if at all, will be consulted from the side of the corporation, only incidentally, collaterally or secondarily, as set forth in the paragraph following.

7. *Functions Public and Appropriate for Associate Activity*. — The social functions performed by corporations have had two enduring qualities: They have been (a) such as were considered under succeeding sets of social conditions conducive to the welfare of the public and of society in general rather than to the particular welfare of the persons performing them, and (b) such as were more advantageously performed by associate than by individual activity. The first has reference to the relations of the activity of the corporate group to the society of which it is a part; the second, to the relations of the group to the conditions under which its activity must be exercised.

The standpoint of the first is society in general; of the second, the corporate group.

(a) What now appears at first blush to be a too restricted view of corporate f ons would probably have been accepted as sufficiently comprehensive before the beginning of the nineteenth century. The unprecedented growth of private corporations since 1830 seems to discredit the statement made, but it is believed that even private corporations find justification for their existence in the general opinion that public welfare is materially promoted by the more facile exercise in corporate form of social functions whose exercise is prompted by the pursuit of private interest.[40] Nor is the limitation inconsistent with the statement made in paragraph six above. The corporate form has always been intended and used to promote public welfare through private interest by affording to private interest a social mechanism through which adequately and effectually to express itself in social activity. The almost insuperable difficulty in the use of the corporate form has been to reconcile the private motive and public purpose of the activity exercised within it. But the difficulty is due not so much to the corporate form itself as to the character of the activity; indeed, it is urged with much force that the use of the corporate form has a tendency to ameliorate the unfortunate social conditions incidental to some kinds of social activity.[41] The class of social evils usually included in discussions of the "railway problem" are evils due more to modern methods of transportation under modern social conditions than to the peculiar legal form in which the men engaged in transportation are organized. Ownership and operation of railways by individuals would entail greater evils than their ownership and operation by corporations.[42]

This attribute of corporate functions is another source of the pernicious legal theory of "artificial personality." The function performed by a person is personified, and the sum of rights and duties involved in the performance of the function is separated in abstract thought and law from the succession of natural persons or groups of persons in whom they are reposed. Then the persons or groups are known to the law as corporations to the extent of their connection with the social functions in view. Hence the division of corporations into aggregate and sole. The early English parson was the *persona ecclesiae*; the church was personified in him; the land, of which he had a limited use, was in reality the property of the church, or the property of society devoted to particular religious services performed by the parson.[43]

The private corporation pure and simple is a product of social, political and

industrial conditions largely peculiar to the nineteenth century, of which democracy and individualism are the foundations. Repugnance to class distinctions and the belief in the equality of men combined with the tendency to restrict the area of state activity at the end of the eighteenth century opposed the creation of corporations because they involved class privileges, inequality and the limitation of individual activity; powers that could not be safely (as a matter of theory) left to the exercise of the state could with no greater degree of safety be reposed in corporations. But if certain functions were dangerous to the liberty of the individual when exercised by the state, they were none the less necessary to be exercised, and the nearer they were to the individual, the less dangerous they seemed to be; accordingly corporations became more numerous in the early part of the present century. But again, inconsistently enough, class distinctions must not be maintained and the assumption of the corporate form and the exercise of corporate powers must be free to all; general incorporation laws were accordingly justified by social theories. The distinction between public and private functions is never easy to determine and it is not made easier by democratic theories of society and the state; all functions have tended to reach the same level, and "incorporation for any lawful purpose" has been freely permitted to all. A false definition of public and private functions has been the cause of the confusion. The 'private corporation" is a contradiction in terms, and has no place in a sound organization of society. The present tendency in the business world (as well as in the courts) is to distinguish more clearly between the various purposes for which corporations are organized and to estimate the responsibility of the organized persons accordingly.

(b) The importance of the second attribute of corporate functions has been only gradually developed and appreciated in the progress of society. Before the present century, even partnerships were unusual and, when they existed, were usually composed of members of the same family. The object of medieval corporations was primarily to provide and limit the conditions of individual activity and only secondarily to afford a means of expression for unified associate activity. It is only in the nineteenth century that the latter object has been magnified (concurrently with a depreciation of the former) to such a degree as seriously to menace the stability and permanence of the individual as a social unit.[44]

The principle of association may make itself manifest in two degrees: (a) in the

imposition by a group of the conditions of activity on its individual members and (b) in the absorption by the group as a unit of the activity of its members. (a) The activity in the first case is so closely appropriate for associated persons that it will not be discussed. (b) Whether absorption by a group of the activity represented by its membership is advantageous is a question to be determined by the ratio of the unit of greatest efficiency of the activity itself (corresponding to the unit of production in economics) to the unit of means of exercising the activity; in general, when the former exceeds the latter, association will be necessary. The ratio of the two factors varies in successive stages of society and the necessity of association varies accordingly.

In some cases both degrees of association have been manifested in the activity of the same corporation; in the fifteenth century, fishing vessels were frequently owned by a borough and used by the burgesses in common, each conducting his business for himself, but according to the ordinances of the corporation, and using the corporation vessels in common with his fellows. The principle of joint-stock management of the entire activity of the corporation was first fully applied in the East India Company, and in that case it was a gradual evolution; originally an "open" regulated company with several groups of investors, it later by degrees came to be a complete joint stock company with one body of investors under unified management.

The corporate function has both attributes. However fully developed either attribute may be, the function is not truly corporate if the other be wanting.[45]

After the foregoing somewhat extended discussion of the nature of the corporation, the following is offered as a definition: A corporation is a body of persons Upon whom the state has conferred such voluntarily accepted but compulsorily maintained relations to one another and to all others that as an autonomous, self-sufficient and self-renewing body they may determine and enforce their common will, and in the pursuit of their private interest may exercise more efficiently social functions both specially conducive to public welfare and most appropriately exercised by associated persons.

III. Ecclesiastical Corporations.

I — Organic Christianity.

Christianity has contributed to the progress of civilization in two ways: directly through its qualities as a form of religion and indirectly through the system of social organization incidentally involved in its exercise. The expression of religious thought and feeling must be sought in a more or less elaborate social organization of some kind, whether patriarchal, democratic or other; undoubtedly, tool for each historical form of religion there has been theoretically a particular social structure more suitable than any other for its maintenance and exercise, however remotely it may have been separated from it in practice. The early organization of society for Christian worship however, — the Christian Church before the Reformation, — the more important on account of its great extent and complexity, was molded less in conformity to its inherent religious qualities than in imitation of the structure of the social environment with which it came in contact; for that reason it was possible to use the Church, to the great relief of mankind, for purposes other than those strictly pertaining to the worship of Christianity. Especially during the Dark Ages, after the fall of the Roman Empire and the decay of its institutions, when Europe was threatened with the anarchy of barbarism, the Church was more promotive of civilization as a system of government than as an embodiment of religious belief and worship. In every century of the Christian era the Church has performed social functions not necessarily devolving on it as an organization of believers in Christianity, largely because it alone has had a social structure adequate for them. During long periods the structure of Christianity has even been so extensively devoted to temporal uses that many spiritual functions have been either neglected or given over to newly devised social organs."

Christianity as a religion before the Reformation was such that Christian society had to be more widely and highly organized than has since been necessary. It emphasized to an extent approached by no form of paganism the human element in religion. It was not satisfied with being a mere body of doctrine — it had to be

translated into the social life of its believers. Its entertainment and propagation involved the enforcement of a social code and the erection of such social machinery as should be incidentally necessary. The faithful were seldom persecuted in Rome for believing in Christianity, — they suffered oftenest for acting it. Moreover, it was exclusive. No other religion might exist side by side with it as with the various forms of paganism in Rome; it was to be the religion of all men, a world-religion in a world-church. The wider the area of church government and the more numerous its subjects, the stronger and more complex it had to be; the greater the danger of dissent and heresy with the widening area, the abler the Church had to be to check disintegration and preserve unity.

It was the great extent and complexity of the structure of Christian society, and its adaptability to other than religious purposes, that caused the growth within it of ecclesiastical corporations. They had not existed in the early Church because the conditions that would give rise to them had not come into existence; but the developing Church became familiar with their use long before analogous institutions were more than fragmentary or rudimentary in the political society of Europe. The secular corporations that had developed under the Roman Empire perished in the general ruin of Roman institutions, or survived here and there as mere fragments during the centuries of feudal domination; the Church, however, suffered less interruption in the course of its development from the Tuetonic invasions, and ecclesiastical corporations had not to wait for their rise until a feudal organization of society should enter on its decline. The significance of corporations, whether in church or state, must always be determined by comparing them with the superior social structure under which they flourish; accordingly an examination of the constitution of the Church at the time of the fall of the Western Roman Empire must be preliminary to a detailed consideration of ecclesiastical corporations.

II — The Primitive Christian Church.

Christ left no imposing social structure for his adherents when he bequeathed his mission to the apostles. The faithful exercised their freedom to organize themselves by adapting to their conditions the forms of the older Jewish Church or of paganism, the existing political institutions of the Roman Empire, and the fragmentary remains of Greek institutions, or by elaborating into a system the personal relations of Christ

and his apostles and disciples, — in general, by resorting freely to all the suitable material so abundantly at hand. The body of Christians, though in scattered groups, was very plastic and susceptible of being molded into almost any form, if only substantial equality and fraternity should be preserved in the mass of its members; moreover, it had a remarkable power of absorption and was capable of rapidly extracting from its environment a complete system of institutions. The apostles and such of their disciples as they commissioned to do so, passed from city to city over the Roman Empire, establishing in each of them a church of Christians. Each church was to be governed in all things spiritual and temporal by a limited number of its members, at first indifferently called presbyters (elders or priests) or bishops (overseers), chosen by the congregation and ordained by an apostle or his disciple; they were the teachers, priests and rulers of the apostolic church. Unity of faith and discipline among the scattered churches was to be preserved by frequent visitation and close supervision of them on the part of the apostles and their disciples, and by the intercommunication of the several churches. The apostles, gifted with greater purity of faith from their earlier personal association with Christ himself, aimed to preserve it in greater harmony and unity by mutual consultations and correspondence. The bond of unity in the apostolic church was purely one of Christian love and charity.

In each college of presbyters one of the number, either by presiding over the body or by acting as the appointed or chosen medium of communication between his church and the other churches and the apostles, or by serving in both capacities, came to be, by the middle of the second century, the leader of his church; the name of bishop was now restricted to him, and the college of elders or priests acted as his advisers; as his official assistants, deacons were appointed by the bishop, to execute his will in temporal matters, to aid in the oblation of the holy sacrifice, to collect the offerings of the faithful and to distribute alms among the dependent. The bishops were the successors of the apostles in their relations to the churches, except that their oversight was confined to the particular churches over which they presided.

The element of Christian unity contributed by the visitation and supervision of the churches by the apostles having been eliminated by their death, the remaining element, that of the intercommunication of the churches, had to be strengthened; and the bishop being the medium of their intercommunication, the episcopal office was

greatly magnified in consequence. The moral unity of the apostolic church became the constitutional unity of the later church in the establishment of provincial synods periodically attended by the bishops of the several churches in each province of the Roman Empire. In each province one church, because originally founded by one of the apostles and situated in the principal city of the province, was accorded precedence over the other churches; its bishop presided over the provincial synods, and as metropolitan sustained to his fellow-bishops a relation quite similar to that of each bishop to his college of presbyters.

The ecclesiastical hierarchy was to be built even higher and the council as the foundation of Christian unity was to be further extended and strengthened. Some councils held in the East had been attended by bishops from more than one province, when the Emperor Constantine caused the summoning at Nicaea, in 325, of the first of the ecumenical councils, a general council attended by bishops or other representatives of all the churches in Christendom. In that council the metropolitans of Rome, Antioch and Alexandria were recognized to be entitled "by ancient custom" to supervisory powers as patriarchs over the other metropolitans in their several districts of the Empire,[46] and metropolitans were not henceforth to take any action affecting any matter of more than provincial importance without the consent of their patriarch. Patriarchal synods or councils were to act as courts of appeal from the provincial synods. The final step was not taken. A contest between the bishops of Constantinople and Rome for the headship of the universal church was not to be decided in favor of either, but was to result finally in the division of Christianity into two great bodies. Latin Christianity in the Western Church and Greek Christianity in the Eastern Church.

Proscribed and forbidden in the Roman Empire for three centuries, the Christian religion and worship had been permitted by the edict of Constantine and Licinius in 312 on an equality with paganism. Later it had been made the legal religion of the Empire by Theodosius in the East and Gratian in the West, though paganism was still tolerated. The crowning victory was won with the destruction of the pagan temples or their transformation into Christian churches before the end of the fourth century. Such was the constitution and dominion of Christianity, when the fall of the Western Roman Empire and the Teutonic migrations cast upon its Western branch the burden of preserving Europe from anarchy. The burden had hardly been assumed when

associations in the nature of corporations made their appearance as part of the structure of the Western Church. The corporations that emerged in the history of the Roman Catholic Church and its successor, the Church of England, were of there classes: (1) Convents, (2) Catholic Chapters, and (3) Colleges of Collegiate Churches.

III — Convents.

Every body of adherents of a form of belief — whether religious or other — has contained a smaller number more devoted than the others to its tenets and unduly zealous and rigid in putting them into practice. And especially every religion (Christianity no less than others) has had its class of ascetics (ασχητικος, from ασχειν, to exercise) — persons over-zealous in the practical application of its principles. Asceticism involves distinction of its votaries from the rest of the mass of the believers of which they are a part, and the distinction has usually found expression in the following a separate life. So close has been the relation between exceptionally rigid application of religious tenets and leading a separate life that asceticism and monasticism (μοναζειν to be alone, to live in solitude, from μονος, alone) have been justly considered nearly synonymous. During the centuries of their persecution in the Roman Empire, all Christians may rightly be said to have been ascetics in comparison with the rest of society; there was no middle ground between unbelief and fanaticism.[47] In the literature of the Church, the monks are often called the successors of the martyrs. The distinction was so marked that the solitary life was also involved, to some extent, in the relations of the early Christians to the rest of society, in the differences of belief, peculiar manners of living and persecutions. The solitary life was in such complete harmony with the conditions surrounding the early Christians that the apologists of monasticism have sought for it, with some degree of success, a positive basis in the teachings of Christ. Referring to the advice given by him to the rich man,[48] Montalembert says: "Governed by these words of the Gospel, the most illustrious fathers, doctors and councils have declared religious (monastic) life to be founded by Jesus Christ himself and first practiced by his apostles. The highest authorities have agreed to recognize that it was born w th the Church and that it has never ceased to coexist with her."[49] Yet it cannot be admitted that Christian doctrine favored the solitary life as an end in itself; it consistently

regarded it only in its effects on general social life and urged it only so far as it aided the Christian to attain more fully his ideal relations to his fellow-men. In general, the orthodox teaching contemplated only temporary periods of solitary life in preparation for more useful participation in the general life of society.

IV — Early Monesticism.

Christian monasticism first became an appreciable movement in Egypt, where its adherents were of two classes, hermits (ερημιτης, from ερημος, solitary) or anchorites (αναχωρειν, to retire), and cenobites (χοσιον, common, and βιος, life). Many primitive Christians, impelled by the fear of persecution, or the desire to find increased religious zeal in a simple and self-denying life of meditation and worship, retired from the cities to live in waste and solitary places as hermits or anchorites. One of the earliest and most noted of them was Paul, who passed many years in the desert in the second half of the third century. The strictly solitary life was soon modified, however, by the introduction of a social element into it.

St. Anthony, the greatest of the Fathers of the Desert, had inherited wealth, but when he heard read in a church the advice given by Christ to the rich young man, he sold his lands, distributed the proceeds among the poor, and retired into the desert to take up the life of a hermit. Attracted by the fame of his exceeding piety and austerity of life, many other hermits gathered about him to profit by his companionship and teaching, with the result that a common mode of living and thinking came to prevail among them under St. Anthony's direction and control. His instruction was oral and the form of his community consequently lacked stability, though when he died in 356 at the age of one hundred and five years, he left behind him a discourse for the future guidance of his disciples.

Pachomius, however, who lived from age to 348, in early life a pagan and a soldier in Constantine's army, provided an organic system for the monastic life of Egypt. Instead of the oral teachings of St. Anthony, he introduced a written rule (which he said had been brought to him by an angel from heaven) for the government and direction of the monks, among whom, after his conversion to Christianity, he had cast his lot. At Tabenne, on the Nile, in the upper Thebaid, he founded a congregation of eight monasteries, each divided into families, and each family subdivided into cells of three monks each. The entire congregation was under one superior, each

monastery under an abbot, and each family under a prior. The monks of each monastery, though in separate cells, lived within one enclosure. So much of their time as was not devoted to religious meditation and worship was passed in fishing, tilling the soil, gathering dates and, most of all, in weaving baskets and mats. They held their goods in common and distributed much in charity to the poor and in hospitality to the stranger and traveller. Both men and women were organized in such communities, though in separate enclosures. The element of unity in monastic life was strengthened by the quite general adoption of Pachomius's rule, and by reciprocal visits and general assemblies. Such were the cenobites, between whom and the hermits the disciples of St. Anthony formed a middle class. In members they increased so rapidly that in the fifth century they were said to equal all the other inhabitants of the province, and entire cities were occupied by them. But the stage of organization attained by monasticism under Pachomius was the highest that it attained in Egypt.

From Egypt, after spreading into Arabia, Syria and Palestine,[50] monasticism reached Asia Minor. Among the hermits and monks of Syria and Asia Minor there had been no generally accepted standard of life until St. Basil (who lived from 379 to 379) provided the rule that has ever since been known by his name and is even now followed by Eastern monks. Born in Cappadocia and educated in Caesarea, Athens and Constantinople, he left the schools to visit the saints among the hermits and monks and lived among them in Egypt, Syria and Palestine. He then adopted their form of life and retired to his estates in Pontus to follow it. Afterwards he was called from his solitary life to become a priest, and he in later years he became Bishop of Caesarea. Then he travelled over his province, uniting the scattered hermits in monasteries and founding nunneries, and giving to all of them his uniform rule. St. Basil was the first monk to become a bishop and the first bishop to introduce monks into his cathedral church as priests. What he added to the organization of monasticism consisted in making it not only contemplative but active, and in strengthening the clergy and Christian church by bringing them into direct contact with the greater piety of the monks, — in fine, in making monasticism not an end in itself, but a means to an end, the betterment of the universal church. His rule (which was in the form of answers to two hundred and three questions) emphasized the superiority of the monastic (or cenobitic) to the strictly solitary life, as inculcating

greater charity and humility; it also enjoined chastity, implicit obedience, and self-abnegation, and a life of industry and labor.

During the time of St. Basil, monasteries multiplied rapidly in the East, and after his death no Eastern province of the Empire was without them. St. Basil was the father of Eastern monasticism, and his rule was its constitution. But in the East the monasteries never attained an organic connection with the whole church. St. Basil dealt with the monks rather as individuals than as corporate groups or members of them, and his rule was rather assumed by the monks than conferred by the church; they were neither created nor recognized by the church as corporate groups. The Roman Church, with its greater genius for organization, was to fill out the outline of corporate monastic life by bestowing on the convents of the West the definite and organic relations to the church that were wanting in those of the East.

V — The Roman Church in the Fifth Century.

In the fifth century the Roman Catholic Church, as the organization of western Christianity, had cast upon it, by the course of events, burdens greater than had ever been borne by any other organization of society. The triumph of Christianity in its recognition as the religion of the Roman Empire in the preceding century, the consequent exemption of its property from taxation and its priesthood from military service, and the succeeding grants of Imperial subsidies and other favors brought into the Church a large membership of former pagans and half-hearted Christians whose adherence to its doctrines was formal rather than real. An inevitable impetus was given to the growing distinction between clergy and laity, between sincere Christians and conventional Christians. The attempted absorption of the Roman population involved the introduction of pagan elements into the rites of the Church in the worship of saints and images. The tendency to pure formalism, always prominent in a state church, was increased in no slight degree. Moreover, Roman society, aside from its lack of sympathy for the (Christian religion, was hopelessly corrupt, and the task of bringing it into conformity with Christian doctrines was almost more than the Church could accomplish, — the Church as an institution of government had to be strengthened at the expense of Christianity as a religion, and at a greater expense, because it is the essence of Christianity as a religion that its doctrines be translated into the activity of every-day social life. It was inevitable that a considerable part of

the more zealous Christians should be crowded out of the Church, as organized and administered under the influence of its environment and equally as inevitable that such Christians should sooner or later adopt a separate organization. The rise of monasteries as part of the organization of Christianity was due, in general, to the inability of the current government of the Church to comprehend and regulate the life of the most vigorous part of Christianity.

Perhaps the Church might have elevated the mass of its membership nearer to the plane of its priesthood and more zealous laity, might have resisted the introduction of pagan elements into its worship, or, once introduced, might have gradually eliminated them, or perhaps it might have eventually molded Roman social life into substantial conformity with its rules of conduct, if its *internal* affairs had been its only charge; but the decadence of the Imperial government, the irruptions of the barbarians and the assertion of pretended rights by the Eastern Empire and the Eastern Church demanded such an extended use of the governmental machinery of the Church for *external* purposes that it was fortunate in preserving any considerable part of the older Christianity. Social stability, the protection of person and property and the maintenance of 1a\v and order had to be assured. The inroads of the barbarians had to be withstood. Armies had to be maintained and towns and prisoners ransomed The conversion of some of the barbarians to Christianity and the reclamation of others from the heresy of Arianism had to be accomplished and their results made steadfast until a new Roman Empire and an extended structure of the Church itself might provide organic stability. The destruction of the earlier literature, art and science of Greece and Rome was imminent. In the impotence of the temporal government and the corruption of individual life, the Roman Church had the whole burden to bear. Nor was the burden made lighter by the attitude of the Eastern Empire and Eastern Church, both powerless to assist, but eager to reap the advantages of the struggles of the Roman Church. The ecclesiastical structure, strained as it was, would probably have succumbed if some of the weight imposed on it had not been shifted to subordinate social organizations — the monastic corporations.

On the basis of their relations to the Roman Church, as well as of their internal organization, the history of Western monasteries may be divided into six periods, each of which is characterized by the origin and development of a peculiar class of monastic bodies:

1. 340–529. The Pre-Benedictine Period. From the origin of Western monasticism to the adoption of the rule of St. Benedict.

2. 529–910. The Benedictine Period. The "Heroic Age" of monasticism. From the adoption of the Benedictine rule to the grouping of the Benedictine monasteries in "congregations," as those of Clugny and Citeaux.

3. 910–1210. The Congregational Period. The "Knighthood of Monasticism." From the origin of the congregations of reformed Benedictine monasteries to the rise of the Mendicant Orders.

4. 1210–1534. The Period of the Mendicant Orders. From the organization of the Mendicant Orders to the Protestant Reformation.

5. 1534–1773. The Period of the Jesuits. From the Protestant Reformation to the suppression of the Jesuits.[51]

6. 1773 — The Modern Period. From the suppression of the Jesuits to the present time.[52]

VI — The Pre-Benedictine Period, 340–529.

It was not merely accidental that the beginning of monasticism in Italy, usually placed at 340, was almost coincidental with the triumph of Christianity in the Empire, the peace of the Church dating from 312. The often-repeated statement that the monks were the successors of the martyrs contains much truth; when the State Church widened enough to make room for the mass of the Roman people, it did not remain deep enough to include a large part of the zealous Christians to whom the introduction of foreign elements into the Church was offensive — and left them to become hermits and monks. The Roman Church was at first opposed to the new asceticism, just as the Romans had earlier opposed Christianity, when all its believers were more or less ascetic. Persecution without the state had given place to persecution within the state; the same classes were persecuted and the same classes were their persecutors. Early monasticism in the west was an effort to practice orthodox Christianity for its own sake by its zealous adherents. As a movement of importance, it got its chief impulse from the teachings of the Fathers of the Church.

St. Athanasius, the opponent of Arianism, in one of his exiles, spent a season in Rome and there advocated the ascetic life, with which he had become familiar in Egypt; he offered the "Patriarch of Egyptian monks" as an example for believers in

a "Life of St. Anthony," even it he added to the known facts such imaginary elements as would make it rather a description of the ideal ascetic life than a faithful biography. St. Jerome did more by persuading some of the wealthy Christian women of Rome, descendants of old patrician families, to devote their lives to self-denial and their wealth to founding monasteries (though mostly in the East); he himself gave to the world the Vulgate as a monument of the industry of his solitary life. St. Ambrose, from his cathedral chair at Milan, preached asceticism so eloquently that Milanese matrons restrained their daughters from hearing him, lest they should be induced to make vows of chastity and assume the rigorous ascetic life; moreover, he permitted the settlement of a body of monks at the very gates of the enclosure of his church. St. Augustine, in imitation of St. Basil and in anticipation of a general movement of later centuries, introduced the *vita communis* of the monks among the priests of his cathedral church at Hippo.

But before the time of St. Benedict monastic and ascetic life was unorganized and formless; the Pre-Benedictine period might almost be called the Pre-Corporate period. Many inhabitants of the Italian cities made vows of chastity or poverty, and contrived to live under them in the midst of society, while others became hermits living under the rule of St. Basil, some newly devised rule or no rule at all. From the fifth century date the *gyrovagi*, — dissolute vagabond monks.

During this period no organized efforts appear to have been made by monks to reclaim Roman life from its corruption; the monastic life was lived for its own sake. Some of the earliest monks, however, devoted their energies to missionary work among the barbarians. About 380, St. Martin of Tours introduced monks into Northern Gaul through his monastery at Poitiers. In 410, Honoratus founded the monastery of Lesinium, afterwards so prolific of priests and bishops. About 415, John Cassianus placed a body of monks at Massilia (modern Marseilles) and anticipated St. Benedict's later work by writing for them his *De Institutis Caenobiorum*.

During the latter half of the fifth century, however, monasticism made no progress, even if it held the ground it had gained. St. Augustine, the last of its great promoters, had died in 430; and no other great name replaces his before that of St. Benedict of Nursia in the beginning of the next century. It lacked unity of organization and purpose, an element to be supplied in the next period.

VII — The Benedictine Period, 529–910.

Born in Umbria in 480 and sent to Rome for education, St. Benedict of Nursia deserted the corrupt life of the city in 494 and retired to live for three years the life of a hermit in a cave in Sublacum (or Subiaco). The fame of his piety and wisdom drew other hermits about him, and wealthy Romans placed their children in his charge for spiritual and intellectual training. He was then placed at the head of a monastery in the vicinity, but withdrew from it when he found the monks unwilling to live the life he desired. After founding others, he finally, in 528, founded the celebrated monastery of Monte Cassino; in the following year he gave to the monks under him for their government the rule that was to serve as a constitutional basis of the interior monastic life for more than a thousand years.

The Benedictine rule consists of seventy-three chapters. After a novitiate of one year[53] (afterwards increased to two years) the monk entered into the full fellowship of the monastery upon taking the three vows of *stabilitas loci* (fixity of residence), *conversto mortem* (implying poverty and chastity) and *obedientia* (obedience). At the head of the monastery and elected for life by all the monks was to be the abbot,[54] whose will should be supreme, but who should in all important matters reach a decision only after having taken the advice of the whole body, though in less important matters the advice of the elder monks alone should be sufficient. If the body of monks should be numerous, it was to be divided into groups of ten, each under a dean appointed and removable by the abbot. If, indeed, the body should become too large for one monastery, it might be divided and its parts placed under priors or superiors appointed by the abbot and subject to him.[55] If a monk should be rebellions, disobedient, proud or complaining, he might by steps be secretly admonished, publicly reprehended, excommunicated, corporally chastised or finally expelled. After expulsion, a monk might be readmitted only three times. No monks from other monasteries might be admitted without the consent of their abbots.

No property should be private, but all should be held in common and distributed to each for his use according to his needs. As to clothing, each should have such as the nature of his labor and the season of the year should require; “concerning the color and size of which things the monks shall not talk; but they shall be such as can be found in the province where they are or as can be bough. the most cheaply.” Each should have a cowl and gown and a working garment, as well as boots and shoes. If

a monk should be about to go upon a journey, he should have the use of a cowl and gown a little better than the ordinary, but he should return them after his journey to the vestiary of the monastery. Worn-out were not to be discarded, but to be replaced in the vestiary for distribution among the poor. Each one should have for his bed a mat and a woollen covering — which were to be frequently searched lest private property should be concealed in them! To remove any excuse for acquiring private property, the abbot should provide each monk with a cowl, a gown, boots, shoes, a binder for the loins a knife, a pen, a needle, a handkerchief and tablets. If possible all should sleep in separate beds in a common dormitory.

Two meals should be served each day in a common hall; each to consist of two cooked dishes, unless it should be possible to add a third of apples or vegetables; but "eating of the flesh of quadrupeds shall be abstained from altogether by every one, excepting alone the weak and sick"; and each monk should be allowed only one pound of bread and a petunia (half a pint) of wine each day; though all the regulations should be subject to modification by the abbot according to the season of the year, the labor of the monk and other such circumstances. The cellarer (or steward) should hold his position permanently, subject only to the abbot, but the work of the kitchen should be performed by the monks in weekly turns. No monk should partake of food outside of the monastery without the consent of the abbot.

The monks should not be idle, but should work in the fields or wherever else directed by the abbot. If any monk should be an artifices, he might work at his craft within the monastery, though the goods he should produce would be the property of the community. Silence and humility should be cultivated at all times. Certain hours of the day should be reserved for meditation, prayer and worship, including the exercises of the "seven canonical hours." Monks selected by the abbots for ordination as priests, or priests who should be admitted into the fraternity as monks, should receive the same treatment and be subject to the same regulations as other monks. Special care should be taken of the young, the sick and the infirm; and hospitality should be extended by the abbot to the stranger and traveller. If possible the monastic enclosure should have within it water, a mill, a garden, a bakery and facilities for the different arts, to the end that the contact of the monks with the outside world might be as slight as possible.[56]

Such was the internal structure and life of the Benedictine monasteries. What was

their external relation to the Church? In the course of the historical development of any class of corporations, the question of their relation to the general organization of society in comparison with which they are in a sense exceptional, is sure to arise at some time, and whenever it arises it is important. Groups of monks were not true corporations until their interrelations and their relations with other members of society were determined and enforced.

The Council of Chalcedon (451) had first recognized the bodies of monks that had multiplied without order or regulation within the pale of the Church, and had subjected them, like any other body of laymen, to the control and protection of the bishop of the province in which they lived.[57] The rule of St. Benedict had been sanctioned by Pope Gregory I in the Council of Rome of 595; and in the Council of Rome of 601, all monasteries were relieved by him of the control of bishops (except with the consent of abbots) in a decree in which he said: "The charge which we formerly filled as head of a monastery has taught us how necessary it is to provide for the tranquillity and security of the monks; and as we know that most of them had to suffer much oppression and injustice at the hands of the bishops, it concerns our fraternal feeling to provide for their future repose." St. Gregory the Great, the first Pope of that name, himself formerly an abbot and founder of monasteries, and the first monk to become pope, was the first to foresee the future importance of monasteries to the Church and to the papacy. That by independence of activity they might become more efficient, he granted them numerous "exceptions." He essayed to make their constitution more nearly perfect by supplementary provisions: — abbots of irregular life should be deposed, discipline in the monasteries should be enforced, monks should not wander about or be harbored by others in their wanderings, the novitiate should be two years instead of one year, monks and nuns should reside in separate monasteries, bishops as well as secular persons should not diminish the property or revenues of monasteries, abbots should be chosen from among the monks by their free and unanimous election and should hold their office until death or the commission of crimes recognized in the canons; no monk should perform secular services, and no bishop should hold a service in a monastery. The Council of Rome of 601 released the monks from another form of dependence upon the bishops that had been imposed by the Council of Chalcedon by bestowing upon them the right to administer the sacraments and to be admitted to any grade of the

priesthood.

The Benedictine rule became the general rule for Roman Catholic monasteries, though there was, for the most part, no organic connection between the monasteries in which it was enforced. Benedictine monasteries increased in number very rapidly. Southern Italy and Sicily were covered with them. In 543 St. Mavrus carried the rule into France, and at the end of the century St. Augustine was commissioned by Pope Gregory to plant it in England. In the seventh century it made its way into Spain. In the eighth century Boniface transplanted it from England into Germany. The great work of converting the barbarians to Christianity was performed by monks. As soon as a foothold had been gained by a body of monks in a new land, monasteries were established, and as soon as the work of conversion had been well begun, the monasteries became cathedrals, with their abbots for bishops and their monks for priests. The monasteries became the training schools of popes, cardinals, bishops and priests. Before the sixth century, monks were only laymen, though distinguished from ordinary laymen, (*seculares*), as *religiosi*, and spiritual worship was performed for them by priests assigned to their monasteries by the bishops. In the tenth century, at the end of the Benedictine period, the monks were regarded as a special ecclesiastical order (*ordo religiosorum*) and their secular affairs were administered by lay brethren (*conversi*). It is hardly too much to say that the Church was *monasticized* during the period. As often happens in the development of corporate life, the superior organization of society proved unable to absorb into its own structure the inferior corporate life that it had called into being; it had to be content with annexing the subordinate structure; the Church was unable to comprehend the results of monastic activity within the hierarchy of pope, bishops and priests, and had to make monasteries a part of its own structure.[58] The monastic life, though slightly modified, was very generally introduced into cathedral chapters and the colleges of collegiate churches in the ninth century.

The Church had its civilizing work to do, not only in Italy but in the Celtic provinces, when the devastating pagan life came in contact with them. To some extent performed through the medium of its regular ecclesiastical organization, the greater service was rendered by the Benedictine monasteries, where the conquered found at least a temporary refuge. Through their industry and frugality, aided by the contributions of the faithful or superstitious, the monks accumulated a body of

economic wealth that was devoted very largely to humane purposes, — the entertainment of the stranger, refugee or traveller, the relief of the sick and poor and the preservation of the remnants of the odder literature, art and science. If in no other place, there was peace, arms were silent within the monastic walls. The harshness of feudal relations was mitigated by the humility of the monks and the influence lent by them to the enfranchisement of slaves. As the property of monasteries was the property of God, the theory of the divine right of their property must have had a tendency to lend stability and security to all property. With all its faults, monasticism was the great reserve force of civilization in the Middle Ages.

Though the Papacy did not attain the height of its powers until the next period, even in the present period the relation of monasticism to its growth is plainly evident. Gregory the Great had enforced the policy of emancipating the monks from the control of the bishops, and his successors followed his example. The popes and the monks each needed the help of the others in their contests with independent and aggressive bishops. The Papacy was the source from which the monasteries obtained exemptions and privileges: the monks in return became the standing army of the Papacy.

At the end of the eighth century the Benedictine monasteries became corrupt, and the strong hand of Charlemagne was needed to restore discipline in them. After the Diet of Aix-la-Chapelle in 817, however, a systematic effort was made by Louis the Pious to effect comprehensive reformation and reorganization of them. He appointed Benedict of Aniane superior-general of all the monasteries in his realm, and caused him, after having investigated them at the head of a commission, to impose upon them a stricter observance of the older Benedictine rule (though slightly modified). Many of the abbacies and much of the property of the monasteries had fallen under the control of laymen — an abuse corrected to some extent by the restoration to the monks of the rights of free election of abbots and of full administration of their property. What was needed, however, was closer organic connection between the separated Benedictine monasteries, and that was an element added only through the formation of new orders. After the tenth century the unreformed Benedictine monasteries sank into impotence as social factors.

III — The Congregational Period, 910–1210.

This period was characterized by the grouping of most of the Benedictine and other monasteries in"congregations" and by a consequent revival of monastic life. Such a movement had been inaugurated under St. Benedict of Aniane, but had been a failure. The interior life of the monasteries was still based generally on the Benedictine rule,[59] but though they are sometimes called Benedictine monasteries, as distinguished from the later Mendicant Orders, the important point is that the older unit of the single Benedictine monastery had been superseded in this period by the new unit of the congregation of monasteries. Clugniacs, Cistercians, Camaldolites, Celestines and Carthusians have now taken the place of Benedictines.

The monastery of Clugny, founded and liberally endowed by Duke William of Aquitaine in 910, was the pioneer in the reformatory movement. Its first abbot, Berno, and his immediate successors enforced the Benedictine rule with such strictness that many other monasteries were influenced to submit themselves to it by granting the selection of their abbots to the abbot of Clugny; many other monasteries simply profited by the example of Clugny by using its life as a standard for the reformation of their own. The submission of monasteries to Clugny became so general that in the twelfth century its congregation numbered two thousand monasteries in France alone; the abbots of Clugny were known as *archiabbates*, as compared with their subordinate abbots. When the congregation became extended, it was divided into ten provinces, and annual general chapters were attended by all abbots; two visitors and other supervisory officers were elected for each province.

In the congregation of Clugny so much depended on the personal character of the abbot of Clugny that the work of Berno, Odo and Peter the Venerable was almost destroyed during the administrations of a few less capable abbots. The Congregation of Citeaux (the Cistercians) profited by the experience of the Clugniacs by inserting suitable provisions in their *Charta Charitatis*, the constitution of their order, in 1119: The abbot of Citeaux should be master over all the monasteries in the congregation, and should visit each of them at least once a year; he should be under the supervision of the abbots of the four monasteries of La Ferte, Pontigny, Clairvaux and Morimond, the chief subordinate monasteries; if he should be remiss or vicious, the supervisory abbots should admonish him four times, and then, in default of improvement, should summon a general chapter and have him deposed by it. On the

other hand, if any abbot should be lukewarm in his enforcement of the monastic rule, he might be accused before the annual general chapter, and if found culpable might be compelled to ask for pardon and undergo penance, or be deposed. This was a step in advance of the constitution of the congregation of Clugny.

Nor was the congregational constitution peculiar to the Clugniac and Cistercian orders. It is also found in the orders of Fontevraux (1006), Grammont (1073), Chartreuse (1084) Camaldoli (1018), and other monastic orders of the period, as well as in the military orders founded during the Crusades. When many orders fell into decay after the Reformation, an attempt was often made to renew them by uniting them to some more flourishing congregation;[60] founding new orders was discouraged, and prospective founders were advised to unite their foundations with whatever congregation should be most in harmony with them.[61] The future constitutional development of monasticism was to consist largely in perfecting the congregational principle.

The monastic orders were in this period, as in the preceding, the main support of the papacy, while their strength had grown with increasing wealth and numbers and more efficient organization. If in the struggle with the Empire the papacy had to suffer many defections among the bishops, those among the abbots and monks were few. Three of the Popes were Clugniacs. The monk Hildebrand, as Clement VII, asserted the greatest claims to which the papacy could aspire. Peter the Hermit preached the first, and St. Bernard the second crusade. On the other hand, the popes granted to the monastic orders greater powers than ever before. The earlier Benedictines had lived the monastic life largely for its own sake; the privileges bestowed on them were largely in the nature of exemptions, from ecclesiastical authority: the reformed orders regarded the monastic life more as a means to an end within the Church; their privileges were not passive exemptions but active powers. The abbot of Clugny, more influential than any bishop, exercised the power of a bishop in a territory about his monastery. In the councils of the Church, side by side with bishops abbots enjoyed equal rights. If before the tenth century the popes had delegated the missionary work of the Church to the Benedictines, Innocent III now delegated to the Cistercians the reclamation of the AIbigensians from their heresy, and, upon their failure, directed Arnold, the head of the order, to proclaim a crusade against them. The ecclesiastical hierarchy was more corrupt than the monastic orders;

the bishops had few followers, while every monk had taken the vow of obedience to his abbot; the bishops and clergy were complaining of the invasions of their rightful fields of authority by the pope; the abbots and monks were dependent upon an independent papacy for all the rights they had and were to have; plainly the interests of the monastic orders and those of the pope were identical; each depended on the other and neither was disappointed.

In this period the monks still monopolized the literature, science and art of their time, though at its end the growth of the universities and the increase of general enlightenment were to threaten them with competition.[62] Scholasticism (the philosophy of the monastic and cathedral schools) became a system during the tenth, eleventh and twelfth centuries, and found its greatest names among the monks.

This period has been well called the "Knighthood of asceticism" A change had come over the spirit of monasticism; the passive humility of St. Benedict had given way to the aggressive pride of St. Bernard. The one extolled the virtues of the solitary life; the other preached a crusade. The one regretted that he had to be a monk; the other was proud to be one. Monasticism became rather. positive than negative, a form of life with something to accomplish in society instead of a life complete in itself. The new temper appears most clearly in the military orders of the crusades, a class of corporations midway between the congregational orders and the later mendicant orders and Jesuits. The Knights Hospitallers of St. John had originally been a body organized to maintain a hospice in Jerusalem for the reception of pilgrims to the Holy Sepulchre, and living under the monastic vows of poverty, chastity, and obedience. Later they added the vow of resistance to the Infidels and defence of the Holy Sepulchre — in distinct recognition of an active social purpose in monasticism. They comprised three classes: (a) knights, who (of noble birth) bore arms and performed military services in war; (b) clergy or chaplains, who conducted the services in the churches of the order, visited the sick in hospitals, and tended the wounded on the battle-field; and (c) serving brethren, who acted as squires to the knights and assisted in the care of hospitals. The government of the order was vested in a Council over which the master of the order presided, — a step beyond the feature of congregational orders that one monastery should be above the others. All the great military orders, passing beyond their strictly military and religious field, later obtained political powers, resulting in some cases in their suppression. Within the military orders there

was a greater differentiation of classes of members than in the purely monastic congregations — a feature to be even further expanded by the Jesuits.

In the congregational orders there was an element of nationalism (if the term may be used for want of a better one), though few of the orders were confined to any one nation. The Clugniacs and Cistercians had their greatest strength in France; the orders closely corresponding to them in Italy were those of Camaldoli and Vallombrosi. The order of Guilbertinus in England was parallel with that of Fontevraux in France. The general chapters were held at the parent monastery and not in Rome as in later centuries. The orders were not universalized or identified in their administrative centres with the Church, as was later the case with the mendicant orders and Jesuits.

In the fourteenth century, the pontificate of Boniface VIII being the turning-point, this class of corporations sank into impotence and resisted all the efforts of the papacy to revive them; in England they were suppressed at the Reformation; in France they lasted until the French Revolution; in all Europe they were superseded in the active life of society by the Mendicant Orders and Jesuits.

IX — The Period of the Mendicant Orders, 1210–1534.

The four great mendicant orders were the Franciscans, Dominicans, Augustinians, and Carmelites. Though not strictly monastic, they were the legitimate historical outgrowth of monasticism and the most important bodies in the Roman Catholic Church from the beginning of the thirteenth century to the Reformation.

At the fourth Lateran Council in 1215, Innocent III forbade the formation of new monastic orders, that the entire monastic body might not be weakened by excessive subdivision; yet the mendicant orders were so different from the older monastic orders and promised so much that he favored the formation of the Franciscans and Dominicans.

The Franciscan rule, sometimes called the Magna Charta Pauperitatis,[63] consisting of only twelve short chapters,[64] contained the following chief provisions: — At the head of the whole fraternity was to be a general minister whose orders were to be implicitly obeyed. Over each province a provincial minister was to preside; over each house or monastery a guardian. Upon the death of the general minister,[65] his successor should be elected by the provincial ministers and guardians in a chapter held once in three years, or after less or greater intervals as ordered by the minister

general. If it should become apparent to the body of provincial ministers and guardians that the general minister was not fit for the service and common utility of the brothers, they might elect another in his place. Brothers should obey all their superiors, should be frequently visited by those set over them, and should have recourse to the general or provincial ministers, if they should find themselves unable to "spiritually observe the rule."

The Franciscan brothers were to live in obedience, without personal possessions, and in chastity. Francis promised obedience and reverence to the pope, and to the Roman Church, and the other brothers were to obey Francis and his successors. Brothers were to be admitted to the order only by provincial ministers after a strict examination and a year of probation. They were to be disciplined by elaborate fasting. The clerical brothers were to perform the divine service according to the order of the Roman Catholic Church. Entertainment and hospitality might be accepted by the brothers, but they were always to walk, and avoid riding if possible. No money was to be received or handled by any of the order, and even clothing was to be provided for the brothers by the general or provincial ministers through spiritual friends.

> "Those brothers to whom God has given the ability to labor, shall labor faithfully and devoutly; in such way that idleness, the enemy of the soul, being excluded, they may not extinguish the spirit of holy prayer and devotion, to which other temporal things should be subservient. As a reward for their labor, they may receive for themselves and their brothers the necessaries of life, but not coin or money, — and this humbly, as becomes the servants of God and the followers of most holy poverty." "The brothers shall appropriate nothing to themselves, neither a house nor a place, nor anything else; but as pilgrims and strangers in this world, in poverty and humility serving God, they shall confidently go seeking for alms;... and wherever the brothers are and shall meet, they shall show themselves as of one household;... and if any of them fall into sickness, the other brothers ought to serve him, as they would wish themselves to be served."

The sins and shortcomings of brothers were to be referred to the provincial ministers, who might enjoin penance upon them or give them over to some priest of the order for that purpose.

Brothers might not preach in any bishopric if forbidden by the bishop. And no brother might preach at all, except after examination and approval by the minister general as to his fitness. Suspicious intercourse with women should be avoided, and nunneries might not be entered without the special permission of the Apostolic Chair. Brothers might go among the Saracens or other infidels upon securing permission so to do from the provincial ministers.

The pope conferred upon the mendicant orders the right of preaching and the cure of souls in any district or country, and ordered that each should have a cardinal for its governor, protector and corrector. Each order eventually made Rome its administrative centre and the residence of its general. They multiplied so rapidly in numbers, that before the Reformation they wielded a greater force than the ecclesiastical hierarchy. In some cities they were so numerous that the cities had to be divided into districts, each of which was exclusively assigned to the brothers of one order. The Church was threatened with absorption by the mendicant orders and the older monastic orders. Among both the Franciscans and Dominicans there was added to the two classes of priests and lay brothers a third known as "Tertiaries," persons who lived in the world and adopted a semimonastic rule provided by the order. Almost contemporaneously with the founding of the order of St. Francis, Clara of Assisi founded a parallel female order — the Sisterhood of St. Clara — under a slightly modified form of the Franciscan rule.

The orders became so extended that disagreements arose within them. In 1517 Pope Leo X. had to give recognition to a division of the Franciscans into Observantes and Conventualists. In such cases the order was usually not absolutely divided, but the dissenting body, if so considerable as to demand recognition, was given a separate vicar-general. Among the Carmelites, the congregation of Mantua, and the "Barefoot" Carmelites of Spain and Italy were granted separate vicar-generals. The reformed order of Augustinians, to which Martin Luther belonged, was one under its own vicar-general. The well-known Capuchins were a reformed order of the Franciscans organized by Matthew de Bassi and accorded the privilege of choosing their own vicar-general in 1525. Thus, at least, the semblance of a unified

organization was maintained.

As a matter of organization, the mendicant orders differed from the earlier monastic orders in being more highly centralized, in maintaining closer relations with the popes by having their systems radiating from Rome, in having larger and more nearly universal fields of activity, and in their desertion of the monastery (or restricted locality) as their unit. The Benedictine of the sixth century had been a member of a monastery; the Franciscan of the fourteenth century was a member of an order as wide as the Church. The development was parallel (though earlier in time) with that of monarchy and national administration out of feudalism.

Their social functions were far in advance of those of their predecessors. Their work was to give new life to the Christian religion and uproot heresy by practicing humility and preaching, the Franciscans rather by the former, the Dominicans rather by the latter. The degeneracy of the clergy and the proud indolence of the monastic orders left the masses of the people, after the first five crusades, disheartened and spiritually miserable. The crusades had been a manifestation of the chivalry of Christianity; they had all but failed. The thirteenth century called for humanity in place of chivalry. The Church, as organized, was powerless to fill the need of the time. The mendicant orders were the organized forms of the new social force. They were churches within the Church. The granting of corporate powers to the mendicant orders is only evidence of the tendency of all organized societies to rely, in their extremities, rather on corporations than on their own organization.

It had been suggested that with the Benedictines the monastic life was largely an end in itself, and that with the congregational orders it was less an end in itself, and more a means to an end. With the mendicants the life of the order (while it remained uncorrupt) was almost entirely for the purpose of affecting society in general; those who desired to practice it for its own sake were organized as “Tertiaries.” For this reason fixity of residence had not been contemplated by St. Francis, though St. Benedict had imposed on his monk the vow of *stabilitas loci*. The mendicants were an itinerant priesthood to seek men wherever they might be found. and to benefit society spiritually by *autos-da-fé* as well as masses.

During this period the Franciscans and Dominicans sustained the monastic reputation for learning by producing many of the most learned men and greatest academicians of the time; but it is an important fact that they accomplished it rather

through the universities than through the machinery of their own orders — a presage of the future differentiation of educational from ecclesiastical corporations.

The Reformation found the mendicant orders in decay; wealth accumulated in spite of vows of poverty had engendered indolence and self-seeking; and envy and jealousy between the orders and between factions within them had displaced zeal for the spiritual welfare of men. In England they were suppressed along with the monastic orders. On the Continent the Church made heroic efforts to reform them, but with only moderately substantial results. Ecclesiastical corporations, like others, have seemed incapable of reformation without such organic changes as to make them virtually different organizations. It has seemed impossible to infuse vitality into a corporate structure when once it has been pervaded by corruption. Instead of a genuine revival of the corporations that had declined by the end of the period, a new class of corporations made their appearance. differing from their predecessors less in form than in the degree to which the same general form was developed.

X — The Period of the Jesuits, 1534–1773.

Ignatius de Loyola founded the Society of Jesus in 1534, but it received the formal approval of the Church only in 1540. In the latter year Pope Paul III, in the bull *Regimini Militantis Ecclesiae,* gave the organization his sanction:

> "Whereas, we have lately learned that our beloved son, Ignatius de Loyola [and ten others) have met together and become associates; and renouncing the seductions of this world, have dedicated their lives to the perpetual service of our Lord Jesus Christ, and of us, and of other our successors, Roman Pontiffs; and expressly for the instruction of boys and other ignorant people in Christianity; and above all, for the spirit and consolation of the faithful in Christ, by hearing confessions [etc.] we receive the associates under our protection and that of the Apostolic See; conceding to them, moreover, that some among them may freely and lawfully draw up such constitutions as they shall judge to be conformable [etc.].... We will, moreover, that into this society there be admitted to the number of sixty persons only, desirous of embracing this rule of living, and no more, and to be incorporated

into the society aforesaid."

The limitation of membership to sixty was removed by a second bull of the same pope in 1543.

The constitution provided for in the bull of approval appears to have been completed in 1552. At the head of the order was to bee general with his residence at Rome and possessing almost absolute authority over the members of the order. He was to be elected by a general chapter or congregation consisting of two *professi* living at Rome, all the provincial generals, and two *professi* chosen in each province by a provincial congregation or chapter. Four assistants should also be elected by the general congregation to reside near the general at Rome and aid him in the administration of the affairs of the order, each with particular reference to one of the four original provinces. The general congregation should also appoint one "admonitor" who should be in continual attendance on the general for the purpose, "should he perceive him swerving from the right path, with all possible humility to advise him, after earnest and devout prayer to God, what he considers to be the best course to follower."

Extreme discrimination was to be exercised in the admission to membership in the order. Members were to be drawn from the best social material. Candidates had to possess a comedy presence, youth, health, strength, facility of speech, and steadiness of purpose. No heretics or schismatics, homicides or other criminals, married men, or persons of weak or unsound mind, were eligible to membership. The governable passions, habits of sinning, unsteadiness and fickleness of mind, lukewarm devotion, want of learning and of ability to acquire it, a dull memory, bodily defects, debility and disease, and advanced age were some of the impediments to candidacy. Any member might be expelled by the general or the general congregation.

The members were divided into four general classes: (a) *professi*, (b) coadjutors, (c) scholars, and (d) novices, — to which ought perhaps to be added a fifth class, (e) of laymen living in society and maintaining secret relations to the order and corresponding to the Tertiaries of the Franciscans and Dominicans. (a) The *professi* were the class from which the highest officers of the order were chosen. (b) The coadjutors were both temporal and spiritual, the former as agents and stewards in business affairs, the latter as priests. Both of these classes passed through preliminary

periods as (c) scholars and (d) novices. The colleges of the order were presided over by rectors, houses of first and second probation by superiors, and provinces by provincial generals, all appointed by the general for limited terms from the class of *professi*.

No property should be owned by the members. Private property should be disposed of at the bidding of the general within a year after the admission of its owner into the order; "and he will accomplish a work of greater perfection if he dispose of it in benefit of the order." Endowments should not be received by the order save for the support of its colleges, scholars, and instructors. No ecclesiastical dignity or benefice, or payment for services, as that of hearing confessions, should be accepted by members. Absolute obedience should be the bond that bound together the several parts of the order in their intricate relations.

> "As for holy obedience, this virtue must be perfect in every point, — in execution, in will, in intellect; doing what is enjoined with all celerity, spiritual joy, and perseverance; persuading ourselves that everything is just; suppressing every repugnant thought and judgment of one's own, in a certain obedience;... and let every one persuade himself that he who lives under obedience should be moved and directed, under Divine Providence, by his superior, just as if he were a corpse, which allows itself to be moved and led in every direction."

Members were to have no communication with other men within or without the order, except with the permission of their superiors. An elaborate system of reports kept the actions of every member and every part of the machinery of the order under the eyes of the higher officers. To the old monastic vows of poverty, chastity, and obedience imposed on all members, a special vow of obedience to the pope was exacted of the profess), the highest class of the order.

The general aims of the Jesuits were, positively, the promotion of the interests of the Roman Catholic Church, and, negatively, the undoing of the work of the Reformation by suppressing Protestantism, as indicated from their point of view by their motto, *Ad Majorem Dei Gloriam*. The means employed had close reference to the conditions of the time. As Protestantism was largely an assertion of individual

reason against authority, they aimed to suppress it by maintaining colleges of their own and working their way into other institutions of learning. As the result had taken place under the protection of temporal rulers they sought to attain control over European princes by every conceivable avenue, from acting as their confessors and tutors to enrolling them in their membership; if control of hostile governments could not be compassed, their work was hampered to the greatest possible extent by the employment of all the arts of diplomacy and intrigue. Incidentally they planted Roman Catholic missions in the East Indies, Japan and China, and in North and South America, aiming always rather at the attainment of control through the machinery of their order than at the dissemination of doctrines. The first thing needful for the Roman Catholic Church was the reassertion of its authority, of its control of the framework of society; afterwards the enlightened tendencies of the time might be accommodated within it. With its large membership of carefully chosen men,[66] its highly concentrated and unified organization, and its wide ramifications, touching society at every point and in every country, it was the strongest factor in the counter-Reformation in the second half of the sixteenth century.

But corporations have seldom been confined to their legitimate field of activity. Always appearing at times when the superior contemporary structure of society is unequal to the tasks by which it is confronted, and when the efforts of individuals in the accomplishment of public purposes are in need of combination and correlation, their powers are likely to be far in excess of their legitimate needs, and their pursuit of public welfare to be subordinated to that of their own interests. The Jesuits accumulated too much power and used it too little for the benefit of the Church and too much for their own aggrandizement. Pope Paul III seems to have had fears for the future in insisting at the outset upon a special vow of obedience to the papacy. The general verdict of history has been in justification of the expulsion of the order from nearly all European countries during the seventeenth and eighteenth centuries, and of its final suppression by Pope Clement XIV in 1773 by the bull *Dominus et Redemptor*.

It must not be understood that the Jesuits occupied the whole field of corporate life of the Roman Catholic Church; the sixteenth century (after the Reformation) and the first half of the seventeenth century witnessed a considerable revival of the older monastic orders and the creation of new ones on the same fundamental plan. There

was, however, nothing new in their organization. The Jesuits represent the highest point of development reached by corporations in the Roman Catholic Church, a point at which they maintained themselves even against the opposition of the monastic orders, the Church itself and the temporal princes. They filled such a large part in the activity of the Church and the Church became so dependent upon them, unable as it was to do even the legitimate work delegated to them, that their suppression was followed by a restoration in 1814, though under circumstances that cannot be considered here.

XI — Cathedral Chapters.

It has been suggested that corporations may have their origin not only in the assumption of a form of organization by newly created groups, but by such changes in the supreme organization of society as to leave some of its groups, retaining their old organization, in an exceptional relation to it. Cathedral chapters are exemplifications of this principle. The course of their development is in some respects the reverse of that of the monastic bodies. The conversion of bodies of cathedral clergy into corporations is due no more to changes within them than to concurrent changes without them in the ecclesiastical organization.

The Church was largely monasticized during the seventh, eighth, and ninth centuries. The later national churches in France, England, and Germany were established by missionary monks. When the conversion of a considerable part of the barbarians had been accomplished, the abbots became bishops and their monks became their clergy. Thus St. Martin was taken from his monastery at Poitiers to be made Bishop of Tours; St. Augustine became the first archbishop of England, and the first of thirty-eight monks to hold that position in succession; and Boniface became archbishop of Germany. Likewise in Italy, the superior reputation of the monks for piety and learning and their close connection with the papacy made many of them popes and even more of them bishops. But while a large part of the bishops were monks, others were not, and the clergy, taken to some extent from the native inhabitants, and in all cases subject to be influenced by their closer contact with the natives, became farther removed from the moral plane of the bishops; by the middle of the eighth century, the degenerate clergy were plainly in need of reformation. The impulse to the Reformation had been given by the monks, both by example of living

and by preaching.[67] The monks had been rising, since the sixth century, from the position of laymen to that of an order of clergy in the Church, and their example must have had increasing influence in the direction of a reformation. The demand for reformation was answered by almost transforming the cathedral churches into monasteries.

It is stated on good authority[68] that the first trace of the "canonical rule" or vita comas is found in a decree of the Council of Vernon in 755, in which it was enacted that "clerks should live either in a monastery under monastic order, or under the control of the bishop under 'canonical' order." Later in the century, bishops in Lombardy "were required to compel their clergy to live under 'canonical' order"; otherwise they would be liable to military service, like ordinary laymen. In 802, Charlemagne enacted at Aix-la-Chapelle:

> "Let [the clergy] not be permitted to wander out of doors, but let them live under complete ward, not given to filthy lucre, not unchaste, not thieves, not murderers, not ravishers, not litigious, not passionate, not puffed up, not drunkards, but chaste in heart and body, humble, modest, sober, kind, peaceful, sons of God worthy of being promoted to holy orders, not living lives of luxury or unchastity or other kinds of iniquity in the villages or homesteads adjoining a church without control or discipline." "The theory was that in cities the bishop and his clergy, and in country places the chief presbyter and the younger clergy, should live together under the same roof. When the bishop's house was not large enough, another building was to be provided; but whether it were the bishop's house or another building, it was a 'clustrum' or 'cloister,' a building kept under lock and key, with a common refectory and, above all, a common dormitory."[69]

The final step was the imposition of a common rule on the body of priests living together.

Louis the Pious, at the same time when he essayed to introduce the reforms of Benedict of Aniane into the monasteries in 817 also made obligatory upon priests the observance of a rule previously (about 760) devised by Chrodigang, Bishop of Metz;

the rule was based on the Benedictine monastic rule, but slightly modified, chiefly in the elimination of the vow of poverty. Louis the Pious also altered Chrodigang's rule so as to make it more widely applicable to bodies of clergy.

> "In both forms of the rule, the clergy-house was to have only one door for entrance and for exit; it was to contain a dormitory, a refectory, a storeroom, and other offices necessary for brethren living together in a single society; the clergy were to receive food and drink in prescribed portions; those who had no means of their own were to receive clothing as well."[70]

The seven "canonical hours" were to be observed, definite parts of each day were to be set apart for prayer, meditation, discipline and instruction. Each day the whole body should come together to celebrate mass and hear the reading of psalms, canons, the canonical rule, or "treatises and homilies which should edify the hearers." Indeed the name"chapter" is said to be derived from the daily meeting for the hearing of the "chapter" (*ad capitulum*). Later in the same century it was enacted that bishops should provide cloisters; if their own houses were not large enough, they were empowered to acquire neighboring land, by compulsion if necessary; if funds were wanting with which to build, forced levies were to be made on the holders of church lands. "The rule became as general in Italy and England as it had become in the Frankish domain, and by the beginning of the tenth century the canonical life embraced almost all the clergy in Western Christendom."[71] Concurrent with and even preceding the introduction of the canonical rule into cathedral chapters, the episcopacy was passing through an important change. The bishop was coming to be less the head of a predominant church with country churches dependent upon it, and more the supervisor of all the churches in a district; in other words, the diocese and parish were emerging in their modern form. Then separation of the clergy from the bishop became wider and the dean came to be the virtual head of the chapter. Church revenues, originally divided into three parts (for the clergy, church structure and poor), came to be divided into four parts (for the bishop, clergy, church structure and poor). The election of the dean had already been vested in the chapter; election of its members was now absorbed by it. The chapter soon occupied a house separate and

distinct from the residence of the bishop. At first temporarily, from the twelfth century permanently, the members of the chapter employed vicars to perform their ecclesiastical services, and some of them were laymen or, if in holy orders, had no actual connection whatever with the cathedral. The sole remaining bond between the cathedral chapter and the hierarchy of the Church was the power of electing the bishops, which has always been retained.

As usual, classes within the chapter were formed and its powers reposed in one class to the exclusion of the other, just as in monasteries the membership was divided into monks and lay brethren, and in the Society of Jesus into *professi* and lower classes. The members of the chapter were distinguished as capitular and non-capitular, according as they participated or not in the exercise of the powers of the chapter.

An instructive process of partial dissolution took place. The revenue and property of the chapter were first separated from those of the bishop. then they were gradually divided among the members of the chapter, the right to live in the chapter-house being commuted for a fixed payment of money; then the members lived in separate houses, and the other features of the common life vanished, except as the shadow of it remained in periodical meetings or banquets. The word “prebend” (prebends, fodder) originally stood for the right to live at the common table, but was applied to the estate for which it was commuted; and those who had still only the right to live in the chapter-house were distinguished as mere canons in contrast with the prebendaries.

In the eleventh and twelfth centuries, when reforms were attempted in the cathedral chapters, especially by the restoration of the common life (*vita communis*) under the rule of St. Augustine those who assumed it were known as “regular canons” (canons living under a rule or *regula*) as distinguished from “secular canons.” Some of the canons who were dissatisfied with the life of the cathedral chapters left the cathedrals and organized monastic orders; such was the origin of the influential Premonstratensian order, founded by St. Norbert in Germany in the twelfth century.

In England, when the monasteries were suppressed, some of them were transformed into cathedrals, the monks becoming secular canons, to wit, the cathedrals of Westminster, Chester, Gloucester, Peterborough, Oxford, and Bristol.

XII — Chapters of Collegiate Churches.

When the common life and canonical rule were introduced into churches in the eighth and ninth centuries, the change was intended to apply to bodies of clergy not only in cathedral churches, but also in country churches. Churches that were not cathedrals, and in which there was such an organized body of clergy, became collegiate churches and their bodies of clergy became colleges or chapters.

The chief difference between them and cathedral chapters was in their relation to the bishop and through him to the ecclesiastical organization. They had no voice in the election of the bishop, and their sources of revenue were more easily distinguished from his; not being situated so as to be clearly subject to the episcopal influence, they came to occupy a position of greater independence.

Their internal organization and development was quite identical with those of the cathedral chapters. After the Reformation in England, the addition of a bishop was all that was necessary to convert some of their churches into cathedrals, the cathedral chapter being already at hand in the collegiate chapter. Some of the monasteries or priories, and especially the latter, were also transformed into collegiate churches, as those of Canterbury, Rochester, Winchester, Worcester,.Durham, Norwich, Ely, and Carlisle.

There was no such tendency to affiliation in the cathedral and collegiate chapters as became such an important element in the growth of monasticism; their activity was rather negative than positive; without great aims or purposes of their own, they are examples of ecclesiastical organs forced into a monastic mold. They are also evidences of the efforts of the Church to absorb into its own structure the monastic life; the futility of the efforts appears in the fact that the ecclesiastical bodies into which the monastic life was injected became corporations after a time.

XIII — General Observations.

After the foregoing historical review of the growth of corporations in the Church, it may be of advantage to bring together some of the tendencies observable in their relation to the general ecclesiastical organization, in their internal structure, and in their interrelations. Some such tendencies have already been noticed, others may now be added.

1. The growth of corporations in the Roman Church was due to the incapacity of

the ecclesiastical organization to comprehend all the life of Christianity and to provide it machinery for the expansion of its full activity. The Church as an organization of all society — as a spiritual government — had to be so general in its nature that it was unfitted for certain classes of Christians; consequently they had of necessity either to remain entirely outside the Church or be allowed to assume autonomous organizations only nominally within it. The situation was appreciated by the Church, the excluded classes were permitted to adopt their own organization, and the complex of all relations set up by them within their own groups and between their own members and the other members of society were confirmed and sanctioned by the Church.

2. The element of personal interest in the membership of ecclesiastical corporations was so much more vigorous than the merely general interest (approaching to apathy) of the membership of the Church that they rapidly absorbed the vitality of Christianity, — and the monastic life came to be known as the "religious" as distinguished from the "secular" life. The Church was weakened by the loss of the strength of Christian thought, feeling and action abstracted by its corporations. Nor was the loss compensated by the emulation of the monastic life by the membership of the Church (outside of the hierarchy of the priesthood); the tendency was quite the contrary, — to depress the moral level of the membership of the Church.

3. The Church was never able to reabsorb the structure of the monasteries, so strong was their tendency to independent life. The only way open to the Church to gain advantage from the existence of the corporations was to accept their fruits (religious zeal and purity) by recruiting the ranks of the ecclesiastical hierarchy from the "religious" orders. The Church thus became so dependent on its corporations that it was virtually unable to exist without them, while it was unable to make them a part of itself. When it attempted to attain the results of monastic life within its own organization by imposing a rule on its bodies of priests in cathedrals and collegiate churches, it soon found that the bodies of priests had become corporations, almost as independent of the Church as the monastic orders themselves, and hardly a part of the ecclesiastical hierarchy.

4. The initiative in the formation of monastic corporations was never taken by the Church. The acts by which their internal and external powers, duties and organization were settled, defined and sanctioned, were in the form of confirmations of the

arrangements made by the groups on their own initiative.

> "[The Church of Rome] understands, what no other Church has ever understood, how to deal with enthusiasts The Catholic Church neither submits to enthusiasm nor proscribes it, but uses it. She considers it as a great moving force which in itself... is neither good nor evil, but which may be so directed as to produce great good or evil; and she assumes the direction to herself,... she knows that when religious feelings have obtained the complete empire of the mind, they impart a strange energy, that may raise men above the dominion of pain and pleasure, that obloquy becomes glory, that death itself is contemplated only as the beginning of a higher and happier life. He may be vulgar, ignorant, visionary, extravagant; but he will do and suffer things which it is for her interest that somebody should do and suffer, yet from which calm and sober-minded men would shrink. She accordingly enlists him in her service, assigns to him some forlorn hope, in which intrepidity and impetuosity are more wanted than judgment and self-command, and sends him forth with her benediction and her approval."[72]

The popes understood that the activity of the monks would be of benefit to Christianity as a religion, but that they could not be organized within the Church, as it was; they accordingly confirmed the organization assumed by them, making it subject to the control of the Church only in an extremity, and not immediately.

In the cathedral and collegiate chapters, however, the initiative was not in the bodies of priests, but in their Church. The intention was not to create corporations, but to prescribe a mode of life for certain bodies within the Church; their ultimate corporate character was the outcome of their prescribed mode of life and their changing relations to the other parts of the government of the Church.

5. Every revival in the Roman Catholic Church was characterized by and largely dependent upon an increase in the membership, power and activity of its corporations. In every great struggle, internal and external, from the descent of the barbarians on the Western Roman Empire to the counter-Reformation in the sixteenth

century, the Church found its greatest strength in its corporations. And it was unfortunately so, because no reformation that was not effected in the general organization of the Church could be lasting. The gain was at the expense, to a great extent, of the substitution of an outside and semi-independent Church for the regular Church; and corporate life had such a degree of persistence that it could not be absorbed.

6. The ecclesiastical corporations were the support of the monarchical principle in its application in the Church. They were the standing army of the Pope, his bulwark against the independence of archbishops and bishops and national churches, — against heresy within the pale of the Church, and the increased activity of universities and schools without it. But the day of reckoning with the religious orders was to come. The papacy anticipated the evil day by making them its Pretorian Guard, by accepting its nominees or occupants of the Apostolic see, and thus providing a bond of unity between them. Pope Clement XIV had to abolish the order of Jesuits, — the quintessence of ecclesiastical corporations. There had come to be two popes in Rome in popular phrase, — the "White Pope" and the "Black Pope" (the superior general of the Jesuits). If the revivals of purity in Christianity and the expanding activity of Christian society had found expression through the machinery of the Church instead of ecclesiastical corporations, the power of the papacy would have been seriously threatened. As it was, the Church itself became so corrupt as to suffer contempt in the eyes of the religious orders, and an Augustinian friar setting at naught his allegiance to the Pope, started the Reformation.

7. In the earliest stages, the attitude of the Church towards its corporations was passive; in its latest stages, active. The Benedictines were tolerated by the Church — merely permitted to live a peculiar life; the Church used the Mendicant Orders as its instruments in destroying heresy, and the Jesuits to regain its control over social organization. The canonical chapters were the result of a positive compulsory action of the Church in an effort to accomplish within it what the monks had accomplished without it. But the change from passivity to activity was not merely a voluntary change of attitude on the part of the governing body of the Church; it is rather evidence that concurrently the vital forces of Christianity had been gradually transferred from the Church to its corporations, — the change of attitude was absolutely necessary if the hold of the Church on Christian society was to be

maintained.

8. One marked tendency of the ecclesiastical corporations was to make themselves self-sufficient, to fill the entire zone of activity in which they moved. The monks might well have been served by priests assigned to them by the bishops, but they were not satisfied until they were priests themselves. The Mendicant Orders might have restricted their activity to districts in which the bishops might suffer them to work, but they soon acquired the right to work in all districts without the consent of bishops. The canonical chapters might have lived their common life under the supervision of a bishop's appointee, but they nevertheless soon acquired the right to elect their own deans. When once the body of powers bestowed on the corporations passed beyond the point at which corporate maintenance was assured, they exhibited a striking ability to attract and absorb additional powers until they filled the entire field of activity in which the corporations were placed; they were able to escape reliance on other organizations of society for any part of their activity. Each succeeding group of corporations had greater powers and a wider organization than its predecessors.

9. As the corporations developed there appeared a tendency to internal differentiation and disintegration, approaching in some respects a final resolution of the bodies into their original individual elements. Instead of living in common with the monks, the abbot came to live apart and enjoy separate and distinct revenues, his place as actual head of the monastery being relinquished to the prior or superior, especially when the abbot came to be rather the head of a system of monasteries than the head of a particular one. As the distance between the head and body of the orders increased, more checks were devised to control the head, and even the service for life was reduced in some cases to short terms of service. Most of the duties of the monastery were early performed in rotation by the monks; but later they acquired some degree of fixity, and many of them were supported by separate revenues; even the positions of those who performed the duties came to be regarded as pieces of property that might be transferred from person to person; in the most degenerate days, many monks ceased to live in common and lived on separate pieces of the monastery lands distributed among them, with little regard for the original purposes of monasticism. In the canonical chapters, the relations of the canons to the chapters became quite insignificant, so far had their corporate dissolution extended.

10. The membership in the corporations became more select. Longer novitiates and periods of probation were required, until the one year's novitiate of St. Benedict became about fifteen years of passing from one grade to another to final admission into the body of *professi* of the Jesuits. While almost any member of society might be a Benedictine, rigid examinations determined the fitness of Mendicants and Jesuits for admission to their orders, and a formidable array of impediments restricted eligibility to fewer persons.

11. The tendency to filiation was so strong that the local unit of the monastery, greatly impaired in the congregation, was finally displaced by the larger unit of the order. The monastic congregations were the earliest "trusts," the Mendicant Orders and Society of Jesus were their logical results — organized churches within the Church, rivalling it in extent and power and threatening to displace it as the government of Catholic Christianity.

12. The most instructive feature of the growth of ecclesiastical corporations was their tendency to become an organization of the priesthood of Christianity instead of being a total organization of a part of Christian society. The early Benedictine convents were merely groups of laymen differing from ordinary laymen only in living a stricter mode of life, enforced and regulated by a written constitution and organized government, but receiving spiritual ministration from the same body of clergy as the ordinary membership of the Church. The "congregational" convents were an order of the clergy though including a class (now distinct) of laymen devoted to the temporal concerns of the body. The Mendicant Orders were bodies of priests, the only lay element being a class of "Tertiaries" not included in their organization, but identified with them only remotely by practicing in their own lives some of the precepts of the friars. The Jesuits were priests, politicians, and teachers, even more distinct from the rank and file of Christianity. The result of this movement was a corporate despotism so strongly intrenched that the Church alone could not dislodge it — perhaps did not dare to attack it because so dependent upon it — and had to accept the assistance of temporal states.

13. The corruption of monasticism and the consequent injury of the Church have been most frequently accounted for by charging the monks with having intentionally subordinated the original purpose of monasticism, the advancement of Christianity, to the pursuit of their own selfish interests. The charge contains an element of truth,

but the influence of the organic system of relations between the monastic orders and the Church is overlooked. The Church deliberately sought the promotion of its own welfare by encouraging the growth of organizations of Christians virtually independent of it; it was the penalty of trying to absorb a large number of members whose participation in its life must have been lacking in zeal and sincerity. The secondary result was to widen a chasm between the papacy and the great body of Christians within the Church which must have been narrowed in time if the papacy had not been placed in a position of dangerous independence through the support of the monastic orders. The weakness of the Church itself, due in large measure to the abstraction from it of the body of Christians organized in monastic orders, was the most potent factor in producing the Reformation. If the Christians who became monks had been so organized as to be kept in close contact with the rest of the world of Christians of which they formed a part, the public purposes of their organization could not have been so easily forgotten and their private interests could not have been so easily magnified. The criticism, however, might justly be made more widely applicable. The experience of the Roman Catholic Church in the use of corporations was not dissimilar to that of other organizations of society in their use.

IV. Feudalism and Corporations.

The point in history at which a study of English corporations (except those of the Church) must be begun is that of the dominance of feudalism. In the structure of an ideal feudal system there could have been no place for corporate forms; they would have been out of harmony with it. While in England, as in the other countries of Europe, feudalism did not attain the typical form that it approximated, it was so fully developed under William the Conqueror that only the most rudimentary corporate forms existed in some of the old English towns at the end of the eleventh century. When corporations began their development, it was at the expense of the feudal system, outside of it and largely in opposition to it, certainly not as an integral part of it or in conformity with it.

The peculiarity of feudalism was that when it was more nearly perfect it appeared to be the least necessary. Its rise and development were demanded by the need of security, — for the most part, purely physical security, safety of life and limb. After the destruction of the Roman Empire and the infusion into European society of the unorganized Germanic elements, civilization declined until it was checked in its downward course by the interposition of the feudal system. But feudalism as a social structure was inflexible; it could permit within it only a slight degree of social expansion. When the chief work of feudalism had been accomplished in the establishing of a tolerable degree of order and security, and society had resumed its progress, the feudal bonds were found to be as irksome in restriction as they had been agreeable in protection. Society in its expansion out of feudalism accordingly demanded new forms of organization for its various lines of activity. The want was supplied, for the most part, by corporations, though to some extent also by more extended and more efficient administrative organs of the central government.

As a general principle, it may be said that periods of social growth and expansion in both state and Church have been characterized by an extended prevalence of corporations, while organic periods of social life have witnessed the extension of the machinery of the state. Society has appeared to develop its new activities during

periods of transition in the framework of corporations as a kind of scaffolding or provisional structure, to be destroyed during organic periods, when the state and Church have been able to absorb partially or wholly the new activities and incorporate them within their own structure. In many cases the provisional structure has proved to be so appropriate for the activity exercised within it during its expansion that larger organizations of society, in absorbing it, have made the provisional structure permanent and have had to modify their own structures to conform to it. There is more truth, from the standpoint of history, in describing the state as a great corporation than in describing corporations as little states.

The growth of corporations depends much on the social unit, on the relations of the state to the individual. From the dominance of feudalism to the time when it was superseded by national organizations there was a gradual change from local units to national units — from feudal manors to nations. The growth of England outside of feudalism was in new local units (until the period of nationality was reached) and the extra-feudal local units were generally organized as corporations. When nationality was attained, the autonomy, and independence of the localities disappeared and they were largely replaced by sub-governmental administrative bodies enforcing national laws instead of locally enacted laws. So long as the national unit had been impossible, and local units had been necessary, there had been an appropriate field for corporations, which was occupied by them as far as feudal forms were unable to occupy it. Again when nationality had been attained, English society began an extra-national expansion by the conquest, settlement and economic exploitation of new lands; this movement was organized largely in the forms of corporations until it was complete, when its results were slowly absorbed by the state and the corporations, after a period of obsolescence, passed out of existence. The nation was the largest unit that the state (as organized) could control; when a larger unit was to be comprehended, the state resorted to the use of corporations for the purpose.

Before feudalism was dominant in England, the Church (considered as society organized on its religious side) had anticipated the decentralizing experience of secular society under feudalism and had recuperated its strength through the assistance of monasticism. Monasticism, however, had been made effective through the medium of corporations, which continued in existence and formed a part of the corporate life of post-feudal England.

Post-feudal society in England, then, except so far as its expanding activities were able to be organized either within the decaying structure of feudalism or within the extended machinery of the state or church, was organized in the forms of (I) Local-Internal Corporations, differentiated into (1) Ecclesiastical Corporations, (2) Municipalities, (3) Gilds and (4) Educational and other Eleemosynary Corporations. England in its national expansion was organized in the forms of (II) National-External Corporations, differentiated into (1) Regulated Companies, (2) Regulated-Exclusive Companies, (3) Joint-Stock Companies, and (4) Colonial Companies. Broadly speaking, none of the corporations comprised in these classes plays a direct part in the life of nineteenth-century society. A few of them still exist as obsolete survivals of a past social order; a few others are even of recent origin and occupy a legitimate field of activity, but the circumstances under which they have been created and are acting are clearly exceptional in the present order. The examination of the several sub-classes in detail will be the work of succeeding chapters of the present volume.

Under the influence of manifold new social movements that have developed, chiefly since the end of the seventeenth century and have been reflected in social institutions in the nineteenth century, has arisen another class Of corporations sufficiently distinguished from all their predecessors if they be called simply (III) Modern Corporations. So great has been the break between the life of this century and the older life, and so numerous are the social factors to be taken into consideration in the interpretation of this last class of corporations that extended treatment of them must be reserved for a separate volume.

V. Municipalities.

I — Towns before 1100.

What degree of growth was attained by cities and towns in Britain under the Romans is unknown, though the scant historical and archeological evidence indicates that they must have acquired considerable size and importance. And perhaps it is just to assume — it is barely more than an assumption — with Kemble[73] that the organization of Utica, colonial, and military stations in other Roman provinces was simply duplicated in Britain. It is, however, a question of hardly more than antiquarian interest, as no substantial features of their civilization and government survived the departure of the Romans except among the incompletely Romanized British during the interval preceding the advent of the Saxons and other Teutonic tribes. The benefits of the adoption of Roman institutions by the native British had been more than counterbalanced by the degeneration due to the contact with Roman social life. Their towns, with their mere shadows of Roman municipal institutions, fell a comparatively easy prey to the Picts and Scots on one hand and the Germanic invaders on the other. But after the British were expelled, their cities and towns were not occupied and inhabited by the invaders. The Germans were not builders of cities or dwellers in them; they were primarily agriculturists. It is a mistake to assume a continuity of English municipal institutions from the Roman days; there was a complete break at the time of the Anglo-Saxon invasion; the institutions of the later boroughs, towns and cities had their roots in the tribal organizations of the invaders.[74]

Thus it came that the settlements about fortified places, at the fords of rivers on convenient harbors, or around cathedral churches and monasteries, though somewhat larger than the agricultural villages, were organized on the same model as townships or groups of townships. Thus, too, when feudal institutions developed in England, they covered the cities, towns and boroughs, whose inhabitants were largely engaged in commerce, as well as the purely agricultural villages and manors, though certainly the feudal ties were not so strict in the former as in the latter. Most of the inhabitants of the towns held their land, the basis of their public rights and duties, directly of the

king — the towns were said to be "in royal demesne"; a larger proportion of the villages were subject to secular or ecclesiastical barons. The confiscated lands distributed by William the Conqueror among his followers were largely agricultural lands and their villages, — the towns he preferred to reserve to himself.

In the growth of English society out of feudalism there were at first two movements — a main movement in the upbuilding of a central power and an elaborated administrative machinery through which it could act, and an ancillary movement in the creation of corporations that represented, to a great degree, the inability of the expanding central power to comprehend all the new activity of society. It was the fortunate peculiarity of feudalism in England that it was conditioned by the existence, side by side with its chain of relations from the land-holder to the sovereign, of an immediate relation of every English man to the king as his subject, — a survival of the principles of the older English kingship. The main movement referred to was in the direction of extending and perfecting the immediate relations of king and subject, while the intermediate feudal relations gradually decayed. For a time, even the growth of town-life was retained within the regular administrative system of the central power, but eventually it secured organizations of a high degree of independence and autonomy. An understanding of the growth of town-life in its organic independence and autonomy demands a consideration of the relations of the townsmen to the monarch as *rex Anglorum* and his administrative system on the one hand and of their relations to the monarch and baronage as feudal seigneurs on the other hand — the former to discover the actual progress towards a future condition, the latter to observe the departure from a past condition. Yet the study is far from being so simple as it may appear. The monarch did not always distinguish in his dealings with his subjects whether he was acting as English king or feudal overlord; many of the relations, particularly those involved in taxation, were expressed in feudal terms long after the essence of feudalism had departed from them. In the county (the unit of administration) the office of sheriff long betrayed a tendency to become hereditary and in that respect to approximate a feudal type; indeed, the administrative system was tinctured throughout with the color of feudalism. Again, there was such a marked unevenness in the progress of the several local communities, and the set of social relations that constitute a corporation were acquired so much in fragments and in such varying order and combination, that the movement seemed to

be wholly without system. For that reason the growth of towns and town institutions from the Conquest to the middle of the sixteenth century must be considered as a whole; as no town can fairly be taken as a type, the general features of the development must be described, and the experience of particular towns must be used merely for illustration. It will probably be most conducive to clearness to consider first the detailed powers (and correlative duties) acquired by the town communities, and then the social structure through which they exercised them during the four centuries of their growth; the decay of the town corporations may be left for final consideration.

II — External Growth of Towns.

The actual transfer of powers from a feudal seigneur, whether king, noble, bishop or abbot, to a body of his vassals, or the confirmation by him in them of powers already assumed or retained in the form of local customs, was usually evidenced by the delivery of a written instrument, a charter, in return for the payment of a sum of money or the rendition of some other consideration. It is to the town charters, accordingly, that one must look for the best record of the changes in the distribution of social powers and duties that lay at the foundation of corporate town life.

The powers, franchises or libertates of the towns (except such as concerned their internal organization) may be conveniently considered under four heads: (1) The *Firma Burgi* (2) Tenurial Privileges, (3) Mercantile Privileges, and (4) Municipal Courts.

1. The *Firma Burgi*. — There had been a tendency, for a long time before the era of town charters began in the twelfth century, to segregate the revenues derived from the towns as well as those derived from other local organizations. The sheriff was the royal officer for the collection of all the revenue from the county, including the towns in it, but he very early came to be held accountable to the Exchequer for a given sum, with the right to retain for himself all the surplus revenues that he could succeed in extracting from the county; in other words, the county was farmed out to him or held by him in ferm, usually for a limited period or during the pleasure of the king. If the county was not held by the sheriff as former, he was said to be the custos of the county, in which capacity he was required to account to the Exchequer for all revenue collected by him, less his reasonable expenses. The sheriff's representative in the

town was the bailiff, sometimes held accountable for all revenue collected, and sometimes for a settled sum, with the right to appropriate the surplus; the bailiff might then, like his principal, the sheriff, be either a castes or a fermer of the town.[75] From the exchequer rolls extant it appears that the revenues of some of the towns were reported separately, while those of others were included in the general revenue of the county.[76] The revenue of each town was regarded as a piece of property, a unit in itself, capable of being transferred from holder to holder like any other piece of property; accordingly the towns "in royal demesne," those whose inhabitants were tenants of the king himself as lord, were often separated from those of the county and conveyed to persons other than the sheriff, to an individual subject, a body of subjects or, most important, to the group of tenants themselves. The *firma burgi* was the sum payable to the king as consideration for the revenues of the town; the person (or persons) who paid it was said to hold the town in form, whether perpetually, for a term of years or merely during the pleasure of the king.

It is hardly necessary to suggest that the grant of a town in form did not imply a conveyance of the land of the town; what was conveyed was its "issues," consisting chiefly of tolls of various kinds, the profits derived from the town courts and the rents payable by the individual town tenants to the owners of the soil. If land escheated, it escheated to the king and not to the town or other holder of the *firma burgi*.

The body of townsmen virtually took the place of the bailiff who had formerly represented the sheriff (and through him the king) in the collection of the town revenues.[77] The townsmen would still have to account to the sheriff for the ferm. But there appears in all corporate life a repugnance to submit to the control of the administrative organs of the state in which it flourishes. Just as the monastic bodies had found relations with the bishops irksome, and had soon found means of severing them, so now the town communities, having disposed of the much-detested bailiff by purchasing the privilege of occupying his place, were very generally willing to pay liberally for the privilege of accounting directly to the Exchequer for the *firma burgi* and such other moneys as should be owing to the king.[78] Accordingly in the exchequer rolls, the sums due from the towns are found entered separately from those due from the rest of the county and are ordinarily paid by some officer or other representative of the town.

Closely connected with the grant of the town in ferm to its townsmen as in a

measure a consequence of it was the grant to them of lands and tenements (or the privilege of acquiring and holding them) whose issues should be applicable to the payment of the ferm. Though a contrary opinion is expressed by Madox,[79] it may well be believed that the ferm of the town, as agreed on by the townsmen, would frequently be larger than its revenues. The revenues were not all that was paid for; the privilege of collecting their own tolls, rents and court fees (all to be properly regarded in the same light as modern taxes, though then viewed as incidental to property in some physical thing or public office), and of having in their own control the social organs for their collection, was an element of freedom well worth buying;[80] the holding of the *firma burgi* was nearly always accompanied by exemptions from tolls in other towns, and other burdens that would, in a number of communicating towns, decrease the revenues of each of them. Sometimes, too, towns decayed after a perpetual annual ferm had been agreed on, and deficits were regularly left to be made up by unwilling and incapable contributors or expunged from the exchequer rolls in the clemency of the king.[81] Probably it was easier to get contributions for the purchase of property whose revenue should be always applicable to the payment of charges than to get contributions for immediate and final application. Again, public-minded townsmen sometimes bequeathed lands and tenements to their towns for such purposes. In many cases in which it appeared that towns were actually unable to meet their recurring charges, the king conveyed to them sources of revenue for their assistance. E.g., Edward II, in the ninth year of his reign, granted to the citizens of Carlisle in aid of their ferm certain royal mills there and the right of fishing in the Eden, with other profits.[82]

2. *Tenurial Privileges*. — Strictly feudal social relations, in their developed form, were based on the tenure of land, though they were the outgrowth of earlier personal relations.[83] But after all men's relations to physical things are secondary; the primary relations are their personal relations to one another — their human relations. It is usual to regard the social changes following the eleventh century as caused by changes in the tenure of land, but in such a view effect is unfortunately substituted for cause. The feudal form of society may properly be regarded as a negative form — a form attained by retrogression rather than by progress — one that was good for society only because it was no worse — a refuge for mankind until the storm of the Teutonic conquests might expend its force. While the relations of personal

dependence and subordination that characterized feudalism were losing their strength and passing away, it was in the nature of the succession of changes that they should be reflected in concomitant changes in the tenure of land. It may hardly be said that the system of land tenure was modified; it was rather gradually superseded by a new system; feudalism was so rigid and inflexible that it could not be remolded or expanded — it had to be broken into fragments.

This is not the place for a tracing in detail of the steps by which the older feudal tenures were superseded; it must suffice to mention and account for the peculiar privileges of landholding enjoyed as a feature of the organization of towns. Originally, when feudal tenures approached nearest to systematic perfection at the end of the eleventh century, obligations of varying degrees of independence and servility rested on all tenants of land. In the manorial village, where the chief industry was agriculture, the feudal obligations took the form, chiefly, of labor on the lord's demesne, or of other labor connected with the agricultural life of the village. But the increase of population and the growth of a class of laborers brought about the use of the demesne land of the manor largely in the same way as the common fields; the lord and tenants were alike in position to make less use of personal services as a bond between them, and the commutation of the services to fixed renderings of goods or money gradually followed. The landowners became, to a large extent landlords enjoying rent from tenants rather than feudal seigneurs enjoying a complex of feudal services from subjects.[84] But outside of the agricultural life to which England was almost exclusively devoted at the time of the conquest the changes were greater. Whether there is some element in commercial and manufacturing life that makes them unsuitable for the form that was characteristic of feudalism[85] may well be doubted, but it is true that such life developed in England outside of the feudal forms in which society was enclosed in the eleventh and twelfth centuries. Trading and the pursuit of handicrafts had more remote relation to the land than had agriculture; if organic relations of dependence and subordination were to be introduced into them, they would have to be based on an element more vital to them; the future was to show that the organization of commerce and industry had to be based on capital (in the narrow sense) and not on land. The inevitable result of the development of the new social activities was a diminution of the extent to which feudalism should be an efficient system of social structure. If, then, even within the limits of agriculture,

feudal tenures were displaced, they must have given way even more readily in other fields of activity. Now, the towns were the seats of the new social activities, and the greater volume the activities attained, the greater was the separation from the older feudal system of land-tenure. The socage tenure came to be a wide group comprehending nearly all such varieties of tenure as had lost their peculiar feudal character and had retained a mere shadow of their former obligations in the easy burden of a moderate quit-rent or even nominal return; in that class belonged the burgage tenure, the distinctive tenure of the townsman, which permitted him to hold his land by the mere payment of a fixed rent, virtually paid to himself when the group of townsmen to which he belonged had acquired their town in ferm.[86]

Townsmen acquired the privilege, by virtue of their membership in the community, of freely alienating and bequeathing their holdings of land, especially if they had acquired them by purchase and not by inheritance. It was the opinion of Bracton that a burgage tenement could be bequeathed as a quasi-chattel, in which case the will and property would probably be expected to come within the jurisdiction of the ecclesiastical courts, but such was not eventually the rule established. Not only were holdings of land transferred in the town court, but some of the cities and towns established registers of wills where wills bequeathing burgages had to be enrolled; some conveyances also had to be enrolled. Moreover, the validity of local town customs as affecting the tenure of town lands was usually passed on by the town courts without serious interference from "Westminster law."[87]

The most conspicuous tendency was "to treat the burgage tenement as an article of commerce; it is likened to a chattel; not only can it like a chattel be disposed of by will, but it can be sold like a chattel."[88] Some of the town charters relieved the townsmen of feudal burdens such as those of marriage and wardship, so that the tenure by which they held land was modified accordingly.[89] Some special tenurial customs, as those of borough English, *retrait liguages* and *retrait feudal*, were confirmed. It was well established — and specially granted in some charters — that by membership in a town, a chartered borough, for a year and a day without being reclaimed by his lord, the serf became a freeman and held his land accordingly.

Such bodies of tenurial privileges must have been very early in their origin; in fact, they seem to have marked tile earliest differentiation of the townsmen as such from the mass of the people, for burgesses are mentioned in Domesday Book to distinguish

their tenures from others, and the earliest charter after the Conquest embodies William's promise that "every child be his father's heir, after his father's day."[90]

But the tenurial privileges though important in themselves are more important as elements in the life of the town groups and as marks of the townsmen's participation in it. They must have been most noteworthy in towns in which there were lands and tenements under several seigneurs;[91] in such towns the peculiar tenurial privileges granted by any one of them would be effective only in the cases of his own tenants, and would serve to distinguish them sharply from the tenants of others. Similarity of tenure peculiar to the group of tenants also served to make the group more compact within itself, while it separated it more completely from other groups — two processes equally essential in the crystallization of corporate life and structure.[92]

3. *Mercantile Privileges*. — To the burgesses of medieval English towns the most agreeable feature of the charters granted to them was their concession of trading privileges. As the towns were the seats of the commercial and industrial development that followed the establishment of order and security in the eleventh century, the older restraints on the production and exchange of commodities were most irksome to the townsmen, and the removal of them most welcome. Such privileges were acquired piecemeal and without order or system. In Domesday Book it is recorded that the men of Dover, in consideration of a payment to the king, enjoyed freedom of tolls throughout England.[93] Sometimes the freedom from tolls extended to the continental dominions of the English kings. In general, however, the important English towns each followed the early example of Dover by purchasing exemption by charter from the many kinds of tolls and fees that hampered trading in all parts of England.[94] As an incident to the grant of exemptions, permission was usually added to have a merchant gild, the necessary organization for the enjoyment of the privileges. Very many small towns secured the privilege of holding markets without further privileges; such towns hardly attained the status of corporations.

The exercise of such privileges had primarily to do with the relations of the inhabitants of one town with those of another. Their significance in this study lies in the fact that they were incidental to participation in the common, organized life of the towns. Commerce was inter-municipal. The town was the unit through which the merchant acted in his dealings not only in England but in foreign countries. The municipal unit was to be superseded by the national unit hardly before the sixteenth

century. The law recognized and sanctioned the rights and duties flowing from the use of the local unit. From the standpoint of commerce England was a federation of municipalities. If the merchant enjoyed his privileges in other towns, it was because he was permitted to rely on the charter of his own town in demanding them; if his privileges were denied him, he could fall back on his own town to obtain redress. Each townsman was responsible, not only for his own acts, but for those of his fellow-townsmen, if damage should be done by failure to respect a "foreigner's" chartered privileges. Of so great force was the grant of mercantile privileges in the evolution of municipal corporations in England that in the sixteenth century the power of holding a merchant gild was gravely asserted to be a legal test of their existence.[95]

4. *Municipal Courts*. — It hardly needed the keen sense of the medieval English burgher to discover that the exercise of a power in society is conditioned largely by its judicial interpretation and protection. If he and his fellow-townsmen were to nave their social relations to one another and to the rest of the world removed from the system of social relations generally prevailing about them, and to have them hardened into a new and peculiar set of institutions, they must be judicially protected as far as possible by reliance on the coercive power of society. The tendency of independent group-life to complete itself has already been noted; if once a body of powers has been conferred on a group of persons, and if they be of sufficient volume and strength to survive in the group and conserve its identity as a group, they invariably exhibit a tendency to attract other powers, and particularly such as are incidental to the exercise of those already conferred and necessary to their full enjoyment. In that tendency lies a general explanation of the growth in English medieval towns of municipal courts (or, more properly, the adaptation of existing courts to town purposes) with their peculiarities of procedure and exclusive jurisdiction, involving the limitation of the jurisdiction of other courts. "There can hardly exist a body of men permanently united by any common interest that will not make for itself a court of justice if it be left for a few years to its own devices."[96]

Local courts had been a part of the tribal system of the Saxons transplanted by them into Britain. When the feudal system had developed, the courts were kept intact, but were brought under the control of the governing class; fortunately the element of participation by the governed in the administration of the courts through the medium

of juries had been largely preserved. When the feudal control of the system came to be superseded by that of burghal corporations, nearly all that was necessary was the substitution of the mayor, bailiff or other town officer for the feudal lord, or his steward, bailiff or other representative. Accordingly the town charters did not often contain grants of the power of holding or presiding over town courts; the grant of that power seemed to be implied in the grant of others more substantial. If a town were conveyed to a body of tenants in form, part of what was conveyed was the issues or revenue of its local courts; the inference was very clear that the issues should be collected by a town officer; for that reason, doubtless, when the abbot of St. Edmunds conceded Bury St. Edmunds in ferm to his men, he found it necessary to reserve the power of holding the manor court.[97] In general the baronage, lay and ecclesiastical, were very tenacious of judicial privileges, as in fact of most others it was the communities of tenants holding directly from the king that most easily acquired the control of their own courts. Some of the manorial courts held by the nobility have continued in existence even until the present century.

Very frequently it was conceded in the town charters that townsmen (except moneyers and royal servants) should not be compelled to "plead without the walls" of their town except in pleas involving tenements held by them outside; and that if cause of action arose within a town, pleas founded on it should be tried in the town court. The jurisdiction of the town courts, however, was expanded rather on its civil than on its criminal side, the latter extending no higher than *infangthef* and *utfangthef*; on its civil side, the county court was virtually superseded by the town court. New forms of procedure were also introduced, the most notable being the reintroduction of trial by compurgation in place of the trial by battle earlier substituted by the Normans; and even after trial by jury had become the rule outside the towns, compurgation was still resorted to inside them. The jealousy of the county administration also appeared in the quite usual provision that the town should have the return of all writs served within it; the authority of the sheriff in the service of process yielded to that of the town constable at the town limits. Substantially the same result was accomplished in a few cases by raising a few towns to the dignity of counties, as in the cases of London, York and Bristol, — or more truly, by giving the town control over the county government in the same way in which it already had control of its own government; in such cases, the sheriff became an officer in the

choice of the townsmen and the inhabitants of the county became, to some extent, subjects of the town community; in some cases the jurisdiction of the town courts was extended over a "suburban" district outside of the original town limits.

But the growth of the town courts and of their peculiar procedure, and the readjustment of jurisdiction in respect to territory, subject-matter and suitors were rather effects than causes of the character of the towns; the absorption of the organs of judicial interpretation and protection was a secondary movement in the growth of town corporations; the primary movement was in the accumulation of a body of social powers and privileges. The former served, however, to intensify the latter and to give fixity and stability to its results.[98]

III — Internal Growth of Towns.

In the preceding sub-chapter have been considered the powers concerning chiefly the antagonistic external relations of the townsmen, the relations due to their increasing separation from the royal central power and feudal system, and their relations to inhabitants of other towns. Along with antagonism to the rest of the society in which a corporate group is found, it is essential to the nature of the group as a corporation that it be internally organized, that interrelations not only be sustained by the members, but that they also be orderly and settled, and given fixity and stability in corporate institutions. A "privileged order" is a group distinguished by the peculiar relations sustained by its members to the other members of the society of which it forms a part, but it is not a corporation, because it lacks the internal organization; the interrelations of the members of such an order are determined not by organized institutions of the order, but merely by their status in the wider society. The features of English towns now to be considered, having to do chiefly with their internal structure, may be distributed under three heads: (1) Town constitution, (2) Town legislation and (3) Taxation.

1. *Town Constitution*. — There was so great variety and such inequality of development in the framework of the town governments that the general outlines alone can be given here. A comprehensive and detailed study of the subject would require an examination of the constitution of each of the many towns during the four centuries of their development. It may at first thought be surprising that the earlier town charters provided no system of town government, though in a few cases

permission was given the *cives*, *burgences* or *homines* to elect freely their chief officer to take the place of the former representative of the king or lord. The reason doubtless was that a rudimentary system of local government was already in existence, inherited from the older system of county, hundred and township, with its feudal modifications, and was simply adapted to the use of the town as a self-governing unit. The charters of full incorporation, those containing a more detailed plan of constitution, date from the reign of Henry VI, the middle of the fifteenth century, when the town corporations had become separated from the general body of townsmen; the early privileges of the towns involved no great change in their institutions; the later ones were clearly exceptional in the close governing body as compared with the rest of the town and needed the legal protection of a distinct definition by charter.

The commutation of the issues of a town in the *firma burgi* does not appear to have resulted in making immediately elective by the town the officers that had formerly represented the sheriff; the bailiff appears to have continued to be appointed by the sheriff for the purpose, if not for that of collecting the issues of the town, of presiding over its courts and assemblies. It is accounted by the historian a veritable revolution when the election of the chief officer of the town was either conceded to the town or more or less forcibly seized by it. The new elective officer was almost invariably called the mayor, and the body of townsmen under him was frequently called the commune — words that seem to indicate the influence of French towns on those in England. The period of this movement in the direction of self-government was the reigns of Richard I and John, the end of the twelfth century, about a century after the beginning of the era of town charters.[99] Substantially the same result was accomplished in some towns by the concession of the election of the bailiff, or in small towns by leaving the town-reeve, already an elective office, free from the influence of a bailiff or other representative of the central power. The mayor had at first a small body of assistants between him and the body of electors, sometimes called bailiffs, and probably older royal officers who had not been superseded by him but had simply been subordinated to him.[100] Some of the towns were composed of wards, originally probably separate townships united in a hundred, that retained their older organization under aldermen elected by them; a body of assistants was thus formed of the aldermen; later, towns were divided into wards for the purpose of

supplying the body of aldermen or for mere police purposes; at all events, the body of assistants or advisers was usually composed of representatives of geographical divisions of the towns.[101] Thus there were officers for special town purposes, such as the clerk of the market, appointed by the mayor either alone or in conjunction with the body of assistants. When a town "became a county" (as it is usually expressed) there was no radical change in the institutions of the town; it is better to say that the county became subject to the town, the principal result of the change being that the town secured the appointment of the sheriff and consequently the control of the county court.

At the end of the first century after the beginning of the positive growth of town life the element of self-government implied chiefly in the election of the mayor was acquired; at the end of the second century a movement of more importance had been consummated in many of the towns — the growth of the council. It has been the habit to assume that English medieval towns were ideal democracies. But even in the primitive township and hundred organizations there was a strong aristocratic element, and in the later independent towns it became even stronger.[102] The four men who accompanied the reeve to the hundred court were not mere representatives of the township; they were *probi homines*. In the towns the chief burgesses, or capital portmen, soon emerged above the common level of their fellow-townsmen. The king or lord was in the habit of holding the wealthier citizens responsible for the fulfilment by the town of its obligations. During the twelfth and thirteenth centuries, however, the towns were fairly democratic; during the fourteenth century there was a steady decline in town democracy and the charters of the fifteenth century evidence the organization of the town aristocracies in technical oligarchical corporations. The early electorate had consisted of the inhabitants bearing scot and lot with their fellows; in their annual moots for legislative and judicial purposes, they had all come together to exercise their public duties as townsmen, even if their deliberations were presided over by the bailiff of king or lord. As the administration of the town government became more difficult by reason of the growth in business and population, the town-meeting became inefficient. When deprived of the function of initiating measures, the work of the official was still brought before the periodical meetings of townsmen for approval. A final step was taken when the popular meeting was replaced in many towns by that of a representative body, the council or common

council. The mayor, aldermen and common council became the type of the town government.[103] In some cases the council seems to have been originated by the mayor and aldermen, representing the aristocratic element, for the purpose of obtaining the popular sanction of their acts necessary to their validity; in such cases the body was composed of principal citizens summoned by the mayor; in other cases, however, the council seems to have been demanded by the common people for the protection of their rights.[104] Even in towns in which the council did not become one of the town institutions the people, though deprived of actual organic participation in the town government, yet prevented actual invasion of their rights by resort to force, as particularly in places where the use of much common property (pasture-land and the like) was enjoyed by the townsmen. By degrees the election of the mayor was lost to the body of citizens, and the board of aldermen and common council became close bodies, their members holding their offices for life and filling their vacancies by co-optation. By the end of the fifteenth century the transformation was generally complete.[105] The governing body came to be considered in law and fact the corporation,[106] while the community, the body of town inhabitants, became a body subject to the government of the corporation. To be free of a corporation now meant not to be a participant in the organic activity of the corporation, the governing body of the town, but merely to enjoy the advantages of life in the town under the control of the corporation.[107] Thus the movement in ecclesiastical corporations was duplicated in the towns. Monks originally been merely Christians, and the monastery a corporate organization of them; eventually they became priests, and monastic bodies became organizations of governing bodies in the church; likewise English town corporations, from being substantially organizations of townsmen became organizations of their governing bodies.[108]

2. *Town Legislation.* — If the earlier town charters contained no provisions for the framework of town government, they were equally silent on the limitations of the power of enacting by-laws[109] and other measures of local self-government. It was recognized and well settled as a principle that no town legislative might invade the limits of the royal or parliamentary law-making power, but the test was not often positively applied, except in London and the other large cities; however, the fear that the town charter or the powers granted by it might be summarily taken away by the king, if the limits of local necessity should be exceeded by the legislative body, acted

as a deterrent. It was ordinarily perilous for a citizen to invoke the aid of the king or his courts to determine whether the town had exceeded its legislative powers; he would do it only in most flagrant cases. To get justice from a royal court was expensive, and if given against a town or its officers was likely to be followed by a punishment quite out of proportion to the offense and likely to react on the complainant.

The limits of legislation were determined rather by the body of customs guaranteed to the towns or of powers granted to them in their charters. The customs were not always definitely known and it was virtually a matter of legislation to determine whether a particular custom existed. The actual extent of a custom known to exist had to be determined, and it was not always easy to distinguish between interpreting customs and making laws. In the expanding life of the towns it often became necessary to apply an old custom to new conditions — a necessity very likely to justify the virtual enactment of laws. The town certainly had and exercised the implied power to enforce and protect by appropriate and necessary legislation the powers positively granted to it by charter. Of course, town legislation was liable to be superseded at any time by a royal statute or act of Parliament, but as a matter of historical fact, the towns suffered very little disturbance from that source before the beginning of the thirteenth century.[110]

3. *Taxation*. — The financial burdens of the inhabitants of the towns were of two general classes: those involved in their participation in the town life, and those involved in their status as subjects of the King of England. The town's governmental institutions and its public industries were usually intended to be self-sustained through the medium of fees and tolls or through application to their support of the segregated revenues of parcels of property. The town-ferm was nearly always partly paid from the revenues of property held by the town for the purpose. The town-wall was kept in repair by certain townsmen in return for their holding certain lands and tenements. Official salaries were few and small and universally supplemented by fees. The principal tolls to which the town was entitled were passage, portage, lastage, stallage, bothage, engage, tronage and scavage. In the event of an actual deficit, however, the townsmen were required to contribute in proportion to their ability. The entire control of the matter of taxation for local purposes was in the town, except, it seems, that it could not levy new tolls or arbitrarily increase old ones,

and that it could not levy a tax for a new project, such as paving a street, without a royal grant of permission.

The principal financial burdens, outside of those incident to the local government, were the result of the king's levying tallages, fines and amercements. The central power levied them on the towns as units and left their distribution among the individual townsmen to the town authorities; in the event of a failure on the part of the townsmen to determine the several proportions of the levy that each should pay, the central authorities stood ready to make the distribution through the agency of the sheriff or of a jury or commission appointed for the purpose; a more expeditious procedure was usually resorted to, however, in the forcible collection of the amount due (especially if it were a fine or amercement) from a few of the wealthier townsmen, who were to later recoup the payments from their fellows as they might. When the period of parliamentary grants of subsidies arrived, the peculiar nature of the wealth of the towns was recognized in their grant of a larger percentage of personal property than was levied on rural taxpayers. The important feature of these taxes as of those for local purposes was that they were collected without the intrusion of outside officers; there was an element of freedom and self-government in the absence of the royal tax-gatherer.[111]

IV — Decay of Towns.

The preceding sketch of town institutions and the social activity that was exercised under their control and guidance, imperfect as it must be, is intended to exhibit the important features of the towns in their positive development; the elements of decadence have not been considered, unless some such elements are necessarily involved in the growth of the oligarchical town corporation. The period of growth of the towns as organic units ended in the fifteenth century; though the activity of the towns has since continued to expand without serious interruption, the expansion has taken place not in the towns as local units, but rather in England as a national unit. It has been suggested that corporations are provisional social structures intended to comprehend expanding social activity until the state, the wider and deeper organization of society, may be able to comprehend it. The English towns had their body of peculiar customs and social constitutions for maintaining and enforcing them, because the state as organized was not able to comprehend all English social

life. The central power, emerging from its feudal environment, was sufficiently occupied in maintaining a bare existence; it was not able to comprehend even the social activity already in existence, and its administrative system tended strongly to assume feudal attributes; much less was it able to assimilate the new elements of social life, for the most part mercantile and industrial activity, which found their sites in the towns. The king had been far more favorable to the towns in granting them chartered rights than had the nobility or churchmen, undoubtedly because of the double relation of king and feudal seigneur that he sustained to them; if the townsmen ceased to be his vassals, they still remained his subjects; if bishop or abbot released his townsmen from their feudal obligations, there was no retracing the step.[112] It was always recognized that the king's position relative to that of the nobility was strengthened by liberality with the towns, even though they were accorded much independence; it not only subtracted power from the nobility, but gave the king a most abundant source of revenue.[113]

Within the towns themselves and in their interrelations were movements that reduced their social isolation — and most effective among them, the affiliation of towns. The body of customary and chartered rights and powers and the necessary social structure for their exercise that prevailed in a few of the larger and more favored cities were used as models by other towns affiliated to them.[114] Thus London, Oxford, York, Winchester and Hastings be came models for many other towns in England; Bristol, Dublin and Kilkenny, for towns in Ireland; Hereford and Rhuddlan, for towns in Scotland. Sometimes the model town had itself been constructed in imitation of another town, as Rhuddlan in imitation of Hereford; and Dublin, of Bristol. Even when a town was not mentioned as a model in a charter, its charter had often been closely copied.[115] Sometimes charters recited that the king had allowed a town to make its choice of the town it would use for a model. In some cases one town would serve as a model in one particular, and another town in other particulars; in some cases only one feature of a town's liberties was imitated. Ordinarily, when one town had been granted the liberties of another town, it demanded (as a matter of right — sometimes specifically granted) and obtained a copy. of the model town's charter to aid in the determination of its rights and duties;[116] if afterwards doubts arose in the interpretation of its constitution, it was at liberty to get advice and information from the model towm Thus, even if there was room for many local peculiarities in the

several towns, the tendency of affiliation was to produce uniformity.[117] Again, the commercial intercommunication of towns rapidly increased and the contact of citizens of different towns in markets and fairs tended to obliterate the divergences of local customs. The impetus given to the commerce of foreign merchants in England in the reigns of the three Edwards exerted a similar influence; the presence of the foreigners aroused in the tradesmen of different English towns a sense of community of interests.

In the administrative reforms of Henry I and Henry II, the towns were regarded largely as distinct units. Before the middle of the thirteenth century the statutes that affected the rights and duties of all townsmen comprehensively were few. With Edward I, however, began a series of statutes directed to the concerns of merchants (another word for townsmen) generally.

> "Formerly there had been a vast number of separate local jurisdictions, each united by a similar tie to the king or head, but without any real connection with one another; now the towns in the different parts of the Country were enabled to realize the interests they had in common, to get over some of the old exclusiveness, and to join in demanding measures for the common good of their class in all parts of the realm."[118]

During the three centuries before the accession of the Tudors the social and legal status of burghers had steadily approached uniformity; in the sixteenth century the townsmen had become virtually an order in English society. In the fifteenth century, if not earlier, the conception of a *liber burgus* had become so definite that a charter granting merely the right to be a *liber burgus* conveyed a settled and determinate body of rights.[119] And it was only when the townsmen had become rather a stratum in English society than a federation of units; when, as Cunningham puts it, the sections of society had become horizontal instead of vertical, that they took an active part in securing the larger liberties of the English people; their previous attitude had been negative rather than positive; their influence on the government had been exerted to keep it from interfering with the towns; their desire had been to protect their own interests. When at the end of the thirteenth century the royal power had

sought to make itself more nearly comprehensive of English society by expanding the great council into a parliament, it had found two classes of social units without representation, the administrative counties of the agricultural population and the numerous corporate towns of the merchants and manufacturers, — very much as the Pope, after monasticism had developed, found his Church divided into administrative bishoprics and monasteries.

But the inevitable result of the summoning to Parliament of representatives from the towns was to break down the barriers of corporate town life. The rights enjoyed by townsmen ceased to be privileges because no longer exceptional; the only exceptional rights remaining were those of the close town governing bodies, which came to be very properly contrasted with the rights of the townsmen in general; the corporation seemed to be a fit framework for town life in general only so long as it was exceptional, in its rights and duties, in the larger volume of national life; when the town life came to be correlated with the life that surrounded it, the corporate shell shrunk until it included barely more than the privileged life within the town itself. The main-spring of corporations is the private interest of the persons organized in them; when the private interest comes to be reposed in a larger unit, the corporation is destroyed or shrinks by the exclusion of those whose interest has been transferred. It is suggestive that the fullness of town life, placed by Cunningham at the end of the thirteenth and beginning of the fourteenth century, was coincidental with the beginning of the modern parliamentary system, and that the decay of all the town powers seems to have culminated in the reign of Richard II, when the system had been fully established.[120] It is suggestive in the same connection that the fifteenth century was characterized by the codification of town statutes in "black books," "red books," and "white books," and by the greater fullness of town charters; laws and chartered rights could not rely for protection, either against the central government or against the townsmen, on public sentiment; exceptional rights are strictly construed and their record must be close at hand. The fifteenth century, too, was the century of struggles between town classes, between rich and poor; the compilations of laws and the more definite charters were for the defence of the rich governing body, the legatees of the older corporate town powers.

The decay of corporate town life, then, was not equivalent to a decay of town life in the larger sense. It is a characteristic of corporations, though theoretically it is

difficult to assign a reason for it, that when a wider social unit is in process of realization and is seeking to absorb the activity of a narrower corporate unit, the corporation can be used with little success as an administrative organ. An effort to make such use of corporations is likely to result in Jesuitism. The history of English towns after the period of the fifteenth and sixteenth centuries, when nationality was attained, is in a succession of acts by which the actual work of government is transferred from the obsolescent corporations to county authorities, justices of the peace, parish authorities, commissions and boards. Whether unfortunately or not, when England attained nationality, it was organized in a monarchical form, or at least in a system of government in which the monarchical element predominated. In resisting the establishment of constitutional government, the hollow shells of town government still existing in the close corporations of the towns were used by the monarchy largely as the means of maintaining an artificial and corrupt control over the House of Commons. Lawyers even discovered that the test of the corporate character of a town was its power to send members to Parliament.[121] From the reign of Henry VIII to the Revolution many of the older charters were modified and new ones granted to perpetuate and make even closer the close type of the town corporation; during the eighteenth century and especially in the long reign of George III, extending into the nineteenth century, there was no improvement:

> "there is little reason to doubt that the form given to the governing classes, as well as the limitation of the burgurship, during this period was adopted for the purpose of influencing the choice, or nomination, of members of Parliament."[122]
>
> "The importance which the privilege of electing members of Parliament had conferred upon corporate towns, or rather upon the governing bodies there, and the rewards for political services, which were brought within the reach of the ruling corporators, had caused this function to be considered in many places as the sole object of their institution. In some boroughs this right had survived all other traces of municipal authority."[123]
>
> "It had become customary not to rely on the municipal corporations for exercising the powers incident to good municipal government.

> The powers granted by local acts of Parliament for various purposes, had been from time to time conferred, not upon the municipal officers, but upon trustees or commissioners distinct from them; so that often the corporations had hardly any duties to perform. They had the nominal government of the town; but the efficient duties, and the responsibility, had been transferred to other hands."[124]

The office of high steward (or patron) of the borough sprung up to make a close connecting link between the corporation and the king and nobility; his function was virtually to nominate its members of Parliament. By the Reform Act of 1832 fifty-six of the nomination or "rotten" boroughs were denuded of the power to return members; thirty boroughs were deprived of one member each, and two of two members; sixty-four seats were distributed among other town populations; and the county representation was increased by sixty-five seats; thus, to some extent, the arbitrary element in parliamentary representation, a result of the prostitution of obsolete town corporations to the support of a corrupt monarchy, was removed.[125]

In 1835, however, the Commissioners on Municipal Corporations in England and Wales, appointed the year previous, found, as nearly as it could determine, two hundred and forty-six municipal corporations in England and Wales. In general, they consisted of a mayor, aldermen and common council, called collectively the town council; the mayor was elected annually from among the aldermen or common council by one or both of the bodies; the councillors were elected for life by the common council or aldermen; the aldermen were elected by the aldermen from among the common councillors, or past-mayors. In the community was a body of freemen, admitted to the franchise by vote of the close corporation; the right to the freedom might be derived from (a) birth of a freeman,[126] (b) marriage to a freeman's widow or daughter or (c) servitude through apprenticeship to a freeman; the freedom might also be conferred by (d) gift or purchase.[127] With few exceptions the corporations were making no effort to provide efficient local government. They existed quite independently of the communities in which they were placed. Even when there was a popular body in the corporation, it consisted of only a small body of freemen far from being representative of the society of the town. Their chief function being the election of members of Parliament, they were little more than

political machines managed and controlled for partisan purposes. The acquisition of the franchise was inspired, not by a desire to participate in local self-government, but by the hope of sharing in the profits of election. The choice of incompetent town officers, careless in the performance of their duties, resulted from the partisan control of the municipal elections. The business of the corporation was transacted in secrecy, sometimes enjoined by oath; the wholesome restraint of publicity was absent.

The mayor's office was neglected and the recorder's viciously filled; all offices were regarded merely as matters of patronage, and some of them were filled by nonresidents. Even the privileges of schools and hospitals were distributed for partisan purposes. The criminal jurisdiction of the town courts was defective and their personnel unworthy. The revenues of the town were frequently derived from improper sources, being the price secured by the sale of their political power. The public property of the towns was let to corporators at scandalously low rents or otherwise corruptly used for their own profit. Corporate funds and revenues were not devoted to municipal purposes, or, if so, with shameful waste and carelessness; in fact, corporate property was not viewed as held in trust for the public; even funds and taxes required by law to be used for specific charitable or other public purposes were shamefully used by corporators for their private enrichment. Exemption of corporators or freemen from tolls and other public obligations gave rise to grievous inequalities. Fining citizens for refusal to accept onerous public offices was regarded as a legitimate source of corporate revenue. In many towns there was no corporate income and the public expenses were borne by the patron or parliamentary members of the town; in others that had sources of income, their issues were absorbed in salaries and the entertainment of the town council and its friends. Civil and criminal justice failed to be administered in the courts because all jurors were freemen and would not antagonize fellow-freemen by adverse findings; the jails were not properly maintained, and the insufficiency of the police force in some towns had to be remedied through local acts or the employment of private watchmen by citizens. In consequence of the anomalous position of the corporations, there was widespread discontent among the people.[128]

The report of the commission was followed by the enactment of the Municipal Corporations Act of 1835, providing,

> "that so much of all laws, statutes, and usages, and so much of all royal and other charters, grants and letters patent... in force relating to the several boroughs [in England and Wales, with the exception of the City of London], or to the inhabitants thereof, or the several... bodies corporate [therein] as are inconsistent with or contrary to the provisions of this act,... be repealed and annulled."

The act also provided, though it retained the structure of the old corporations, that it should be uniform in all boroughs (except as to the number of aldermen and councillors, the former, however, being in all cases one third the number of the latter) and should be designated as the "Mayor, Aldermen and Burgesses" of the town; the mayor should be selected annually by the aldermen and councillors from among their number; the aldermen, from four to sixteen in number, for terms of six years (one half going out of office every three years but re-eligible) by the councillors from among themselves or citizens qualified to be councillors; the councillors, from twelve to forty-eight in number (with a small property qualification), annually for terms of three years (one third going out of office every year but re-eligible), by resident householders having paid poor-rates for three years; the rights of existing freemen were preserved for their lives but their exclusive franchise was destroyed and they were to have no successors.[129] By the measure, "second in importance to the Reform Act alone," "local self-government was effectually restored."[130] The movement was virtually an abolition of municipal corporations and the substitution for them of sub-governmental bodies, lacking in most of the essential attributes of corporations and deserving to be considered rather as organs of a nationally organised society.[131]

It is worthy of note that when municipalities of England came to be reduced to harmony with the wider national government of England, they were permitted to retain, in most of its features, the form that they had acquired during their development. The mayor, aldermen and burgesses were retained. The mayor was still to be chosen by the aldermen and councillors from their own number. The governmental structure of the new municipalities was changed but little. The changes that were introduced were intended to adapt the old structure to new uses through the limitation of terms of office, the expansion of the municipal suffrage and the

consequent imposition of increased responsibility. In the capacity of local corporations, the municipalities had served as organizations of local social units as long as such units enjoyed a distinct existence; in so doing they had evolved a type of structure; when it became necessary to organize the population of localities as parts of a larger and inclusive unit instead of distinct local units, the type of municipal structure that had been evolved was used for the purpose. When corporations are absorbed by the state, their structure is more likely to be made a part of that of the state than to be replaced by a new structure.

VI. Gilds.

I. — Classes of Gilds.

The term "gild" is applied to four classes of associations: (1) Frith-gilds, (2) Social-Religious gilds, (3) Ecclesiastical gilds and (4) Trade gilds, consisting of (a) Merchant gilds and (b) Craft gilds. But the four classes are not exclusive; all gilds possessed religious and social (fraternal) elements in varying degrees, and few gilds are found to have been rigidly confined to the attributes of their class; yet the classification is sufficient for purposes of description. Moreover, not all the gilds may properly be considered corporations. Corporations are essentially developed forms of association; they are not so much a particular class of associations as associations of all kinds in a particular stage of growth. The test of the corporate character is triple, involving the interrelations of the associated persons, their relations to other individual members of society and their relations to the state. Associations not only pass through preliminary stages in attaining the corporate stage, but they frequently leave the latter, either relapsing into a lower stage by the loss of corporate attributes, or advancing to a higher stage as administrative organs of the state through their absorption by it. Corporate life might be described as a portion of the stratum of associated life included between two cross-sections of it. It would consequently be quite impossible, even if profitable, to entirely separate in study the peculiarly corporate stage from the preceding and succeeding stages of associated life. The four classes of gilds will accordingly be considered in turn.

II. — Frith-Gilds and Social-Religious Gilds.

1. In the seventh and eighth centuries the social organization of the Anglo-Saxons in England had undergone many changes since the time of their immigration, but the most important change had resulted from the partial relinquishment of the family as the unit of rights and duties, and the formation above it of the state with its system of government and laws. The disintegration of the family had been hastened most by the increasing stability of the relations of the people to the soil and the consequent

growth of private ownership of land. The Frith-gilds were more or less voluntary associations, not based on kinship, that partially replaced the old family unit in Anglo-Saxon society; that is substantially all that may be said of them. Security of person and property was becoming more necessary as the older social system was left behind; neither a firmly established state nor a feudal baronage was yet at hand. Perhaps there was a process of gradual disintegration of the family by the formal admission of outsiders into the family bond, but history affords no evidence of it; it seems unlikely, moreover, because the family and Frith-gild are explicitly contrasted in the Anglo-Saxon laws.

Two of the laws of Ive have caused much controversy among students of gilds. Whether it is safe to say that gilds existed in England in the seventh and eighth centuries depends almost entirely on the construction put upon these two laws.

> "He who slays a thief must declare on oath that he slew him offending; not his gild brethren" (*gegildan*).[132] "If a man demand the 'wer' of the slain, he must declare that he slew him for a thief; not the associates (*gegildan*) of the slain nor his lord: but if he conceal it, and after a time it become known, then makes he room for an oath on behalf of the dead man, that his kindred may exculpate him."[133]

What is meant by "gegildan" cannot be stated with certainty. It has been interpreted to mean minor compulsory organizations of the state, such as the township and hundred. Gross, who has given the subject probably the most careful examination, admits that he does not know what the "gegildan" were but adopts the cautious view of Schmidt that they were "gild-comrades" (*Zahlungsgenossen*) — those who mutually paid for one another.[134] Thorpe even suggests that the word as used in the first law cited may mean nothing more than "comrades in guilt."[135] The word must mean at least mutually responsible associations not based on kinship, whether voluntary or compulsory.[136] In the laws of Alfred the distinction between the older family organization and the new organization that was supplementing it is more apparent.

> "If a man, kinless of paternal relations, fight and slay a man, and then

> if he have maternal relations, let them pay a third of the 'wer'; his gild-brethren a third part; for a third, let him flee."[137] "If a man kill a man thus circumstanced, if he have no relatives, let half be paid to the king; half to his gild-brethren."[138]

These laws are included with only slight changes in the code known as the Laws of Henry the First.

> "Si quis autem paterna cognacione careno male pugnet ut hominem occidat, si tune cognacionem maternam habeas, reddat ipsa terciam partem were, terciam congildones, pro tercia fugiat. Si nec maternam cognacionem habeas, reddant congildones dimidiam weram, pro dimidia fugiat vel componat. Si quis occidatur ejusmodi, secundum regi, dimidium congildonibus."[139]

But the organization of the gild-brethren is still so uncertain that nothing save the quality of mutual responsibility can safely be predicted of it.

The *Dooms of London* (*Judicia Civitatis Londoniae*) of the reign of Æthelstan, have been somewhat extravagantly referred to as "a deed of incorporation by the prelates and reeves of the Londoners for the repression of theft and maintenance of the public peace."[140] They appear to be a body of laws independently ordained by the bishops and reeves of London and then given royal sanction by being annexed to the body of laws ordained by the king and his witan.[141] They provided that when a thief had been slain, one fourth of the surplus of his property after the payment of the"ceap-gild" should go to the "fellowship";[142] that each ("except the poor widow who has no 'forwychta' nor any land") should contribute to a common fund to pay for stolen goods, and that all should "have the search in common";[143] that if any man "who has given his 'wed' in our gild ships should die,... each gild-brother shall give a 'gesufel' loaf for his soul, and sing a fifty or get it sung within xxx days";[144] that whosoever might should avenge the injuries of all, that they "should be all in one friendship as in one foeship," and "that he who should kill a thief before other men,... be xii pence the better for the deed, and for the enterprise, from our common money..."[145] If gilds be defined somewhat broadly as associations "whose significant feature was a

fraternal feeling of mutual interdependence and close affection,"[146] "voluntary associations for mutual support,"[147] or associations "for mutual help, made by the people themselves when and as they found the need for it,"[148] then the London Frithgild may be said to have been the first of English gilds, even though it is not plain that it was fully voluntary and the dooms of London ordained for its government were hardly "made by the people themselves." It is difficult to discover any essential difference between the organization of the London Frith-gild and the prevailing organization of the population in townships and hundreds. The convivial nature of the monthly meeting, of which "bytt-fything" was a feature, is of no significance; the meeting was, after all, of "'hyndrum' and those who direct the tithings" — of officers of the regular subdivisions of the state, not of officers of a closer body within the body of the state. The most important fact is that the dooms of London were expressly ordained for the people of London, that the body of population subject to them was treated as an exception in the general body of English people, — the first step towards corporate autonomy and independence.

2. Of the social-religious gilds there is some definite information concerning the gild at Exeter, D'Orcy's gild at Abbotsbury, the Thanes' gild at Cambridge and the Cnichten-gild of London, as well as some fragmentary references to others.

"This assembly was collected in Exeter, for the love of God, and for our souls' need, both in regard to our health of life here, and to the after days, which we desire for ourselves by God's doom." Meetings were held three times a year on feast days of the Church; each member made a contribution for the common expenses, and a priest at each meeting sang two masses, one for the living and one for the dead members; each brother was also to sing two psalms, one for the living and one for the dead. On the death of a brother, each other brother was to provide six masses or six psalms, and to contribute five pence. If a brother's house should be burned, each other brother should contribute a penny for his assistance. Fines were imposed for failure to perform fraternal obligations; "misgreeting" a brother was punished by a fine of thirty pence.[149]

In D'Orcy's gild at Abbotsbury, contributions of money or wax were made by gild-brothers on the occasions of religious services; at the same time each contributed a loaf of bread for common alms. A fine was imposed for misgreeting another in the gild, in hostile temper. "Let him that introduceth more guests than he ought, without

leave of the steward and the caterers, forfeit his entrance.'‘ In sickness, fraternal aid was rendered; in death, burial was provided and the attendance of all the brethren was required.[150]

In the Thanes' gild at Cambridge, "each gave oath upon the relics to the rest, that he would hold true brotherhood to support him that Lath the best right." Burial of a dead brother was conducted by his brethren and failure to attend was punished by fine. "Let the gildship inherit of the dead half a farm, and each gildbrother contribute two pence to the alms, and out of this sum let what is fitting to be taken to St. Æthelthryth." Brethren were aided in need and against the depredations of thieves.[151]

> "If any gild-brother slay a man, and if he be a compelled avenger and compensate for his insult,.. let each gildbrother assist... but if the gild-brother with folly and deceit slay a man, let him bear his own deed; and if a comrade slay another comrade through his own folly, let him bear his breach as regards the relations of the slain."

Misgreeting was punished by fine. In sickness or death, a brother should be removed whither he had willed.[152]

The "Anglica Cnichteen-gild of London" is said to have been originally composed of thirteen men who received a grant of land in eastern London from Cnut in recognition by him of powers displayed by them in personal combats. The right to hold land was accompanied by the right to associate and to bear the name "Cnichtengild." They were recognized in a charter of Edward the Confessor as having a "gild," rights in land, and a body of special customs. In 1125, fifteen men, the successors of the original thirteen, gave to the church and canons of Holy Trinity near Aldgate the land and soke called "Anglissah Cnichte-gilde" in return for their admission to the monastery. They surrendered their charters to Holy Trinity, King Henry confirmed their gift and their history as an association ended. There were Cnichten-gilds in Winchester and Canterbury also.[153] To what class of society the cnichten belonged is uncertain, but it is plain from the evidence of the conveyance of land by the Cnichten-gild of Canterbury to Christ Church that its membership was partly or wholly composed of merchants.[154] If the word "Cnicht" be equivalent to "Thane," then it may be inferred that the Thanes' gild of Cambridge was also

composed, to some extent, of the same class, especially as it is known that thanehood could be acquired by making three successful voyages to foreign lands. The Cnichten-gilds were at least probably restricted to the more prominent and influential classes in the towns.

3. There were also gilds organized under the auspices of the Church and composed wholly or partly of the clergy. One of the laws of King Edgar seems to indicate that such associations existed in his reign. "We enjoin, that no priest deprive another of any of those things which appertain to him; neither in his minster, nor in his shrift-district, nor in his gild-ship, nor in any of the things appertaining to him."[155] There were gilds of the Kalenders (the most noted one being in Bristol) composed at first of clergy alone, who met on the first day of each month, but afterwards admitting lay-members, sometimes limited in number, and both men and women. William of Worcester is authority for the statement that the Gild of the Kalenders in Bristol "was founded in honor of the feast of Corpus Christi, long before the Norman Conquest, about the year 700," but the statement is discredited. Annexed to its normal activity as a gild, it had as one of its functions the custody of the archives of the town, the keeping of a monthly record of all public acts and the registration of deeds and rolls, and the maintenance of a school for Jews and other strangers for the purpose of bringing them up in Christianity.[156] In the fourteenth century, clergy were sometimes admitted to membership in secular Social-Religious gilds, but were not allowed to hold offices in them or participate in their deliberations.[157]

Bishop Osbern and the canons of St. Peter's monastery at Exeter were members of the gild at Woodbury, gathered "in the name of Christ and St. Peter the apostle"; at Easter, one penny for every hearth was to be paid to the canons; for every departed gild-brother one penny for every hearth was to be contributed as "soul-shot, be it a man be it a woman who belongs to the gildship"; "and the canons are to have 'the soul-shot,' and perform such service for them as they ought to perform."[158] In Bishop Wolfstan's gild, the bishop was associated with the abbots of Evesham, Chertsey, Bath, Pershone, Winchcombe and Gloucester, and the dean of Worcester. They were to "be faithful to our temporal lord King William and to Matilda the lady," to be obedient to God and St. Mary and St. Benedict and to be "quasi cor unum et anima una." Every week there were to be two masses in each monastery. " It is the agreement of the abbots that they will be obedient to God and to their bishop, for

their common need." "Each shall perform and, for his own account, buy a hundred masses, and bathe a hundred needy men, and feed them, and shoe them. And each [shall] sing himself seven masses and for thirty days set his meat before him, and a penny upon the meat."[159]

After the Norman Conquest, the Frith-gilds appear to have lost their identity as social units. Their social functions came to be performed by other kinds of associations, by the towns, Trade gilds, and Social-Religious gilds. Moreover, the growth of a national government and of the feudal system provided new centres around which the old mutual responsibility might revolve. The Ecclesiastical gilds, also, seem to have been crowded out by the development of a more completely organized church.[160] Yet there is reason to believe, notwithstanding serious breaks in the historical evidence, that the SocialReligious gilds contrived to be prominent and influential factors in English town-life until the middle of the sixteenth century. But they had scarcely any new features. All their essential elements as gilds were already present at the time of the Conquest, the restricted membership, the periodical meetings on feast-days of the Church, the contributions to a common fund for purposes of religious worship and of fraternal and general charity, the feasts, and fraternal aid in sickness, distress and death.

In the second Parliament of 1388, held by Richard II at Cambridge, writs were ordered to be sent to all sheriffs directing them to call upon the"Masters and Wardens of all gilds and brotherhoods" for returns

> "as to the manner and form and authority of the foundation and beginning and continuance and governance of the gilds and brotherhoods aforesaid: as to the manner and form of the oaths, gatherings, feasts, and general meetings of the brethren and sisters; and of all other such things touching these gilds and brotherhoods: also as to their liberties, privileges, statutes, ordinances, usages, and customs and moreover as to all [their] lands, tenements, rents and possessions, whether held in mortmain or not, and as to [their] goods and chattels, and as to the true value of said lands, tenements, rents, and possessions, and the true worth of said goods and chattels: also as to the whole manner and form of all and every the premises, and

> of all other matters and things in any way concerning or touching the said gilds and brotherhoods"; "And that the said masters and wardens shall bring and lay before us and our said council... the charters and letters patent, if they have any, granted by us or any of our forefathers, in any way touching or concerning the aforesaid gilds or brotherhoods, upon pain of the revocation and perpetual annulling of the charters and letters aforesaid, and of all the liberties, immunities, privileges, and grants contained in [them]"

to await such further orders as should be given by the council and Parliament.[161] In compliance with the terms of the writs, many reports[162] were made in behalf of the gilds, from which their character at that time may be quite fully learned. A brief consideration of them will substantiate the statement that they differed little from those of the eleventh century.

The gild, founded and organized by the town or by a group of people within it, was almost universally dedicated to some saint or religious symbol,[163] and was usually known by that name except when it happened to be the only or most prominent gild in a town, and then it was often known by the name of its location. Among the purposes of the gild were the "amendment of the lives and souls" of the brethren and sisters and the "nourishment of love" between them, prayer for all manner of men at every meeting, the maintenance of a saint's image in a church; the "maintenance of the play of the Lords' Prayer in York, for the benefit of both hearers and upholders," and "to hold certain [religious] services and the better to secure the liberties of the town." The head officers were from one to four wardens (usually with a small body of assistants called stewards), — an alderman, steward and two assistants, — or an alderman, chamberlain and eight assistants. Other officers were deans, clerks, bellmen and beadles. In some gilds small salaries were paid to some of the officers. The officers were elected annually by the whole fraternity, annual reports were required and refusal to accept office was punishable by fine. Ordinances were enacted by the consent of all at annual or quarterly meetings, but they were not to be against the common law or the"King's right." From one to four meetings were held each year. Both men and women (whether resident or not) were admitted to membership on vote of the fraternity or by leave of the warden and twelve members.[164] An

entrance oath to keep the ordinances of the gild was usually imposed, and sometimes a "kiss of love" had to be given to the newcomer by all present. The ordinances of the gild were read to new members (and sometimes to all members) so that they might not plead ignorance of them. Entrance fees and annual and quarterly dues were levied and voluntary contributions recommended.[165] Property in the form of lands and tenements, grain, cattle (leased by the year) and articles used in religious ceremonies was owned by the gild.[166] Many members (and even non-members) donated or willed property to the gild for general or special purposes.

The regular and special meetings were usually held after more or less elaborate devotional services in the church of the patron saint of the gild or elsewhere, the expenses of which it had partly or wholly defrayed. Some of the gilds maintained chaplains, chapels or chantries; others provided that a chaplain should be maintained if the gild could afford it, the poor of the gild having the first claim on its resources. All meetings were characterized by the usual feasting and drinking, for the provision and regulation of which the ordinances contained many rules, as that no brother should enter the "ale chamber" without permission of the warden, that the officers should have certain allow ances, that "no brother nor sister [should] be so hardy, [as] to sleep, nor let the cup stand by him," and that no brother should sit at the feast longer than the aldermen; many of the gilds had processions and games and a few produced spectacles on the occasions of their meetings.[167] Absence from the meetings (especially on the part of members in town when they were held) was punished by fine. Members were not to attend meetings in a tabard or cloak or in bare legs or barefooted. Some gilds had a livery worn at all meetings and at the burial of brethren and all public courts in which the gild participated; if a brother could not afford a full suit of livery, he was provided with at least a hood at the expense of the fraternity.

All brethren were to be good men or men of good repute; no others were admitted; if members committed crimes, violated the canon law or were otherwise seriously remiss, they were subject to expulsion, until, at least, their conduct should be amended. Brethren unruly, boisterous, heedless of the ordinances or rebellious of tongue toward the aldermen were subject to punishment by fine. Penalties for wronging one another or disclosing to outsiders the affairs of the gild were provided. No gild-brother might become surety for another for debt or trespass or other obligation without the consent of the aldermen and chief brethren. In case members

should quarrel or disagree, their matters of difference should be submitted to the aldermen alone or with a part or all the brethren; if they should disregard the decision reached or should again quarrel, they should be subject to expulsion; suits at law should be resorted to only on consent of the gild after its efforts to reach a settlement had proved unavailing. Fraternal aid was extended in old age, sickness, loss by robbery and damage by fire or the sea. Money was loaned from the common-box in times of need, security for its repayment being sometimes required. Young brethren were helped to find work. Young unmarried women of the gild were also materially assisted:

> "If any good girl of the gild, of marriageable age, cannot have the means found by her father, either to go into a religious house or to marry, whichever she wishes to do; friendly and right help shall be given her, out of our means and our common-chest, towards enabling her to do whichever of the two she wishes."[168]

Brethren distressed in their business were assisted, unless their straits should be due to their own folly, riotous living, rising too late in the morning or sloth and indolence. Members unjustly imprisoned were visited and comforted. Members on pilgrimages to the Holy Land or elsewhere were exempt from the payment of fees, or positively assisted, accompanied outside the walls of the city on setting out and met on returning. When a brother died, all (on penalty of being fined) attended the services at his burial, defrayed the expenses of it, and made offerings not only for the masses for his soul's welfare but for general alms;[169] if he died out of town, his corpse was brought back at the expense of the gild, or services were held even in its absence; if he were drowned it was the duty of his gild-brothers to search the sea for his body (to a distance of six miles). In some towns the gild had peals rung in honor of dead brethren. One of the ordinances of the Gild of Palmers, at Ludlow, provided that a brother might keep night-watches with the dead on condition that he"neither call up ghosts, nor make any mockeries of the body or its good name nor do any other scandals of the kind."

In addition to purely social-religious functions, many gilds assumed a variety of public functions, as the maintenance of schools and hospitals, care of bridges and

highways and the repair of town-walls. The Gild of Ringers, which flourished at Bristol in the fourteenth and fifteenth centuries, and the Gild of Minstrels and Plays, found in Lincoln at the end of the fourteenth century, aimed to promote the cultivation of music.[170]

With few exceptions the gilds that made returns in 1389 had been formed in the fourteenth century. The returns are not proof of an historical continuity of Social-Religious gilds from the eleventh to the fourteenth century, and there is little supplementary evidence. But, on the other hand, there is nothing to account for an exceptional outburst of such organizations in the fourteenth century. The close similarity of the gilds then existing to those of the eleventh century is in itself an argument for the continuation of such a social structure during the intervening two centuries — an argument strengthened by the fact that Merchant gilds, with all the dominant characteristics of the purely Social-Religious gilds, were most prevalent in the twelfth and thirteenth centuries. If there is some uncertainty of their activity during some centuries, the middle of the sixteenth century is very definitely the time when their activity ceased. In the act of 1545 for the dissolution of colleges in the reign of Henry VIII,[171] "fraternities, brotherhoods and guylds" were included with "colleges, free chapelles, chantries and hospitalles"; many were expressly named for dissolution, and commissioners were to investigate many others; but by the more general provisions of the act of Edward VI of 1547 for the same purpose, all fraternities, brotherhoods and gilds in England and Wales and the King's other dominions, except those of "Mysteries or Crafts," and all their property should be in the possession of the King "without office or inquisition."

The derivation of gilds is as doubtful as most questions relating to them. The class of writers that are inclined to find an origin in Roman institutions for many other features of the structure of Anglo-Saxon and English society, look to the Roman "collegia" and "sodalitates" for the source of English gilds; but it certainly is impossible to prove a continuity of organization from the Roman to the Anglo-Saxon period; the only argument seems to be based on the mere similarity of the institutions, and that, of course, is hardly sufficient. Other writers have sought to trace gilds to the old heathen sacrificial feasts of the Teutons, at which either kinsmen or larger groups of tribesmen gathered; but there was no stable organization or fixed body of relations among the people that attended them; the only common feature was the periodical

meeting for religious worship with its accompanying feasting and drinking. Gilds have also been called "artificial families," with the clear intimation that they have their source in the family — a suggestion that can be based on hardly more than fancy. Perhaps they may be most easily explained (or their explanation avoided) by deciding that they were merely "natural" or "spontaneous" organizations, having their origin in the spirit of the time or in current conditions.

The status of a corporation was hardly attained by any of the three classes of gilds described. The attitude of the state toward associations of its subjects may be of four kinds; it may (a) oppose, (b) permit, (c) encourage or (d) demand them. (a) If the state is opposed to them and they exist in spite of its efforts to suppress them, they are assuredly not corporations. (b) If the state is indifferent and merely permits them to exist, they are likewise not corporations, wanting as they are in the power to enlist the coercive power of the state in the maintenance of a body of rights and powers. (c) The ideal attitude of the state towards corporations is one not of passive indifference but of active encouragement; the state recognizes the public importance of their functions and secures the performance of them through the bestowal of the necessary rights and powers and of the legal sanction to make them fully operative. (d) If the state compulsorily and arbitrarily divides its subjects into groups for governmental purposes, they are not corporations, even if they have in their own control the administration of the affairs of particular importance to them. Thus the Frith-gilds, though they appeared to be executing "agreements," were virtually compulsory organizations of local populations; the attitude of the state towards them was one of more than mere encouragement. On the other hand the Social-Religious and Ecclesiastical gilds exercised functions not recognized as essential to public welfare; the attitude of the state was correspondingly passive. Yet whether purely voluntary or compulsory, the associations had the internal organization that would be serviceable for corporate activity; the use of such an organization would be calculated to train the people in preparation for more indenendent self-control.

III. — Merchant Gilds.

The Merchant gild (or gild merchant, as it was usually called) was merely a gild of merchants. A gild was an association of persons for the preservation of the peace, the promotion of social fellowship, the performance of religious worship or some other

phase of social activity of common interest to its members; merchant gilds differed from other gilds in having for their purpose the protection and promotion of the economic interests of merchants. It would be hardly right to say that they were derived from other kinds of gilds. Mutual responsibility and mutual advantage organically rendered was a universal characteristic of local medieval society; the social unit through which they had to be secured was necessarily a small unit. The particular kinds of gilds prominent in each successive period depended on the social needs of the time. The merchant gild did not make its appearance until after the Conquest because, doubtless, the economic development of England had not earlier attained a point at which there was a trading class to organize. Possibly the mutual interests of traders, unimportant as they must have been, had previously found protection under the guise of the Cnichten-gilds; the reference to one of the earliest merchant gilds, the so-called Chapmen's Gild at Canterbury in the archepiscopate of Anselm, seems to indicate such a connection. Writers have often without warrant considered the Cnichten-gild of London a merchant gild. But mere speculation is idle: the first historical evidence of a gild that may certainly be called a merchant gild is in a document evidencing the conveyance by the Chapmen Gild of Canterbury of some houses to Christ Church between 1093 and 1109, and in a charter of Robert Fitz-Hanon to the burgesses of Bereford between 1087 and 1107.[172] As a matter of historical evidence, then, the merchant gild made its appearance in England at the end of the eleventh century. Closer relations with the Continent and the greater security of life and property afforded by the rigorous rule of the Conqueror gave an impetus to English commerce at home and abroad; moreover, a considerable body of traders followed William to England, — such at least is a fair inference from the frequency with which French surnames are found among the merchants of London and other important towns of the period. The merchant gild as an institution may have been imported by the foreigners into England, for it flourished on the Continent among peoples with whom the English were in close contact before it arose in England; but the weight of evidence is against such an origin; it was not found in London where the influence of the foreigners was greatest and it was found in many small and remote places[173] whose influence must have been slight; moreover, the governing class of the Normans do not appear to have favored its transplanting. It was essentially due to conditions new in England, but comparatively old on the Continent.

The origin of the merchant gild in England must be ascribed to those conditions and to the character of the local social structure within which the new conditions would have to be correlated with existing social activity. Institutions are not easily transported. The rise of the new commercial life and the wide application of the principle of mutual responsibility and mutual advantage in local groups in state and church and secular society are quite sufficient to account for the rise of the merchant gild in England.

As an institution of local social organization, the merchant gild flourished in England during three hundred years, the twelfth, thirteenth and fourteenth centuries, the charters granting it being most numerous in the reigns of Henry I, Henry II, Richard I and John. For the sake of convenience, its earliest features will first be considered, and then the respects in which it changed during the three centuries.

The power to organize and maintain a merchant gild was usually conceded to the people of a locality by the king, or by a secular or ecclesiastical lord (latterly with the consent of the king), in a charter along with other municipal franchises of the character already described.[174] But the franchise differed from most of the other municipal franchises as involving the right to form an association for certain purposes.

> "If we attempt to expand the brief phrase used in the charter we seem brought to some such result as the following: The king gives to the burgesses a right to form or retain an association for the purpose of employing to the best advantage those mercantile immunities which by other words of his charter he has conferred upon them. They are to be toll-free; they may organize themselves for the purpose of maintaining this freedom."[175]

The work of organization was initiated, if the general rule may be inferred from the case of Ipswich in 1200, by the organized municipality. When the burgesses of Ipswich had received their charter from King John in 1200, they first organized their municipal government by the election of their bailiffs, coroners and other capital portmen. The latter then ordained that there should be elected by the council of the town one alderman of the merchant gild, with whom were to be associated four

"approved and lawful men"; the five were then to make oath that they would "well and faithfully maintain the said gild and all things appertaining to it." The alderman and four assistants having been chosen in a popular town meeting and duly sworn, announced that all freemen of the town were to come before them on a future day to organize their gild and pay their house (or fees). Further the municipality, — the bailiffs, coroners and popular body, after discussing how the gild should be maintained, decided that the alderman and his successors in office should have the monopoly of "buying and selling certain kinds of stone and marble," with the duty of making an annual report to the bailiff and coroners of his profits therefrom.[176] Once organized, the gild elected its own officers, maintained its own treasury, held its own meetings and passed and kept in a separate roll its own ordinances.

Most frequently, as in Ipswich, the gild was presided over by an alderman, assisted by two or four associates called stewards or wardens, but in some towns his place was occupied by one or two stewards, masters, wardens, or keepers. There were also usually several minor officers, such as door-keepers, treasurers, clerks and marshals. The officers were annually elected by the brethren of the gild. The duties of the alderman or other head officer were, in general, to preside over the deliberations of the gild, to enforce its ordinances, to care for its property, to collect its fines, entrance fees, assessments, tolls and profits from monopolies and other revenues, and to settle disputes between gildsmen.[177] The meetings of the gild, at which members were admitted, ordinances made and other gild business transacted, were annual, semiannual or quarterly, and were called "morghespeches." Membership in the gild was obtained by election by the brethren and the payment of an entrance fee (usually lower in the case of relations of existing brethren). "The newly elected member was required to take an oath of fealty to the fraternity, swearing to observe its laws, to uphold its privileges, not to divulge its counsels, to obey its officers, and not to aid any non-gildsman under cover of the newly acquired 'freedom'" — a requirement sometimes prudently supplemented by the demand of sureties for fulfilling the new obligations.[178] Not only were there burgesses who were not brethren of the gild merchant, but there were gildsmen who were not burgesses, both among residents and non-residents of the town. Burgesses were eligible to membership but had to be formally admitted by the brotherhood. Sometimes villains, but usually only freemen, might become members. Non-residents of the town, as, e.g., neighboring lords and

ecclesiastics, were often admitted to the gild.[179] Monks[180] and women, who could not be burgesses, were admitted to the fraternity. It is possible that in some towns villains might be burgesses but not gildsmen, or vice versa. In many towns the tenants of privileged sakes of bishops, abbots, barons or constables of castles were not burgesses but might be and often were gildsmen. In some towns, as in Andover, gildsmen were of two classes, those of the " free gild " and of the " villein gild";[181] like wise there were grades of membership, as untransferable (except to near kinsmen) or limited to the life of the holder. Membership in the gild, however, entailed the burden of being "at scot and lot" with the burgesses — of sharing with them the financial burdens of the municipality,[182] while simple burgess-ship depended normally on the holding of a burgage in the town.

A gild court was evolved from the activity of the gild, having jurisdiction not only over its members, but In some cases even over non-members. Infractions of ordinances were punished by fines, expulsion and forfeitures of goods. At first the judicial function appears to have been exercised almost entirely in the "morghespeche" or periodical meeting; later, ordinances were summarily enforced, to a large extent, by the head officer. The tendency of independent associations to attract judicial powers has already been noted in the rise of the municipalities; it will be observed quite as prominent in other forms of association as in municipalities and gilds.

The merchant gilds also preserved many of the usages of the social-religious gilds. The morghespeches and other general and special meetings were characterized by much feasting and drinking. "To drink the gild merchant " was significantly a usual expression for holding a gild meeting. The gild fraternity usually adopted the name of a saint or religious symbol, maintained priests, chapels and chantries and attended devotional services on feast days in a body. All gildsmen were required to attend the burial of a brother and contribute to its expense, if necessary, and to provide prayers for the welfare of his soul. Brethren in sickness, distress and poverty were aided, from a common-chest, and alms were distributed in general charity.[183] Disputes between brethren were settled by fraternal mediation. Slander and misgreeting were discouraged by adverse ordinances and penalties.

The general purpose of the gild merchant was to regulate trade[184] in so far as it affected the community in which the gild flourished. The adoption of such ordinances

as should reasonably subserve that purpose seemed to be implied in the grant to maintain an organization. Almost the only right specifically mentioned in the charters in addition to the general right to have the gild was "that no one who is not of the gild may trade in the said town, except with the consent of the burgesses," — and that was not a universal provision; it was hardly necessary to its exercise that the power be specifically granted. By their ordinances tolls were levied on non-gildsmen from which gildsmen were exempt either wholly or in part nor might they keep shops or sell specified articles at retail or in quantities less than specified, though most kinds of victuals in common use were excepted from the rule, and its operation was generally suspended during fairs (and sometimes on market days). No regrater (or engrosser), one who bought for the purpose of reselling, — except a gildsman might sell many articles at retail, nor might others buy of him, except gildsmen or townsmen. Frequently non-gildsmen might not trade with each other. Goods to be sold had to be exposed at the common hall or in the market-place, and sales had to be made within specified hours. Many articles might not be sold to foreigners (non-townsmen) at all. Stranger merchants might remain in town no longer than forty days and during their stay had to conduct their transactions in the presence of gildsmen. The foreigner might not disguise the sale of his goods under the name of a gildsman, nor might he enter into partnership will. him. Gildsmen possessed the right of pre-emption of goods exposed for sale against a foreigner, and even against a townsman not of the gild; they had likewise the right to make a first offer for cargoes brought to some ports. But a gildsman exercising the right of pre-emption had to divide his purchase with fellow gildsmen, if they should demand a division Concerning some commodities there were special regulations in some towns, as that no fishdealer might cut his fish for sale without the license of the gild, and might not have a license as long as a townsman had fish to sell; that a dealer in herrings might spend only one market-day in a town; that (at Reading) a foreigner should forfeit his corn if he brought it before three o'clock on the market-day; and that no foreigner should bring tanned leather to Reading except at times of fairs. From all such ordinances, however, the non-gildsman, whether resident or foreigner, might purchase immunity. Such was the merchant gild as it appeared in its stage of greatest efficiency. An effort has been made to present an image of the ideal to which it approximated in its normal activity. It must be borne in mind that it was always

modified by its environment and that in common with other social institutions it was in process of change during the entire three centuries of its existence, whether the change was due to its own activity or to that of other institutions with which it necessarily came in contact. There remain for consideration, then, the historical changes through which it passed in (a) its internal relations, (b) relations to the town and (c) its relations to industry and commerce and their other organizations.

(a) It is assumed that in its earliest stages, before it became recognized as a definite part of the social machinery of town-life, the merchant gild was a simple association of merchants for their common good like the social religious gilds. If so, there must have been a substantial equality of membership. Before the rise of the towns as possessors of a body of franchises, liberties and immunities, not only within their own limits, but beyond them in every part of England, the merchant gild must have had only a small body of powers and those necessarily restricted to the interrelations of their members. The membership of the gild must have consisted almost wholly of residents of the town in which it flourished; and the townsmen were on nearly the same social plane.

There are many reasons to believe, in the dearth of historical information, that the early merchant gild was very democratic. During the twelfth and thirteenth centuries, however, the town population was being differentiated into well-defined classes. A landless class in the towns increased in number and a class of merchants arose — a class of townsmen who produced not entirely for consumption but partly to get a surplus for exchange. A class of non-residents with a surplus to exchange desired to enjoy the mercantile privileges of the towns, which they could do only under the regulations of the gild.

Even a class of artisans, humble as they must have been, must have needed the privileges of the merchant gild as well as the noble baron or abbot with his quantity of agricultural goods to exchange. In the presence of such changes in the society and social life affected by the activity of the gild, it is not difficult to understand how, from being democratic in the beginning of the twelfth century, it came to be a closer and more aristocratic body at the end of the thirteenth century. The changes that characterized the towns themselves were closely paralleled in the merchant gilds. In one gild the differentiation in gild membership was constitutionally recognized by the distinction of “free gild” from “villain” or “hause gild.” Within the gild a small

body of assistants necessary to the alderman in the administration of his office hardened into a prominent part of the gild machinery, while the non-official body of merchants originally a part of the self-governing fraternity came to participate less fully in its direction. Mere exemption from the restrictions of the gild without membership in it became as suitable to the needs of the merchant as full membership in it; so it must have appeared to the non-townsman and lower classes of townsmen, who could view the gild only as a restrictive organization; only substantial townsmen, persons vitally interested in the promotion of the town, could heartily endorse the measures of the gild. Freedom of the gild, like freedom of the town, became a term of passive, not active import, — the right not to be interfered with by an organized body, not the right to participate in it. The merchant gild, from being a democratic self-governing organization, became an oligarchical corporation to which the state had virtually delegated the power of controlling the economic activity of a local body of subjects.

(b) The relations of the merchant gild to the state were maintained through the municipality; even where there was no "free borough" and yet a gild merchant, the community of inhabitants was recognized as a basis for the formation and maintenance of the gild. The men of a town might organize a merchant gild, whether or not they had such a municipal organization and such a body of rights as would make them a "free borough." The organization with which it came in contact or which it supplemented was the town. The merchant gild seems seldom or never to have been directly dealt with by the Crown. When a charter of liberties or franchises was granted to a town, its people were in possession of a body of powers whose exercise would result in undoubted benefit to them. The most substantial of the granted powers and almost the only ones through which they would come in contact with the people of other towns had to do with trade and commerce. Without putting too much stress on the medieval tendency to apply the principle of mutual responsibility and mutual advantage to all groups of persons engaged in the same occupation, living in the same restricted locality or otherwise dominated by a common interest, the control of buying and selling might have been expected to be reposed in the buying and selling class, the merchants. The use of the powers granted by charter was recognized to be of importance to the town; the powers could be used by the mercantile class; the powers were simply resigned to them for their exercise

and they were permitted to form an independent organization for the more efficient exercise of them. The conditions were those that are always present in the growth of corporations, — the recognition of the public importance of the activity of certain classes acting in response to the demands of their own interest, and the consequent bestowal upon them of an organization through which, by pursuing their own interests, they may promote the public welfare. The merchant gild was, then, a corporation whose organization was initiated by the municipality or community in which it flourished.

The relations of the gild merchant to the towns have been the source of much controversy. Some writers have described the gild merchant as merely a voluntary association of merchants acting in matters of common interest for their mutual advantage, and sustaining no organic relations to the town. Others have described it as "the department of town administration whose duty was to maintain and regulate the trade monopoly,"[185] "an official organ of the municipality"[186] "and an organized part of the town constitution,"[187] though "at first merely a private society, unconnected with the town government, having for its object the protection of its members, the tradesmen of the borough, and the maintenance of the newly invigorated trade interests."[188] Still others have identified the merchant gild with the town itself,[189] have supposed the town to be simply a development of the gild[190] or have found in the grant of the power to have a merchant gild the supreme test of the municipal character of a community.[191]

There is no evidence that at any time the merchant gild was merely an association of persons, like a social-religious gild, promoting the interests of its members. When it first appears, it is as the repository of exceptional mercantile powers that have been bestowed upon the town community, unless indeed the Cnichten-gilds and Chapmen's Gild of Canterbury be considered the direct predecessors of the later merchant gilds, and of them unfortunately, nothing definite may be said.

In the possession and exercise of the exceptional mercantile powers that had been granted to towns, the volume of social activity controlled by the gild was greater than that of the municipal organization itself, while it had less opposition to overcome. The area of the town activity was, for the most part, that formerly occupied by the king and baronage — political activity — and was of course strictly construed; the activity of the gild covered a developing field, that had previously had only a limited

existence and to the extent that it was increasing had never been under the control of king or baronage; the town, consequently, had to encounter more opposition than the gild in the exercise of its powers. The court feet also often remained in the hands of the feudal lord, abbot or bishop, and the field of town government was narrowed accordingly; the later degeneration of the feet court in the fifteenth century and its displacement by the justice of the peace must have had the same effect. Again, the town was frequently in conflict with the tenants of privileged sakes and adjoining areas; the membership of the gild, however, tended to include them; their interests were opposed to those of the townsmen but likely to be in harmony with those of the gildsmen. The substantial class of townsmen were the merchants, and as such the gild was their organization, while they participated in town life and town government merely as townsmen; their interest in the gild was closer and more real to them than their interest in the town. The mere initiation of the gild organization by the town did not make it subordinate to it or a department of town administration. The merchant gild of Ipswich was not a department of the administration of the town of Ipswich. During the twelfth and thirteenth centuries a most noticeable feature of town life was the identity of town officers and gild officers, but such identity does not imply that there was an organic connection between the town and gild governments. During the century of the three Edwards, during which the merchant class became a ruling oligarchy in the towns, a townsman became mayor because he was a prominent merchant and consequently prominent in the merchant gild; he was not made alderman of the gild because he was prominent in the town government. The truth probably is that in the contact of the two organisms, the one of greater strength, the gild, was gradually absorbing the vitality of the weaker, the town, by controlling it through the identity of officials. In some towns the municipal government was actually supplanted by that of the merchant gild; in others the gild became the dominant force in the town government, but manifested itself through identity of officers or the less tangible identity of class interest.

The error in identifying the gild with the municipality is due to a failure to consider that the franchise to have a gild merchant was only one of the franchises usually granted to a mediceval town, though the gild merchant (and the municipal power that it wielded) was usually the most important element of town life; besides, the earlier relations of the gild and town were unjustly assumed to have been the same as those

found in some places in the fourteenth and fifteenth centuries. As a rough test of the municipal character of a community, the possession of the merchant gild was not always misleading, as that franchise was nearly always only one of several that together were sufficient to constitute a "free borough." It is hardly necessary to add, in the light of what has been said, that the town was not derived from the gild, though its development was greatly promoted by it.

(c) The class of artisans during the twelfth century was quite insignificant. Most of the goods sold in markets and fairs were the "extracted" products of the land and sea, agricultural products, fish and minerals and products for immediate consumption or luxuries requiring little of the labor of artisans. Nor was there a marked differentiation of merchants into classes. During the thirteenth and fourteenth centuries classes of artisans arose and to the class of general merchants were added classes dealing in particular lines of goods. What was the position of the earlier craftsmen (including both artisans and dealers in special goods) in the merchant gild, or whether they had any recognized status in it at all, is uncertain; at all events, during the thirteenth and fourteenth centuries they came to be organized in craft gilds. Suffice it to say at this point — the question will be considered later — that in some places the merchant gild became a composite body formed by the union of craft gilds, while in others they simply ceased to exist, except as purely socialreligious bodies, leaving the field of economic regulation to the town corporation and the craft gilds. The fourteenth century was one of decay for the merchant gild as an independent institution. By the fifteenth century it had ceased to be a force in English municipal life though its name was perpetuated in some obsolete bodies.

IV — Craft Guilds.

As the merchant gilds were organizations of the general mercantile bodies of English towns, so the craft gilds were organizations of the separate bodies of traders and artisans into which the wider bodies were differentiated in the course of the thirteenth and fourteenth centuries. In considering them the same plan may be used that was used in considering the earlier organizations. First, they may be described as they normally appeared; then the historical changes that they underwent may be detailed. Such a method of considering any social institution has its manifest advantages, for social structure is never permanent; as society is always in a

condition of change, the forms or combinations of relations in which it is enclosed are always subject to modification, whether in the nature of growth or decay, and whether due to purely internal cause or to contact with their environment. There is in any given institution, however, what may fairly be called its normal condition, when its structure is clearly adapted to its functions and no part of it is plainly abortive or over-developed, even if there be no particular time at which all its parts are doing simply the work for which they are fitted and no more, and when their correlated activity is harmonious. The normal condition of an institution is not necessarily that in which it is accomplishing the most or greatest results; it not infrequently happens, especially in periods of rapid social change, that the condition of an institution becomes abnormal and by reason of the absence of appropriate means through which social activity may be exercised, it is called upon to do and does work for which it is not intended or adapted, but which is greater and more important to society than its own work normally performed. Nor is the existence of an institution's normal condition coincidental with its possession of fixityor stability; peculiarly enough, the contrary is nearer the truth; rigidity is rather a mark of decadence than of vigor. When its condition is normal an institution is likely to be impressionable and readily adaptable to fluctuations in the conditions of the field of activity embraced by it; it owes its strength not to its rigidity but to its flexibility.

In general, the craft gilds had most of the religious and fraternal characteristics of the social-religious gilds and merchant gilds. Almost universally dedicated to some saint or religious symbol,[192] and known by its name or by the name of the trade or craft organized within them, they contributed to the maintenance of lights and torches at religious services, supported chapels, priests and chantries in cathedral, monastic or parish churches, attended masses and funeral services in a body, made offerings and presented street-spectacles on feast-days of the Church and aided in the maintenance and repair of church structures. Their periodical meetings for the election of officers, the enactment of ordinances and the punishment of members for infractions of them were characterized by the usual fraternal feasting and ale-drinking. They aided their members in sickness, helpless old age, poverty, commercial failure, loss by shipwreck and fire and other distress, and after their death defrayed, if necessary, the expense of their burial and of masses and prayers for the repose of their souls. They aimed, finally, to maintain a standard of morality and

fraternal courtesy by a code of appropriate ordinances and the necessary penalties of fines and expulsion.

The system of government was also quite similar to that of other secular gilds. The head officer, — master, bailiff, warden, or overseer, — was elected annually by the whole fraternity. In the smaller gilds the head officer was usually the only officer, being informally assisted as occasion required by the advice of the more influential and "reputable" members of the fraternity. In the larger gilds the head officer was usually a master, assisted by regularly elected wardens, two to six (in one gild, fifteen) in number, the latter performing the actual work of government, and the former acting as presiding officer. The general meetings of the gilds were called hallmotes, as among the bakers, or loghallmotes (hallmotes for recapitulating laws)[193] as among the fishmongers,[194] and were held from once to four times each year. Failure to attend them was punishable by fine, as was also refusal to accept office.[195] Officers usually served without compensation or with only such as was afforded by fees,[196] but in some of the larger gilds they received small salaries;[197] they were always required to take an oath before the mayor or other head officer of the town upon entering office,[198] and were punished for neglect of official duties.[199]

The membership of the fraternity consisted of the men of the trade or craft admitted to it by consent of the whole body or its officers, and no one might "use the craft " in the town without being a gildsman or at least paying tribute to the gild. In general, also, and acting subject to its regulations, craftsmen became qualified for membership only by being vouched for as competent and trustworthy by persons already members or by serving an apprenticeship.[200] Teaching a trade or craft to a person without making him an apprentice was forbidden. On admission to the gild, both strangers and apprentices had to take an oath to keep the ordinances of the gild, and had to pay an entrance fee, as well as to enter into frankpledge.[201] The usual minimum term of apprenticeship was seven years. On the death of a member, his widow might carry on the business until she should marry again, when, unless she should marry a gildsman, she had to dispose of her stock or tools and leave the business. The employment of women, however, except one's wedded wife or daughter, was forbidden.[202] Masters were not to entice journeymen or apprentices from one another or to retain them after learning that they had "wrongly" left others or that "they had not parted in a friendly and reasonable manner";[203] and receiving

lads as apprentices for the purpose of selling them to other masters was also forbidden.[204] Nor might masters receive apprentices unless able to sustain them until the fulfilment of their covenants. Apprentices had to be enrolled before the town or gild officers at the beginning of their apprenticeship and again presented at its completion.[205]

Like the merchant gilds and unlike the social-religious gilds, the craft gilds enacted and enforced ordinances (also called "points," statutes and articles) for the control and regulation of the economic activity of their members, the chief purpose being to secure honest dealing and work from the tradesmen and craftsmen,[206] at a price fair to both producer and consumer. The ordinances were made by the town on its own initiative, or made by the gild and approved by the town, or independently made by the gild. They were sometimes enforced by the town on information by gild officials, and sometimes independently by the gilds. They provided that deceit should not be practiced in the making of goods, either by the use of defective material or by inferior workmanship.

> "No one of the... trade [of Furbishers] shall make in his house, or allow to be made, pommels or hilts of swords, if they be not of good pattern and steel; and the scabbards must be made of good calf-leather; and if any one shall be found doing to the contrary thereof, let him lose such false work, and be punished at the discretion of the Mayor and Aldermen.... No one shall cause a sword that has been broken to be repaired or made up again, in conceit or subtlety, to the deceiving of the people...."[207] "No man shall make a girdle of any worse leather than ox leather."[208]

By the ordinances of the weavers it was provided that no cloth should be made of flocks or thrums or of English or Spanish yarn mixed, that Spanish wool only was to be dyed in "bleache," that cloth was to be of only a certain weight, and that woof-threads should not be used for warp; and the weight and width of cloth were carefully provided for.[209] Cappers were to make caps of wool, black, white, lana, grisa; old caps were not to be dyed black, because thus they could often be sold for new caps; new caps of white or grey wool were not to be dyed black, because the

color would be taken out by rain;[210] later it was provided that caps should not be worked in chalk or coal; even later, since "false" caps made of flocks instead of wool were brought into the country from abroad, foreign merchants were required to swear (and give security) that they would remove such goods from the country and not bring them in again; while all such caps found in the country in future were to be burned and their makers to be amerced. Lorimers should use no cast-iron or other defective material in making bridles, and old bridles should not be furbished up for sale; no joiner should make saddle-bows except of specified wood and in a particular manner, and no painter was to paint saddle-bows, made outside of the City, until they had been examined by the inspectors of the lorimcrs and by them certified by mark to be of proper material.[211] Inferior leather should not be substituted by cordwainers for other leather;[212] nor, more specifically, should they "sell to any person shoes of bazen as being cordewayne, or of calfleather for ox-leather."[213] Beef was not to be baked in pies and sold for venison, and rabbits were not to be baked in pies and so sold at all.[214] "No girdler should cause any girdle of silk, of wool, of leather, or of linen thread, to be garnished with any inferior metal than with latten, copper, iron and steel [and not with] lead, pewter, and tin, and other false things."[215] Working at night was almost universally prohibited, because work then done was not sure to be well done, and was not easily inspected, and tended to deprive some members of the craft of work.[216] Likewise work was usually prohibited on Saturday afternoons, on feast-days of the Church (and on the eve of double feasts) and particularly on that of the patron saint of the gild, and in Christmas week and Easter week.[217]

Buying and selling were closely regulated at every point. Forestalling was particularly prohibited and regrating strictly limited.

"No one of the trade [of Pepperers of Soperlane] shall mix any manner of wares, that is to say, shall put old things with new, or new things with old, by reason whereof the good things may be impaired by the old; nor yet, things of one price, or of one sort, with other things of another price, or of another sort.... No person shall dub any manner of wares: — that is to say, by putting in a thing that was in another bale, and then dressing the bale up again in another manner than in the form in which it was first bought; so as to make the ends of the bale contain better things than the remainder within the bale; by reason whereof the buyer may be deceived, and so lose his goods.... No one shall moisten any manner of merchandise, such as saffron, alum,

ginger, cloves, and such manner of things as may admit of being moistened; that is to say, by steeping the ginger, or turning the saffron out of the sack and then anointing it, or bathing it in water; by reason whereof any manner of weight may be increased, or any deterioration arise to the merchandise."[218] "No one of the... trade [of Pelterers] shall work together old and new materials of his own; no one working at new 'werk' shall sell or buy old furs, or any manner of old budges, as those who do so are held suspected of mixing old and new together"; and no one should mix together seasoned and unseasoned or superior and inferior furs.[219] Lead brought into the city or old lead should not be bought for resale, and "all [plumbers] as well poor as rich, shall be partners therein, at their desire."[220] Fishmongers might not go beyond certain limits (the chapel or the Bridge, Castle Barnard and Jordan's Quay) to meet fish, or buy them in ships before the ropes were ashore, on pain of forfeiting the fish bought. Strangers were not to buy fish of strangers, nor was a freeman to be in partnership with a stranger. Fish were not to be sold at retail on the quay, but only in the two fish-markets in London. Regrating of fish was not permitted until the king had first bought what he wanted in the market; likewise dealers in poultry were not allowed to go out of the city to meet incomers for the purpose of forestalling, but were to buy in the city, after buyers of the king, barons and citizens should have bought what they wanted — i.e., after the third hour and not before.[221] While the sale of victuals by the producer directly to the consumer was generally favored, the sale of other goods by foreigners at retail was forbidden.

> "Whereas foreign folk of divers countries do bring to the city [of London] divers manners of hats to sell, and carry them about the streets, as well before the houses of freemen of the said trade, as elsewhere; and thereby bar them of their dealings and of their sale, so that the freemen of the said trade in the city are greatly impoverished thereby; it is agreed that no strange person bringing hats to the said city for sale, shall sell them by retail, but only in gross, and that, to the freemen of the city on pain of losing the same."[222]

Baskets for fish were to be of proper size, were to contain only one kind of fish, and were not to be "dubbed" (filled with better fish on top than below),[223] — an

offense punished by imprisonment and an order that the offender be "held as a cheat." Sturgeon that came in barrels were to be of one taking and one salting. Fresh fish were not to be bought or sold for resale before sunrise or salt fish before prime. As to oysters and whelks, he alone who got them must bring them to the city, and boat-loads of them might not be sold in gross before noon. Fish arriving in the night were not to be unloaded until sunrise, unless the weather should be rainy, and then they should lie upon the quay of the city in the keeping of the sergeant of the street, until sunrise.

> "No manner of fish that comes by land in baskets shall be harbored in shops or in houses; but [the dealers] shall sell the same before their shops in view of the people; save as to the reputable men of the trade, who may harbor their own fish upon view of the sergeant; provided that, without concealing or disposing of anything, they fully | bring] the same to market for sale on the morrow, under pain [of forfeiting them]." "No man shall commit forecheap (preemption or forestalling) against another in dealing... but the reputable men of the trade shall make their purchases... in a fair manner, without injury done to any other person, and without any such forecheap; and neither for anger nor for spite, shall any vendor hold his fish too dear: and if vendors do so, the mayor and reputable men shall assign proper persons to assess the same."[224]

Likewise the size of nets to be used at certain times and in certain places was minutely regulated.[225] Even the maintenance of credit (in its narrow sense) was roughly protected: "no butcher Shall] sell... his wares, after he has once or twice failed in his payment, until such time as he shall have fully paid up all that he is in arrear; this in order to destroy the bad repute of the trade."[226] No thief was to remain among the Tapicers, but was to be removed and punished.[227] Conviction of a felony entailed the loss of membership in the gild. Defence against bad debtors u as provided:

> "if the... creditors, to whom the debt is due, shall warn the other folks

> who shall serve such their debtors, that such sum is so due to them, then, in such case, if after the said warring they shall serve them, the furriers who shall have been so warned shall be bound to pay the debt to such creditors, in case the debtors shall not give security to the said creditors for the debt that to them is so due."[228]

It followed, from the close control to which each craft was subjected, that members of one craft should not interfere in the work of other crafts, or that subdivisions of a craft should be strictly confined to their own kind of work; e.g., no maker of "tourte" bread was to make white bread for sale, or vice versa. Likewise the secrets of each trade or craft were to be preserved inviolate by its members.[229] The prices of goods and the wages of labor were determined. If buyers should pay or sellers accept more than the legal price, it was a punishable offence. Likewise if masters should pay or men accept more than the legal rate of wages, they were fined. "And if the men are rebels and contrarious, and will not work, then, the four masters shall have power to take them before the mayor and court of Gihald of the town, to be there dealt with according to law and reason."[230]

The ordinances of the craft gilds, except to the extent that infractions of them were punished in the periodical hallmotes, were enforced in gild courts held by gild officers, gild courts held by town officers or in the town courts themselves. In the two latter cases, the gild officers acted largely in the capacity of prosecutors. The officers elected by the gilds had the power to search the shops and houses of the members at all times,[231] and the men of a trade or craft were usually required to live (and work) in the same neighborhood,[232] and work within stated hours for the purpose of making the work of searching more effective; for the same purpose, nearly all transactions had to be conducted in the market-place or in such places and under such circumstances that they would afford publicity of their nature.[233] If defectively made ("false") goods should be discovered, they were brought before the court for destruction, confiscation[234] or amendment; punishment by confiscation of goods, imposition of fines, imprisonment and expulsion from the gild varied with the nature and grade of the offense. For the purpose of enabling searchers to trace false goods to their makers, the craftsman was very often required to put his private mark on all articles made by him and to leave a copy of it with the searchers; a mark was also

used by the wardens and searchers as a certificate of inspection and approval; unmarked articles were sometimes subject to summary confiscation or destruction, whatever their quality; and counterfeiting marks was a serious offense. Turners were required to put their marks on all wooden measures turned by them.[235] "Helmetery and other arms forged with the hammer" were not to be exposed for sale until marked by the wardens after assay of them, each helmet-maker had his own "sign," which might not be counterfeited by another.[236]

In some cases, town and gild courts had concurrent jurisdiction over persons and goods involved. Disputes between fellow-gildsmen were usually determined by the gild courts. If a gildsman should be impleaded in the town court, the gild officers might demand that the controversy be removed to their own court, even when the complaint had been made by a non-gildsman.[237] When questions in dispute were proper to be submitted to a jury, it was sometimes required that the jury be composed partly of gildsmen and partly of others. The gild courts were presided over by the regular head officers of the gild and not by a separate judiciary. From some gild courts an appeal might be taken to the mayor, as from that of the weavers instituted in the twenty-eighth year of the reign of Edward I.[238]

The revenues of the craft gilds were derived from fees for binding apprentices and admitting new members to the freedom of the craft, and from the annual dues paid by the brethren, as well as from fines and amercements for infractions of gild ordinances — though the latter source of revenue was usually absorbed wholly or in part by the municipalities and state. Some charges were also levied on goods in stages of exchange, as on cargoes of fish brought to the markets of London for sale, and on manufactured goods inspected. Much property was also bequeathed to the gilds by members on their death, to be used by them for general purposes, or to be administered by them for some special religious or charitable purpose, with the usual stipulation that masses and prayers be provided for the repose of the donor's soul.

If such were the normal constitution and activity of the craft gilds, there remain to be considered the historical changes through which they passed in (a) their internal relations, (b) their relations to town and nation and (c) their relations to trade and industry and to their other organizations.

(a) The changes in their internal relations were very similar to those that took place in the towns and merchant gilds as already detailed. The membership, substantially

co-extensive with the craft of a town, at first participated fully in the life of its organization in the gild; and maintained an approximately pure democracy in it. But even before a body of advisers to the officers had a constitutional status in the gild, steady influence was exerted on the government of the gild by its "reputable men";[239] in some of the more important gilds, the ordinances early contemplated recourse to them for advice by the masters and wardens in the administration of their offices.[240] The earlier somewhat indefinite body of "reputable men" hardened by the end of the fourteenth century into a definite organic part of many gilds and was usually referred to as "the eight," "the thirteen," "the twenty-four" or other number;[241] by the sixteenth century it was known as the court of assistants and had absorbed most of the vital powers of the gild,[242] the enactment of ordinances, the admission of members and the election of officers, including the filling of its own vacancies by co-optation; it was also the body from which the gild officers were chosen, and of which they became members again by virtue of their having "passed the master's or prime warden's chair."[243]

Besides the intrusion of the court of assistants into the gild constitution, distinctions arose among the members as such; well-defined classes were the outcome of differences in wealth. Though the differentiation was caused to some extent by the use of a distinctive dress,[244] its effect must have been confined to making plainer and more manifest the effects of the more fundamental causes; the adoption of a distinctive dress; must have been largely incidental to the influence of general tendencies. At all events, many of the companies into which the gilds developed in the sixteenth century contained a body of wealthy members "called" by the court of assistants from the general membership and known as the "Livery" or "clothing,"[245] because their earlier exclusive ability to afford a distinctive dress had grown into an exclusive right to wear it. Even in the social-religious gilds of the fourteenth century brethren had been expected to wear a livery on all public occasions, at gild meetings, and at burial services; if too poor to provide an entire suit, a hood at least was worn, which was furnished to the impecunious of some gilds at the expense of the common-box. But after the lapse of a century, assuming for the moment the identity of the two kinds of gilds, the class of members able to provide their livery and attend all the banquets and semi-public functions that were coincidental with its use, was so distinct as to be recognized in the gild constitution. In the gild of Taylors of

Exeter, at the end of the fifteenth century, it was ordained that every member who was "privileged" of the craft and of the value of twenty pounds in goods should be "of the fellowship and clothing of the master and should pay yearly twelve pence and his offering at Midsummer at their feast," while every other member, "not privileged" should pay six pence yearly.[246] In the London Livery Companies the livery became the body from which alone the officers might be elected and vacancies in the court of assistants filled.[247] The livery, the "clothing," at first a symbol of membership in the gild, thus became the mark of an aristocratic class within it.[248]

But the differentiation of classes was not confined to the higher grades of gildsmen; even before the livery and court of assistants were emerging at the top of the scale as expressions of differences in economic status, the delimitation of the system of apprenticeship and the rise of a class of wage-working journeymen were producing similar results at the bottom.[249] In the thirteenth century, when the craft gilds had hardly attained a condition of self-sufficiency, admission of members had been left largely to the determination of the gild on the basis of the fitness and ability of applicants to "use the craft," while the dependence on apprenticeship had been slight. In the two following centuries the relation was reversed; apprenticeship became the chief, in some gilds the sole channel (except that of family relationship) through which craft-membership could be attained.[250] At the same time apprenticeship itself and the relations of masters and apprentices involved in it assumed definite and settled form. In the fifteenth century the term of years, which had previously been left largely to agreement in each case, came to be limited to "at least seven years," — in fact, such limitation had been recognized as one of the "customs of London." The master was to provide his apprentice with food and clothes and other necessaries and was to teach him the craft; on the other hand, the apprentice was to obey his master and not marry without his consent, and to submit to be reasonably ("duly but not otherwise") punished.[251] The enrollment of the apprentice before the town officers at the beginning and end of his apprenticeship was uniformly required. The number of apprentices was also restricted in various ways. To prevent the attraction of labor from agriculture to the trades and crafts after the economic upheaval consequent on the ravages of the Black Death, Parliament enacted that all who had followed agriculture until twelve years of age should continue to follow it[252] and that none might become apprentices to craftsmen whose fathers were not able to pay twenty

shillings a year.[253] Bondmen and villeins were declared ineligible to apprenticeship.[254]

Such large fees were demanded at the binding of the apprentice and at his admission to the freedom on the conclusion of his term as to cause a restriction of the number of apprentices and invite interference by King and Parliament.[255] The number of apprentices that a master might have before the fifteenth century seems to have been limited only by the ability of the master to sustain and instruct them. Other restrictions, however, gradually found enforcement in the codes of gild regulations, by which the number of apprentices should depend on the rank of the master in the gild, or by which more than one might not be bound without the consent of the wardens of the gild or the chamberlain or other officers of the city. As compared with the number of journeymen that a master might employ, it became the rule that he might have one apprentice for the first three journeymen and one for each additional journeyman — a proportion that was sanctioned by Elizabeth in the Statute of Apprentices[256] for the crafts of clothmakers, fullers, shearmen, weavers, tailors and shoemakers, for the purpose, probably, of keeping them in harmony with the system generally prevalent in current industry.[257]

At first it was possible, in fact as well as in theory, to set up as a master and employer of others immediately on the completion of the term of apprenticeship; But very early even the small amount of capital required in medieval trade or industry necessitated the lapse of a few years before the potential master could become an active one. During such time he was a journeyman, or servant, as he was more usually called. Before the fourteenth century there was probably no great inequality in the numbers and status of masters and journeymen but the further rapid development of trade and industry and of the factor of capital in them during that century decreased the proportion of masters and increased that of journeymen,[258] while they became further separated in the social and economic scale. And the movement was made more rapid by the more or less arbitrary exaction of large fees for the admission to the freedom and particularly to the status of a master and employer; the fees were so large and plainly opposed to the public welfare that both towns and nation protested.[259] The rise of a well-defined class of wage-working laborers in the journeymen produced a body of distinct social interests[260] at the same time that the governing body was shrinking so as to exclude not only the mass of journeymen but even many of the lesser masters. As the result of both movements the

journeymen in many crafts assumed a separate organization, with more or less autonomy, being either almost distinct from that of the masters, distinct in organization but subject to the other, or merely recognized as a distinct administrative group within the wider body.

The tendency towards the formation within crafts of separate organizations of workmen as distinguished from employers, to which Ashley[261] has been the first English writer to assign due importance, is best exemplified, in the present condition of the historical evidence, in the career of the Bachelor or Yeoman Company of Taylors. In 1415, a complaint was lodged with the mayor and aldermen of London that the journeymen and servants of the tailors were living apart by themselves in companies without the license of the officials of the city or of the Taylors' Company and that they were in the habit of assembling in great numbers and "making conventicles" in divers places and beating, wounding and ill-treating persons, and especially that they had assaulted a master of the craft. The master and wardens of the craft, called before the mayor and aldermen to answer why they permitted "their servants and apprentices to inhabit houses of this kind alone by themselves, in companies, without a superior to rule them, and to commit and perpetrate these evils and crimes so lawlessly," expressed great regret and asked that certain yeomen be summoned. After an examination of the yeomen, the mayor and aldermen decided

> "that the servants of the aforesaid trade shall be hereafter under government and rule of the Master and Wardens of the aforesaid trade, as other servants of other trades in the said city are, and are bound by law to be, and that they shall not use henceforth livery or dress, meetings or conventicles, or other unlawful things of this kind,"

and ordered them to leave the houses within four days. In 1427, however, they asked permission to have an annual meeting in the church of St. John Jerusalem on St. John's Decollation Day and there "to offer for the deceased brothers and sisters of the brotherhood," but permission was denied them "unless with and in the presence of the Masters of the said trade." In 1613, the Yeomen Company, from the ordinances of the Taylors' Company at that time, appear to have consisted of two

classes, — (1) bachelors in "foyne" and those in "budge," and (2) freemen or brethren elected to be recorded on the company's books as such, — and to have been governed by four wardens substitute elected by the Taylors' Company from among the yeomen and assisted in the administration of their offices by "sixteen" elected by the yeomen from their own number. The wardens substitute acted under the direction of the Court of Assistants. The Yeoman Company had a separate treasury, clerk, bedel, benefactions and alms. Merchants and yeomen held their feasts on different festival-days of the church, and no social equality or relationship existed between them. Each had the care of its own poor, but the Merchant Taylors held estates in trust for the yeomen, and had control of their funds. Disagreements between the wardens substitute and the sixteen were frequent. In 1649, the workmen modestly asked that two of the substitutes be practical tailors and that orders for the purpose of preventing the competition of foreigners be enforced. In 1661, the wardens substitute were not sworn in, the separate organization of the Yeomen Company ceased to exist, and its business was taken in hand by the Merchant Company.[262] Likewise "ordinances, articles and constitutions" were "ordained and granted" by " the worshipful masters and wardens with all the whole company of the craft of Blacksmiths of London, to the servants of the same craft" in 1434, by which they had their own wardens and a separate organization; there was a provision, however, reserving an appeal from the wardens of the yeomen to the master of the craft.[263]

Here and there among the records are found indications that a distinction, though by no means clear or definite, had grown up between apprentices and servants or journeymen, such as must be assumed in interpreting the ordinance of the Blade-smiths "that no one of the trade shall teach his journeymen the secrets of his trade, as he would his apprentice."[264] So, too, it was provided by the Bachelor or Yeomen Company of Taylors that its members should not reveal its secrets to a "master [master's?] prentiss." Possibly apprenticeship was considered in some crafts a preparation for mastership, the rank of employer, as distinguished from that of a simple workman. Such a distinction was by no means universal; the apprentices usually merged in the class of workmen or laborers.

By reason of the social movements within the membership of the organized classes of tradesmen and craftsmen, the "freedom of the craft" came to have a new significance. Formerly carrying with it the right to participate in the control of the

economic relations of the entire body, it finally conveyed merely the right to follow a particular vocation in a town. Speaking broadly, the craft gild, company or mistery developed, before the end of the sixteenth century, from a self-governing organization of men of a craft into a close corporation imposing from above a code of regulations to which the men of the craft should conform. The solidarity of the earlier organizations had been disintegrated by the formation and crystallization of classes within the crafts with bodies of interests rather in opposition than in harmony. The social conditions under which the men of a craft had a common interest in the craft itself were on the point of giving way to new conditions under which separate classes in the crafts would have greater affinity to corresponding classes in other crafts than to other classes in their own crafts; to use Cunningham's apt phraseology, industrial society in the "gild system" was divided into classes by perpendicular lines; the growth of class interests would eventually lead to the substitution, as it has in the present century, of a division of horizontal lines.[265] The power to regulate industry, as reposed in the original gilds, was hardly exceptional in the society of which they formed a part; it was not so much a privilege, a right restricted to a person among his fellows, as a public right, the right to participate in the life of a social unit, though assuredly a local and occupational unit; after the development described, however, the control of industry, as far as it was exercised, became more nearly a privilege, an exceptional power, a right in derogation of the rights of others, even within the small unit.

It was somewhat broadly stated, in describing the normal craft gild, that it "had all the religious and fraternal characteristics of the social-religious gilds, and merchant gilds." Perhaps the statement in such a general and positive form is not fully justified by the historical evidence, unless it be assumed that many craft organizations were wide variations from the normal type. The gilds (in the broad sense of the term) were of three kinds, according to their origin, (1) those of spontaneous origin, (2) those whose origin was due rather to the town's need of police machinery, virtually compulsory in origin, and (3) the later bodies in which were reposed a body of privileges granted by the Crown. To the first the term gild was most properly applied; to the second, the term craft or mistery; and to the third, the term company; though usage was far from consistent or invariable. There is some slight historical evidence on which to base a theory that the first class were derived from social-religious

associations by the assumption of economic functions. The membership of some of the social-religious gilds consisted wholly or predominantly of craftsmen and took their name from their craft,[266] though few of them appear to have had ordinances for the control of trade and industry.[267] There is very slight evidence that the gilds of the second class developed the social-religious and fraternal features; or if they had them, that they manifested them in the same organization as the economic features. The third class were clearly successors of the first two classes and universally had the features in question. Among the many sets of craft ordinances found in the records of the city of London, as they appear in the *Liber Custumarum, Liber Albus* and *Memorials*, those of the "Whit tawyers" alone contain provisions of a social-religious nature;[268] though the bodies of ordinances regularly approved by the city government may not, as suggested by Ashley,[269] have shown the social-religious features of the craft; there was no reason for the enrolment at the Guildhall of any but the economic ordinances.[270]

It is in respect to these features that the Reformation in the sixteenth century worked some important changes, though the extent of the changes has been exaggerated to include other changes. The religious features of the gilds were, of course, those primarily affected; the other features were affected only secondarily and derivatively. Such property as the gilds held subject to "superstitious uses" was confiscated; in general, if only part of the income of parcels of property was devoted to such uses, they were assumed by the Crown only to such extent as they were so devoted, the previous "superstitious" burden being resolved into a rent charge payable to the Crown.[271] The element of common life involved in the religious life of the gilds under Catholicism was an important one and its partial destruction by the Reformation removed a strong bond from the interrelations of the gildsmen.

(b) The earliest evidence of English craft gilds is in the Pipe Roll of the thirty-first year of Henry I, in which the Weavers of London, Lincoln, Oxford, Huntingdon and Winchester, the Fullers of Winchester and the Cordwainers of Oxford appear to have made payments to the exchequer for their recognition by the Crown. So, too, the Weavers of London, York, Lincoln, Huntingdon, Nottingham and Oxford, the Fullers of Winchester, the Bakers of London, and the Corvesars of Oxford are mentioned in the Pipe Rolls of Stephen, Henry II, Richard and Henry III, as charged with or rendering annual payments to the exchequer for their gilds.[272] The policy of Henry

II seems to have been to give autonomy to the crafts as compared with the towns. He issued a charter to the weavers of London that ensured them virtual independence of the city government.[273] In the twenty-sixth year of his reign (1180) eighteen gilds of London, including the Goldsmiths, Butchers, Pepperers, and Cloth-finishers, were amerced as adulterine (set up without warrant).[274] But it is not to be inferred therefrom that the craft gilds continued to sustain direct relations to the king and to derive their powers from him. They had rather the status of independent municipalities and soon came into collision with the municipal bodies of the towns; eventually they had to yield to them and enjoy their rights as communities subject to the towns. During the reigns of Richard and John the towns acquired powers so substantial that a return to the policy of Henry II by Henry III was not successful in maintaining a direct connection between the Crown and the gilds. The charter of the weavers of London, which had been granted by Henry II, was annulled and their gild destroyed by John in return for a payment by the City, but was confirmed by Henry III in an "inspeximus" charter;[275] like wise the weavers of Oxford [had] fined in a cask of wine, to have a writ commanding the mayor and provosts of Oxford to let them have the same liberties in that city, as well in "cloth-working as in other things, which they had in the times of King Henry II, King Richard, and King John."[276] From the middle of the thirteenth through the fourteenth and fifteenth centuries the normal status of the gilds was one of subjection to the towns.[277] Some of them must have had an independent origin and, as already suggested, there is reason to believe that they first existed in the form of social-religious gilds; but many others were only the result of an organization for police purposes imposed on bodies of tradesmen and craftsmen by the towns. Even when recognized by the king, they were to look to the town for their powers.

The relations of the gilds to the towns appear most plainly in the manner of enacting and enforcing their ordinances. They were sometimes enacted by the town and nothing but their enforcement left to the gild; even when the gild had the power to enact its own ordinances, it had the obligation of enforcing other ordinances emanating from the town and statutes enacted by the king and Parliament. More frequently the gilds formulated their ordinances and presented them to the town government for enactment, approval or confirmation,[278] though sometimes with the express reservation of the right to amend them at their will without consulting the

gilds.[279]

From the formal language found in the gild ordinances, such as those collected in the *Liber Custumarum* and *Memorials of London*, one might be inclined to infer that little independence had been exercised by the gilds, but it is probably true that the gilds were given a pretty free hand; there appears to be no record of a petition for the approval of ordinances that was denied, though it is doubtful whether such a denial would have found a place in the public records if it had been made; the language used in the town records must have been purely formal in many cases; it seems that in one case the gild had been enforcing ordinances not enrolled at the Guildhall, though it had others that had been regularly approved there.[280] The facts that the town government had not the technical knowledge necessary to judge what ordinances were best for the actual work of a craft, and that it was lax in enforcing them,[281] the presumption that the crafts were given wide powers in practice. In the fiftieth year of Edward III, when certain fullers asked that a proposed "point," forbidding the use of urine in fulling cloth, be accepted and enrolled by the mayor and aldermen of London, the latter called two successive meetings to ascertain whether the rule would be acceptable to the whole trade, and having so ascertained, granted the petition; it is significant that the merits of the proposed rule in itself were not enquired into.[282]

In the enforcement of its ordinances, however enacted, the gild exercised little independence. The first masters, wardens and other head officers were usually appointed by the town, though in some cases elected by the gild; their successors were uniformly elected by the gild. In the majority of them, their searchers and overseers simply brought false goods and implements and their makers and users before the town courts;[283] their functions were inquisitorial rather than judicial.[284] In a few gilds a court was maintained and justice dispensed by the masters and wardens, especially between gildsmen. From some gild courts an appeal lay to the town courts.[285] In one craft, at least, it was optional with the craftsman whether he would be judged by the wardens of the craft or by the mayor and aldermen.[286] Some gilds had the power to remove cases involving gildsmen from the town courts to their own courts, though to amerce only men of their own craft.[287] In their relations to nation and town in the enactment and enforcement of their ordinances, the gilds underwent less change than in any other. After the sixteenth century many of their powers decayed, but such as remained unimpaired were exercised in nearly the same manner

as in the thirteenth and fourteenth centuries, by the enactment of ordinances subject to the approval of national or municipal organs, and their enforcement through the medium of justices of the peace and mayors or other political officers. On the whole, gild ordinances were not so readily accorded approval during the seventeenth and eighteenth centuries as previously, but largely because the relations of many companies to the industrial activity of society had become merely nominal; moreover, the national government had assumed much more extended control over trade and industry and had left the companies a more limited field for the exercise of their powers. Within the limited field, however, the method of their activity was substantially the same as it had been when the field was wider. Even as early as the reign of Edward III the stronger gilds had sought sanction in royal charters largely for the purpose of enabling them to hold property in mortmain, but they differed little, in their actual activity, from those that had not sought such sanction. In the fifteenth and sixteenth centuries, however, the movement became more general and operated as a process of selection, preserving the stronger gilds, particularly those that had accumulated a considerable amount of property through bequests, donations and the collection of fees, and leaving the weaker ones to decay and the surrender of their powers to national and municipal agencies. Elizabeth is said to have been opposed to the gilds, though the opposition had a wider basis than that of a mere royal policy. Recognition by the Crown became, at all events, a necessary element of corporate existence as it had not previously been, and distinguished the "companies" from the older gilds. Some of the companies acquired sufficient strength to ensure their existence only through combination of gilds. The importance of the change has been both exaggerated and disparaged. Some writers have considered the incorporated companies as new creations, widely separated from the gilds and crafts that preceded them; others have insisted that incorporation made no difference with the crafts and consequently left them in the same social position that they had previously occupied. The general effect of the movement was to preserve an industrial structure that industry had largely outgrown. It can hardly be denied that the second half of the sixteenth century was a period during which the older conditions of industry gave way to new ones; the incorporation of the mercantile companies acted as a perpetuation of the aristocratic control of industry into which the gild system had degenerated; in that respect it was directly in line with most of the legislation of the

period, which aimed to preserve through national agencies the industrial relations that had grown up under the gild system. It is true that incorporation worked no material change in the gilds or crafts that became companies; what it did tend to do was to preserve them in the presence of an environment to which they must otherwise have succumbed.

The use of the craft gilds, with their varying degrees of autonomy, for the purpose of the police supervision of townsmen is evidence of the difficulty of extending the governmental powers of a political group over the social activity of component groups that has once been given an independent organization, especially when such activity is in process of expansion. During the centuries in which the craft gilds flourished England was enjoying a rapid economic growth. Earlier organized in merchant gilds, the differentiation of the older trading classes into new classes of artisans made it no easier for the towns to regulate the economic relations of townsmen than it had been before.

The division of town population on an economic basis into groups as craft gilds provided a convenient means for enforcing police measures not relating to trade or industry. Thus, in 1982, to provisions for "the safe-keeping of the city of London," the ringing of curfew, inquiry as to suspected persons, inquisition of inns, closing of ale and wine shops, and night-watching the town and river was added a provision — "As to the trades: — that every trade shall present the names of all persons in that trade and of all who have been serving therein, where they dwell, and in what ward."[288] In 1370, when an attack on the city of London was apprehended, the mayor, aldermen and commonalty decided to keep forty men-at-arms and sixty archers between the tower of London and Billingsgate,

> "which watch the men of the trades underwritten agreed to keep in succession each night... as follows: — Tuesday, Drapers and Tailors; Wednesday, Mercers and Apothecaries Thursday, Fishmongers and Butchers; Friday, Pelterers and Vintners; Saturday, Goldsmiths and Sadlers; Sunday, Ironmongers, Armourers and Cutlers; Monday, Tawyers, Spurriers Bowyers and Girdlers."[289]

In 1422, Parliament had enacted that all the weirs or "rydells" in the Thames

between Staines and Gravesend and Queensborough should be destroyed; accordingly the mayor and common council of the city of London ordained that two men from each of twenty-six crafts should accompany the mayor to execute the statute.[290]

The relations of the towns and crafts as organic bodies having been considered, it may be well to review the changes that took place from the standpoint of the individual townsman and his relation to town and gild. The earliest craftsmen had been aliens and not townsmen neither enjoying the advantages nor bearing the burdens of burgessship. In the twelfth century and in the early part of the following century they appear to have been a subject class. They could not become burgesses without forswearing their craft. A townsman could not be accused by a craftsman; nor could he be convicted on his testimony.[291] The historical sources do not reveal the steps by which the progress was made, but from such a status of servility he had risen to the level of full burgessship by the latter part of the thirteenth century. It may perhaps be assumed in accounting for the rise of the artisans in importance in the towns (a) that they were increasing in number, (b) that many who had been serfs of the feudal lords became free and (c) that they increased in prosperity and consequently in wealth. The first step was, then, that burgessship was denied the craftsmen; the next, that he was permitted to be both burgess and craftsman; the third step, that he might not be a craftsman without being a burgess, soon followed. Finally freedom of the town was conditioned on freedom of a gild.[292] The gild became the medium through which burgessship was attained and exercised. Such a relationship between gild membership and participation in town life could not be long sustained without finding expression in the town constitution. Accordingly, in the governing bodies of many towns the craft gilds were given representation.[293] In some towns the domination of the gilds was carried so far that the town government was constitutionally nothing more than a federation of gilds. Such relations also had their effect on the gilds themselves. Instead of being organizations of tradesmen and craftsmen in the town, they tended to become merely sections of the town population, the pivot around which their social life revolved being participation in town life and not engagement in trade or craft. Accordingly, the combination of gilds became frequent, when the centripetal force of burgessship became stronger and the centrifugal force of economic interests became weaker.

In considering one other feature of the relations of the craft gilds to the organization of the wider society in which they flourished, it is necessary to anticipate somewhat a movement that has already been referred to and will be more fully described in a later chapter.[294] The allimportant fact of the history of England in the fifteenth and sixteenth centuries was the development and attainment of nationality under the Tudors. The crafts were not affected as much directly by that great fact, as indirectly through its influence on the towns. By the middle of the sixteenth century the towns of England had generally become close corporations having only slight relation to the actual work of town government, denuded of most of the powers necessary to do such work, and supplanted in doing it by agencies more directly subordinate to the national government. It hardly need be suggested that under the influence of the movement there was a strong tendency towards the national incorporation of gilds (now more usually called companies or fellowships), to the widening of the geographical area of their activity[295] and to the use of them to a limited extent as organs of the state. E.g., largely because they were organized groups, the state used them for the important purposes of taxation, mostly in the form of forced loans. Gilds had previously been recognized by the king, particularly in the twelfth and thirteenth centuries. But the attitude of the crown towards the earliest gilds, those of which there is bare mention in the pipe rolls of Henry I and his successors, had been largely permissive, somewhat similar to the attitude towards the bodies of Jews in several cities. As soon as the growth of towns had become an influential movement, the gilds were viewed by the crown as subject to them and in general continued to be so viewed as long as the towns retained their vigor. Some gild corporations had been created by royal charter as early as the century of the three Edwards, but the removal of gilds from the control of the towns implied in it had sometimes resulted in serious conflicts of interests, and had been followed by a pruning of gild powers as in the entertaining case of Exeter. The craft gilds, instead of presenting their ordinances for approval to mayors and aldermen, now had to submit them to the judges of national courts.[296] In many cases the ordinances of the gilds were given effect throughout the nation in relation to matters that had hitherto been regarded as of local concern. On the other hand, matters of national importance were given over to the control of incorporated companies or supplemented by their activity.

(c) What was the status of the early artisan in the merchant gild is not known,

though it is a justifiable conjecture that he might have been a member of it and a sharer of its privileges, especially if he combined with his craft the work of selling what he produced and did not confine himself to piece-work or servants' labor for his fellow-townsmen, and if he also accumulated sufficient wealth to have influence in the community. It is certain that in the twelfth century he was required to forswear his craft to obtain admission to the gild merchant. The organization of the craftsmen in gilds, even if favored by the town authorities for police purposes, must have united with the differentiation of the general merchant class into distinct classes more nearly on a level with the craftsmen to elevate their status in the town. The disintegration of the gild merchant with the increasing prosperity of the class of artisans must have secured for them the more independent social life that they enjoyed from the end of the thirteenth century. The difficulty of accounting for the changed condition of the artisans has led some writers to attribute it to more or less sanguinary conflicts between the craft gilds and merchant gilds in which the former were able to throw off the oppressive yoke of the latter; though the theory is discredited by the absence of historical evidence in support of it, the same objection must be urged to other theories that have been advanced in the same connection. It is merely suggested here that the merchant gild may have dissolved without serious conflict of interests into the several classes in which the merchants were afterwards organized, while the classes of artisans may have arisen in the social scale through the increasing importance of their economic activity and their closer relations with the new classes of merchants. At all events there is no evidence of organic relations between the merchant gilds and the craft gilds; the former gradually disappeared and the latter gradually took their place, except to the extent that it was taken by the towns under the domination of influential merchants; in addition to the narrower field covered by the old merchant gilds, the craft gilds also afforded a social structure for the newly-developed manufacturing activity of the artisans, the older bodies having had to do almost entirely with extracted products, not with transformed products.

Some differences between the merchant gild and craft gild may be conveniently noticed at this point. The former received its powers from the Crown, not directly, to be sure, but through the medium of the community in which it existed; peculiarly enough, it was not dealt with directly by the Crown, being viewed rather as the whole community in organization for particular purposes; though in actual operation it was

quite otherwise. The craft gild, however, was uniformly viewed as an organization subject to the town and as getting its powers from it and not from the Crown[297] until the decay of town governments and their replacement to a large extent by national agencies. The difference was doubtless due to the fact that the towns had secured independence and strength by the time the craft gilds were in a flourishing stage.

While the gild merchant had its origin in the grant of the power to have it in the charter of the town, there is a quite uniform absence of mention of craft gilds in town charters. It seems never to have been necessary for the town to obtain from the Crown the power to bestow upon its component groups the social structure necessary to bring the pursuits of their interests into harmony with town life in general. To put the idea in another form, there was a general relation of equality in the merchant gild, of subordination in the craft gild, sustained to the town. The extra-territorial jurisdiction of the merchant gild, its power to act beyond the limits of the town in which it existed and to extend its privileges to non-residents, does not appear to have been possessed by the craft gild,[298] until they merged in the later national companies; that was one of the powers that went to the town in the distribution of the functions of the gild merchant; if a craftsman had rights to be protected away from his own town, they were protected through his citizenship in the town, not through his membership in the craft gild.

In the early years of the gild system, when industrial processes were comparatively simple, and few classes intervened between the producer of raw material and the consumer of the finished product, it was possible for gilds to be almost mutually exclusive, but with the economic development of the fourteenth and fifteenth centuries contact of gilds with one another became closer and resulted in the formation of a variety of relations, largely according to the relations of the economic activities organized within them. Sometimes two bodies of craftsmen, recognized as having distinct and perhaps conflicting interests, were united under one governing body composed of representatives selected by each craft.

Quite frequently the ordinances relating to two conflicting crafts were combined in one code,[299] even if separately enforced.[300] Sometimes the gild of one craft was given control of the men of another craft with powers of search and presentation.[301] Sometimes a craft was divided into separate crafts, as when the development of particular kinds of work in it had created wide differences between its members.[302]

Especially was such a division likely where the dealers in goods were combined with the producers of them in the same craft. As some trades (and especially the woollen trade) became more highly developed, the several processes between the producer and consumer were represented by separate crafts. Even when an actual division did not take place, distinct interests within the craft were early recognized, as in the ordinance of the braziers providing that at least one warden should be a worker in the trade while the others should be chapmen.[303] Some gilds became so much more important and influential than others in their community that they were distinguished in classes, as in the well-known division of the London companies into "greater" and "lesser" companies.

The most suggestive feature of the relations that gradually came to exist between the several crafts is that the artisan crafts were usually subordinated to the trading crafts. Even in a craft in which were combined both trading and working classes, there was a plain tendency to make it the sole organization of the former by crowding out the latter or leaving them to become bachelors' or journeymen's companies.

From 1300 to 1450 the craft gilds were, on the whole, efficient organizations of trade and industry. So long as the social unit was local, so long as each town community was nearly self-sufficient and both demand and supply had reference to the population of its limited area, while town society was largely democratic, the influence of aggregated capital small, and industries simple and not divided into several processes, it was possible for the gild organization to endure. With increased communication between English towns and the growth of a foreign commerce the gild barriers were broken down. Both within and without, the craft gild was losing its control of economic activity. The membership of the gild had less and less reference to the trade or industry whose name it bore. Moreover the gild exercised a diminishing control over trade and industry. After the middle of the sixteenth century, the gild or company was so plainly a body having merely a profitable control over certain fields of industry instead of an organization for the control by the tradesmen or craftsmen of their own conditions that Elizabeth and dames I. could see nothing objectionable in investing private individuals with similar powers in the "monopolies" created by them. The governing body of the craft had shrunk into a close corporation virtually outside of the craft itself and simply deriving revenues from it in the form of fees with little beyond a nominal control of it; most of the

public functions of the body had vanished and in their place was a body of rights private in their nature. So clearly had the incorporated company slight influence over economic activity and so clearly had it become the channel through which general participation in the town life was reached that one might in London be permitted to engage in any trade or industry by obtaining the freedom of any company and through it the freedom of the city. As far as trade and industry alone were concerned the gilds, with few exceptions, ceased, after the sixteenth century, to promote them, if they did not even restrain them.

V — The London Livery Companies.

The livery companies of London have been mentioned generally as the developed forms of the earlier gilds but deserve more particular notice because they represent what has survived from the gild system since the middle of the sixteenth century. They have been regarded by some writers as a distinct class of organizations, but may more properly be regarded merely as gilds modified by new conditions. In some of them there has been no break in corporate existence from the thirteenth century to the present time; such of them as were created in the seventeenth century were made to conform with the companies then in existence and can hardly be considered evidence of a purpose, either on the part of the crown or on their own part, to institute a new class of corporations.

They were called "livery" companies because they had secured from the city of London permission to wear a livery or distinguishing dress, though by the sixteenth century its use had come to be restricted to a definite and distinct class of their numbers. They differed from the earlier gilds or crafts, which had been normally in direct subjection to the municipalities, in their having obtained recognition by charter from the crown, though perhaps not as technical corporations. The fishmongers had received royal sanction of their rights and duties as early as the reign of Edward I; eight of the companies appear to have received charters from Edward III.[304] When they received their first charters they were not different from the other trade and craft gilds of the period. In each succeeding reign they secured confirmation of their former charters by "inspeximus" charters of the new sovereign until the reign of James I, when most of them obtained new charters and fourteen new companies were created.[305] Before the end of the fourteenth century the power of electing the

municipal officers of the city of London had been assumed by them; moreover, they participated in the government of the city through their predominant representation in the common council, the aldermen being representatives of the wards of the city. The mayor of the city, who had to be taken from one of the great livery companies,[306] was sometimes significantly described by virtue of his office "master of all the companies" or the "warden of all the companies." Twelve[307] of the companies, through their greater wealth and importance, and through their larger representation in the government of the city, had come to be distinguished as the "great" livery companies,[308] the others being known as the 'lesser" or"minor" livery companies. Among the former, moreover, an order of precedence had been established,[309] which was of later importance almost solely in regulating their participation in civic pageants and "tidings." The chief characteristics that distinguished the livery companies of London from the older gilds and crafts at the beginning of the reign of Elizabeth were, then, (a) their possession of select bodies known as the "livery" or "clothing," (b) their incorporation or equivalent sanction by the crown, (c) their control of the government of the city and (d) their division into "great" and "lesser" companies with an order of precedence in the former.

The Reformation exerted its influence on the companies as on most other social bodies, by lessening somewhat the bonds of association. They had accumulated considerable property from which the income, wholly or in part, was expended on masses, obits and other religious ceremonies; such property, to the extent to which it was devoted to "superstitious uses," was assumed by the crown. They were permitted to redeem the property, however, by paying to the crown the amounts formerly devoted to superstitious uses capitalized at five per cent.[310] The amounts paid in redemption were raised by loans and subscriptions of members. One effect of the change was to relieve the companies of duties that had been especially appropriate for them. They became, to a certain extent, investors in property for the sake of its income instead of administrators of funds devoted to the welfare of their members' souls. Aside from the economic effects, much of the influence of Catholicism as a binding social force had been lost. Under the changed conditions, religious worship could not be so essentially a part of their common life. Yet after the Reformation, each of most of the companies attended a particular church, a part of which was reserved for their especial use; but sermons did not take the place that

masses had formerly filled.

Within the companies the centre of corporate power was in the court of assistants, a body of from ten to thirty-five members, serving for life and filling their vacancies by cooptation; they "called" freemen to the livery, elected all the company's officers and had the direction of all its affairs. The executive officers were from one to six wardens; in some of the companies the chief executive was the prime warden, in others, a master, whether or not regarded as one of the wardens. They were elected annually from among the liverymen[311] by the court of assistants and became assistants at once, *ex officio*, or after having "passed the master's or prime warden's chair." The livery was also a body limited in number, though varying in size from fifty (in the great companies)[312] to four hundred members, called from the freemen by the court of assistants, and including the masters, wardens and assistants.[313] By the end of the sixteenth century the color of the livery worn by each company became settled, though formerly it had been changeable, and the style became the same in all the companies — an indication that the relations between the separate companies and between them in the aggregate and the rest of society had crystallized. A peculiar development, possibly the result of the growth of the restricted livery, was the exclusion of women from the companies, except so far as they enjoyed mere freedom of them; it may have been due to some extent to the partial elimination of the religious element from the companies by the Reformation; at all events, there is almost no mention of women in their records after the sixteenth century; they certainly were not called to the livery. The oligarchical constitution outlined had become a fact by the beginning of the reign of Elizabeth, but it was not yet recognized in the charters of the companies; even during her reign only one new charter was granted to a company, the older charters of the other companies being simply confirmed by "inspeximus" charters. In the reign of James I, however, the new charters granted, whether to the old companies,[314] or to the fifteen newly created companies, distinctly recognized and sanctioned the developed constitution.

It is only in a limited sense that the freemen may be said to have been a part of their companies. The freedom might be acquired in four ways: (1) By apprenticeship or servitude, (2) by patrimony or birth, (3) by purchase or "redemption" and (4) by conference *honoris causa*. (1) A person became qualified for the freedom by an apprenticeship of seven years to a freeman; frequently such apprenticeship was

merely colorable, a matter of form, without reference to the trade or craft of either the company, master or apprentice; frequent enactment of ordinances that it should be real and not merely colorable seemed to be unavailing. (2) All legitimate children, both male and female, born to freemen after the freedom had been acquired, were eligible to the freedom by virtue of such birth.[315] (3) The freedom might be conferred in return for the payment of a sum of money, in which case it was technically said to be acquired by redemption. (4) The freedom was frequently conferred as an honor on distinguished persons. Henry VII and Prince Henry (son of James I) thus became merchant taylors; James I, a clothworker; and Charles II, James II and William III, grocers; Elizabeth was a "free sister" of the mercers. Persons were admitted to the freedom on proof of their qualifications by the masters and wardens; when conferred by redemption or *honoris causa*, it appears to have been by the court of assistants or livery. Membership in the companies was exclusive; a person might be a member of only one company, and he might transfer his membership from one to another. (1) Liverymen could be called only from freemen, and only from the wealthy and influential ones. In 1697 the court of aldermen of London enacted "that no person should be allowed to take upon himself the clothing of any of the twelve companies unless he have an estate of £1000; of the inferior companies, unless he have an estate of £500."[316] (2) Freedom of the city of London was consequent on membership in a livery company. (3) Freedom of a company enabled the freemen to follow the trade or craft controlled by the company; the rule was apparently broadened at times so much as to enable a person to follow any trade or craft if free of any company.[317] (4) Freemen were exclusively entitled to pensions, alms or other charitable aid from the large funds of the companies devoted to such purposes; similarly many educational advantages in institutions partly or wholly controlled by the companies were restricted to their freemen's families. If liverymen became bankrupt, or failed to meet the terms of agreements for the compromise of their debts, they lost the status of liverymen; if they applied for aid from the charitable funds, they similarly lost their status, to the extent, at least, of ceasing to be more than nominally liverymen; fees for admission to the livery being refunded to them.

The Reformation or the middle of the sixteenth century is usually assigned as the date at which the companies ceased to exercise control over trade and industry, but the assignment is plainly too positive. Some of the companies exercise a degree of

such control even at the present day. In 1884 the London Livery (companies Commission reported that the Fishmongers' Company still appointed and paid "fish meters" to examine fish offered for sale at Billingsgate Market and condemn such as they should find unsound, which were deodorized and removed at the company's expense; the company also prosecuted infractions of the provisions of the Fisheries Act[318] against the sale of undersized fish or of fish during "close time." The Society of Apothecaries were reported to exercise the power conferred by Parliament of examining candidates for licenses to practice as apothecaries, granting such licenses and of recovering penalties from persons practicing without them. The Scriveners' Company exercised a similar control over candidates for the office of notary, by imposing examinations on them and preventing them from practicing without having taken them. The Founders' Company had legal authority to stamp weights.[319] The Gunmakers' Company tested and marked guns, pistols and small arms, and prosecuted offenders against the act[320] from which their authority was derived.[321] Most of the new companies created during the seventeenth century were active until at least the middle of the eighteenth century. The power to enact ordinances was not fully used after 1550 by the older companies, but the right of search and approval was by no means unused. Three tendencies are noticeable in the control exercised over trade and industry: (1) The membership of the companies had continually less reference to the trade or craft indicated by their names.[322] As early as 1415, the membership of the drapers had not been confined to tradesmen; in 1445, only one member of the skinners was a skinner by trade; after 1502 the Merchant Taylors' Company was open by charter to all trades; in 1882, the liveries of the companies were found to be composed chiefly of professional men, wealthy business men and retired merchants.[323] The rights of control over trade and industry were a source of income to the companies; the rights were exercised by a group of persons without reference to their participation in the social activity controlled. From the standpoint of the crown the companies were not different from the "monopolies" created by Elizabeth and James; in fact, the powers exercised by the "monopolists" were the same, in most cases, as those formerly possessed by the companies and were viewed as merely transferred from them to the favored patentees of the crown. The power granted to the "monopolists" was not so much that of exclusive production or sale as of exclusive "searching and sealing." When an effort was made in 1580 to obtain

from Elizabeth a monopoly of the gauging of beer, it was at once met by an objection from the Brewers' Company, who plainly regarded the scheme as a contemplated invasion of their chartered rights, though each party to the controversy insisted rather on considerations of expediency. Likewise the monopoly of "searching and sealing" leather was in derogation of the rights of the Leathersellers' Company. Indeed, the chief complaints against the granting of monopolies came from the livery companies, though their opposition was made more effectual by the excessive rapacity of their opponents. (2) The subdivision of companies was not commensurate with the increase in the number of distinct trades or industries. Largely because the control of the companies was so distant and so lightly used, newly differentiated occupations were retained under the older organization or expressly subjected to it. Thus by a charter granted by William and Mary to the Grocers' Company, confectioners, druggists, tobacconists, tobacco-cutters and sugar-refiners were retained or brought within its jurisdiction and subjected to its right of search; the name of the company, by its charter of 1607, was "the Freemen of the Misteries of Grocers and Apothecaries of the City of London"; in 1617, however, the apothecaries secured a separate charter from James I on the ground "that the ignorance and rashness of presumptuous empirics and ignorant and inexpert men may be restrained, whereupon many discommodities, inconveniences and perils do daily arise to the rude and incredulous people."[324] Organ-makers continued to be governed by the Blacksmiths' Company, though the clockmakers subject to it obtained a separate charter. On the other hand, some divisions seem to have been hardly demanded by the conditions of industry, as the separation of the bowyers from the Fletchers. The division of the barber-chirurgeons into Barbers and Surgeons was apparently justified. After the middle of the sixteenth century, it is believed, no organized companies were united; the last union was probably that of the stock-fishmongers and salt-fishmongers in the Fishmongers' Company in 1536 by charter of Henry VIII. (3) The authority of the companies was extended beyond the city, in some cases over the whole of England. By the middle of the sixteenth century many foreign as well as native tradesmen and artisans had settled in the suburbs of London, outside of the jurisdiction of the companies; by statute in the reign of Henry VIII, their business and work were subjected to the inspection and approval of the London companies.[325] By the charters of the several companies granted in the reign of Elizabeth and succeeding reigns their

right of regulation and search was expressly extended to include territory from two to seven miles beyond the limits of the city, as, for example, in the case of the Apothecaries' Company in 1617. The Merchant Taylors' silver yard was made a standard for the Bartholomew cloth-fair. A similar extension of the powers of the Goldsmiths' Company had long antedated the Reformation. In the charter granted to it by Edward IV it was provided "that in all trading cities and towns in England where gold-smiths reside, the same Ordinance be observed as in London, and that one or two of every such city or town, for the rest of that trade, shall come to London to be ascertained of their touch of gold, and there to have a stamp of a puncion with a leopard's head marked upon their work, as of ancient time it has been ordained."[326] The same company had as one of its functions the "trial of the pyx," which it still performs.[327] In 1884 the Stationers' Company still maintained, by virtue of the provisions of the Copyright Act of 1842, a register of all publications.[328] Perhaps it is only another way of describing the geographical extension of the companies' powers to say that they were coming to exercise rather national than local powers.[329]

The political relations of the livery companies to the government of metropolitan London have remained substantially unaltered to the present day. A "common hall" consisting of all liverymen free of the city proposes the names of two aldermen, one of whom is elected mayor by the court of aldermen. Until the passage of the Reform Act[330] members of Parliament had been elected by a common hall, but by that act the electorate was broadened by allowing ordinary electors to participate with the liverymen. The sheriffs, chamberlain, and other city officers are chosen by common halls. Constitutionally the metropolis remains little more than a federation of livery companies. Aside from their political relations to the government, the companies were used as organs of the state and city because they were organizations of large groups of citizens and because they represented, broadly speaking, the organized wealth of the city. In their corporate capacity they had become very wealthy through gifts and bequests of property by members and others for various purposes chiefly of a public nature, such as the maintenance of hospitals, almshouses and schools, and exhibitions and scholarships in colleges, for the payments of pensions and the distribution of charity in other forms; the income of the property was often in excess of the amounts expended in the execution of the trusts with which it was burdened and left a surplus for the enrichment of the companies. Another source of wealth was

the fees paid for binding apprentices, admitting candidates to the freedom, advancing freemen to the livery, dues periodically paid by members and fines levied for the infraction of rules. Contributions had also at times been made by members which, if not repaid, became part of the corporate property. Fees for "searching and sealing" goods, testing measures and similar public duties were considerable. Moreover, their members (liverymen) were nearly all wealthy and could be resorted to when the corporate funds were insufficient. When the king or city needed funds for any purpose, or desired the promotion of a public enterprise, resort was had, especially until the end of the seventeenth century, directly to the companies and indirectly through them to their members.[331] When lotteries were projected by the crown, the companies and their members were invited to subscribe for shares; they afterwards complained that there had been delay in the payment of prizes. During the period of the Civil War and Commonwealth, Charles as well as the Parliamentary party and Cromwell extorted loans from them. The usual procedure was to make a demand on the mayor of the city for the service; he in turn issued "precepts" to the companies for the loans, which were made out of corporate funds, money borrowed by the companies or contributions levied on their members (liverymen); during the Civil War some of the companies were reduced to the necessity of disposing of their plate to meet the exactions of the state. Only a small part of the loans were ever repaid. The halls of the companies also proved very convenient for barracks during the war and afterwards for the administrative offices of the departments of the Commonwealth government.

In times of war, the companies were required to furnish ships and quotas of soldiers. When England was threatened by the Armada, they furnished thirty-eight ships. For a long time they had also to maintain armories and powder magazines. In 1572 the creation and support by them of a standing force of three thousand soldiers appears to have been contemplated by the crown. In manning the ships provided by them for the use of the crown they were apparently permitted to impress the necessary number of men for seamen and marines. As in the exaction of loans, the crown required the city to provide the ships, soldiers and supplies; the mayor thereupon issued precepts to the several companies for their shares of the service.

An interesting function of the companies was the maintenance of a supply of corn for the use of the people in times of scarcity. It had been the custom of the city to

maintain such a supply for the purpose of selling it to the people at a reasonable price when by reason of scarcity its market price had become excessive. Incidentally the habit had been contracted of applying to the companies for loans with which to lay in the supplies, and of answering their demands for repayment by suggestions that they take the corn itself. Finally the companies maintained the supplies themselves in the municipal storehouses at "the Bridge," where the city had kept them, and later more prudently in their own storehouses. The custom ceased on the destruction of the companies' storehouses in the great fire of 1666. Likewise, in the seventeenth century,

> "for a constant supply of sea coal for the use of the poor in times of scarcity, and to defeat the combinations of coal dealers, the several city companies... were ordered to purchase and lay up yearly... quantities of coals, which, in dear times, were to be vended in such manner and at such prices as the lord mayor and court of aldermen should by written precept direct, so that the coals should not lie sold to loss."[332]

The companies were also the sources from which were derived the economic means of promoting voyages of discovery, the establishment of new trade with foreign peoples and the colonization of new lands. In some cases the companies or their members acted on their own initiative; in others they were more or less unwillingly induced to adventure capital through precepts issued by the mayor at the instance of the crown. But they not only contributed money in furtherance of such projects, — they also conferred upon them the form of organization in which their own affairs were conducted. In general the great companies engaged in foreign commerce and colonization during the sixteenth, seventeenth and eighteenth centuries were constituted on the model of the London Livery Company. The Merchant Adventurers appear to have been at first organized within the Mercers' Company; later they had a separate organization, but were subject to ordinances enacted by the Mercers and had to render a sort of tribute to them; finally they attained complete independence. Until 1526 the Merchant Adventurers and Mercers used the same books for recording their transactions. The Turkey or Levant Company appears to have been an offshoot

of the Grocers' Company and used its halls for meetings until the great fire of 1666. The East India Company had as close connection with the Levant Company as is implied in the use of the books of the latter for the meetings held in organizing it, and was moreover closely related to the Grocers' Company through the partial identity of their fields of activity and of their membership. Precepts do not appear certainly to have been called for in the organization of the purely commercial companies, but they were issued for setting out voyages of discovery; in the former, private interest could probably be relied on for a motive force, while in the latter the element of a definite prospect of gain was wanting. For a similar reason — because the public purpose was magnified and private interest was without a stimulus — the issuance of precepts for subscriptions was occasioned by projects of colonization. In the charter granted to the London Company in 1609 for the colonization of "South Virginia," the names of most of the important livery companies of London appear as "adventurers." In response to the demand made in its precept, the Merchant Taylors' Company subscribed £200, one half as its corporate subscription and one half as the subscription of individual members. When the lottery permitted by the charter of 1612 was set up, the companies were required (invited or requested by precept) to subscribe for shares, and the drawing was held in the hall of one of them. The most interesting colonization project in which they participated was that of the Irish Society. James I, in 1609, invited the city of London to plant and govern a colony on lands forfeited by rebels in the county of Ulster in Ireland — a project which he described as "likely to prove pleasing to Almighty God, honorable to the city, and profitable to the undertakers." The mayor thereupon summoned a meeting of representatives of the twelve great livery companies (four from each company) to consider the proposal. As a result, the companies advanced for the execution of the project various sums which were afterwards increased to £5000 for each company or £60,000 for all. They also provided for the government of the colony by a governor, deputy governor and twenty-four assistants, the recorder and five of the aldermen of London to be members of the court, and all members to be "free of the city." The body, known as the "Irish Society," was incorporated by James in 1613 as the "Governor and Assistants of the new Plantation in Ulster, within the realm of Ireland." A new county was laid out for it on the site of the old city of Derrie and in its vicinity, which was appropriately named "Londonderry." Most of the land was

divided in twelve equal parts among the several livery companies, but a part remained undivided under the administration of the Irish Society.[333]

The companies were also, in a measure, made media for the publication and enforcement of laws and proclamations. In 1579, when a libellous book was published about a prospective marriage of Elizabeth to the Duke of Anjou, precepts were sent to all the wardens of livery companies directing them to warn their members not to possess or harbor but to suppress such literature. Sumptuary legislation, such as related to the kinds of caps and other clothing that should be worn by different social classes, was brought to the attention of the companies and its enforcement enjoined by precepts.

No small part of the companies' activity was expended in the presentation of pageants on land and river on public occasions, such as the return of the king or queen after an absence from the city or country. The "lord mayor's show," presented annually under the auspices of the company of which the mayor was a member, was a most elaborate and expensive function; it is said to have been most magnificent from the middle of the sixteenth to the end of the seventeenth century. When foreign ambassadors or other distinguished persons arrived in London, it was not unusual for the great livery companies to provide a fitting reception for them, sometimes including a street pageant. When the Russian ambassador was expected to arrive in the city in 1617, the companies were ordered by precept to provide a number of the members of each of them to accompany the mayor and aldermen to receive him at the quay. Likewise the funerals of the companies' members or of the king or prominent persons were ceremonies in which the companies participated with the usual elaborateness. Another phase of the ceremonial side of the companies' life was and still is the giving of banquets, both periodically and on special occasions, — apparently the most enduring feature of gild life for nearly a thousand years. Some of them were intended chiefly for their own members, such as the "election banquet," the survival of the early annual meeting of gildsmen for the election of their officers and the transaction of their other business; others were intended to add dignity to public occasions, such as the election and inauguration of a lord mayor; others still were given in honor of distinguished English or foreign statesmen or other persons.

During the reigns of Elizabeth and the Stuarts there was much interference by the court with the companies in appointments to offices and the disposition of property

by lease and otherwise. It ought hardly to be regarded as a movement of importance for it was certainly prompted by little more than a sordid purpose to derive pecuniary and political advantages from the companies' management of their affairs. But the matter terminated in 1684 in the issuance of writs of *quo warranto* against the companies. The charter of London, or its body of privileges, had already been declared forfeited and the companies did not wait for adverse decisions; they subserviently surrendered their charters to Charles II with petitions, in most cases, for a regrant of their privileges. When a committee of the Grocers' Company, appointed for the purpose, waited on the King's secretary they were told that the King was not disposed to deprive them of their property powers, but desired only "a regulation of the governing part, so as his majesty might for the future have in himself a moving power of any officer therein for mismanagement, in the same way and method that they themselves now used, and claimed to have by power derivable from the crown."[334] By the new charters granted by Charles II it was provided that wardens' and clerks' names should first be presented to the King for his approval; if they should be approved, they should assume office, but if rejected, successive new elections should be held by the courts of assistants until the King's approval should be obtained. Moreover, any warden, clerk or assistant should be removable by order of the privy council, and none should be elected to the livery without the approval of the mayor and court of aldermen of London. Before James II fled from England in 1688, he prepared by an order in council to restore the companies' charters to them. After the Revolution the companies were restored by statute to the status held by them before the writs of *quo warranto* were issued under Charles II.[335] New charters were granted to some of them by William and Mary.

After the beginning of the nineteenth century the wealth of the livery companies increased very greatly, chiefly by reason of the rapid rise in the value of the large amounts of city real estate owned by them. Their somewhat anomalous character and activity led to the appointment in 1880 of a royal commission of twelve members

> "to inquire into the circumstances and dates of their foundation, and the objects for which they were founded, and how far those objects are now being carried into effect... to inquire into and ascertain the constitution and powers of [their] governing bodies... and the mode

> of admission of freemen, livery, and other members... to inquire into and ascertain the property of, or held in trust for or by [them], both real and personal, and where the same is situate, and of what it is composed, and the capital value of the several descriptions of such property, and [its] annual income and the mode in which [it] is managed and the income is expended [and] to consider and report what measures [if any] are... expedient and necessary for improving or altering the constitution of such companies, or the appropriation or administration of the property or revenues thereof."

It was found that in 1880 the income from property held in trust had been about £200,000, and from corporate property between £550,000 and £600,000, a total of from £750,000 to £800,000; the property was estimated to be of the value of at least £15,000,000, while the indebtedness of the companies was about £180,000. The companies whose affairs were investigated were the twelve great livery companies and sixty lesser livery companies; it was found that since 1835 thirteen companies had become extinct; four unimportant companies were not included in the investigation because they were not technically "livery" companies. When their report was made in 1884, the commission were

> "of opinion the state should intervene but only for the purposes of (1) preventing the alienation of the property of the companies of London, (2) securing the permanent application of a considerable portion of the corporate income thence arising to useful purposes, (3) declaring new trusts in cases in which a better application of the trust income of the companies has become desirable."[336]

No changes have resulted directly from the investigation. Indirectly it has influenced the companies on their own initiative to devote a larger part of their corporate income to public purposes, such as the establishment and support of institutions for technical education.

The history of the livery companies of London is interesting evidence of the persistence of corporate structure aside from the activity that may have originally

been exercised within it. In the thirteenth and fourteenth centuries they had been social organizations of tradesmen and artisans for the control of their economic life in substantial harmony with the gild system. When the gild system, speaking broadly, ceased to be an efficient organization of industrial society after the middle of the sixteenth century, the London livery companies shared with the rest of the system in the loss of their control over trade and industry. They continued to exist, however, for five general reasons: (1) London had never possessed the homogeneity that characterized most other English towns; it had always been rather a federation of units than a distinct unit, whether of geographical units that crystallized in wards, or of units of population organized in gilds. The conception of gild representation in the government of the city was on that account more easily realized. When once admitted to participate as units in the government of the city, the superior vigor of their corporate life made it readily possible for them to almost wholly absorb it. One reason for the persistence of their life is that they were largely identical with the city government and found in their exercise of political power a function capable of perpetuating them. (2) London, to both its advantage and disadvantage, was nearer to the royal government than any other city in England; its powers were greater, while its duties were also heavier. Its government, constructed by confederation of gilds, could not be so easily modified by the centralizing influences represented in the crown; at the same time, the growth of royal power demanded greater services of a national character; both tending to strengthen the gilds as organizations by increasing their autonomy and broadening their functions. They became organs of the expanding national government, as similar organizations in other cities could not. (3) They were the organizations of the great commercial wealth of London, irrespective of the occupations of its owners. In many cities the governing body itself had become the organization of the wealthy classes; in a few of them, a predominant gild or company had displaced it; in London, the companies served the purpose. Perhaps inseparable from the possession of great wealth was the social-fraternal ostentation of its owners through the social machinery of the companics, providing a strong corporate bond and enriching the companies through the benefactions of their members. (4) Before the establishment of the East India Company and other great foreign commercial companies and of the Bank of England at the end of the seventeenth century there was no organization of capital to which the national

government could resort for the satisfaction of its financial needs; it had no "financial agent." The city of London, acting through the livery companies, supplied the want until more convenient institutions could be evolved from experience. It was a crude expedient, but its use for the purpose tended to perpetuate the corporate existence of the companies. (5) Finally the large accumulation of corporate wealth, whether held in trust or absolutely, as distinguished from the wealth of private members, strengthened the life of the companies. In fact, the administration of their trust estates and the expenditure of a part of the income from corporate estates on entertainments and benevolences have been the chief functions of the companies since the middle of the last century.[337] The holding of property by a corporation is theoretically subsidiary to the accomplishment of some public purpose, but when the purpose has been lost to view, or has been accomplished, the accumulated property, especially if large in amount, tends to hold the corporation together, because it is so difficult to distribute the property equitably. The Livery Companies Commission were evidently perplexed by the problem what disposition should be made of the companies' property, if they should not be maintained as corporations. The London livery companies, to recapitulate, were maintained beyond the time of decay of their medieaval functions by (1) their intimate connection with the municipal government of the city, (a) their use as organs of the expanding central government, (3) their service in the expression of the power and ostentation of the exceptionally wealthy classes of London, (4) their use as organizations through which the financial needs of the nation and city might be supplied and (5) their accumulated corporate wealth.

VI.

It is impossible to designate exactly the point in history at which the associations included under the general name of the "gild system" attained the degree of development implied in the term "corporation." Even as loosely as the term is commonly used, one would hesitate to apply it to the gilds of the thirteenth century, while the justice of applying it to the London livery companies of the eighteenth century is unquestionable. The mere use of the words "corporation," "body corporate" or "body politic" in historical documents is not a safe basis of judgment, and for reasons that will appear more fully in a later chapter, the technical legal tests used for the past one hundred and fifty years would be quite useless. Possibly a

somewhat careful examination of the associations discussed in this chapter, in the light of what has been said of the nature of corporations, will be of service.

All the gilds (even including the rudimentary organizations imposed on bodies of tradesmen and craftsmen for police purposes) were recognized by the state, — in other words, they were protected in the exercise of their powers, though to a varying extent, by the coercive force of politically organized society, whether wielded by king or municipality. But bare recognition is not enough; corporations are creatures of the state, the term implying that the state has a more than passive interest in them. The Frith-gilds have already been considered from that point of view. The ecclesiastical and social-religious gilds may have been of benefit to society, may have aided humanity in its progress towards the indefinable goal of perfection which it is ever striving to attain, but they were not so viewed by the state, by society as it happened to be organized during the time when they flourished; its attitude towards them was merely permissive, tolerative. The same statement would be almost true of the earliest trade gilds, of the merchant gilds in the twelfth century and of the craft gilds in the century following. The passive attitude hardly became clearly one of activity before the reigns of Richard I and John in the case of the merchant gilds and the century covered by the reigns of the three Edwards may be safely called the period during which a similar transition took place in the attitude towards the craft gilds. It is doubtful whether such a change of attitude towards the ecclesiastical and social-religious gilds ever took place; their chief importance in the development of corporations is that they provided an interior organization, a system of relations between their members, that might be used and indeed was used as a social structure for other kinds of social life. The best evidence of the change of attitude towards the craft gilds lies in the fact that many trades not voluntarily organized in gilds were compulsorily organized by the municipalities on the model of the true gilds.

To what extent were the gild relations voluntary or compulsory, and what degree of stability did they possess when once assumed? The ecclesiastical and social-religious gilds were clearly voluntary associations and there is no reason to doubt that members might retire from them at will. They were by no means the only media through which the soul's welfare in the future world might be assured or the fraternal-social impulses of men in this world afforded gratification. They occupied no exclusive field of social activity. In the trade gilds, the situation was different. The

merchant gilds and the later craft gilds occupied exclusive fields of life. The early buyer and seller and the later tradesman or craftsman had to belong to a gild. It must not be said that his membership in the gild was voluntary; he might exercise his will in determining whether he would buy, sell, trade or manufacture, but if once he should choose, his membership in the gild followed as a matter of compulsion. But there was a channel through which a voluntary element crept into the gilds. The membership in the gild conveyed the right to participate in certain lines of economic activity as well as to control them; if the former should be emphasized but a little, the sufferance of the gild would be of as great advantage as its franchise; and that was exactly what happened, if not always in form, at least quite universally in substance. The tradesman or artisan simply paid tribute to the gild for the permission to engage in a trade, or industry, while the gild virtually shrunk into a smaller body in the exercise of control over it. Then membership became truly voluntary. In many gilds the distinction between persons who merely wanted to trade or manufacture and others who actually expected to attend gild feasts, Occupy offices and be of one "clothing" or another was clearly and unequivocally made; the former were eventually excluded from the gild organization; the latter constituted the gild and membership in their number was not compulsory. The two sides of gild life had become separate; doing business and imposing the conditions under which it should be done had come to be distinct; the former was left to a social class substantially unorganized; the latter became the function of the gild. Membership in the gild was not voluntary until the shrinkage described had taken place. When once the obligations of membership in a trade gild had been assumed, they were not easily laid aside. One could belong to only one gild at a time, and once he had chosen his occupation and entered the appropriate gild, all the social usages of the time were in opposition to his making a change or even allowing his children to make it. Moreover, other crafts were not expected to admit readily a deserter from his own craft. Membership in a craft carried too much with it to permit it to be easily laid aside. One's residence, his status in society, his credit, his fraternal relations with his fellows, were dependent on his membership in his gild. Moreover, even if surrender of membership in a gild had been readily permissible, entering another gild in order to follow another occupation would have been necessary; the general obligation of gild membership was quite unavoidable. When what has been called the process of

social shrinkage in the gild had taken place, it was only by consent of the narrower body that the burdens of membership might be laid aside. When the precepts of the Stuarts had become too frequent, liverymen of the London companies would have been glad to surrender their membership but could not do it. Membership in trade gilds, then, may be said to have been characterized by a high degree of stability, and its assumption was hardly voluntary until the gilds had departed from their democratic basis and were becoming virtually organizations of the governing or directing element in trade and industry.

More important, possibly, is the question of the internal status of the gilds: whether the centre from which their restricted social force was exerted, the source of their activity, was within or without them; whether in exerting their social force, either in the preliminary stage of determining to what end or in what manner it should be exerted or in the later stage of actually exerting it and transforming it into social effects, they were self-sufficient or in their weakness had to be supplemented by auxiliary social agents; and whether they possessed the power of maintaining their character as associations, groups of persons, without aid or interference from the outside in the replenishment of their membership. The ecclesiastical and social-religious gilds were essentially autonomous; no preliminary act of Church or State was necessary to set their social force in motion or to keep it in motion except in so far as the statute of mortmain required the consent of the state to their holding the property that served to some extent as the economic basis of their activity; nor was the command or consent of external social agents prerequisite to their enactment or enforcement of ordinances; likewise they controlled their own membership, granting or denying admission to applicants as they pleased and expelling undesirable members. As far as the qualities of autonomy, self-sufficiency, and selfrenovation are concerned, the ecclesiastical and socialreligious gilds were in plain possession of them. But the powers of the trade gilds were so much more vital to society that they were unable to exercise them in so great independence of nation and town. The developed merchant gilds and craft gilds, however, with the exception of those described as compulsorily organized by the town, were fairly autonomous; they generally elected their own officers, though the first ones were usually appointed by the town govermnent, and though all had to qualify themselves for their offices by taking an oath before the mayor; the initiation of any movement within the limits of

their powers belonged to them and their gild life had an independent centre. But they were not fully self-sufficient; their ordinances were sometimes enacted for them by the town or nation; their assent, at least, was usually sought; even when they enacted their own ordinances, they had to submit them to superior social groups for approval. When their ordinances were to be enforced, they seldom had the power to enforce them in their own courts; and when they had such power they often had to submit to a review of the decisions of their own courts or officers by municipal or national authorities; more usually they had the bare power to present infractions of their ordinances before the higher authorities for their consideration. Yet though they appear as a matter of theory to have been very dependent on the municipal and national authorities in putting their powers into effect, they were nevertheless, in actual practice, subjected to very slight control from the outside. Through the inability of the town to enact technically proper ordinances, and through the influence of their own compactly organized members, the gilds were generally able to get such ordinances as they desired, and in the enforcement of them, gild loyalty could safely be relied on to give them weight without resorting to mayors and judges for punishment of their infractions. When their relations to industry became more remote and their importance to the actual economic activity of society decreased, they were allowed greater independence by the state. It is needless to add that their control over their membership was nearly exclusive. Even in their early stages, when they were substantially organizations of all the persons engaged in a particular vocation, trade or industry, they were always allowed to determine whether applicants for admission were proper to be admitted; though the children of gildsmen had the privilege of entering the gilds on payment of lower fees than others, the gild had to pass on their admission; likewise the gilds had the power to protect their membership by expelling their members for infractions of ordinances; apprenticeship, as a channel through which members might be admitted, was under their close control. When the gilds had developed into companies, virtually organizations of the upper classes in trades and crafts, or of persons having no connection with them, membership was still more closely limited; even apprenticeship led only to the status of a shopkeeper or workman in the trade or craft, and not to membership in its organized governing body. In general, and especially in their later development, the trade gilds, exclusive of a class of them that were clearly imperfect and abortive, possessed the degree of

autonomy, self-sufficiency, and self-renovation that is one of the attributes of corporations.

The feature of compulsory unity in gilds of all kinds was so conspicuous at all times that attention need hardly be called to it. But the unity of the gilds was in the early centuries rather political than personal. Though the gild acted as a unit, it was mostly for the purpose of determining how each member should act in the sphere of social life within its limited field. The ecclesiastical gilds, standing midway between the monastic organizations and the later gilds, afforded, under ecclesiastical management, the means for the salvation of the souls of individuals; likewise the social-religious gilds, though not under the direct management of the Church, provided social machinery through which the brethren might be more fully assured of welfare in the future life, and also regulated the social relations in the present life to one another, and, to some extent, to outsiders. In the trade gilds, moreover the element of unity was largely in the possession of social machinery for the regulation of the personal activity of members. The individual was not lost sight of — he was rather held up to plainer view. The gilds were not so much active social agents themselves as they were political organizations within which the individual might more effectively act, in other words, they were political units. When in the course of their development the governmental part of the gilds became distinct from the social functions of their members, their unity assumed a different form and became more nearly real, as they became more nearly governing bodies, to the exclusion of persons subject to their regulations. While the relations of gildsmen to outside members of society rested on them individually (though acting under rules imposed by the whole gild) their interrelations were sustained largely through the medium of their governing body, for whose use a more or less elaborate accumulation of economic goods was necessary. The gilds maintained commonboxes to make effective their system of almsgiving, had candelabra and funeral palls for religious purposes and stage property for plays; many eventually owned common halls, almshouses, schools and hospitals. The interrelations of members may be said not to have been terminated by death. As in life members united in religious services for their souls' future welfare, so at death they aimed to carry beyond the grave the advantages of gild membership by bequeathing property in return for masses and prayers for the repose of their souls to be rendered through the same gild machinery. The gild as a group

thus came to be the owner, in many cases, of considerable amounts of property, augmented by many fees paid for binding apprentices, admitting to the freedom and the like; while concurrently the gild was virtually shrinking into its governing body, and its actual control over industry was gradually wasting away. The effect was a conception of the gild as a body actually doing *for society* instead of imposing regulations under which society could do for itself. When that conception had been attained, the way was clear for the modern corporation with its conception of *personal* unity in place of the older one of the *political* unity of the gild.

What was said of the merchant gilds must with equal truth be said of the ecclesiastical, social-religious and craft gilds. Their vital principle was the private interest of their members. The universal element of religious service had for its purpose the betterment of the gildsman's status in the future life. The distribution of alms among members was certainly not prompted by a desire to benefit society in general; even the distribution of alms to non-members was intended to benefit rather the donor than the donee; it was a reflection of the self-abnegatory religion of the Middle Ages. The supervision of economic processes and the maintenance of a standard of skill and fair dealing were certainly for the protection rather of fellow-gildsmen than of the other members of society with whom they came in contact, though the state was amply justified in finding in them means of benefiting society in general. The private interest, however, was not manifested by each gildsman in his own commercial and industrial activity; it was manifested rather in his fellow-gildsmen's work; it was a social or political interest. The private interest of tailors, as far as the gild system was concerned, did not impel them to make and sell clothes; it impelled them rather to organize their group so that each tailor, in making and selling clothes, might do so under such regulations that he would not thereby do injury to his fellow-tailors. The movement discussed in the preceding chapter, however, wrought a change in the nature of the interest, though it still remained private interest. When the positive functions of gilds in making and enforcing rules of individual activity had virtually disappeared, leaving the older governing body of the gild separated from trade and industry but compactly united in the administration of a fund of gild property, the private interests of its members centred in the participation in the fruits of its accumulated wealth and social prestige.

Corporations, it has been suggested, are not only organizations of a particular form,

but also only those whose functions are (a) public and (b) appropriate for social activity. What is a public function depends, practically, on the state of public opinion at a given time. Though dependent to some extent on the nature of the activity itself, yet the question whether its performance is a public function is answered by the state in view of many considerations that it is not necessary to detail. The preservation of the peace was regarded as a public function in the ninth and tenth centuries, and if the state had not accomplished it through the Frith-gilds, it must of necessity have found some other means of accomplishing it. The maintenance of a social organization by means of which the religious sentiments of a people may find expression has often and perhaps well been regarded by the state as one of its functions. It was so regarded from the tenth to the sixteenth centuries, but the ecclesiastical and social-religious gilds were not considered as necessary for the purpose. The State and Church had an Organization adequate for the purpose without them. Yet they were allowed to exist, for while they were not positively necessary, they did not detract strength from the regular religious organization. Whatever was the attitude of the state, in view of the existing organization of society on its religious side, the religious work of the ecclesiastical and social-religious gilds was public in its nature, as affording a social medium through which the individual might approach perfection. Even in their social-fraternal aspects, the latter class of gilds were clearly performing public functions, even if the state, in their absence, would not have considered it a duty to provide other institutions to take their place. The regulation of trade and industry is conceded to be a public function, though it has not always been so readily conceded as now. In so far, then, as the merchant gilds and craft gilds regulated the economic activity of their members, they were performing a public function. The unit of organization was small, to be sure, but social progress was necessary to enable society to grow out of the gild into the town and out of the town into the nation. The degree to which the economic activity of society may best be regulated must always remain an open question, but that some regulation is necessary cannot be doubted. Whether the state shall regulate trade and industry directly or indirectly through more or less voluntary sub-groups of citizens is a question of expediency; under the system of trade gilds, the state adopted the latter method and relied upon the power of revision and prior approval to keep the self-interest of the gildsmen from overbalancing the interests of society in general. But the regulation of the economic

activity of society was not the only public function that devolved on the gilds. The participation in town government, the presentation of plays and pageants on public occasions, the entertainment of notable citizens and foreigners and the maintenance of schools, almshouses and hospitals were public functions that they continued to perform even after they had virtually lost their effective control of trade and industry, though the effort involved in their performance was hardly commensurate with the private compensation of members incident to it.

To what extent were the functions of the gilds appropriate for associate activity? To what extent did they demand the existence of bodies of persons instead of individuals? The stage of development in which the gilds were essentially organizations of groups of persons for their self-government in some field of activity presents a simple case. The term self-government implies group activity in the work of government, whatever the field covered and whatever the end aimed at, whether the preservation of the peace, the celebration of religious services, the maintenance of fraternal relations or the regulation of trade and industry. But when the element of self-government was modified, as in the ecclesiastical gilds or later trade gilds, or virtually eliminated, as in the still later trade companies, — i.e., when the gild came to be merely the governing body of the group that previously had been entirely included in it, — the appropriateness of the work of regulation for associate activity is not so plain. Elizabeth and James, in granting patents of monopoly, were evidently of the opinion that such duties could properly be reposed in the hands of individuals. As a general principle, the fact that a function is public in its nature lends a presumption that it may best be performed by associated persons; the volume (if the expression may be used) of the work is likely to be beyond the capacity of an individual; its possession of the public character makes it necessary that it be closely adjusted to its environment, that it be correlated with the activity of other social agents, — a work that may best be done by a deliberating body of persons; moreover, it is likely to have such need of continuity that the life of the individual must be extended into the possibly endless life of a group. The effective regulation of trade and industry, so far as it was accomplished at all after the gilds had ceased to be potent, was the work of Parliament; the creation of monopolies resulted in failure, — indeed, it was hardly intended to provide an effective supervision of trade and industry, but only to provide a questionable source of revenue. But even if the

vanished power of the control over the economic life of society had tended to destroy the character of the gilds and trade companies as associations, their other public functions tended to preserve it; the maintenance of the gild machinery was necessary for the administration of the accumulated property, the presentation of pageants, the participation in town life as numerical divisions of the people and the provision of public entertainment.

It appears, then, to be an impossibility to designate a particular point of time in history at which the corporation appeared in the gild system; the whole course of development was uneven, as between different classes and sub-classes of gilds, and as between the several qualities that in combination characterize the ideal corporation.

VII. Educational and Eleemosynary Corporations.

I — Origin of the Universities.

On the demise of the institutions of the Western Roman Empire, the preservation of the remnants of Greek and Roman learning and the feeble maintenance of education were left, with much else, as a heritage of the Church and especially of its bodies of monks. Un-Romanized Christianity and Roman learning found a common refuge; some of the monasteries, like that of Viviers, founded by Cassiodorus, appear to have been devoted rather to the ends of learning than to those of religion. Even the municipal schools that survived in Italy and in southern France, where Roman institutions had taken root most firmly north of the Alps, succumbed to the Frankish invasions and left to the monks such part of the field as they had not previously occupied. The Benedictine reorganization opportunely gave an impetus to monasticism at the beginning of the sixth century, even before the barbarian migrations had ceased; in the convents based on the Benedictine rule was the sole refuge of learning from the sixth to the ninth century, or until the reaction in the Church by which on one hand the regular life of the monasteries was introduced into cathedral chapters, and on the other, the monasteries were transformed into cathedrals. In both monastery and cathedral, however, education was long intended solely to qualify monks and canons for the performance of their religious duties and not to raise the general level of learning in society. As the life of convent or chapter was lived as an end in itself, so learning, subordinated to that life, found no wider purpose. It was only at the beginning of the ninth century that the larger monasteries made a distinction between the ololati and outsiders in their schools; but by that time they had shrunken from bodies of laymen into an order of the priesthood; the differentiation in the body of scholars was parallel with the change in the status of the monks in the Church. The cathedral chapters were manifestly bodies of priests and their schools were more readily opened to the reception of outside scholars. But what is more to the purpose, neither the monastery nor cathedral schools had a distinct organization; the scizolasticus was merely one of the monks or canons, or

occasionally some outsider employed by them, whose duty it was, under the direction of the abbot or chapter, to instruct the group of scholars made up of both *oblati* and outsiders.

The first important modification of the control of learning and education by the Church was involved in the establishment by Charlemagne of his School of the Palace in 782 in charge of Alcuin. The implied reform, however, was rather in the substance of learning and education than in the form of the schools. The Emperor, consistently with his general policy, aimed not so much to found schools exempt from ecclesiastical control as to found a school suitable for the education of the nobles of his court and the imperial administrative officers and to secure through it the supervision of the monastic and cathedral schools of his empire; far from an intention to do away with the existing ecclesiastical system of education, he sought merely to improve and reinvigorate it.

The School of the Palace was hardly more than a cathedral school without the cathedral; Alcuin himself had been *scholasticus* of York before he had been called into the service of the Emperor, and became abbot of Tours when his years of active service were ended. He was at once the head of the School of the Palace and the imperial minister of education. The schools of the Empire had shared in the general demoralization of State and Church under the Merovingians; the need was not so much to found a new system as to secure the old one from corruption and impotency.

To be sure, Charlemagne was far in advance of his time in entertaining a broader view than his contemporaries of learning as an element in the life of society; he was able to see that education ought to be something more than preparation for the life of a monk, canon or priest, but outside the School of the Palace he sought no new agency for its promotion. The most that he did was to secure an increase in the number and an improvement in the quality of the existing schools, without organic changes in their system. Though in general Louis simply followed the policy of his father, his reign affords a dim view of the future release of learning from the control of the Church. In 822, in his capitulary of Attigny, he insisted that learning and preaching were essential to the welfare of the state and that only those should preach who were well-educated, that each one preparing for successive grades of the priesthood ought therefore to have a place of study and a master, and that schools ought to be provided in every diocese. The higher standard of education demanded

made it plain that the unit of the single monastery or cathedral was not large enough; accordingly, in 829, the bishops petitioned Louis to provide for the establishment of three large public schools, open to both monks and clergy, in the three most convenient cities in the empire, " in order that his father's efforts and his own might not fall into decay." The petition, though without results, is incontrovertible evidence of the tendency that was later to result in the growth of the University of Paris from a cathedral school too large for the control of bishop or cathedral chapter.

Learning and education continued to be almost wholly monopolized by the Church and to find expression through the machinery of cathedrals and monasteries; they were not yet under the control of a body of persons with a distinct and separate social organization for the general reason that their scope was little wider than that of the learning involved in the religious activity of the priest and monk. The differentiation of university from church, of learning for its own sake from learning as part of the mechanism of religious worship, had to await an expansion of the volume of learning itself. The reigns of Charlemagne and Louis contain evidence of the beginning of such an expansion in the existence of a class of scholars in the monastic and cathedral schools and in the School of the Palace who were not to become monks or priests and in the recognition, though indistinct, that learning and education had social functions outside of the Church. As a matter of organization alone, there was no change in the educational system until the rise of the medieval universities save such as was implied in the establishment of the School of the Palace; but the revival of learning that was to be the indispensable condition of the growth of new educational institutions began to manifest itself in the first half of the ninth century.

The early Christian Church had instinctively repelled pagan learning. It was one manifestation of its exclusiveness. In any conflict of religions it might with reason be expected that the adherents of one would condemn the learning of the adherents of the other along with their religion; most of all, the circumstances under which Christians struggled with their opponents and their insistence on the universality of their religion made it inevitable that pagan learning should share to a large extent in the defeat of pagan religions. In the contest between a narrow and militant Christianity and the literary store of the Virgils and Ciceros, full of pagan thought and sentiment, literary taste and culture had to yield for several centuries to the condemnation of religious bigotry. But the triumph of Christianity over Roman

paganism was not so destructive of classical learning as the conversion of the barbarians. When the higher classes of Romans were brought within the pale of Christianity, they necessarily brought with them an appreciation of the strength and beauty of Greek and Roman letters; the converted barbarians, however, brought little but superstition and rudeness. Even the store of culture added to the society of Christianity by its conquest of the higher classes of Romans must have been small, for it was a religion that had its origin and early growth among the humbler classes; the eventual absorption of the more cultivated part of Roman society could hardly have assured the preservation of the culture that had formerly been monopolized by them. But classical learning had inherent strength. Wherever a remnant of culture and literary taste remained, the appeal of the classical philosophers and poets for recognition was heard. Classical learning was too strong in itself to be utterly destroyed. Here and there a monk had to suffer rebuke from his abbot for concealing a Virgil in his cell, but the abbot himself was more than likely to have his own Virgil. Notwithstanding the theoretical opposition of the monks to pagan learning, it was in their cloisters that its remnants found refuge. Yet the monks degenerated greatly in learning. It is not far from the truth to say that the early growth of Christianity was destruction of pagan culture; what it substituted for it was a body of faith and sentiment that inculcated humility and simplicity in the concrete relations of social life, as taught in the holy Scriptures and in the patristic literature with which they were supplemented. However fortunate that much of the literature of Greece and Rome was in later centuries to be restored to its place as a part of the world's store of learning, the Church was not to act as a willing agent in its restoration; to some extent that result was incidental to the attainment by the Church of other results more directly aimed at, but for the most part, in its participation in the restoration of learning, the Church received its impulse from without. It was not for the sole purpose of promoting the general culture of society or even of the secular and regular priesthood that the Church at first resorted to the stock of classical learning, — the purpose was much narrower.

Before the ninth century the purpose of the Church was to subordinate learning and education to religion. If a monk or priest were to have learning, it should be only of such character and quantity as would enable him to efficiently perform his religious duties. The learning embodied in the literature of the Church was hardly sufficient;

it had to be supplemented with that of the vanquished pagans. The language of the literature of the Church was Greek and Latin, and that of the worship of the Western Church was Latin, which could not well be maintained in its purity without recourse to the works of classical masters. Even if their substance was regarded as dangerous for the Christian, the use of them for the sake of the literary form in which they were cast prevented them at least from becoming wholly unknown and kept them near at hand for the exceptional monk whose taste should tempt him to prohibited familiarity with them. If with passing time the Christian repugnance to pagan learning should be lessened as the actual conflict with paganism and the eventual victory over it receded into the more distant past, its use for the sake of the language in which it was written would serve as a vehicle for its reintroduction as a factor in the advance of society. It is significant that, even in the days of Abelard, the little instruction on the subject of Latin literature that was given at Paris was imparted under the head of grammar.

The religious life could not be complete in itself, even though for centuries it could be so magnified in the minds of men that other sides of life could be subordinated to it. In times of reliance on tradition, when society was fortunate in retaining what it had without aspiring to more, it could not be expected that the world's body of learning would be created anew; in the nature of things, the wisdom of the Greeks and Romans had to be resorted to as a basis for the practice and worship of Christianity. If the date of Easter was to be determined, pagan arithmetic and pagan astronomy had to be used in determining it. The phenomena of the physical world could be understood, for the most part, only through the medium of pagan learning. Thus the mass of older learning was kept alive by the Church, not as much for its own sake as for the sake of the religion to which it was made subservient. The fact of most importance is that it was kept alive at all. Most of the institutions of the Dark Ages possessed the negative merit of conserving in the presence of destruction. Though the Church did not create a body of secular learning from the fifth to the ninth centuries, it at least preserved from destruction a portion of the older learning, even if only incidentally to the maintenance of its own activity. Moreover, as long as the body of secular learning could be kept subordinate to religion, neither large enough in quantity to approach an equality with it, nor of such a quality as to be seriously antagonistic to it, the monastic and cathedral schools would be a sufficient

social structure for it. Charlemagne and Louis saw but dimly the greater importance of learning than the Church had assigned to it. They set in motion, both in the ecclesiastical schools and in the School of the Palace, forces that would so enlarge the social functions of learning and education and so set them in opposition to the Church that cathedral schools would not be adequate organizations for them and the cathedral school of Paris would become a university.

If the use of pagan learning for the sake of the language in which it was written and for the purpose of supplementing purely Christian learning outside of the strict lines of religion itself had resulted mainly in its preservation, the use of it within the circle of the Christian religion for the purpose of interpreting and elaborating it as a religious system was productive of greater results. Western Christianity was busied until the sixth century chiefly in getting itself established as a religious belief, as a basis of human conduct, in opposition to the pagan elements of Roman and barbarian life with which it came in contact. When it had achieved success and in so doing had incidentally erected a wide-extending governmental structure, the Roman Catholic Church, it entered what constituted the second stage in its development — the elaboration of a system of dogmas. Its first step was to get itself lived; the second to systematize itself and justify the social structure through which it was lived. Until the ninth century most reliance was placed on tradition based on the literature of the Church itself. But the elements of faith and tradition which had produced the superstitious mysticism of the monasteries had to be supplemented by a larger use of reason. As pure reason is merely an implement for the ascertainment and correlation of truth, there could be no sound objection to the use of pagan systems of reasoning in the elaboration of Christian truth. The study of dialectics was accordingly extended in the monastic and cathedral schools, first in the domain of secular knowledge and later in that of Christian doctrine. Alcuin and John Scotus Erigena, in the School of the Palace, gave increased attention to the logic of Aristotle. Rabanus Maurus, sckolasizcus of the monastery of Fulda, with exceptional liberality aimed to promote the interests of Christianity through ample instruction in pagan literature and learning, and especially in pagan philosophy; his pupil, Lupus Servatus, went even further in the same direction. From the field of philosophy, the use of dialectics passed over into that of theology; the question of the reality of universals could not be solved without threatening the stability of the settled doctrines of Christianity.

Anselm, the last of the great monastic teachers, made a critical application of the scholastic philosophy to theology but remained orthodox. Roscellinus, however, in attempting the same work, ended in being heretical. Finally, at the beginning of the twelfth century, Abelard appeared as the greatest exponent, first in philosophy and then in theology, of the speculative spirit that insisted on applying to all things the test of reason, and secured for himself and his teachings the condemnation of the Church.

With Abelard was reached the point at which pagan philosophy ceased to be the willing servant of Christianity. The conflict was between the tendency to apply reason in the elaboration of Christian dogma, championed by Abelard, and the monastic tendency to rely on blind faith and tradition, represented by St. Bernard. Though the latter triumphed for the time, the former was too strong to be permanently defeated. The monastic schools ceased to include outsiders among their scholars, and the cathedral schools became more independent of the Church. But the dominance of the scholastic philosophy was not sufficient to force the Church to the limit of its powers in the control of education. The end of the eleventh and the beginning of the twelfth century witnessed the beginning of a genuine revival of learning, as a part of a more general outburst of human energy. Charlemagne's project of a world empire had failed, and from the ruins of his Frankish Empire had been laid the foundations of modern European states which had been fairly settled by the end of the tenth century; political and social order had been established in Europe, if even at the expense of the rise of the feudal system. Though the adjustment of the personal elements of the Teutonic peoples and the organic elements of Roman institutions had not been fully accomplished, the turning point of civilization had been passed in the tenth century and humanity had begun again to press forward. Possibly the passing of the millennial year and with it the escape from the apprehended destruction of the world had given to humanity renewed hope and an impulse to advance; the dismal tenth century, at all events, was succeeded by a transitional century in which were gathering the forces that constituted the progress of the four centuries before the Renaissance. Monasticism had taken on renewed life in the Clugniac reorganization in the tenth century and under the reforms of St. Bernard at the beginning of the twelfth century. The crusades, manifestations as well of a renewed spirit and energy as of increased religious zeal among the nations of

western Europe, were bringing them together as well as putting them in contact with the civilization of the East. A revival of architecture in the beginning of the Gothic period was at hand. The complete works of Aristotle, previously represented in Latin translations of only a part, were giving a stronger impulse to the scholastic philosophy at the beginning of the thirteenth century.

The schools increased in number and improved in quality. The monastic schools, which in the ninth century had been superior to the cathedral schools, seemed to be impervious to the influence of the scholastic philosophy in the fullness of its development and ceased to contain secular scholars. The cathedral schools, however, located in the larger cities, and exposed to all the awakening influences of the revival of learning and of the more general revival of human activity of which it was only a part, and less under the conservative influence of monasticism and feudalism, were crowded with scholars. If a date must somewhat arbitrarily be taken for the beginning of the university era, it must be the beginning of the twelfth century. "Abelard, though not in any strict sense the founder, was at least the intellectual progenitor of the University of Paris."[338] In his lifetime all the forces necessary to account for the rise of the universities came into full operation, — the revival of learning, the antagonism of the scholastic philosophy (and, more broadly, of pagan learning) to Christianity, and the presence of an increasing body of men devoting themselves to learning and education for purposes other than that of the practice of Christianity. Abelard himself was a typical university student and teacher of the Middle Ages.

II — The English Universities.

If the history of the English universities is to be divided into periods, there may be said to be three of them: (1) The period from the twelfth to the sixteenth century, characterized by their attainment of their greatest independence of Church and State, the perfection of their system of internal relations and their gradual disintegration into colleges; (2) the period from the sixteenth to the beginning of the nineteenth century, characterized by their increased subjection to Church and State, the substantial maintenance of the system of internal relations (except as affected by the crystallization of the colleges) and the increased autonomy of the colleges; and (3) the period of which the nineteenth century is the beginning, characterized (to the present time) by an increased but more systematic control by the State, the marked

loss of influence by the Church, the broadening f the basis of the system of internal relations, and the decrease of the autonomy of the colleges (tending to convert them into virtual departments of a restored university unit).

It is the intention, in this study of corporations, to consider particularly the rise and development of the English universities; but, strictly speaking, they had, in common with other European universities, their rise and early development in France. While municipalities and gilds, as well as the later corporate companies of the sixteenth, seventeenth and eighteenth centuries, had separate origins, though under substantially similar conditions, in the several nations of western Europe, and were much more uniform in their development than is usually supposed, the university movement was not confined to separate nations in its origin but was peculiarly European in character; it had its rise and development earliest in France; by the time the revival of learning attained such force in other parts of Europe as to demand separate institutions for its expression, it had already assumed them in France. The University of Paris was the great "mother of universities"; the origin of nearly every mediaeval European university may be traced directly or indirectly to migrations from it or to intentional imitations of it. On account of the paucity of historical evidence, the nature of the origin of the University of Oxford is not definitely known. It has heretofore been quite generally considered to have had an origin independent of the University of Paris, and to have been evolved from the ecclesiastical schools of Oxford; the latest investigations make it appear likely that it was formed, like most others, by a migration from Paris; in either case, the historian has felt justified in supplying the early unknown history of the one by resort to the known facts of the early history of the other, on the assumption, of course, that if the one was not an offshoot of the other, it must at least have had a similar origin and early development. There is one striking advantage to the student of the general subject of universities in such a method of treatment: the facts of the rise of the University of Paris show very clearly the connection between the old and new social forces and their organic structure, between the old ecclesiastical schools and the medieval university, but after it was once established, it was retarded in its further development by its social environment to a greater extent than the English universities; probably the best method of obtaining a clear understanding of the rise and development of the typical European university of the Middle Ages is by studying its rise in Paris and its later

development in Oxford.

III — The Universities and the Church.

At the end of the eleventh century the number of scholars in Paris noticeably increased. France was the foremost European nation of the time and Paris was the chief city in Christendom. The Carolingian reformation of education and the renewed encouragement of learning had exerted their greatest influence on French schools. France was the source from which the first crusades derived their greatest strength, and the nation in which the reviving influences of contact with the East were most strongly felt. The strength of monasticism, too, was in France; there the reorganization under the Clugniacs had originated and there the reforms of St. Bernard were to have their rise.

The centre around which learning and education revolved in Paris at the end of the eleventh century was its cathedral school. There were other schools at Paris. The school of the Collegiate Church of Ste. Genevieve was on the "Mount" across the river from the Island of Paris; scholars afterwards seceded to it from Paris on a few occasions and Abelard himself had lectured in it when he had been denied permission to lecture in Paris. A school was also maintained by the canons of St. Victor in which William of Champeaux lectured after he retired from Paris. But it was the cathedral school that grew; the others enjoying no permanent growth. It had formerly been only one among several in France, and it had not been pre-eminentamong them; the cathedral schools of Tours and Rheims and the monastery school of Fulda had been widely known in Europe before either the masters or scholars of Paris had given it a superior name. William of Champeaux was its first great master and Abelard its first great scholar; by the time of the death of the latter, in the middle of the twelfth century, the cathedral school of Paris had attained the position of preeminence that, as the later university, it long retained. Abelard was the typical medieval master and scholar; in him are found the qualities that characterized his social class for centuries. His connection with the Church was purely formal. His method of study was critical; in his study even of theology he departed from the traditions of the Church; the study of philosophy and theology which he stamped with his personality was the chief work of the universities of Europe until the Renaissance of the fifteenth century. As a scholar, he wandered from one school to another as he was attracted by the fame of

this master or that; as a master, he taught in one school or another as he found the conditions most favorable, and attracted by his reputation a body of pupils, who followed him from place to place. Tout, except for the large number of its noted masters and scholars and the greater fame of its lectures, the cathedral school of Paris in the twelfth century was like other cathedral schools in Europe; in form and organization it was not distinguished from others.

No university developed out of a monastic school. In the eleventh and twelfth centuries the monks yielded to the secular clergy their place as participants in the revival of learning and education. The reorganization of nonasticism in those centuries exhausted its effects within the monastic orders themselves. Monasticism was made stronger in opposition to the social movements of the time rather than in sympathy with them; its renewed vigor was due rather to lessening its points of contact with the world than to increasing them. When next monasticism should make an effort to bring itself into harmony with the intellectual progress of the Middle Ages, it was to be through the medium of the mendicant orders (which were not strictly monastic orders) of the thirteenth century; until that time, the control of the monks over learning and education must have decreased.

It appears that before the intellectual revival of the eleventh century the *scholasticus* was usually one of the monks or canons to whom the duty of instruction was delegated by the abbot or chapter. When it became necessary to give instruction to the increasing number of secular scholars and to provide instruction of a higher grade and quality, the *scholasticus* or his assistants might be non-capitular persons. Next he was found acting more in the capacity of a superintendent of the schools than in that of an instructor in them; then he was frequently known as *magister scholarum* — the master of the schools — and the practical work of instruction was left to lecturers much less likely to be members of the chapter. As the distance widened between the superintendent of the schools and the lecturers, the office of *magister scholarum* disappeared and his place was taken by the chancellor as the representative of the bishop, while the lecturers — masters — suffered less superintendence, being licensed by the chancellor to lecture. Originally the schools were part of the cathedral establishment, being held in buildings connected with or near the cathedral; later they were held, under some restrictions, in buildings rented by the masters and quite distinct from those of the cathedral, though in their vicinity.

Moreover, the masters came to depend upon the fees of their pupils for their maintenance and to depend less on the bishop, his chancellor or the cathedral chapter. Far from sustaining an organic connection with the cathedral chapter, they wandered from one school to another, as the conditions of prospective success or independence attracted them. Masters might not lecture within the jurisdiction of the bishop, however, without obtaining from his chancellor a *licentia docendi* and paying him for its granting such fees as he should demand. The chancellor, moreover, might exercise his discretion to refuse the license, or, if he granted it, might afterwards summarily deprive the master of it; similarly he might prohibit a scholar from further attendance on his master's lectures though the scholar did not need his consent to attend them in the beginning. But Pope Alexander III (and the third Lateran Council, held in 1179) decreed that no fee should be charged for the *licentia docendi* by the chancellor and that it should be freely granted on demand to any one qualified to receive it. Almost all that was left to the chancellor by the middle of the twelfth century was the authority to exercise his judgment on the qualifications of the applicant for the license to teach. As he had no personal information on which to base a consideration of the applicant's qualifications, he quite unavoidably found it necessary to resort for it to the masters under whom he had studied; it very easily became customary for the chancellor to rely on the recommendation of the applicant's former masters.

Up to this point the masters and scholars had been acquiring distinctness as a class — the first step in the social movement that usually results in corporate institutions; there had been no appreciable development of organic interrelations between the members of the class. The first step in that direction seemed to have been involved in the admission to membership in the class. When the scholar had received his license from the chancellor, — had become a licentiate — which it would hardly be possible for him to do except on the recommendation of his master, he was not considered by the other masters to be one of them until he had given under the direction of his own master a public exhibition of his ability to serve in the position to which he aspired. His old master then placed the magisterial biretta on his head, bestowed upon him the emblematic ring and open book and received him as a master with a kiss and a benediction; the new master was expected to provide for his fellow-masters a feast, and presents of clothing or money. The entrance of the

licentiate upon his duties as a master — such the public exhibition was considered to be — was his "inception," *principium* (or "commencement"). Later it became customary to permit some of the older and more advanced scholars to begin their preparation for mastership a considerable time before their inception by lecturing to a certain extent on prescribed subjects; they became known as "bachelors." The terms "master" and "doctor" had the same significance; they signified a scholar who had become a qualified teacher of others, and accepted and recognized as such by his fellow-teachers; the former term came to be restricted in use to the department of arts and the latter to those of divinity, medicine and law. The insignificance of the beginnings of the interrelations of the masters appears in the character of certain statutes or customs reduced to writing about Halo. The masters had made rules, (a) prescribing a uniform dress for the members of the body, (b) demanding a designated order in lectures and disputations and (c) requiring the attendance of masters at the funeral services of their dead colleagues. To secure the observance of the rules the masters had taken an oath to withdraw their consortium from those who should fail or refuse to observe them. One of the masters had suffered the prescribed penalty of virtual expulsion, but his fellows had generously decided to accord him readmission; in order to do so, how ever, they had to secure absolution from their oath by the Pope. Pope Innocent III gave his sanction to the readmission of the expelled scholar, and in so doing left the only extant evidence of the rules that had been violated.

The regulative power over masters and scholars, before they attained an autonomous and independent position in the society of their time, was reposed, for the most part, in the chancellor, as the representative of the bishop, and through him of the Church. He had the power and authority of a judge. The masters and scholars were viewed as "clerks," and as such were amenable to the spiritual jurisdiction of the ecclesiastical powers; the chancellor was of course the one with whom they came into direct contact. Yet it was rather a privilege, because through their liability to the ecclesiastical jurisdiction they escaped liability to the harsher and more exacting jurisdiction of the secular courts. Though the chancellor had a prison, incarceration in it was regarded not so much as a punishment in itself as a restraint preliminary to the real punishment, the imposition of a penance or some other kind of spiritual burden. In 1215, the Pope granted to the masters the authority to hold trials of their own scholars, but that detraction from the powers of the chancellor did not prove to

be permanent.

The corporations of the Middle Ages were formed more by external than by internal forces. It was not so much the desire of members of a group to attain autonomy and independence, as the desire of other social organizations to accord them such qualities and at the same time to impose upon them corresponding burdens, that so often resulted in their corporate organization. Thus it was long after the beginning of the thirteenth century before the University of Paris had an official head, and the first movement in that direction was involved in the power conferred by the Pope on the body of masters in 1210 to elect a *procuretor ad litem* (proctor) to represent them and make answer for them as a body in suits against them pending before the Roman court.

The attitude of the king towards the body of masters and scholars and the nature of their relations to the townsmen with whom they came in contact is revealed in an event of the year 1200. It was one of the riotous conflicts between students and townsmen so common in university cities and towns in Europe throughout the Middle Ages. The disturbance began in a tavern. An assault on the servant of a German student was followed by an attack on the tavern-keeper by the student and a body of friends among his fellow-students. Thereupon the provost, followed by a body of citizens, stoned the hostel in which the students lived and killed several students, among whom was the German student himself. Upon the demand by the students of redress from the king, coupled with an implied threat to migrate from Paris in case their demand should not be granted, the king imposed severe punishments on the provost and his fellow citizens that had participated with him in the riot. Furthermore, he conceded to the scholars that such of them as should in future be arrested by either royal or municipal officers should be surrendered at once to the bishop or his representative for trial. It was further provided that the townsmen should take an oath to respect and protect the privileges of scholars and even assume to inform on their own initiative against citizens who should fail to likewise respect them. The provost, as the representative of the body of townsmen, was to take a similar oath before the assembled masters that he would not violate the privileges of the scholars. Goods of scholars should not be levied on by secular officers and those accused of assault on scholars should not be accorded the choice of trial by batter or ordeal. In the charter it is to be noted, however, that the scholars were treated as

individuals; they were treated as members of a class rather than as members of an organized corporate body, except to the slight degree perhaps involved in the appearance of the provost before the assembled masters.

At the beginning of the thirteenth century, then, the University of Paris had been so developed from the cathedral school of Paris that its masters and scholars were recognized by both Pope and King as a distinct class of persons in comparison with the monks and canons of the Church and with the townsmen of Paris. Though the codified rules and statutes under which their activity was regulated were not numerous, they possessed a body of customs sanctioned in use by both Church and State. Their body of powers had been acquired largely at the expense of the bishop and his chancellor and of the cathedral chapter of Paris; as a consequence, their relations to the chancellor, with whom they had closest contact, were rather of opposition than of agreement. Their interrelations as well as their relation to townsmen were still subject to the jurisdiction of the chancellor. They had successfully asserted control over admission to their membership. They had not, however, perfected a system of personal interrelations; they had hardly progressed sufficiently in that direction to need a body of officers or system of government; their relations with other members of society were on a personal basis. The conditions in Paris are found almost exactly duplicated in Oxford where the authentic history of the first English university begins. The parallel is so close that it lends a very strong presumption to the interesting theory advanced by Mr. Rashdall that the University of Oxford had its origin in a migration of English scholars from Paris about 1167. If his theory must be rejected, the more objectionable theory must be substituted that the University of Paris was intentionally duplicated at Oxford. Similarity of conditions of growth even if conceded could hardly be made to account for so great similarity of structure and activity.

IV — Universities from 1200 to 1310.

Early in the thirteenth century the University of Oxford, whatever its prior history may have been, appears to have taken up the course of the development of learning and education at the point to which the University of Paris had already carried it. In a comparative study of European universities, it would doubtless be made plain that in their later growth the University of Paris and both the English universities were

intimately connected at many points; important steps in either were likely to be followed by sympathetic changes in each of the others;[339] to the extent that the universities of Europe derived their powers from the papal chair and submitted to its supervision, their development was likely to be along the same general lines; moreover, there was an almost constant interchange of masters and scholars carrying with them new ideas and new methods. Leaving out of view in the present study, however, the participation of the University of Oxford in the general university movement in Europe, it may best be considered, during the first period of its development, from the thirteenth to the sixteenth century, according to the changing relations accompanying its contact with its environment on its several sides, and then according to the changes in the interrelations of the masters and scholars, though space may be afforded for only the most important facts. The subject may be conveniently treated under the following heads: (1) Relations to the Church; (2) Relations to the State; (3) Relations to the Town; and (4) Internal Relations.

(1) *Relations to the Church*. — Much of the history of the University of Oxford revolves about the office of the chancellor, because it was at once the medium of connection with Church, State and town, and of the interrelations of the masters and scholars. The conditions under which the chancellor acted in Oxford were so much more favorable to the autonomy and independence of the University than they were in Paris that the University of Oxford approached more nearly the type of the mediaeval university after the middle of the thirteenth century than the University of Paris. Oxford, unlike Paris, was not a cathedral city; it was in the extensive diocese of the Bishop of Lincoln and remote from his see. The Bishop of Lincoln was far from wielding as much influence among English bishops as the Bishop of Paris among French bishops. There was no cathedral chapter at Oxford, as at Paris, jealous of the expanding powers of the University. Moreover the see of Lincoln was vacant for forty years before 1214, the period during which the University of Oxford was finding its place as such among the universities of Europe. It is not entirely clear, from the language of the Legative Ordinance of 1214, whether the office of chancellor was occupied at that time, if indeed it had ever been occupied. At all events, when he appeared a few years later, it was rather in the capacity of head of the University than in that of representative of the bishop. The offices of chancellor and rector, separate in Paris, the former as the representative of the bishop and

guardian of his rights, and the latter as head and representative of the University, were merged in Oxford, though the chancellor (as Grosstête) was sometimes also called rector. His powers were at first quite identical with those of the chancellor of the Bishop of Paris: he granted licenses to masters and deprived them of their licenses and had power to deny the privileges of the masters' lectures to scholars; moreover, as an ecclesiastical judge, he had a limited jurisdiction over masters and scholars (as clerks) which he enforced by penance and excommunication. But the most important fact in the early history of Oxford is that the relations of the chancellor to the bishop were so distant as to permit the future transferrence of the basis of his power from the Church to the body of masters themselves. He always appeared, not as the upholder of episcopal rights, but as the champion of the University's privileges. In 1257, when the dispute of the Bishop of Lincoln and the University as to the rights of the latter was reviewed by the King on the question of the authority to impose suspension from regency as a penalty for neglect to attend Congregation, the chancellor, instead of having espoused the cause of the bishop, had evidenced his identity with the University by sanctioning the decree of suspension, while the bishop had been left to rely for the protection of his rights on a formal objection in his behalf by the Archdeacon of Derby; the disclaimer by the University of an intention to infringe on the rights of the Bishop of Lincoln or his church could not have been entirely disingenuous.

The chancellor had originally been appointed by the Bishop of Lincoln. The first departure from the rule was in basing the appointment on the recommendation of the University. Step by step the point was reached where the bishop's part in the selection of a chancellor consisted in a confirmation of his election by the University. In 1300 it had for some years been a subject of dispute whether the chancellor was elected or merely nominated by the University; in that year the question was conceived to be involved in the more technical question whether it was the duty of the chancellor to call in person on the bishop to receive his confirmation of the choice already made by the University; eventually the bishop issued the commission to the newly chosen chancellor without insisting on the strict observance of the rights that he claimed, but with the reservation which had become usual that it was done degratia special). A half-century later, in Ado, the Bishop of Lincoln had delayed to issue a commission to a newly chosen chancellor; thereupon his superior, the

Archbishop of Canterbury, interfered with an admonition that he proceed to issue the commission at once; when the admonition had been unheeded, the archbishop himself issued the commission. When the matter reached the Pope for review, he recognized the right of the archbishop to issue a commission to a chancellor of the University, but only in case of neglect on the part of the Bishop of Lincoln to issue it. In 1368, the confirmation by the bishop had become a meaningless form and had even not been sought in some cases; at that time the Pope decreed that in future it be altogether dispensed with. The revolution was complete; the chancellor, at first the representative of the bishop and appointed by him, had become the head of the University and elected by it.

The Church was tenacious of its jurisdiction over masters and scholars, based on the theory that they were clerks and having its origin in the times when it was true that they were under its direct protection. Before the chancellorship had become firmly settled, it was provided by the Legative Ordinance, in 1214, at the conclusion of the trouble between King John and the Pope, that if the townsmen of Oxford should arrest a scholar, they should at once surrender him "to the Bishop of Lincoln, the archdeacon of the place, or his official, the chancellor, or to whomsoever the Bishop of Lincoln should have appointed to this office." Near the end of the century, in 1280, when the contest between the Bishop of Lincoln and the University was at its height, the latter claimed and by solemn oath in congregation undertook to maintain against the former certain jurisdictional powers then exercised by the chancellor and by them declared to have been exercised by him customarily "from time out of mind": (a) that a layman might be cited by a scholar before him, (b) that the probate of scholars' wills lay in him, (c) that he had the right of "inquisition" into the moral conduct of scholars and (d) that masters might insist on pleading in his court alone in matters relating to contracts entered into with the University. Though the chancellor himself was not inclined to go as far as the masters in his claims of jurisdiction, he would concede no more to the bishop than that he might exercise jurisdiction on appeal or in case of the chancellor's neglect or failure to exercise it. Later, when the matter came up before a provincial convocation of bishops for consideration, the archbishops and other bishops were found in opposition to the Bishop of Lincoln; his claims were accordingly disregarded and the extreme position of the University was fully sustained; instead of to the bishop, appeals lay from the

chancellor's court to the organized body of masters themselves. The bishop yielded with the usual formal reservation that his concession was "an act of pure and voluntary grace." If exemption from the jurisdiction of the Bishop of Lincoln was broad, the exemption by a bull of Pope Boniface IX, in 1395 (though it was revoked by John XXIII in 1411), of the University from that of all "archbishops, even *legati nati*, bishops and ordinances" could hardly have been more comprehensive. The chancellor's court had originally or at least in 1214 been merely that of the bishop's officer; in 1280 his jurisdiction had become so independent that the bishop lost even the right of entertaining pleas on appeal; little more than a century later, the only ecclesiastical jurisdiction superior to the chancellor's was that of the Pope himself. While in 1214 the grant of jurisdiction had been to the bishop or to the chancellor as his representative, such grants after 1300 were to the chancellor alone — and he had then become the representative of the University.

A noticeable and important tendency in the history of the University of Oxford (and one that will be the subject of further comment) was that of the Pope to grant privileges: to the University, even against the episcopal and higher ecclesiastical ranks. For an example, in 1254, when Alexander IV confirmed "the immunities, liberties, and laudable, ancient and rational customs, and approved and honest constitutions from Innocent IV," he also granted to the masters and scholars of the University exemption from summons by papal delegates to answer outside of Oxford concerning contracts made within it.[340] In the same year, when the University was involved with Henry of Lexington, Bishop of Lincoln, in the long dispute over their conflicting rights, the Pope appointed the bishops of London and Salisbury "conservators of the rights, liberties, and immunities of the university." The extraordinary exemption of the University from the jurisdiction of all ecclesiastical powers but that of the Pope himself by Boniface IX in 1395 has already been alluded to.

The withdrawal of the monks from the educational field in the tenth and eleventh centuries has already been noted and an explanation of it has been sought in the great change in the attitude of the monastic orders towards the rest of society. The general purpose of St. Francis and St. Dominic was to make their orders a force in society, while the ideal of St. Benedict and St. Bernard had been to make the monastic life complete in itself; if the Mendicants passed lives of humility and self-denial, it was

not so much because the hardships involved were valuable in themselves as because they enabled them more effectively to accomplish among other men the work they had set themselves to do. The Mendicants were not wanting in an appreciation of the weight of the new social factor of revived learning, as represented by the universities of Europe, but they were justified in viewing it to some extent as a weapon in the hands of rivals that might be serviceable in their own hands. Accordingly, within a few years after their orders were founded, both the Dominicans and Franciscans appeared at Oxford, the former in 1221, the latter in 1224. Likewise, later in the century, the Carmelites appeared in 1256 and the Augustinians in 1268. The matters of interest are of course the nature of their relations to the organized body of masters and scholars and the effect of their contact. The universities were the embodiment of the new social element of learning and education; the Mendicants were the instruments through which the partially re-awakened Church sought to recover, among other things, the power that it had earlier exercised in the field now covered by the universities. What was to be the result of their coming in contact?

The Dominicans and Franciscans at first set up their schools within the city of Oxford; but before many years they found that their relations to the University would be more faithfully reflected in a location outside its walls; they accordingly retired to the suburbs, whither they were followed by the later Mendicants. They assumed an attitude of comparative independence, pretended to educate their scholars in their own schools and according to their own methods and promised no allegiance to the statutes of the University. In 1252 a statute was passed by the University that inception as a doctor of theology be preceded by a period of lecturing as a bachelor and by inception as a master of arts, unless the chancellor and regent-masters should consent to dispense with the requirements. The statute was important not so much in results due to its enforcement as in the assertions of right involved in it. The inception as a doctor of theology be preceded by a period of lecturing as a bachelor and by inception as a master of arts, unless the chancellor and regent-masters should consent to dispense with the requirements. The statute was important not so much in results due to its enforcement as n the assertions of right involved in it. The inception as master of arts involved the taking of an oath of obedience to the statues of the University that would not have to be assumed by the scholar who incepted in theology without having taken the preliminary course in arts. As a matter of fact,

either because the statute was not enforced or because it was found easily complied with by the Friars, there was no serious friction in the thirteenth century. It was perhapts owing to the comparative weakness of the University itself during the first century of its growth that contact with the Friars resulted in no harsh relations; the University was occupied during the second half of the thirteenth century in its long and at times bitter conflict with the Bishop of Lincoln, in achieving a degree of independence of him that was necessary to its own existence; it will be seen later that during the same time it was accumulating powers drawn from both king and town and perfecting its internal government. The fourteenth century was the century of the universities' greatest independence while the first half of it was that of the Mendicants' greatest vigor; it was inevitable that the incompatible aims of independence on the part of the Friars and of control on the part of the University should result in a trial of strength.

Its victory of 1300 over the Bishop of Lincoln had hardly been won when the University began to take measures to bring the Friars under its control. The examinatory sermons of bachelors of theology had been delivered at the Friars' convents until 1303, when it was ordered by statute of the University that henceforth they be delivered in St. Mary's, the University church. Seven years later the same measure was taken with regard to the sermons preached by doctors of theology on the eve of their inception, the theological vespers; those were also removed from the convents to St. Mary's. It was even required that the degree of bachelor of theology, previously conferred in the Mendicants' separate schools, be taken in the University. Under the statute of 1252, graces dispensing with some of the requirements for inception had been freely granted, but now all requirements were insisted on, and perhaps with unnecessary strictures. Not only were no degrees to be conferred unless the recipient should take an oath to render obedience to the statutes of the University, but even Friars who were already masters or doctors were required to take the oath, and one Dominican doctor was actually expelled for his refusal to take it. Further stubbornness on the part of the Friars was punished by their excommunication by the Archbishop of Canterbury — a punishment that entailed loss of revenue from confessions, and defections of auditors from sermons and of scholars from the schools. Their greater unpopularity, due to their unyielding attitude towards the University, intensified the opposition of secular preachers and townsmen to them.

But the conflict was not strictly between the Friars and the University. The four faculties of the University were those of arts, medicine, law and theology. The Mendicants aimed to fortify themselves by controlling the theological faculty and maintaining it in independence of the other faculties, the conflict, then, on its organic side was within the University. At the outset, in 1303, what might be called a constitutional statute was passed that a statute should be valid in the whole University if passed by the regents of only two faculties and a majority of the non-regents. The statutes passed in 1310 removing the theological vespers to St. Mary's and requiring the degree of bachelor of theology to be taken in the University lacked the concurrence of the theological faculty, but were nevertheless enforced. The matters in controversy, including that of the granting of graces or dispensations by the chancellor and regent-masters, were taken at once before the Pope. After investigation and hearings in England by a body of four (two secular and two regular) arbitrators, it was decided, as to graces, that every master should take oath not to deny them to a Friar "out of malice, or hatred or rancor," though he might do so "for the common utility and honor of the university"; such a denial should be referred to the chancellor, proctors, and regent-masters of theology, who upon hearing the reasons assigned by the objecting master, might either sustain or overrule his objection; the constitutional statute passed in 1303 was virtually sustained by a decision that a valid statute might be passed by a majority of three of the faculties, the non-regents being counted as one faculty, which majority, however, should include the faculties of arts and non-regents; due notice to all voters was provided for by the requirement of a preliminary promulgafion of each proposed statute in a general congregation of regents, at which a copy of it should be served on a master of each faculty, the voting to take plane fifteen days later. The decision was sanctioned and enforced by both Pope and King in 1314. Though the conflict was prolonged for a few years, it finally ended in 1320 in the surrender of the Friars to the University. In 1358, the University easily enforced a statute forbidding the Friars to accept as novices boys less than eighteen years of age. It was likewise provided by statute that at no one time should more than one doctor in each Mendicant order have a seat in convocation. By the bull of Boniface IX, in 1395, the Friars were not exempted from the comprehensive jurisdiction of the chancellor, but were expressly made subject to it.

The fourteenth century, as it has been suggested, was the century of the greatest independence in the University of Oxford. In the second half of the century the independence to which both King and Pope had contributed resulted in the rise and growth of Wycliffism. The University formerly honored with the name of "the second school of the Church," became under the influence of Wycliffe and his followers, as Archbishop Courtenay well described it, "the university of heresies." But it was soon restored to conformity with the Church, though not so much through the efforts of the Church itself as through the intervention of a monarchy more zealous for it than the papacy. The Catholic Church, moreover, had been largely nationalized in England and had to look to the King for support. So thoroughly was the University permeated by the spirit of Wycliffe that an order to condemn the heresies of Lollardism met with no compliance in 1409. In 1411 they were condemned by the Council of London. The subjection of the University was accomplished and its future subservience assured through the restoration of the episcopal power of visitation. Though at first, in 1411, the visitation of the Archbishop of Canterbury was resisted, even when supported by a royal writ that such power belonged to him, submission soon followed — even before Parliament, in the same year, had confirmed the power of the Archbishop as visitor. The submission was followed at once by the passage of a statute by the University that disseminators of Lollardism should be punished by excommunication, that candidates for degrees should abjure it and that heads of colleges and halls should exclude all who promoted or were even suspected of promoting it. In 1414 the University was so spiritless as to submit to visitation even by the Bishop of Lincoln, though the right had been recognized by King and Parliament only in the Archbishop.

The suppression of Lollardism left the University of Oxford intellectually stagnant, nor was its intellectual activity aroused until the Renaissance in the second half of the fifteenth century introduced a new element. Wycliffe was the last of the scholastic philosophers and the heretical movement that bears his name was the last effort to reform Catholicism by the older method. Wycliffe is called the "morning star of the Reformation"; he was more truly the"evening star of scholasticism." But until the Reformation in the sixteenth century, the University of Oxford remained passive beneath the control of the Church; its constitutional structure had been perfected (as far as influenced by the Church) by the beginning of the fourteenth century; by the

beginning of the following century the Church had simply posed upon it the visitorial system that kept it within the bounds of orthodoxy. In the first stage of its development, the Church had conceded its independence largely because was unable to prevent it; in the second stage, the Church restrained it without destroying its autonomy; in the third stage, the Church was to recognize its strength and use it as an implement for the advancement of its own interests. But the third stage was to begin with the Reformation; A forerunner of future conditions was the concession (in 1490) of power to the chancellor (with the faculty of theology) to license preachers to serve in any diocese of England.

2. Though the powers of the University of Oxford had their source in the Church, and though the masters and scholars were considered to be under its special protection and jurisdiction, the field of learning and education was left to the Church no more exclusively than any other, however strenuously the ecclesiastical claims might be advanced. It is hardly necessary to suggest that there was no strictly drawn line which Church or State refrained from crossing, from one side or the other. Before the Reformation the most usual course pursued by the University in its accumulation of powers was to secure their concision by both Pope and King, whether the one conceded and the other sanctioned and confirmed or each conceded separately, the one by papal bull and the other by royal charter. The extent of the King's interference in matters over which the Church had theoretically exclusive control varied only with the conditions and circumstances of the time. After the complete victory of Innocent III over John, it could hardly be expected that royal approval would be sought for any measures decided on by the Church. During the fourteenth century the Church was being "nationalized" to a certain extent and the exercise of ecclesiastical authority was conditioned to an equally increasing extent on royal assent. At the end of the fifteenth century the monarchy was found almost outdoing the papacy in its zeal to bring the University back into harmony with the orthodox teachings of the Church. The University itself was not likely to discriminate nicely between matters to be laid before the King and those to be laid before the Pope. If the removal of a chancellor or proctor seemed to promise relief from an abuse that had caused complaint, the King did not hesitate to apply the remedy summarily without regard to the offiecr's relation to bishop or archbishop or Pope. The clerical exemptions and immunities of masters and scholars did not always avail

to preserve them from imprisonment by royal order. Disputes relating to matters within the control of the Church were constantly referred to the King and peremptorily settled by him.

The King sustained exceptionally paternal relations to the University. With good reason he regarded the famous seat of learning as an ornament to his realm. Whenever the body of masters and scholars came into collision with any other class or power, the complaints that they were usually only too ready to make were very likely to find a willing listener in the King. Scholars on the way to and from Oxford were accorded special protection from violence. When the Jews of Oxford became extortionate in their demands of usurious interest, a royal writ was speedily issued to set a reasonable maximum rate. When a migration of dissatisfied masters and scholars from Paris took place, a cordial invitation to attach themselves to the English universities was extended to them. When there had been secessions of considerable numbers of students from Oxford in 1260 and 1263, and they had migrated to Northampton and there founded a new university, the King saw fit soon afterwards to abolish the new university by royal writ and order the seceding scholars to resume their place in Oxford. In the frequent ruptures with Oxford townsmen, the clerks were always able to get more than justice at royal hands. If the Bishop of Lincoln was striving to regain his diminishing authority over the University, he could count on no assistance from the King. When the Mendicants sought to maintain their schools in independence at the side of the University, or to intrench themselves in the control of its theological faculty, the royal sanction was cheerfully given to an award making them subject to statutes of the University that could be passed against their will.

As might be expected from the extent of the field over which the Church exercised control of the affairs of the University, and within which, consequently, the King was not so likely to exercise his full authority, the principal matters in which he interfered were those involved in the relations of masters and scholars to townsmen and to the royal courts. There was a multitude of particular disputes between the University and the city of Oxford in which he intervened without establishing a system of organic relations between the two bodies. The University frequently made complaints of the unsanitary condition of the narrow,dnd filthy streets and alleys of the city — due in one code to the habitual burning of fat by the citizens in the streets before their

dwellings — and of the faulty conduction of the pavements or of the foulness of water used by townsmen in making bread and beer; such complaints invariably elicited royal orders for the summary amendment of the conditions complained of the royal prodigality in conferring on the University substantial municipal powers, at the expense of the city corporation, until it became itself virtually a municipality, will appear when the organic relations of the University and city of Oxford are considered.

If the description of medieval university life that historians have constructed from the scattered sources are faithful, the mediaeval scholar must have come into close and frequent contact with courts of justice. As early as 1214 the right of the chancellor to assume jurisdiction of a case in which a scholar was a defendant had been granted by a Legative Ordinance. In 1275 jurisdiction was conferred by royal writ on the chancellor over all personal actions in which a scholar should be a party, whether defendant or plaintiff. In 1288 the chancellor's jurisdiction was extended beyond the walls of the city so as to include the students' playground, Beaumont Fields. In 1290, of all cases in which either party should be a scholar, only such as involved a charge of mayhem or homicide were left outside his jurisdiction. The King's bailiff was punished for having held the chancellor's authority in too slight esteem and was for the future subjected to his orders, though he might, if aggrieved, make complaint to the King. In 1405 the apex of judicial authority seems to have been attained when Henry IV granted to the University the authority to demand and assume jurisdiction over privileged persons (masters and scholars and their defendants, and the officers and employees of the University) charged with felony; they were to be tried by a jury composed in equal parts of privileged persons and townsmen, before a steward, who should be appointed by the chancellor but approved by the Lord High Chancellor.

There was no end of factional troubles among masters and scholars, ranging from mere personal disputes to conflicts between faculties over their relative authority. Unless the Pope Archbishop should intervene, — which was less probable after the end of the thirteenth century, — the royal court was the only forum in which such troubles could be adjusted. The right to expel a master, or to adopt a particular mode of procedure, was very likely to be drawn by the defeated party before the King for his determination. In 1413 an act was passed by Parliament providing for the

expulsion of the Irish from the University because of their insubordination; the act is said to have been enforced three years later.

Down to the end of the fourteenth century the general policy of the Crown and Parliament was to concede liberally to the University such authority as an independent exercise of its powers seemed to demand. It was viewed as an object in itself; though the King might take pride in the increase of learning and the growth of a learned class, the universities were not considered to be a necessary element in the life of the English people and in the operations of the King's government. A change in the view was first caused indirectly through the Church. During the second half of the fourteenth century the Catholic Church in England was undergoing the process of nationalization that was to result in the sixteenth century in a separate national Church; the Crown was gradually assuming the control over the Church that had been exercised by the papacy. When the independence of the University of Oxford found expression in heretical Lollardy at the end of the fourteenth century, the King was even more ready than the bishops to restore it to orthodoxy. The distinction between relations to Church and relations to King becomes more difficult to maintain; the two sets of relations become to a large extent identical. When the restoration of the visitorial power of the Church over the University became necessary to undo the work of heresy and prevent its recurrence in the future, the archbishop fortified himself with a royal order and later with a parliamentary statute in confirmation of the right asserted by him. The time had arrived when the developed monarchy would primarily use the Church to strengthen its own position and would secondarily prevent the universities from asserting their independence against the Church. The independence earlier conceded to the universities had sufficed to show what strength they might exert; now such strength was not to be permitted by the Crown to detract from that of the Church.

The change appears plainly in the later development of the chancellorship. During the thirteenth century, when the form of the University of Oxford was being gradually evolved, the chancellor's term of office was two years. The accumulation of powers (especially judicial and administrative powers) by the University had been largely in the person of the chancellor; the University's control of him and its enjoyment of the powers wielded by him had been maintained by the body of masters and scholars largely through their election of him for short terms of office and through their ability

to obstruct him in the performance of the activity of his office. When the constitution of the University had become well settled at the beginning of the fourteenth century, and the separation of the chancellor's office from the Church had become fully accomplished, re-electionsof the chancellor, which formerly had not been frequent, began to be more usual. During the fifteenth century the tenure of the office, became permanent and its occupants, instead of residing in Oxford, were non-residents. The chancellor resided at court and his active duties in Oxford were performed by a vice-chancellor, whose appointment by the chancellor was perfunctorily confirmed by convocation. Instead of being the medium through which the 'autonomy and independence of the University was exercised, the chancellor had become the instrument tough which its dependence on the Crown was assured. Between the revival of the right of visitation in the Church and the control of the chancellorship by th:Crown, it was possible to make the University completely subservient to an autocratic monarchy and a narrow prelacy, while it was left out of harmony with the mass of the people. But it must be said that the attitude towards the University was rather negative than positive; the aim was rather to restrain it from exercising dangerous autonomy than to use it as a positive instrument in furthering the aims of Church or State; the change to the latter attitude followed the Reformation in the sixteenth century and belongs to the second period of the history of universities in England.

3. *Relations to the Town*. — The relations of the canons of cathedral chapters and monks to the citizens of media-val towns had not always been harmonious. Any privileged class within the town walls, whether protected by King, noble, bishop or abbot, had usually to defend their privileges with vigor if they were not to fall before the strong corporate spirit of the town. As a general rule, the towns succeeded before the end of the Middle Ages in bringing the privileged classes within them into substantial conformity with their own population. In the case of the universities, however, the town was destined to defeat in its struggle with the privileged class of masters and scholars.

In 1209 occurred in Oxford one of those riots between townsmen and scholars that were so important because they frequently entailed a readjustment of the organic relations between town and university at the hands of the higher authorities of State and Church. When it became known that some scholars had killed a woman, the

mayor and burgesses made an attack upon their hostel for the purpose of arresting them. They seized some of the occupants of the hostel and later executed two or three of them; the ones (so it is said) who had been instrumental in causing the death of the woman, having sought safety in flight, were not apprehended. The strongest weapon of the mediaeval university before 1400 in its contests with townsmen was its power to remove from one place to another with slight inconvenience to either masters or scholars. The University as a body owned almost no property. There was no large fixed library and the University owned no buildings; the few books in use belonged to the masters, who read them to their scholars, while the houses used for schools or hostels were rented from townsmen or other owners. The towns usually depended largely on the bodies of masters and scholars for their prosperity; few measures that the University could take would injure the town more than to simply leave it. A modified form of the same punishment was a cessation of lectures, the power to declare which the Pope at one time granted to the University of Paris for its own protection. Contrasted with the Benedictine monk, who had been required to take an oath of *stabilitas loci*, the mediaeval scholar found protection for his liberty in *instabilitas loci*. When the disturbance took place in Oxford in 1209 it resulted in a *suspendium cleracorum*; most of the masters and scholars dispersed in several directions, some of them collecting in Cambridge and there founding the University of Cambridge. Matthew Paris is authority for the statement that the scholars dispersed amounted in number to three thousand. King John was already embroiled in his dispute with Innocent III, and no heed was given to the trouble between the town and University of Oxford until the submission of John in 1213. In the following year the Pope's legate issued his Legative Ordinance for the settlement of the present and the avoidance of future difficulty in Oxford. In reparation of their unjust treatment of the scholars, the townsmen were to march in procession, without shoes or coats, to the graves in which they had buried executed scholars and thence remove them to the cemetery — an act very material to the welfare of Souls of the dead. Each year forever afterwards the town should make a payment of forty-two shillings for distribution among poor scholars, and on St. Nicholas's Day each year they should provide a feast of bread, beer, pottage and meat for one hundred poor scholars to be selected by the Abbot of Oseney and the Prior of St. Frideswide's with the assistance of the Bishop of Lincoln, the archdeacon of the place or his official or the chancellor.

If the townsmen should in future arrest a clerk, they should surrender him to the Bishop of Lincoln or his representative (archdeacon or chancellor) for trial. Victuals should be sold by townsmen to scholars at reasonable prices. For twenty years the rent of hostels and schools should be what it had been before the dispersion of the scholars, except that one half the rent for the first ten years should be remitted; after the expiration of the twenty years, the rent should be taxed by four burgesses and four scholars jointly. Observance of the provisions was assured by requiring an oath to be taken annually by fifty (or as many as the bishop should demand) substantial burgesses. Masters who had continued to lecture after the secession of the other masters and most of the scholars, were punished by suspension for three years from the exercise of the privilege of lecturing.

The chancellor had no prison in which to confine clerks awaiting trial or sentence in his tribunal. In 1231 the mayor and bailiffs of Oxford were required by order of the King to permit the chancellor to use for his purposes the prison belonging to the town. A little later the constable of the royal castle of Oxford was likewise required by another royal order to permit the chancellor to make use of the castle prison in addition to that of the town. Furthermore, both the royal and municipal peace officers were placed at the disposal of the chancellor in the administration of his court; the sheriff as well as the mayor and bailiffs was required to afford him assistance in putting his orders and decrees into effect.

In 1244 another constitution-making riot took place. There had been considerable friction between the scholars and the body of money-lending Jews that had settled in Oxford. The medieval student appears to have been generally impecunious. A vicious raid was made by a mob of scholars on the Jewry which was stayed only when fifty of the raiders had been thrown into prison. Yet when the matter was referred, in the usual course of such matters, to the King, he assumed the attitude characteristic of him when either scholars or Jews were involved. In a charter he conceded that henceforth the Jews should receive no more than twopence in the pound per week for interest on loans made to scholars. To insure justice — to the scholars — future disagreements between them and the Jews with relation to the payment of loans and interest were to be brought before the chancellor for his adjudication. The occasion afforded the King an excuse for conceding also that the chancellor assume and exercise jurisdiction in all matters of debt, rent or prices, and of contracts relating to

personal property, in which a clerk should be a party. Four years later a second charter authorized the chancellor and proctors to be present at and assist in the assize of bread and beer held by the mayor and bailiffs of Oxford; the mayor and bailiffs were also required on entering upon their term of office to take oath that they would respect the liberties and customs of the University. In 1255 an additional assurance of the rights of scholars was provided in the requirement that a layman who should make an assault on a clerk should be imprisoned in the tower of the castle until he should make such satisfaction to the clerk as should meet with the approval of the chancellor. Edward I confirmed a custom that houses in Oxford once rented by masters or scholars for schools or halls could not be let to laymen as long as clerks should stand ready to take them; he also confirmed the older custom of the taxation of halls by a joint board of burgesses and representatives (called taxers) of the scholars, which had been approved by the Legatine Ordinance of 1214. In 1275 scholars were exempted by royal writ from view of frank pledge, aids, talliages, watches and other similar burdens to which townsmen were subject. The chancellor was given power, to a certain extent, to regulate the peace and quiet of the town by restraint of vicious classes, as by the imprisonment of prostitutes. In 1288, as already suggested, the jurisdiction of the chancellor was enlarged so as to include Beaumont Fields, the playground of scholars without the walls of the city. Two years later cases of mayhem and homicide were made the only ones beyond the jurisdiction of the chancellor, if only either party should be a clerk. Two years later the jurisdiction was made to cover all civil actions that should arise in Oxford and all criminal actions (excepting only cases of mayhem and homicide) if a clerk should be a party in either class of actions; and all the servants of clerks, as well as bedels, parchmentmakers, illuminators, copyists, barbers and all others "of the clothing of the clerks," were to enjoy the clerical exemptions, except that they should be subjected to the burdens of taxation borne by townsmen if they should embark in business. The chancellor was given authority to survey and condemn unsound food in the town market.

In the middle of the fourteenth century — more exactly, in 1354 — the most sanguinary fight between University and town in their history took place, — and was followed, as usually, by the royal concession of additional privileges to the chancellor and University and of scant justice to the offending townsmen. Both parties surrendered all their charters absolutely into the hands of the king. By way of partial

reparation of damage done, the town was required to pay to the University the sum of £250 as satisfaction for all damage except such as arose from mayhem and homicide; all goods of scholars seized by the townsmen were to be returned. An interdict imposed on the town was raised on the consideration that annually in future the mayor and bailiffs at the head of sixty burgesses should appear in the church of the University (St. Mary's) and there celebrate mass for the repose of the souls of clerks who had been killed in the riot; each of them, in addition to their defraying the expense of the mass, should make an offering of one penny, of which poor scholars should receive forty pence and the curate of the church the residue. As part of the readjustment the king conceded to the chancellor the authority to impose punishment for bearing arms or disturbing the peace, whether by scholars or townsmen; the assessment and taxation of scholars and others likewise privileged; the assize of bread, wine and ale; the assize of weights and measures (conducted by a clerk of the market); the punishment of regrating and forestalling, and the survey and "correction of victuals"; and control of the cleansing and paving of the streets. The limit of jurisdiction, previously set at the crimes of mayhem and homicide, was removed in 1405, when Henry IV granted to the chancellor the power of withdrawing from the regular courts the cases of privileged persons charged with felony; but they were to be tried not by him in person, but by a steward appointed by him subject to the approval of the Lord High Chancellor, before a jury composed in equal parts of townsmen and privileged persons. Another remarkable function later exercised by the University was that of conducting inquisitions into the delinquencies of the townsmen; there was nothing startling in the claim advanced by the University in 1280 that the chancellor should have the power to inquire into and correct the delinquencies of scholars, but it is no uncertain evidence of the humility of the townsmen that they permitted their town to be divided into districts, each to be assigned to a doctor of theology and two masters of arts for the collection of evidence, and their fellow-townsmen to be brought before the chancellor for excommunication or the imposition of penance. Tournaments and jousts were also forbidden in Oxford or its vicinity, and the chancellor might exercise a censorship over or even forbid theatrical performances.

So effectually had the University of Oxford withdrawn one power after another from the townsmen and so persistently had it increased its positive control over

nearly every department of their municipal life that the latest writer on mediaeval universities is fully justified in declaring. “By the middle of the fifteenth century the Town had been crushed, and was almost entirely subjugated to the authority of the University. The burghers lived henceforth in their own town almost as the helots or subjects of a conquering people.”[341]

4. *Internal Relations*. — A corporation is distinguished from a mere class or order chiefly by the internal system of relations between its component members. A group of persons that may be called a corporation must have such governmental machinery that its group unity may be assured, its character as a group perpetuated, and the objects of its existence accomplished. The body of masters and students in Paris at the beginning of the thirteenth century were hardly more than a mere class. A beginning in the direction of self-control had been made in the assumption by the masters of the control of admission to their status. Before that step had been taken the body of masters and scholars had been merely a class of persons without a code of exceptional rights in society save such as were due to their connection with the Church, without control of their own membership and without an organization through which to independently accomplish their purposes. Even the Legatine Ordinance of 1214, by which the masters and scholars of the University of Oxford were accorded substantial privileges, was not addressed to them, but “to the burghers, bishop and all the faithful in Christ.” The chancellor had been the agent through whom the Church directed and regulated the activity of the group. In Oxford the relations of the Church to the University were so loose, owing to the want of a close connection between the Bishop of Lincoln and the chancellor or whatever resident representative occupied his place in Oxford, that the chancellor by degrees became the head of the University, elected by it and maintaining its immunities and privileges even against the bishop himself; the act of confirming the choice of the University had become an empty form and had been dispensed with by the end of the thirteenth century.

The earliest division of the body of masters and scholars was into nations. The origin of the division, found in all medieval universities, is involved in obscurity. It is not difficult to imagine that in Paris scholars of the same nationality may have associated in their social life by living in the same hostels or in the same neighborhood, and the tendency may have been strengthened if foreign students were

governed in their relations to one another by the laws and customs of their own country, but the facts that there were four nations in Paris and that some. Of the nations were composed of scholars of divers nationalities seem to indicate that what may have originally been a spontaneous grouping on the basis of nationality was soon taken advantage of for other purposes. The medieval student was likely to be a turbulent person and his turbulence was not likely to be mitigated by his surroundings; nor was there a very wide social gulf between the scholar and his master. It was a quite universal principle in the Middle Ages that the preservation of the peace should be accomplished by binding groups, on whatever basis formed, by mutual oaths and by requiring them to elect a representative to act as their foreman, stand responsible for their keeping their oaths and aid in their enforcement either by punishing violations or reporting them to higher powers. It was a refinement of the essential principle of feudalism. As in that of Paris, so in most other medieval universities, there were four nations. Early in the thirteenth century, at least as early as 1228, four nations existed in the University of Oxford, each with its elected head. In the course of a few years, certainly before the middle of the century, the four had been reduced to two nations, those from the north of the Trent being known as Northerners, and those from the south of the river as Southerners; the Scotch were included in the former, the Irish and Welsh in the latter. If members of different nations fell into a quarrel, they could rely for assistance on the nations to which they belonged. Settlements of such quarrels as well as of others involving the nations more generally were frequently made by representatives of the nations, the settlement being ratified at a meeting of the nations including masters and scholars. Such settlements were sometimes very formal in character, articles of peace being drawn; each student then was required to take an oath that he would observe them, the elected leaders being also bound by oath to have them enforced and report violations of them. That the organization by nations extended a little beyond the keeping of the peace is indicated by the provision of a charter of Henry III granted in 1248, by which the two proctors (elected representatives of the nations) were permitted to participate with the chancellor in the assize of bread and beer held by the mayor and bailiffs of Oxford. But though in other medieval universities, and especially in that of Bologna, the organization by nations came to be the predominant organization, in Oxford it disappeared several years before the end of the thirteenth century. The two proctors,

however, continued to be chosen from north and south and to perform certain duties as executive officers, such as to summon and preside at congregations, and to demand oaths to preserve the peace, but they were properly considered not as chiefs of separate divisions, but as officers of the whole body.

It must not be assumed that all the university life revolved about the centre of the organization of nations. In general, during the whole thirteenth century the centre of activity at Oxford was in the process of determination. The Church, through the Bishop of Lincoln, had contained the original centre; the body of masters succeeded in establishing a competitive centre; the wider body of masters and scholars, as organized in nations, possessed a centre for some purposes. The transferrence of authority from the Church to the masters through their gradual assumption of control of the chancellor has already been described. The body in which the corporate powers rested at the end of the century was the body of masters. The control of admission to their own body was obtained by the University of Paris before the history of the University of Oxford probably began. Control of the activity of masters by their associates was constantly strengthened. By the Legatine Ordinance of 1214, masters that had continued to lecture in Oxford after the *suspendium clericorum*, probably decreed by the masters as a body, were punished by three years' suspension from the privileges of lecturing. The status of a scholar came to be recognized as dependent upon the masters; in All the expulsion from Oxford by the sheriff of all scholars not studying under a regular master was ordered by the king. The control of the chancellor's office was in the possession of the masters that elected him. In the middle of the thirteenth century university statutes were passed "by authority of the chancellor and masters regent, with the unanimous consent of the non-regents." Where the pressure upon the masters to preserve their unity did not come from without, the most effective instrument used by the body of masters to accomplish that end within itself was the "withdrawal of the fellowship of masters," the penalty suffered (in the middle of the thirteenth century) by those who on their inception refused to take the oath to keep the peace and obey the statutes of the University.

The original significance of becoming a master has been considered. Very early it became true that not all who acquired the right to lecture implied in the mastership cared to avail themselves of its exercise, though it had been granted originally on the condition that it should be actually exercised at least for a limited period. The

mastership was readily viewed as an evidence of the scholar's completion of his work, — rather as the end of his studying than the "commencement" of his lecturing. The degree became largely a certificate of merit and was granted as such by a dispensation (or "grace") on the part of the masters, relieving the inceptor from the obligation of subsequent lecturing and other conditions relating to the practical significance of the degree; possibly the masters were very willing to confer exemptions that would keep their number small at a time when their whole remuneration consisted of fees paid by scholars. Those masters who actually lectured were called regent masters or regents; those who did not lecture were called non-regent masters or non-regents. The lecturers were divided into the four faculties of arts, medicine, law[342] and theology. The separate faculties, however, never attained a great degree of independence of each other; though each had charge of matters relating particularly to its own work, it was always liable to be overruled by the other faculties. The only departure from the principle that the whole body of masters was the true unit of university life was in the attainment by the faculty of arts of a position of predominance over the other faculties in some respects; the initiation of statutes was under its control, though it never succeeded in establishing the power to veto statutes after their passage; in 1252 a statute was passed that "no one should be admitted to the license in theology who had not previously been a regent in arts"; moreover, through the control of the body of non-regents by the artists, the faculty of arts had an ally that virtually doubled its weight in the deliberations of the university body.

At the end of the thirteenth century, when the constitution of the University had become substantially settled, the system of government was as follows: (1) When the regent masters of arts met in a body for the purpose of transacting matters relating to their department, they were known as the Congregation of Regents in Arts, or more familiarly, the Black Congregation. They elected the two proctors, of whom the senior presided over their body when in session, though both were executive officers of the whole University. One of the most important of their duties was the celebration of inceptions in arts. Constitutionally more important, they had the authority to entertain a preliminary discussion of proposed statutes intended to bind the whole University; when assembled for that particular purpose, they were called the Previous Congregation. (2) Above the first body was a congregation of the regents of all the

faculties, called the Lesser Congregation. It was virtually the legislature of the University. Matters of business, in the narrower sense, came before it, such as the management and disposition of its property and the details of income and expenditure. It elected the chancellor. Technical educational matters relating to the work of lecturers and scholars and the conferring of degrees were considered. Theoretically the chancellor himself conferred the degrees — the original *licentiae docundi*, — but the Lesser Congregation had the power to dispense by "graces" with some of the conditions earlier imposed, unless the dispensation were reserved by statute for the consideration of the Full Congregation. It was very easy to confuse the dispensation and the implied recommendation with the conferring of the degree, especially when the granting of the grace became a quite universal preliminary; the power of actually conferring the degree was accordingly lodged in this body later. (3) The third body was the congregation of all regents and non-regents, and was called the Great Congregation or Full Congregation. If the Lesser Congregation was the ordinary legislature of the University the Great Congregation might be regarded in some respects rather as a constitutional body. It alone had the power to pass a "permanent statute." It also acted on some matters specially reserved for it. The separate faculties voted in separate places as units. The nonregents also voted as a separate unit and as such were called one of the faculties.

In the administration of his court the chancellor brought his powers to bear on clerks in their contact not only with townsmen and the wider body of the king's subjects but also with one another; in the latter class of relations his jurisdiction had increased largely at the expense of the Church, and consequently suffered less from the supervision or interference of the king or his courts. In 1280, when the University succeeded in defending the jurisdiction of the chancellor against the Bishop of Lincoln, and even secured from a provincial convocation of bishops a denial of the right to even exercise an appellate jurisdiction in the classes of cases in question, a judicial action of the chancellor was treated much as one of his administrative acts would be treated. An appeal lay from his decision to a Congregation of regents and then to a Great Congregation of regents and non-regents. Controversies of small importance, however, were heard by the Hebdomadarius, a bachelor of law appointed by the chancellor each week, as indicated by his official name; they might then be taken by appeal before the chancellor or some officer who should have his authority

to act in his place; they might then be carried higher by appeal like other controversies. As a matter of practice, cases when appealed to the congregations were not heard bythem directly and in full session, but by boards of delegates of each faculty selected for the purpose. It may be said, then, that in the regulation of the relations of masters and scholars to one another or to the University, a system of specially designed courts had developed in the Hebdomadarius, the chancellor or his representative, and the boards of appeal of the congregations.

V — The Colleges in the Universities.

The movement that resulted in the gradual dissolution of the University of Oxford into its colleges must be approached from two directions, from within the University and from without it; it was the composite effect of the internal tendency to community of living and the external application to university life of external forms of ecclesiastical organization. In the early part of the thirteenth century the scholars of Oxford lived in the houses of townsmen or in small groups in hostels or halls. The lectures to which they listened were delivered in schools rented by the masters and doctors. The domestic life of the hostels or halls and the activity of the schools were quite distinct. Under the circumstances, little control over the personal conduct of scholars could be exercised by the University. The scholars of mediaeval universities were turbulent in the extreme. If the spirit that dominated mediaeval institutions were to manifest itself, the scholars would be expected to find spontaneously an organization in smaller groups, and then be held accountable for their behavior through an elective head by the University. The individual scholar, living by himself, and pretending to keep the peace through his individual efforts, would be out of harmony with medieval institutions. If the statements of historians may be credited, the "chamber-dekyns," the scholars that lived in lodgings with the townsmen, were the most troublesome and unruly members of the University. In tavern brawls, "town and gown" riots and contests between university nations they were always prominent actors. Moreover, many who came to Oxford, not to study, but to enjoy the attractions that a university town presented even in the thirteenth and fourteenth centuries, assumed the name of scholar merely as a cloak for their excesses; such persons adopted the life in lodgings of the "chamber-dekyns" and increased the odium that properly attached to the class. That such spurious scholars existed in

Oxford is evidenced by the royal order as early as 1231 that all scholars be expelled by the sheriff from Oxford except such as were studying under a regular master. In 1432 it was enacted that all scholars should reside in colleges or halls, on pain of imprisonment, and that no townsmen should accept scholars as lodgers unless he had the special license of the chancellor so to do.

There is good reason to believe that the several hostels or halls were occupied by scholars having common sympathies due to their having come from the same county, region or nation. In the continental universities the hostels were very frequently occupied by fellow-countrymen. Meagre as are the details of early life in them, they are sufficient to indicate a considerable degree of organization. The residents of the hall elected a principal, probably annually, and possessed bodies of rules to which the scholars had to conform. An officer called the "impostor," elected or appointed each week, acted as a dean in the enforcement of the rules, punished infractions of them by the imposition of fines and made a report to the principal at the end of the week. Moreover, disputations came to be regularly held in the halls, thus supplementing the work of the masters. It is very likely that the principal supervised such work to some extent, for it was finally required that he should be a graduate. The University gradually asserted its authority over the halls. In 1411 self-government was to some extent assured by a university statute that no principal of a hall should be permitted to receive into his hall scholars expelled from others for breaches of their statutes. An arbitrary requirement of qualifications in principles was involved in the refusal of the chancellor to sanction the leasing of halls to certain principals and in his later assumption of the right to expel them if exceptionable in character. In the code of statutes passed in 1432, some of which must have been merely in confirmation of existing customs or rules, it was required that scholars reside in the halls of principals "lawfully approved and admitted by the Chancellor and Regents." At about the same time statutes for the regulation of the halls were enacted by the chancellor "with the advice and consent of the Congregation of Masters and of the Principals of Halls." The University assumed the right to veto statutes enacted by the halls, and even enacted statutes for them without their participation or consent. The principal, too, was, in 1432, required to be a graduate. By the end of the fifteenth century the University had established complete control over the halls.

The period, covering about sixty years of the fifteenth century, between the

suppression of Lollardism and the Renaissance was one of stagnation in Oxford. In 1438 it was complained that the halls were deserted, and that the number of scholars had dwindled from several thousands to one thousand; in Into only twenty of the former two hundred schools are said to have remained in use. The loss of members and decrease of activity were almost entirely at the expense of the unendowed halls. When the reaction came at the end of the century it had its effect not in the revival of the halls, but in the enlargement of the colleges. Moreover, during two centuries the halls had largely come under the control of the colleges. By the end of the first period of university history the system of halls was a thing of the past; the few that remained were merely appendages of the colleges.

After the Mendicants set up their establishments in Oxford in the thirteenth century many scholars made their home in them and studied in their schools. In most respects they offered advantages superior to those of the halls. They were better regulated and better managed. The discipline to which their inmates, both friars or novices and secular scholars, had to submit commended them to parents and guardians of younger scholars. The students did not indulge in riots, and the social life of the houses was quieter and more favorable to study. They possessed libraries, if their meagre collections of manuscripts deserved the name. Finally, the religious instruction and exercises that seem to have been wholly wanting to the halls, were not overlooked in the houses of the Mendicants. The older Benedictine monasteries followed the example set by the Mendicants and also set up their halls and colleges in Oxford. In 1289, at a chapter-general of Benedictines held at Abingdon, a tax of two pence per mark on their revenue was imposed on all their monasteries in the province of Canterbury to provide for the foundation and support of a studium for Benedictine monks at Oxford. In such institutions the monks from the several monasteries appear to have occupied separate parts of the hall under whose roof they formed a common domicile. Likewise some of the larger monasteries, as that of St. Peter at Gloucester, established separate studia at Oxford, though they frequently admitted monks of other monasteries and even secular scholars. The organization of the Benedictine and Mendicant studia was merely that of the monasteries themselves; they were presided over by a prior, elected by the chapter-general for studia open to all monasteries, and appointed by the abbot for such as were intended exclusively for the monks of a particular monastery. They were, of course, suppressed at the Reformation. Their

chief importance in the development of the college system lies not so much in their direct imitation by founders of colleges as in the stimulus they gave to such founders to introduce the institutions of the Church into the field of education.

It is universally agreed by historians that many of the Oxford scholars were drawn from the lower and poorer classes of society. The frequency with which the "poor scholar" is mentioned in the sources of university history is a sound basis for the statement. The plane of life of university scholars was mean in the extreme. Actuated by love of learning and the philanthropic purpose of aiding poor scholars, the desire to promote the interests of the Church or the more personal desire to better the superstitious philanthropist's status in the future life, certain medieval philanthropists set apart property by gift or will for the support of poor scholars. Thus William of Durham, in 1249, left to the University by will the sum of three hundred and ten marks for the support at Oxford of ten scholars, natives of the county of Durham, and John Balliol made a similar benefaction for poor scholars about fifteen years later; no system of organic relations between the beneficiaries was established in either case; they appear to have not even lived together at first. A few years afterwards Dervorguilla, wife of John Balliol, increased his benefaction so that it would provide each of sixteen scholars with an annual stipend of twenty-seven marks, and collected the beneficiaries in one house; in 1282 she provided a set of statutes by which they should govern themselves; in 1292 the University took a similar step with the beneficiaries of William of Durham, bringing them together in the "Great Hall of the University." Walter de Merton had given similar assistance to poor scholars at Oxford. In 1264 he had founded a "House of the Scholars of Merton" at Maiden, in Surrey, and had placed it, together with the estates intended for the support of the scholars, in charge of a warden and bailiffs; two or three priests or chaplains were attached to the establishment; the scholars, twenty in number, were to live together in a hall or house at Oxford, or wherever else there should be more suitable university schools. In 1274 the establishment in Surrey was united by Walter de Merton with the body of scholars in the hall at Oxford under a comprehensive code of statutes, which are considered to have served as a model for not only University and Balliol Colleges, but for most of the later foundations in both Oxford and Cambridge. Such was the origin of the three earliest Oxford colleges, exhibiting all the internal stages in the evolution of the college from the individual scholar. The

individual beneficiaries of William of Durham, Balliol or Walter de Merton did not differ at first from other scholars. When they were brought together in a common house they constituted a hall. When their self-governing interrelations and their relations to the property whose income they enjoyed and to the Church whose interests they promoted were given stability and permanence by a body of statutes, they constituted a normal Oxford college. Though each college had its peculiarities of organization, they had greater similarity than is usually supposed. After considering their general features, an examination of their relations to the University and Church and to each other will be of advantage.

The founders of colleges were those who provided by gift or will the endowments for their support and eomposed the bodies of statutes by which they should be governed. A few were founded by the king or queen and a few by wealthy private persons, but the majority by bishops and others who held high office in Church or State.[343] In order, particularly, that the statute against alienating lands in mortmain might not be violated, and, more generally, that the royal favor might not be wanting, the consent of the king was first obtained; in order, similarly, that no obstacles might be presented by the Church, the sanction of the Pope was also obtained. In the early history of some colleges, the endowment was for a time vested in an outside body, who managed the property and turned over to the college the revenue derived from it; thus the endowment of Exeter College was early in charge of the dean and chapter of Exeter, who managed it and remitted periodically to the college the revenues received from it. The endowment of the original founder was in most cases augmented in later years by those of other benefactors, who were sometimes honored with recognition as co-founders; the successive endowments were not always amalgamated; the later ones were frequently kept distinct and devoted to the support of additional fellows or lecturers under a distinct body of statutes. Part of the endowment was usually the land and buildings occupied by the college; though for some years rented property might be used, the college eventually acquired land for its purposes. The founders of colleges were actuated by three motives: they aimed to advance the interests of the Church, to promote education and learning or to better their own prospective status in the future life; they were usually actuated by all three motives in combination. The interests of the Church might be advanced in no better way than by the provision of more ample means for the education of the priesthood,

not merely in the restricted field of theology, but also in the wider field of general knowledge; a college might even be intended to combat a particular heresy, as Lincoln College[344] to combat Wycliffism, or, like New College, to compete with the monastic and Mendicant orders by raising the intellectual plane of the secular priesthood. Even though in most cases the learning that a poor scholar might be assisted to secure may have been intended to strengthen the Church, in many of them pure love of learning for its own sake was sufficient arouse the benevolence of the founder. The most common aim was more purely personal; the extension of assistance to needy scholars was a form of charity that, along with the advancement of the interests of the Church, was expected by the superstitious mediaeval founders of colleges to redound to their advantage in the future life;[345] not only was that result expected to follow the act of charity, but particular provisions were usually made that their endowments should be compensated for by the colleges to some extent, by the celebration of masses and the offering of prayers for the repose of their souls and of those of their ancestors and descendants. A somewhat more worldly phase of the motive of personal interest appears in the frequent reservation of preferences for "founder's kin" in the bestowal of memberships in the colleges. It was quite in harmony with the religious motives of founders that colleges should be nearly always dedicated to saints or religious symbols, and that their names should be as frequently religious in suggestion.

The members of a college — using the term not in its technical strictness, but so widely as to include all the members sustaining organic relations to the group and excluding only mere employees — were (a) the visitors, (b) the head, (c) the fellows, (d) the scholars, (e) the almsmen, (f) the commoners, (g) the lecturers and (h) the chaplains. (a) The visitor was virtually the successor of the founder, and had the power to investigate the affairs of the college at any time, to ascertain whether the statutes were being faithfully observed, to compel compliance with their terms, to receive newly elected heads into their office and to remove heads if on complaint of the fellows they should be found "useless or negligent, or luxurious or vicious," or, more generally, if their retention in office would be detrimental to the welfare of the college; the validity of some acts of the college, such as the passage of new statutes, often depended on the sanction of the visitor; in some colleges he had power to interpret, declare, harmonize, correct and modify the statutes, or even to enact new

ones; the visitors were most usually bishops or archbishops, though the king, the chancellor or some master of the University, a mendicant friar or private person held the office in some colleges; in a few cases (of the early colleges) the right of visitation was vested in two or three persons acting jointly; in only one college was the visitor elected by the collegiate body. (a) The head of the college, variously called warden, master, provost, president or rector, was quite universally (except in the early history of some colleges) elected by the fellows or a select number of them, though not necessarily from their own number; he was required to be in holy orders, but was to lose his office on the acceptance of a benefice or the acquisition of an independent income;[346] though in some of the earlier colleges he was elected annually, his office came to be universally permanent; he had actual oversight of the work of the college and particularly of the administration of its endowment; he presided over the fellows in their meetings and was usually elected from among their number; in the later history of the colleges, he became somewhat more remote from the fellows, lived in a separate house and deputed many of his functions to a sub-warden, vice-president or dean. (c) The fellows originally named by the founder constituted a close body, statutorily limited in number to from ten to seventy members,[347] filling their vacancies by co-optation[348] and devoting them selves to the particular studies prescribed by statute; they were the original "poor scholars" of the thirteenth century and formed the nucleus of the collegiate body; their chief qualifications were that "they excel in poverty, ability and manners" and be of legitimate birth,[349] but kinsmen of the founders and natives of particular counties or dwellers in the vicinity of college estates or scholars on the foundation were frequently given a preference by statute in elections to fellowships, as well as to the scholarships; the fellows also exercised the legislative powers of the college, within the limits imposed by the foundation-statutes, though often subject, in many particulars, to the sanction of the visitor and to his interpretation of the limits of their powers; they might similarly secure the removal of the head, if he should be unfaithful to his office, by complaint to the visitor after having thrice admonished him; some of the fellows also usually performed official duties, as those of vice-principal, bursars, secretaries or chaplains, for which they received remuneration in addition to their fellows' stipends; they were usually admitted on probation for one or two years before entering into their full status as fellows, and during the period were in some colleges not permitted to share

in the management of collegiate affairs; they were often in separate classes having different rights and duties and perhaps supported on the endowments of distinct benefactors, the legislative power being frequently exercised by one, the senior or earlier endowed class, to the exclusion of others; they were uniformly required to be in holy orders or to enter them within a limited time after election or after having taken a degree, but they lost their fellowships and their stipends ceased if they accepted a benefice, acquired an independent income, renounced celibacy, ceased to reside in college or to study diligently, "entered any religion" by becoming a monk or friar or accepted a fellowship in another college; the fellowships of the thirteenth century had been intended to aid the scholar until the attainment of his degree, but they later gradually became permanent, at least to the extent of covering the period between the degree and the benefice; likewise the fellows had originally been mere scholars studying for degrees, but later bodies of statutes required them (or a part of them) to be at least bachelors[350] and to assume the work of instructing inferior scholars in the college; though even then the fellowships were often limited to a definite number of years (as to fourteen years in Exeter College) they might be summarily (without right of appeal) expelled for committing crimes, violating the statutes, raising scandals or quarrels, or fermenting discord, and might be readmitted only in cases of small misdemeanors followed by unfeigned penitence; it was wisely provided that they should not be admitted on the request of lords or other influential persons. (d) Below the rank of fellows in the developed Oxford college and supported on the same foundation[351] were the scholars, limited in number and coming, like the fellows, by preference from particular counties or parishes; they were undergraduates admitted on probation for a year after an examination by a college examiner to determine their admission or rejection, and held their scholarships for a limited period or until they should have taken their degrees, in some colleges they were preferred in the election to vacant fellowships;[352] in addition to their attendance on the masters of Oxford schools they were instructed, especially from the fifteenth century, by the fellows and latterly by special principals and tutors who might or might not be fellows concurrently; in addition to the pursuit of their studies, they were required to wait on the tables in the common-hall and perform other menial services for the fellows, to sing in the chapel, and to otherwise act in a subordinate capacity in the common life of the college.[353] (e) Connected with some

of the earlier colleges and dependent on fixed allowances from their revenues were a small number of indigent men and women, who were, of course, no part of the student body; thus it was provided in the statutes of Queen's College that thirteen poor men and poor women should be fed daily in addition to a general distribution of soup at the college gate. (f) Beside the fellows and scholars, many colleges had within their walls a body of scholars who were "not on the foundation,"[354] who did not share in the college revenues, but paid for their accommodations, and were usually called "non-foundationers" or "commoners," while other colleges would not admit merely boarders or roomers, but only those who also received instruction; usually limited by statute to the "high-born," to sons of the nobility and gentry, they were admitted by common consent of the fellows on condition (in University College) "that before them [each] shall promise whilst he lives with them, that he will honestly observe the customs of the fellows of the house, pay his dues, not hurt any of the things belonging to the house, either by himself or those that belong to him"; the class increased with the disappearance of the old Oxford halls and with the growth of a system of instruction within the colleges, while by reaction the halls suffered from the absorption of scholars by the colleges. (g) As the activity of the colleges became more complete in itself and to comprehend more fully the instruction of their inmates, lecturers, readers and tutors in special branches of study were attached to them and supported on definite stipends paid from their revenues; in most cases, the work done by them had previously been done by fellows, who received fees and other compensation for it, and even after they were separately provided for, they were often made eligible to fellowships concurrently. (h) The religious side of college life was never neglected by founders; the fellows were in many colleges required to act in the capacity of chaplains, but in most of them chaplains were specially provided for; sometimes elected by the fellows or appointed by a bishop or dean and chapter with their consent, they generally owed their office to the choice of some authority outside of the collegiate body.

Several features of the life of the medieval Oxford colleges not directly involved in a description of the classes of persons comprehended in them may be noted with profit. Their domestic life was regulated to the minutest detail by their statutes. The hours of rising, of the two principal meals of the day and of retiring were definitely fined. The articles of diet, the manner in which they should be prepared for the table,

the amounts of them that should be consumed and the limits of the expense to be incurred in providing them were prescribed. The head (if he did not live separately) and the senior fellows, with perhaps some of the lecturers and "commensales," might alone dine at the high table in the common-hall; an inferior class dined at a lower table; and still lower classes used the remaining tables indiscriminately; the poor scholars that waited on the tables ate after the others had finished. The common speech at table was required to be in Latin; if a scholar should make bold to use his mother-tongue, he was subject to reproof by the principal, and if twice or thrice reproved without amendment, to be put away from the table and to be last served; at Queen's College, a single exception, French might be spoken in place of Latin. A domestic establishment complete in all respects was contemplated; clerks, secretaries, caterers, dispensers, millers, bakers, cooks, scullions, brewers, porters, barbers, gardeners and nightwatchmen were among the employees provided for by statutes. If a common dormitory was used, a monitor usually presided over it to observe and report infractions of rules. If separate chambers were used, the number of occupants allotted to each was settled; if a fellow was entitled by the statutes to the services of a poor scholar, they were required to occupy separate beds in the same chamber. The care of the person was not beneath the consideration of the statutes. Even the manner of shaving the head was dictated. "No fellow, chaplain, clerk, scholar or chorister shall grow long hair, or a beard, or wear peaked shoes, or red, green or white shoes." A college livery was often prescribed and sometimes furnished annually, at least to the extent of a hood, at the charge of the college revenues. In their manners, members of superior classes were charged not to be overbearing towards their inferiors, and the rich were not permitted to oppress the poor. Creating or disseminating scandal, inciting quarrels or discord or revealing the secrets of the college might be punished by expulsion. Fellows were not to delay to use their good offices in pacifying controversies, and had power to punish minor infractions of rules summarily. For the further preservation of order and enforcement of regulations, the scholars were frequently divided into groups of ten with a dean over each group. All forms of rudeness, such as jumping, shouting, dancing in the chapel or halls and playing on musical instruments immoderately, were punishable. Most of the crimes known to the mediaeval criminal calendar were catalogued in the college statutes and their commission visited with expulsion. The lawlessness of

poaching, fighting or quarrelling, drinking to excess, frequenting taverns and play-houses and wandering about at night after the college gates had been closed was emphasized. Amusements were closely restricted, especially within the college walls; among the rougher diversions, attendance either as participant or spectator at tiltings and wrestling and boxing contests was forbid den. Suffering the presentation of comedies in college near the end of the fifteenth century was an exceptional indulgence. The presence of guests was regarded as detrimental to study; they were accordingly excluded except they should be prominent persons to be entertained by the warden. The rule of exclusion was extended from guests to animals and birds. "No one shall keep in the college hounds, rats, ferrets, hawks or falcons for sport, or monkeys, bears, foxes, deer, badgers or any other wild beasts, that would be unprofitable or dangerous to the college." That the fellows might not plead ignorance of the statutes, they were publicly read to them once a year. Murmuring against them, or incorrigibility for a week, was punished by expulsion. If the external world was carefully excluded from the college, its internal life was with equal care preserved from actively coming in contact with the outside world. Residence in college, in some of them even during vacation, was mandatory, except when the coming of a pestilence made it advisable for the whole body to retire for a time from the city. In the management of the college estates, the provisions for which were in great detail, an annual tour over them by the head and fellows (or part of them) was made at the time of the annual audit of accounts. For the transaction of the more important business, the election and admission of fellows, and the inquisition into the work of the scholars, from one to three chapters were held annually. If the warden or other head should become incapacitated for the discharge of his duties, he was relieved by the election of another in his place and retired on an ample pension. Likewise the fellow or scholar was provided for in sickness and even supported outside the college if his restoration to health demanded it. On the other hand, fellows were enjoined to aid and assist the college if after the severance of their connection with it they should find exceptional fortune in the world.

There was nothing in the original extension of aid to "poor scholars" by William of Durham, John Balliol, and Walter de Merton in the middle of the thirteenth century to threaten a serious modification of the scholars' relations to the University. Such evidence of the disintegration of the University as then existed was to be found

in the previous "spontaneous" growth of the Oxford halls. When the benefactors brought their benefactions into harmony with the existing aularian system by introducing community of living among the several groups of beneficiaries, they did no more than to promote the disintegration already implied in the development of halls, though the influence of adding a more substantial economic basis could not have been slight. The extent to which the halls became independent and autonomous centres of study and instruction within the University, and in a sense in opposition to it, has been suggested; in their activity, however, they did not compete with the University so much as they really supplemented its activity; the University schools still flourished and the inmates of halls still attended lectures in them; the disputations and other exercises of the halls were to a large extent new elements in University education, the elements that are now exaggerated in college courses in which textbooks are used. The Mendicants and monks took a step in advance of the hall communities in providing more extensively for the instruction of their scholars, for the plain purpose not of supplementing but of supplanting the work of the University schools. The University was more or less successful in its contest with the friars because it had the support of the Church. When the secular colleges were founded by ecclesiastics or by persons under their influence, largely for the purpose of fighting the friars and monks with their own weapons, the work of disintegration, already well begun by the halls and religious houses, was carried rapidly forward. Though the University was able to establish complete control over the halls through the power of disqualifying or removing their principals and of making, vetoing or modifying their statutes, it very clearly had to be content with control and not aspire to the absorption of the halls; to the extent that they flourished, even under the direction of the University, the University was not performing its functions directly, but indirectly through the halls as organs. Even more truly was the University unable to fully control the interior activity of the religious schools; the moderate control that it succeeded in establishing consisted partly in placing limitations, in the first instance, on the admission of scholars to them, and later on the admission of their scholars to the status of University graduates, and partly in circumscribing the participation of their representatives in the government of the University itself. Just as in the halls, the extent of the work done in the religious schools was the measure of the extent to which the University failed to do its own work directly and had to

rely on its being done indirectly through them. The colleges were far more independent and autonomous than either the hall communities or religious bodies. At first, however, they relied on the University schools for the instruction of their scholars; they were content to prescribe the domain of their scholars' work and to regulate the details of their common life. Such educational work as they did was largely supplemental, like that of the halls; the nature of it is clearly suggested in one of the statutes of Balliol College, by which it is provided that under the supervision and correction of the principal there should be one "sophism" each week "to be discussed and determined" in the house ''and this should be done in turn, in such manner that the sophists should introduce and reply, and they should determine who should have determined in the schools." It was a common statutory provision that "poor scholars" should be daily "opposed" by the fellows at dinner before going to their own table. The fellows, called scholars in the statutes of early colleges, were at first merely what their name indicated — scholars — and were not required to be graduates; the more advanced fellows were then given the somewhat indefinite duty of aiding the less advanced ones in their studies; next the fellows (or part of them) were recognized as definitely obligated to instruct others on the foundation, as in New College, where the "tutorial" system is said to have had its origin, and were allowed for their services compensation in addition to their stipends, as well as fees paid to them by the scholars; in short, the fellows developed into teachers and were required to be graduates, while those actually engaged in studying formed a new and inferior class, known by the name the fellows had originally borne — scholars. As the system of teaching became more nearly complete in the colleges in the fifteenth century, special lectureships in some branches of work were endowed for the accommodation of the scholars. The movement extended even beyond the boundaries of the colleges when at the end of the fifteenth century their lectureships were thrown open to the whole University, as were those in theology, moral and metaphysical philosophy and natural philosophy in Magdalen College, and those in Greek and Latin in Corpus Christi College. Nor did they suffer seriously from the competition of the meagrely endowed University lectureships founded by Henry VIII. As college instruction became more extended, the University dispensed more fully with the requirement that scholars hear lectures in the University schools, as it with equal liberality dispensed with the requirement that candidates for degrees lecture in them.

Meanwhile the commensales, originally merely boarders in the colleges, attending the University schools, had become pupils in the colleges and were not accepted unless they would not only live but also receive instruction in them. The college instruction had first been extended in the higher faculties, instruction in arts and grammar being left longer to the University schools and grammar schools; in the statutes of Queen's College it was first provided that arts should be taught in college; by the end of the fifteenth century all effective instruction in arts had been absorbed by the colleges. Pupils had been received from the grammar schools of Oxford (supervised by the University) and from other grammar schools; the colleges provided for such instruction within their walls by a teacher of grammar, who might or might not be a fellow, until, as in Magdalen, the scholars' fitness to begin arts should be determined by examination; in this field New College even expanded beyond Oxford and the University by relegating the work in grammar to Winchester College, from whose graduates its scholars were exclusively chosen; other colleges were obligated to maintain from their revenues grammar schools outside of Oxford, to which, however, they sustained no other close relations. The broad fact is that by the middle of the sixteenth century the work of instruction in the University had been transferred from its schools to the colleges, and that in many of them scholars might obtain all the instruction leading to their degrees without attending the University schools at all. The development of the "college monopoly" was promoted even by the character of the books used. The expensive manuscripts of the thirteenth century had been almost exclusively the property of the lecturing masters, but when the colleges were founded their statutes usually extended to their scholars the common use of the books in the college libraries. The colleges first established what are now known as "entrance examinations," thereby assuming the determination of the fitness of a prospective scholar for the status to which he aspired. The University came to depend for its definition of a scholar on the determination of the statutes of the colleges.[355] The power of conferring degrees, however, never departed from the University; every step leading to the degree might be under the control and supervision of the colleges, but the final conferring of the degree remained the function of the University.

The Oxford colleges, whether founded by churchmen or by persons under their influence, were so manifestly the fruits of a pious purpose that they were given forms of organization modelled on the corporate forms of the Church, while the

permanence of their constitution and the fidelity of their life to the purpose of their foundation were assured by their almost universal subjection to the visitorial authority of bishops. Some of them, not only from their structural form, but even from the substance of their activity, might justly be classed with the chapters of cathedral or collegiate churches, their educational structure and activity being conceived as merely annexed to them, just as most other ecclesiastical corporations had schools annexed to them; but in others the structure, though plainly ecclesiastical, was predominantly occupied by educational activity, while the substantially ecclesiastical functions were performed by chaplains or otherwise subordinated to the educational activity. The normal form of the Oxford college, however, was that of the chapter of a collegiate church, though Henry VIII converted Wolsey's Cardinal College into a dean and canons of Christ Church Cathedral with its Bishop of Oxford. The original endowment of Lincoln College consisted of the impropriations of three churches served by the fellows (though with the aid of chaplains); the three churches, with the college, virtually constituted a collegiate church, with the rector and fellows for its dean and chapter. It may hardly be said that monasteries or Mendicant houses were used as models of the colleges; when an attempt was made to place both secular and regular scholars on an equality on the foundation of Canterbury College, it proved a failure, and the former were eventually subordinated to the latter. If the colleges were intended to do for the Church what the Mendicant and monastic houses were doing for their orders, it was only a particular manifestation of the general purpose of their foundation. They were intended to promote the interests of the Church by supplying it with priests, and especially with learned priests — and that was the point of contest with the religious orders, — by protecting it against heresy, and by providing it with a body of ecclesiastics who could capably fill the great offices of state at that time invariably held by them. In accordance with their threefold purpose, theology and the canon and civil law were given such prominence in foundation statutes that the colleges may be well said to have been little more than ecclesiastical seminaries. The fellowships were almost universally not intended for the promotion of learning for its own sake, much less for the modern purpose of scholarly research, but to make learning subserve the ends of the Church; accordingly fellows were required to be in holy orders at the time of their election or to enter them within a limited time thereafter, and some colleges virtually

projected themselves into the Church by holding advowsons of benefices to which they nominated their fellows in the order of their seniority; some colleges, too, were virtually chapters of corporate churches, their fellows being members. The ecclesiastical nature of the colleges was also reflected in the routine of their interior life. Frequent (sometimes daily) masses had to be celebrated and daily prayers offered for the repose of the souls of founders or other benefactors and their ancestors and descendants, of the king and queen and their predecessors and successors, of the Englishmen who had fallen in a French war and of other persons. Each meal had to be preceded by a benediction and followed by the offering of thanks or prayers or the recital of the *De Profundis*; while dinner was in progress, either the chaplain or a scholar (who served in his turn) read aloud a portion of the Scriptures or of the writings of the Doctors of the Church. In some colleges even the canonical hours were observed. Inseparable from the college was the chapel in which the chaplain (or a fellow serving in the capacity of chaplain) officiated, while the scholars sang and otherwise participated in the services, and in which all scholars were required to perform their devotions on all Sundays and saints' days. In Queen's College a provost and twelve fellows were provided for in imitation of Christ and the Apostles, and the founders hoped that the scholars would be seventy-two in number, in imitation of the Disciples. But with all the strictness and elaborateness of their religious life, no "rule" was imposed on the colleges; they remained secular establishments. In general, the system of colleges was the medium through which the Church regained over learning the control that it had exercised before the rise of the university movement and during it, early stages; during the twelfth and thirteenth centuries, the University of Oxford had attained such independence that it menaced the stability of the Church; through the disintegration of the wider University body into colleges and through the control or the colleges by the Church, an ecclesiastical sovereignty over the realm of learning was so firmly re-established by the sixteenth century that it was not disturbed until the nineteenth century.

VI – The Universities from 1550 to 1850

When the first period of the history of the English universities came to an end with the general historical period of the Middle Ages, their constitution was in most respects fully established. During the second period of their history their structure was not modified sufficiently to bring them into complete harmony with the new

movements of modern history; they yielded only so much as was unavoidable and retained enough to assure the conservation of their principal elements in the presence of wide-spread change. From the sixteenth to the nineteenth century, through all the political changes caused by the despotism of the new Tudor monarchy, the imperious tyranny of the Stuarts, the leading iconoclasm of the Commonwealth and the constitutional kingship of the Hanoverians, through all the religious shifting of Roman Catholicism, Anglicanism, Puritanism, Presbyterianism, non-conformity and dissent, and through all the great intellectual movements from the Renaissance and the Reformation to the beginning of the liberal development of the present day, the English universities, as institutions, remained substantially intact. Serious modifications of their medieval structure have been mostly temporary. The Middle Ages were characterized by the rearing of imposing institutions rather than by the development of ideas to find expression in them; the Catholic Church was greater than Catholicism; feudalism was greater than kings or barons. Modern history, on the contrary, has been distinguished by the growth of ideas rather than of institutions; Protestantism is greater than the Protestant Churches; liberty and equality are greater than parliaments and constitutional kingships.

Even abstract thought, in the limited field that it occupied before the Reformation, was cast in the imposing and symmetrical form of the scholastic philosophy. The great movement of civilization in the Middle Ages was one of reabsorption, of regaining the body of knowledge left by the ancient world and providing institutions for it; the most effective force in Christianity had to lie dormant until the Reformation should arouse it, because humanity had not yet absorbed the product of Greek and Roman life. The work of humanity in the modern era has been that of expansion in ideas within the structural framework left by the Middle Ages, and the vexatious side of the problem of civilization has been not in the incapacity to generate and develop ideas, but in the inability to provide an adequate social structure for them. The aim of the present day is not to get men to do — they do enough and do it well, — but so to regulate their relations in the doing that it may not be wanting in effect. The recently renewed interest in medieval institutions can be explained only by a renewed appreciation of the need of developing an organization of present society that will allow present social forms the degree of activity necessary to their effectiveness. Of all the institutions that the Middle Ages bequeathed to the modern

world those of the English universities have proved to be most enduring, have suffered the least change in response to the demands of modern life. The study of university history on its formal side is therefore less difficult after than before the end of the fifteenth century and may be disposed of with some degree of brevity. For the sake of convenience, the second period may be considered under the three heads already used in connection with other subjects: (1) Relations to the State, (2) Relations to the Church and (3) Internal relations, — though the facts included under the second heads were more or less completely merged with those under the first head after the Reformation and may not always be easily distinguished or distributed.

1. The attitude of the new Tudor monarchy towards the universities was characterized by the same element of despotism that pervaded its relations to all other national institutions. They had been promoted largely for the sake of learning itself; they were now used to subserve the interests of the monarchy. Though Henry VIII was a true friend of learning, its exponents, like the Church, the courts and Parliament, must support his pretensions. When he was seeking a divorce from Catherine, in 1530, he demanded that the University of Oxford unite its sanction with those that had been obtained from continental universities. Though with reluctance and only after some of the younger masters of arts had been persuaded to withdraw from convocation and withhold their adverse votes, the University yielded. So, too, in 1534, when separation from Rome was about to be consummated by the royal assumption of the title of "Supreme Head of the Church of England," the University, all its charters having four years earlier been delivered into the king's hands, there to remain for thirteen years, was found compliant in approving the step even before it had been taken. When James I had found the theory of the "divine right of kings" a sufficient basis for the imperious tyranny of the Stuarts, he found in the Arminian party in the University his strongest adherents and accordingly favored their control of the institution, though he had brought with him from Scotland predilections for Presbyterianism. When the doctrine of "passive obedience" needed support, the University convocation almost eagerly passed a resolution in condemnation of all resistance, whether offensive or defensive, to a reigning sovereign.

On the other hand, the University, while it had been able in the fourteenth century to rely on the Crown for protection against other powers in the state, found it necessary after the beginning of the sixteenth century to protect itself by humility,

conciliation and obsequiousness, against the Crown itself. The chancellor, originally the representative of the Church in its control of learning, but long the active head of the University and resident in Oxford, became its ambassador or advocate, almost the royal minister of higher education, and resident at court, leaving his active work as administrative head to be done by a resident vice-chancellor; he must now be a courtier or courtly prelate, a Leicester or a Laud. Every radical change of policy, whether political or religious, was accompanied by a demand for a revision of the statutes of the University involving, at least in theory, even its constitution; whether the new code of statutes in answer to the demand emanated from the Crown directly, or indirectly through the subservient chancellor or a royal commission, they were properly known as the "Edwardine," the "Marian," or the"Caroline" statutes, though the university might in form have asserted the right to perfunctorily approve them or pass them at the dictation of their actual makers. While the new codes were in process of compilation, the constitution of the University was frequently suspended. So dependent was it in the reign of Henry VIII that it humbly surrendered all its charters into the hands of Cardinal Wolsey with the request that he should use his own pleasure in amending them; when they were returned five years later, with a new one from the King, they were received with the greatest obsequiousness; even later in the reign they were again in the King's hands for a period of thirteen years. The spoliation of the monastic houses by Henry VIII and Edward VI made the University and its component colleges tremble for their own revenues, and when fear of spoliation was past the desire of sharing with the courtiers in the spoils was fully as destructive of independence. With the increasing power of Parliament in the government came the necessity of securing its recognition of the corporate status in an enactment, in 1570 (or 1571),

> "that the... chancellor of the University of Oxford, and his successors forever, and the masters and scholars of the... University of Oxford for the time being, shall be incorporated and have a perpetual succession in fact, deed, and name, by the name of 'the Chancellor, Masters and Scholars of the University of Oxford.'"

In 1604, in the first year of the reign of James I, the University was given the right

to elect two burgesses to Parliament who should inform that body "of the true state of the university and of each particular college." Even in the reign of Elizabeth, at the time of the statutory incorporation of the University, Parliament had not hesitated to interfere by legislation in its internal affairs. In two acts of the thirteenth and eighteenth years of her reign it was provided, by the earlier, that college estates should be leased for twenty-one years or not to exceed three lives, and by the later, that one third of the rentals reserved in such leases should be rendered in corn or malt estimated at 6s. 8d. and 5s. per quarter; in 1589 followed an act to prevent the sale and collusory resignation of fellowships and corrupt election to them.

The University and the Anglican Church became as dependent on the Crown as the Crown on them. When the civil war broke out the University was more than loyal to the Stuarts; though for other reasons in addition to that of the loyalty of the University, Oxford became the base of Charles's military operations and virtually his capital, the schools and halls being converted into barracks, mints and storehouses, as well as into royal palaces and courts, until the city was captured by the Parliamentary army. When James II, by his Declaration of Indulgence, in 1687, sought to confer on Roman Catholics the right of admission to corporations, and began the enforcement of his policy in the place where his arbitrary will would be most likely to meet with no opposition, he very consistently chose the University of Oxford; on the resistance of Magdalen College to his mandate to elect Parker to its presidency, already filled by a candidate of their own choice, a royal commission expelled the president and twenty-five fellows, though James afterwards reinstated them when the loss of his throne was threatened by the nation. Yet such an affinity seems to exist between corporations enjoying special privileges and the arbitrary rulers upon whom the possession of the privileges depends, that the University of Oxford, notwithstanding the arbitrariness of James II, continued for eighty years to be the stronghold of Jacobitism; not until the accession of George III were the results of the revolution of 1688 accepted in Oxford otherwise than as an unavoidable calamity. The University had become so dependent on the Crown and had left so little of its spirit of fourteenth-century independence that in 1759 its power to repeal any of the Caroline statutes without the royal consent was denied by the proctors, though they were not sustained in their opposition; the power had certainly not been exercised in an important matter for a century.

In the reign of Henry VIII began the succession of royal and parliamentary commissions and boards of visitors, so frequent in time and so comprehensive in purpose during the sixteenth and seventeenth centuries that they threatened at times to form a permanent part of the University constitution. A commission appointed by Edward VI under the great seal was designed chiefly to eliminate popery from Oxford and in effecting its purpose destroyed ‘’superstitious” emblems, and after expelling all Catholic masters and scholars, introduced Protestants (some of them aliens) in their places; it eventually provided a complete code of new statutes, afterwards known as the “Edwardine statutes.” When Mary ascended the throne, the tables were turned. Most of the Protestants fled from Oxford, but such as remained were burned at the stake or expelled by a board of visitors deputed in 1556 by Cardinal Pole, the new Catholic chancellor; English Bibles and Protestant books in the libraries were burned; the code of “Marian statutes” was the work of the visitors. Elizabeth had no sooner succeeded Mary on the throne than she suspended all academical elections at Oxford and appointed a board of visitors for the purpose of enforcing compliance with the act of supremacy on the University; nine heads of colleges and many fellows and others were expelled for non-compliance. With such a chancellor as Laud, Charles I hardly needed to resort to commissions; a delegacy of convocation spent four years in codifying the University statutes; the code was then corrected and amended by Laud, and, after a year for the suggestion of further amendments by the University and colleges, was finally promulgated by him in 1636 with the confirmation of the king; the new statutes were called the “Caroline” or “Laudian” statutes and remained in force (except during the interregnum of the Commonwealth) until the middle of the nineteenth century. When Oxford had been captured, in 1646, during the civil war, by the insurgent forces, Parliament at once suspended academical elections and the renewal of leases of college estates “ until the pleasure of Parliament be made known therein.” In the following year an ordinance was enacted “for the visitation and reformation of the University of Oxford and the several colleges and halls therein,” by a board of twenty-four visitors, of whom fourteen were laymen and ten were clergy. It was intended at first largely as an inquisitorial body, having actual power to act in lesser matters, to provide information for a standing committee of lords and commons and to submit reports and appeals to it; the board of visitors, however, soon acquired all necessary powers

and used them to depose ten heads of colleges and many professors and fellows, filling many of their places at once with their own nominees; they further supervised and directed the administration of the University and colleges in all its details. Cromwell himself became chancellor in 1650, and in 1652 the board of visitors was merged in a resident commission consisting of the vice-chancellor, three heads of colleges and a prebendary of Christ Church, which should put into permanent effect the more fundamental changes made by the original board of visitors; in 1654, the commission was again changed, but not essentially, and continued to govern the University for four years. The commission exercised substantially all the powers formerly exercised by the chancellor and visitors of the University and colleges; the degree of permanence enjoyed by it had threatened to convert the University into a state institution. When weakness developed in the government of the Commonwealth, the University resumed many of the powers that it formerly exercised and the restoration of the monarchy completed the change. Soon after Charles II had reached London, he appointed a new board of visitors to undo the work of Cromwell, but its changes were almost entirely personal, and not constitutional; a few heads and fellows of colleges were replaced by others and little else occurred. The numerous other commissions cannot be examined in detail; the general result of their activity, however, was to reduce the independence of the University and to bring it into greater harmony with the state and with the changes in the Church caused by the interference of the state.

After the Revolution of 1688, the state seemed to sustain a somewhat modified attitude towards the University largely because religious questions had lost their previous importance in national politics and because the University itself had declined in importance. The century following the revolution is rightly called by Brodrick "the Dark Age of academical history."[356] Only when a rebellion in behalf of the Pretender was threatened, early in the reign of George I, did the government consider the strong Jacobite sentiment worthy of notice. On that occasion, it was proposed that the king be empowered for seven years

> "to nominate and appoint all and every the Chancellor, Vice-Chancellor, Proctors, and other officers of the [two] universities, and all heads of houses, fellows, students, chaplains, scholars, and

> exhibitioners, and all members of and in all and every the college and colleges, hall and halls in the said universities or either of them upon all and every vacancy and vacancies";

another plan suggested contemplated the election of heads of colleges by certain officers of state and the distribution of other positions and the management and disposition of college revenues by a commission. Neither plan, however, was adopted.

2. Much that might be said of the relations of the University of Oxford to the Church after the Reformation has been placed under the head of its relations to the state; the state acted through the Church and usually treated the University as a part of the ecclesiastical system. But some of the more intimate relations must be considered. For two centuries the contest between the secular church, which tended to become nationalized, and the monasteries, which had adhered closely to Rome, had been bitter in the University; the suppression of religious houses at the Reformation ended the contest and left the national church in control, while some of the colleges profited by the diversion to them of the property of the suppressed bodies, and Christ Church and some professorships were endowed from it. The University was now dominated by the Anglican Church and opposed Catholics, non-conformists and dissenters, as the Catholic Church (in England) had formerly opposed the monks and friars and Lollards. The University was narrower under the Church of England than it had been before the Reformation. The continual weeding out of Catholics at one time and of Protestants at another left it thoroughly lifeless, except as a seminary for the clergy, to whom its fellowships were almost all confined. When the policy of the state was sufficiently liberal, as in Elizabeth's reign, to admit any but adherents of the Anglican Church, the University simply became the battle-ground of theological controversy to the exclusion of everything else. It shared to only a slight extent in the revival of the brilliant Elizabethan era. After the Reformation, too, more avenues had been opened to the energetic man of education than the career in the Church that had formerly been all that he could hope for, not so much as a result of the Reformation as of the broader movement against tradition and in favor of individual development of which it properly formed a part. Under James I and Charles I, the University was brought into closer connection with the

Church not only by restricting the membership more closely through the imposition of test-oaths but by opening benefices more numerously to graduates. The intimacy of the dependence of the University on the Established Church appears most clearly in a petition of the resident graduates to Parliament in 1641 when it was threatening the exclusion of the bishops from the House of Lords; the petition prayed for the maintenance of the bishops and their Cathedral churches, as, among other things,

> "the principal outward motive of all students, especially in divinity, and the fittest reward of some deep and eminent scholars; as affording a competent portion in an ingenious way to many younger brothers of good parentage who devote themselves to the ministry of the gospel;... and as funds by which many of the learned professors in our university are maintained."[357]

The University was not widened at the Revolution and continued thereafter, during its dismal eighteenth century, the narrow seminary of the Anglican Church that it had become. Subscription to the Thirty-nine Articles at matriculation and declaration of conformity to the liturgy of the Established Church on acceptance of a fellowship and the obligation of entering holy orders continued to be exacted until the middle of the nineteenth century.

3. At the end of the fifteenth century the crystallization of University activity in the colleges had been quite complete. The colleges suffered so little internal modification until the middle of the nineteenth century that they need no consideration; a lesser proportion of the fellows in the post-Reformation foundations were required to be in holy orders, and the old group of theology, canon law and civil law was not so generally imposed on fellows, — in fact, the study of the canon law was abolished; laxity in the enforcement of the minor regulations of daily life and of the more important requirement of residence by heads of houses and fellows might be a subject of complaint; many minute regulations of living and study like those of the Laudian statutes were provided, but they would hardly change one's general impression of a college or its inmates when compared with that of the college at the beginning of the sixteenth century.

The "college monopoly" expanded during the sixteenth and seventeenth century

until it controlled not only the membership of the University but also its government. After the chancellor became habitually non-resident and rather the University's "friend at court" than its head, the vice-chancellor, appointed by him, became the acting head; in 1569, he was required by the Edwardine statutes to be elected by the congregation; twenty years later his nomination was again vested in the chancellor and has since so remained. By the same statute of 1569, passed under the influence of Leicester, the Black Congregation as far as concerned its power to give preliminary consideration to measures to be brought before convocation was abolished, and in its place was substituted a body consisting of the vice-chancellor, doctors, heads of colleges and proctors. In 1629, the older methods of electing proctors, either by vote of the entire academic body or by vote of congregation, were discontinued and cycles of twenty-three years were settled during each of which, in future, each college, according to its size and importance, should elect a definite number of proctors. Some years later the Laudian (or Caroline) statutes confirmed the use of the proctorial cycles and further provided that in each college the proctors should be elected by the doctors and masters of a given rank. By the Laudian statutes the administration of the University was given to the Hebdomadal Board, composed of the vice-chancellor, heads of colleges and proctors; the vice-chancellor, moreover, was to be nominated annually by the chancellor from the heads of colleges in rotation with the approval of convocation.

But while the college monopoly seems to have been complete in 1636 and to have been formally maintained until the nineteenth century, some movements in the history of the University of Oxford plainly tended in the opposite direction — to the ultimate restoration of the University unit. Wolsey is said to have had in contemplation the establishment of University professorships and of University lecture-rooms at the time of the foundation of his Cardinal College. Henry VIII afterwards founded his five Regius professorships of Divinity, Civil Law, Medicine, Hebrew and Greek, though he provided them only with a meagre endowment of £40 annually. Some such professorships had previously been established and others were afterwards added, even during the dismal eighteenth century. The establishment of professorships and lectureships in separate colleges but open to the whole University must have had a similar tendency; Henry VIII stipulated with the colleges that such lectureships should be established at the expense of the five wealthiest colleges and

that they should be attended daily not only by the scholars of the colleges in which they were maintained but also by the scholars of all the other colleges. One of the effects of the closer supervision of the universities and colleges by the state through the agency of ministerial chancellors and boards of visitation was to introduce a considerable degree of uniformity into the conditions prevalent in all of them, for it was inclined to treat them rather as one body. According to the Edwardine statutes, the retention of a fellowship was made conditional on six months' residence, lectures were to be followed by examinations and matriculation examinations were to be held, — rules apparently enforceable in all colleges, whatever their previous custom may have been; likewise the limitation of fellowships to a term of years, enforced in a few periods, appears to have been applicable to all and not to only a part of the colleges.[358] The commissioners appointed by Edward VI were given power to consolidate several colleges into one, but did not exercise it; they had also projected the plan of having separate colleges devoted to special branches of study, as New College to arts and All Souls' to civil law, but did not execute it. The University also acquired some new functions or more effectual organs for the exercise of those that it already possessed. In 1581 a statute passed by convocation provided that all tutors should submit to be examined and licensed by a board composed of the vice-chancellor and six doctors or bachelors of divinity. Representation in Parliament, conferred by James I in 1604, was conferred on the University without reference to its colleges.[359] The cheapening of books after the sixteenth century may have operated to decrease the corporate spirit of the colleges by permitting the scholar to study with less dependence on the books owned by the college and used in common. The Laudian statutes provided for a system of public oral examinations for the degrees of Bachelor of Arts and Master of Arts, to "be conducted, in rotation, by all the regent masters, under the orders of the senior proctor," and covering branches of study in which, by the statutes, the candidate should be required to have heard lectures. Whatever centripetal forces of University activity were effective in overcoming the centrifugal forces of college activity, the principle was still severely applicable in 1770, that no single one of the heads of colleges, or all of them together, "could dispense with statutable rules, independently of Convocation

VII — The Universities Differ 1850.

In 1850 a new period in the constitutional history of the English universities began, though some preliminary reforms had taken place between 1800 and 1830. The Laudian statutes had provided that in the University of Oxford examinations for the degrees of Bachelor of Arts and Master of Arts should be conducted in rotation by all the regent masters, under the orders of the senior proctor, but during the eighteenth century the system had fallen into decay; no responsibility rested on the examiners, they received no compensation, and their positions lacked permanence. In 1800, the system was amended by the division of candidates into two classes, to whom "pass" and "honor" examinations were respectively given; the candidates for honors were subdivided into two classes according to the degrees of merit attained by them; the examiners, moreover, were given responsibility and standing by being made appointive officers, receiving salaries and serving for definite terms. Even as amended, the system suffered much further modification in the course of thirty years, the principal changes being the substitution of written for the oral examinations required by the original Laudian statutes, as well as by the amendatory statute of 1800; the candidates for honors were divided into three instead of two classes the system of honor schools was also given a beginning by placing mathematics in a school separate from the classical school. In 1850, however, the system of examinations was amplified so that they should be held at the end of the second, third and fourth years, the last being the final examination for the degree of Bachelor of Arts, two "pass" examinations were to be held each year in the several branches o{ study, the honor schools were increased to four by the addition of one for natural science and one for law and modern history to the classical school and the school of mathematics; the number was later increased to six by the division of that of law and modern history into one for jurisprudence and one for modern history and by the addition of one for theology. But such changes, great as they were, demanded only slight constitutional changes; to the extent that they exerted an influence, they served to magnify the importance of the University in comparison with its component colleges. The University was exercising its power to determine to what candidates it should grant degrees by setting a higher standard or at least by insisting on a more rigid adherence to the standard formerly too loosely maintained. The inevitable reaction was certain to have an appreciable effect on the colleges, the organs of the

University by which almost all its work of instruction was done. The colleges, however, were so heavily encumbered by the mass of medieval restrictions under which they worked that the national government, it was generally agreed, had to be appealed to for the initiation of fundamental reforms.

In 1850, accordingly, and largely at the instance of the authorities of the University and colleges themselves, a royal commission was appointed for an investigation of the state of the University and colleges, and of their discipline and revenues. After a thorough investigation, the commission made many recommendations, of which part were put in force by an act of Parliament of 1854 and part by ordinances of executive commissions provided for by the act. The chief reforms were as follows: The Hebdomadal Board, the organic embodiment of the college monopoly, gave place to a Council composed of elected representatives, in equal numbers, of the heads of colleges, professors and resident masters of arts. The Convocation, which had come to perform its duties perfunctorily, conducting its transactions in Latin and doing little more than to grant degrees, was superseded by a new body, called the "Congregation" and composed of all resident members of Convocation, and permitted to use English in its deliberations. Existing professorships were reorganized and re-endowed and new ones were founded from contributions levied on the colleges. The colleges were given new constitutions and new codes of statutes and their fellowships were made accessible to all candidates on the basis of merit; new fellowships were required to be created in studies established or recognized by the University. The number of scholarships and their stipends were increased. Private halls were provided for so that the "unattached" or "non-collegiate" element might be restored to the membership of the University. No religious test should be imposed on scholars at the time of their matriculation or of their receiving the degree of Bachelor of Arts, but only on candidates for the degree of Master of Arts and for fellowships in the colleges; in 1871, such religious tests as remained were abolished by act of Parliament, except such as were necessary to maintain the exclusive connection of the faculty of theology with the Church of England.

In 1872, renewed agitation for the reform of the universities resulted in the appointment by the crown of a second commission, purely inquisitorial in character, for the investigation of the revenues and obligations of both the Universities of Oxford and Cambridge and their colleges. After an extended investigation and report,

an act of Parliament was passed in 1877 for the appointment of executive commissioners with wide powers to reorganize the interrelations of the two universities and their colleges; that the pursuit of a conservative course in the readjustment of revenues might be assured, the needs of the several colleges were to be given prior recognition, and representatives elected by them were to sit in conjunction with the commissioners. The work of the commission, approved by the crown in 1882, for the universities and colleges substantially new constitutions and codes of statutes, though some of the old features were retained. Professorships, readerships and lectureships were newly founded or given an increased endowment. The appointment and control of the important University examiners were regulated. The University was provided with more ample funds for the maintenance of its buildings and the satisfaction of its other needs. The courses of study were divided into homogeneous groups under the limited supervision of Boards of Faculties. The colleges were assessed definite percentages of their revenues to the amount of £20,000 for the payment of the increased expense, and provision was made for the application of surplus revenue to University and college purposes, while a reduction of expenditures was sought in lowering the stipends of fellows. The fellowships were not to be tenable for life unless connected with an University or college office, though many of them were at the same time given such connection; the remaining fellowships, about one hundred in number, were made terminable at the end of seven years and were freed of obligations of residence and of service in University or college offices; the restrictions on almost all headships and fellowships were removed. Scholarships were made uniform as to the age and emoluments of the scholars who should hold them. But the legislative organization of the University remained as it had been left by the act of 1854, while the general form of the colleges was only slightly modified. On its organic side, the University was still, in many respects, only an aggregate of colleges; the autonomy of the colleges had been diminished but not destroyed, while the University's area of activity had been greatly widened. The instruction by University professors and the tuition by college tutors continued to flourish side by side. Scholars were not absolutely required to attend the lectures of the University, though their increased endowments and improved organization made them more attractive to scholars. Though matriculation might be directly in the University by non-collegiate scholars, it might also be indirectly

through the colleges by such scholars as should become inmates of them. The extension of the "combined lecture" system, by which, as in a few colleges since the seventeenth century, scholars of one college might attend lectures in others, broke down the barriers between the colleges, while it did not make closer the connection between their inmates and the University; in fact, the tendency was in quite the opposite direction, for the system permitted the tutors to specialize their work, in application of the principle of division of labor, and to make their "combined" work more effective in the presence of competition by the University. The most important fact was that equality of status was established in the fellowships and scholarships of the several colleges; the first step in the amalgamation of confederated states in a single state is the eradication of the differences between them; likewise the Oxford scholar became more truly a member of the University when his status in his own college became the same as that of his fellow-scholars in other colleges. The abolition of religious tests tended to destroy similarity of membership in the University while it had the more important effect of bringing scholars as a class into greater harmony with the outside world — the University became more cosmopolitan. The "university extension" movement is a legitimate outcome of the broadening of the basis of university membership.

The comprehension of a wider area by the University of Oxford in the exercise of its public functions appears plainly from a University statute of 1857 providing for the examination by it of middle class schools as a means of establishing organic relations to them. In 1873, a second step in the same direction was taken by the assumption of the work of examining public schools and granting to their pupils certificates of their proficiency; it is interesting to note, too, that the work was to be done by a joint-board of the two Universities of Oxford and Cambridge, — convincing evidence of the diminishing autonomy of the two corporations; the movement is said to have been inspired by an apprehension of impending "state supervision" of the public schools — a confession that the universities were invading a field of activity rightfully belonging to the state.

"Notwithstanding the bold amendments which it has undergone, the constitution and educational system of the University must be regarded as still [in 1894] in a state of transition."[360] The most that may be said of the changes in the English universities since the beginning of the nineteenth century is: They have greatly increased the

activity of the universities not only absolutely, but relatively to that of the component colleges. The plain tendency has been towards the restoration of the university as the real unit of higher education from its former status as a federation of colleges. The colleges have themselves tended to become more similar to each other in constitution and membership, though dissimilar (yet co-operative) in their activity, while the relations of their members to the university have become closer and more vital; in other words, the colleges have tended (though not strongly) to become co-operating departments of the university. In their relations to society the universities have largely ceased to contain a membership of persons entirely distinct and different in their rights and duties from other members of society and consequently have become more similar to each other; they have come to a realization rather of their affinity to society than of their distinction from it, — attraction has succeeded repulsion; they have accordingly extended their area of social activity and have (to a slight extent) occupied it in common, while they have been treated by the state in legislation and administration rather as divisions of one body than as separate bodies; in fine, they have tended to develop from autonomous corporations into administrative organs of the state.

VIII — Modern English Universities.

The University of Cambridge was so similar in development to the University of Oxford that for the purposes of this study a consideration of it may be dispensed with, but the University of Durham and the University of London possess a few features that may be adverted to with profit.

The University of Durham was founded in 1832 largely through the influence of the Bishop of Durham. It was to consist of a warden or principal, other necessary officers, professors and readers, tutors and students, and was to be established according to such regulations as the dean and chapter of Durham Cathedral (in whom was confided the discipline) with the consent of the bishop (who should be visitor) should prescribe; stalls in the cathedral were to be annexed to the office of warden, and to the professorships of divinity and Greek; the professor of mathematics and other officers were to be elected by the dean and chapter. In 1835, by statute of the dean and chapter, the ordinary management of the University, under the bishop as visitor and the dean and chapter as governors, was vested in the warden, a senate and

a convocation; the warden was to be the active head of the University and to convoke, dissolve and preside over both senate and convocation, to have both an original and casting vote in each and to have a previous veto in convocation, subject in some cases to appeal to the dean and chapter and bishop; the senate was to consist of the chief officers[361] of the University, to transact the ordinary business of the University and originate resolutions in more important matters for conformation by convocation; the convocation, composed of the warden and such doctors and masters in divinity, law, medicine and arts from Oxford, Cambridge and Dublin as should be members of the University of Durham, to be increased in future by the doctors and masters of Durham, was to confirm or reject without amendment measures presented by the senate. It was incorporated in 1837 as "The Warden, Masters and Scholars of the University of Durham," with the power to confer degrees.[362] In 1841 the office of warden was annexed to that of the dean of Durham. The original six fellows were eventually increased to twenty-four, of whom all should have the degree of Bachelor of Arts, not more than one third should be laymen and each should hold his fellowship for eight years (or if in holy orders, for ten years) but should lose it on marriage, admission to a preferment in the cathedral or to a benefice; all elections to fellowships were to be on the basis of merit, including both learning and morals. Scholars were to be admitted on examination and to submit to annual public examinations. No religious tests were to be imposed at matriculation, but only on application for a degree or other academical privileges, though all scholars were required to attend church services daily. Peculiarly enough, a college was established within the University, and other colleges or halls were contemplated, with tutors and censors to regulate the studies and conduct of scholars, of whom all had to be inmates of some such college, house or hall. An interesting amalgamation of university, college and cathedral chapter! The University of Durham represents very faithfully the structure of the university as modified to suit the purpose of a liberal Church. The control of the Church was assured by vesting the government in the dean and chapter, and by the union of the offices of dean and warden as well as those of the canons and chief instructors. Though the instruction was to redound chiefly to the interest of the Church, not all the fellowships were reserved for fellows in holy orders; not only were some of the fellowships open to those not in holy orders, but religious tests were dispensed with to such extent as the Church, from its own standpoint, could

safely permit. If colleges and halls were provided for, they were clearly intended rather as departments for the organization of the domestic life of the scholars than as autonomous units of instruction, and were not allowed to threaten the disintegration of the University itself.

If the organization of the University of Durham was what might reasonably have been expected from a liberal bishop and cathedral dean and chapter after England's six centuries of university history, that of the University of London was what might likewise have been expected from the exercise by the state of the power of establishing a great university on its own initiative after an equal experience. In 1836, William IV granted to a number of noblemen and gentlemen a charter for a new university, to be called "The University of London," of which they should constitute the senate,[363] "for the advancement of religion and morality, and the promotion of useful knowledge [and] to hold forth to all classes and denominations... without any distinction whatever, an encouragement for pursuing a regular and liberal course of education." The senate, appointed "for the purpose of ascertaining by means of examinations the persons who [had] acquired proficiency in literature, science and art by the pursuit of [a] course of education and of rewarding them by academical degrees, as evidence of their respective attainments, and marks of honor proportionate thereto," was to be composed of a chancellor, vice-chancellor and thirty-six fellows, of whom all should be qualified by the possession of doctors', masters' or bachelors degrees, besides such persons as the crown might see fit to add at a subsequent time. In addition to the senate there was to be a convocation, consisting of all Doctors of Law, Doctors of Medicine, Masters of Arts, Bachelors of Law and Bachelors of Medicine of two years' standing and Bachelors of Arts of three years' standing, electing its own chairman for terms of three years, and empowered to discuss and declare its opinion on any matter relating to the University. The chancellor was to be appointed by the crown and to serve for life; the vice-chancellor was to be elected annually by the senate from among the fellows; vacancies among the fellows were to be filled by the remaining fellows or by the crown from a list of three nominees presented by convocation for each vacancy. The crown was to be visitor. The power to appoint examiners and other officers and servants was to be exercised by the senate. The administration of the University and the making of rules relating to degrees were to be vested in the senate, subject to the

approval of one of the secretaries of state. The degrees of Bachelor of Arts, Master of Arts, Bachelor of Laws and Doctor of Laws were to be granted only to graduates of University College (London), King's College (London) and such other institutions, whether in London or outside, as the crown should authorize; the degrees of Bachelor of Medicine and Doctor of Medicine were to be granted to graduates of such institutions as should be approved by the secretary of state at the suggestion of the senate.[364] Examinations for degrees were to be held annually and such fees were to be charged for them as should be approved by the Commissioners of the Treasury. The University has been without endowment, has been required to submit annually to the Commissioners of the Treasury an account of its receipts and expenditures, and has been supported by parliamentary grants, its fees from examinations having been expended in rewards and scholarships; the duties of the members of the senate have been gratuitously performed.

The University of London is merely a university superstructure for the colleges connected with it. When considered together, the University and the several colleges connected with it are not unlike either of the older Universities of Oxford or Cambridge except that the new institution touches the state at more points, does not pretend to be a "teaching university" and is far more distinct from its colleges in its administration than are the older universities. In the University of Durham one extreme was attained by the amalgamation of the University and its colleges, while in the University of London the other extreme was attained by making the University more distinct from its colleges than is any other similar institution. It is interesting in the extreme that though the University of London was merely an institution initiated by the state to confer degrees indicative of work accomplished by separate colleges, it should be given the form evolved in the history of the Universities of Oxford and Cambridge; the weak element in its constitution was its only new feature — the body of fellows; the corresponding bodies in the constitutions of Oxford, Cambridge and Durham were composed of persons having a vital connection as instructors or administrators with the colleges, but in the University of London, the distinct interests and geographical separation of the colleges made such a body impossible and compelled reliance on a body composed of prominent educated persons to be gradually replaced by graduates of its colleges.

IX — Schools and Eleemosynary Corporations.

In the grades of schools below the universities and their colleges a considerable diversity of organization prevailed until the nineteenth century, during which, however, comparative uniformity has been attained through the interference of the state. The reason for the diversity was, doubtless, that the scholars themselves did not participate in the control of their own organization. The scholars of grammar schools were readily recognized, both by their age and by the inferior rank of their studies, as a dependent class. Most of the schools, moreover, originated in the period of the Renaissance and Reformation, the last half of the fifteenth and the first half of the sixteenth centuries; by that time the movement in all mediaeval corporations towards the restriction of the governing powers of their members to a close administrative class within them was well-nigh complete; burgesses were no longer mere citizens but members of close governing bodies in the towns; the fellowship of a gild was not the entire body of gildsmen but merely the governing body of wardens and assistants or other higher rank of gildsmen; so, too, in the colleges of the universities, the fellows, who had earlier been merely scholars governing themselves, had become the collegiate body in which was reposed the government of scholars and the administration of college affairs; it might be expected, then, that the grammar schools founded in the fifteenth and sixteenth centuries would be only bodies of scholars subjected to a "governing body" of some kind. As far as the scholars themselves were concerned, their organization for the purpose of instruction was simple and uniform; they were merely grouped in classes according to their work or their social status and subjected to rules made by the governing body and executed by head-masters and their under-masters, ushers or other assistants; a rudimentary element of autonomy existed in the monitorial system, and the status of scholars in some schools was preliminary to the enjoyment of a similar or more exalted status in university or other colleges, or even in the governing body of their own school, but in itself it was purely dependent. In the governing bodies, the real corporations, much variety of form appeared. The corporate bodies to which the grammar schools were subjected were purely ecclesiastical and secular corporations, formed either for their own peculiar purposes or for the express purpose of governing the schools, — municipal corporations, corporations formed for general charitable purposes of which one was the maintenance of a school, and corporations formed expressly for the

administration of schools. They may broadly be divided into two classes; in the first, ecclesiastical elements were prominent, and the force of the Reformation was not seriously felt; — in the second, ecclesiastical elements were excluded and the influence of the Reformation appeared in the substitution of secular elements.

Westminster College, or St. Peter's College at Westminster, was an appendage of the dean and chapter of Westminster, which had been a monastery before the Reformation, had been suppressed as such and made a collegiate church and later a cathedral church by Henry VIII and even later restored to the condition of a collegiate church by Edward VI; as a monastery it had supported a school, though far less important than the one maintained after its suppression; associated with the dean and chapter in the appointment of its head-master and in its government were the dean of Christchurch, Oxford, and the master of Trinity College, Cambridge. Winchester College, however, founded by Wykeham in 1379 as a preparatory school for New College, Oxford, was not subjected to a purely ecclesiastical corporation. Its governing body consisted of a warden, sub-warden and ten fellows, elected by the warden and fellows of New College, while the school itself, superintended by a head-master and usher, contained seventy scholars; the members of the governing body, however, were all priests, and were assisted by a body of chaplains and choristers in the execution of the religious part of the bishop-founder's plans; the governing body did not constitute a church, but was exactly modelled on the predominant type of Oxford college; the fellows were expected and intended to devote themselves primarily to learning. Eton College was modelled on Winchester College by its founder, Henry VI, and consisted of a provost, ten fellows, a schoolmaster and twenty-five poor scholars, with the necessary chaplains, clerks and choristers; but the provost and fellows constituted a collegiate church into which a parochial church had been converted for the purpose of founding the college; its endowment was derived almost entirely from suppressed alien priories; it was intended as a preparatory school for King's College, Cambridge, just as Winchester for New College.

But after the end of the fifteenth century, founders of endowed schools appear to have had less confidence in the permanence of ecclesiastical institutions and to have preferred to entrust their benefactions to secular corporations. John Colet, though dean of the cathedral chapter of St. Paul's, conveyed the endowment of St. Paul's

School to the Company of Mercers of London with the direction that they should "have all the care and governance of the school [and should] every year choose of their company two honest and substantial men called the surveyors of the school, which in the name of the whole fellowship [should] take all the charge and business about the school for that one year"; he assigned as the reason for his preference of the London company "that there was no certainty in human affairs, but that, in his opinion, there was less probability of corruption in such a body of citizens than in any other order or degree of mankind." The Merchant Taylors' school, however, was founded directly by the Merchant Taylors Company, with the assistance of some of its members, about 1560, and has been maintained by it ever since; the master and wardens and all past-masters were to be the"surveyors" of the school. Shrewsbury School was founded by Edward VI about 1554 on an endowment consisting of church property appropriated by him; he conveyed the property to the town corporation of Shrewsbury, in which he also vested the government of the school under the Bishop of Lincoln as visitor; in 1798, after a long quarrel between the town corporation and the head master over the question of his independence of it, Parliament interfered and vested the government of the school in twelve trustees, together with the mayor, who should preside over them and have both an original and casting vote; vacancies in their body were to be filled by the town corporation from three nominees of the trustees; St. John's College, Cambridge, was to have the power to appoint the head-master. The "free grammar-school of John Lyon, in the village of Harrow upon the Hill" and its endowment were placed in control of six "keepers and governors" of the school, who should, among other things, maintain the school from its endowment and perpetuate their own existence by filling their vacancies by co-optation. In 1611, Thomas Sutton conveyed in trust to a body of sixteen "governors" lands for the establishment of a hospital and free school, who should fill their vacancies by co-optation,[365] make all necessary statutes for the administration of their double charge and appoint the master of the school and other officers; such was the organization of the Charterhouse School. Somewhat similarly, Lawrence Sheriff conveyed lands to two trustees who were to maintain from their revenue a school and almshouses at Rugby, and so reconvey the lands to other trustees that the latter would perpetuate their maintenance.[366] By decree of the court of chancery in 1653, however, the succession of trusts was replaced by a self-renewing board of

twelve trustees.

The periods of the Renaissance and Reformation were prolific of endowed grammar schools, and elementary schools, most of which were placed under the government of town corporations, some of them more or less modified for the purpose by the addition of outside members, of distinct self-renewing bodies of trustees or governors, or of bodies more or less composed of members holding their places by virtue of their offices in Church or State.

The grammar schools of Edward VI, endowed from the property of suppressed monasteries and priories, were nearly all given over to municipalities, like Shrewsbury School. In very many of the grammar schools, even of those governed by municipalities, the colleges of Oxford and Cambridge obtained a more or less exclusive control of the appointment of the master, and were closely affiliated with them through the medium of scholarships in the colleges held by the schools.

During the seventeenth and eighteenth centuries the schools remained substantially unchanged in their constitutions, though in many of them the members of the governing body came to view their positions almost solely as sources of revenue, to the detriment of the schools as educational institutions. In fact, during the seventeenth and eighteenth centuries many new endowed schools were founded, though nearly all of them were organized on the same plan as those of the later Reformation. When the time to reform them came in the nineteenth century, they were all dealt with by the same general method. The courts of equity had always exercised jurisdiction over them as trusts, whose execution it could enforce, or modify. In many cases the courts had interfered to enforce schemes involving reorganization of the governing bodies, redistribution of revenues or rearrangement of curricula. But the court of chancery was an inadequate medium of reform, and its work had to be supplemented by parliamentary action. The general method of Parliament in the several classes of schools included two steps, (a) an investigation of the corporations, their revenues and the schools maintained by them, with recommendations for their reform, and (b) an enforcement of the recommendations. The first step was undertaken by an Inquisitorial and advisory commission, the second step by an executive commission either temporary or permanent in character.

Of the commissions to inquire into the affairs of the endowed schools there were three: (1) The Popular Education Commission of 1859, (2) the Public Schools

Commission of 1861 and (3) the Schools Inquiry Commission of 1864. The first commission investigated the elementary schools; the second, nine particular public schools and colleges, Westminster, Winchester, Eton, St. Paul's, Merchant Taylors', Shrewsbury, Harrow, Charterhouse and Rugby; the third, such schools as had not been investigated by the two earlier commissions. The work of each commission, and the action based on its recommendations, will be briefly considered.

(1) The Commissioners of Popular Education were appointed by the crown in 1859, "to inquire into the state of popular education in England, and to consider and report what measures, if any, [were] required for the extension of sound and cheap elementary instruction to all classes of the people." In their report in 1862, they expressed the opinion that the court of chancery was not a suitable body for the reformation and supervision of the schools for popular education and that the powers of the charity commissioners I were ineffectual for the purpose; they therefore recommended that the work be placed under a committee of the Privy Council. No action, however, was taken on the recommendation until after the reports of the two succeeding bodies of commissioners.

(2) In 1861 a royal commission was appointed "for the purpose of enquiring into the nature and application of the endowments, funds and revenues belonging to or received by the... colleges, schools and foundations" of Eton, Winchester, Westminster, Charterhouse, St. Paul's, Merchant Taylors', Harrow, Rugby and Shrewsbury, "and also to enquire into [their] administration and management... and into the system and course of studies respectively pursued [in them] as well as into the methods, subjects and extent of the instruction given to [their] students." The recommendations of the commission were carried into effect through a body of seven executive commissioners appointed by virtue of the Public Schools Act of 1868. The governing bodies were allowed a limited period (about a year) in which to make the changes themselves subject to the approval of the commission; after the expiration of the time such changes as were still not made were to be made by the commission itself. Westminster College was provided with an endowment of lands, buildings and funds separate from those of the dean and chapter, and was given a new governing body composed of the dean of Westminster, dean of Christchurch (Oxford), master of Trinity College (Cambridge), two members elected by the dean and chapter of Westminster, one member elected by the dean and chapter of Christchurch (Oxford),

one member elected by the masters and seniors of Trinity College (Cambridge), one elected by the Council of the Royal Society, one appointed by the Lord Chief Justice of England, one elected by such masters of Westminster as should be graduates of the English universities and not less than three nor more than five members elected by the governing body itself. Winchester College (it was recommended) should have a governing body consisting of a warden, four stipendiary and seven honorary fellows, the four stipendiary fellows being distinguished in literature or science and having served as head-master, second master or assistant master, the seven honorary fellows being the warden of New College (Oxford), three appointees of the crown and three chosen by the governing body. Eton was to be governed by a body of nine, ten or eleven fellows; the provost was to be appointed by the crown and to be relieved of the spiritual charge of the parish of Eton, and though to be a member of the Church of England, not necessarily to be in holy orders. The fellows were to consist of the provosts of Eton and King's College (Cambridge) *ex officio*, five nominees of the University of Oxford, the University of Cambridge, the Royal Society, the Lord Chief Justice and the masters of Eton, and the remaining two, three or four elected by the fellows themselves.

Some of the schools under secular control were reformed in a similar manner. It was recommended that the governing body of St. Paul's be amended by adding to the master, wardens and surveyors one or two other members elected by the Mercers' Company and an equal number appointed by the crown, but the recommendation was not executed. No recommendation was made as to the Merchant Taylors' School. Shrewsbury School should have a governing body of thirteen members, three elected by the municipality of Shrewsbury, one by the masters and fellows of St. John's College (Cambridge), one by the master and fellows of Magdalen College (Cambridge), one by the dean and chapter of Christchurch (Oxford), three by the crown and four by the governing body. Harrow School was to be strengthened by adding to the six original "keepers and governors" six others distinguished by a reputation in literature and science. The recommendations concerning Charterhouse and Rugby schools were quite similar. To the sixteen governors of the former it was proposed that four others eminent in literature and science be added, and then that the whole number of twenty be gradually reduced to the original number of sixteen by refraining from filling the next four vacancies in the original membership; the

recommendation was based on the view that "the task which these bodies will have to undertake... is that of blending a due proportion of modern studies with the old classical course without destroying the general character of the public schools." Of the twelve trustees of Rugby it was desired that they "be persons qualified by their position or attainments to fill [their] situation with advantage to the school" and that four of them be "of generally acknowledged eminence in literature and science. "

(3) The third commission, to investigate the schools not comprised in the work of the two former commissions, was appointed in 1864. The first commission had investigated elementary popular schools; the second nine particular grammar schools; the third was intended to investigate in general the rest of the grammar schools. The commission presented its report in 1867–1868. It proposed that the head-master of an endowed school appoint and dismiss his own assistants and have entire charge of the administration of the school; and that the governors, subject to schemes adopted by superior authorities, "use the funds of the endowment as shall be found expedient for the good of the school," appoint and dismiss masters, determine the subjects of instruction, fix the fees of scholars and the salaries of the employees, maintain halls (in boarding schools) and grant or refuse licenses to separate boarding houses. Through provincial and central authorities the schools were to be graded in districts with relation to each other, consolidated, enlarged or suppressed. Schemes for the resettlement of educational trusts proposed by the provincial and approved by the central authority were to be presented to Parliament. The schools should be periodically inspected, have their accounts audited and their scholars examined by the central authority or its representatives.[367] The report was followed by the passage of the Endowed Schools Act of 1869, providing for the appointment of three commissioners by the crown. They should have power to prepare schemes for the administration of endowments of the schools which should be submitted for approval to the committee of the Privy Council on education. The governing bodies of schools might present to the commissioners schemes for their consideration and might appeal from their decision to the Queen in Council, by whom in turn the scheme in controversy might be referred to Parliament for further consideration or back to the commissioners with a proper order. In general, it was provided that endowments supporting both schools and other charities might be divided, part going under the control of the schools commissioners and part under that of the charities

commissioners.

Under the legislation based on the above-described investigations the older corporations have been so changed in character that they have become virtually new corporations. The important features of the reforms were the following: (1) Such of the colleges as had been under the control of the Church were released from it, though a sentiment of conservatism gave the older ecclesiastical corporations representation on the governing body. (2) The colleges dependent on the colleges of Oxford and Cambridge were made independent of them, though they, like the Church, were given a limited representation in the governing bodies. (3) Likewise the extensive influence of municipalities was reduced to a limited representation. (4) A national element was added in representatives named by the crown and high officers of state and elected by the governing bodies themselves. (5) A clear distinction was made between the governing bodies and the schools, — which had not been done at all before the Reformation and had afterwards been incompletely done, — and such a composition of the former was provided for that they should be fairly representative of enlightened public opinion. (6) The new governing bodies were so broadened that "though not unduly large, they should be protected by their numbers and by the position and character of their individual members from the domination of personal or professional influences or prejudices and [should] include men conversant with the world, with the requirements of active life, and with the progress of literature and science." (7) Perhaps all the other features of the reform are comprehended in the implied recognition that (at least popular and intermediate) education is intended not so much for the benefit of the scholar himself as for that of the society of which he forms a part, and that the schools, if not governed directly by the state, ought at all events to be governed (with slight reference to the wishes of the original founders) by such a composite body that the maintenance of their due relations to society would be assured; the demand that literary and scientific studies be combined with the older classical studies was based on the new view of education.

X — Inns of Court and Inns of Chancery.

The origin of the inns of court and inns of chancery, to which Sir John Fortescue accorded the dignity of "The University of the Laws,"[368] is involved in obscurity. The generally accepted explanation is that they grew out of the common life of lawyers,

students and officers of the courts. When in the thirteenth century the Court of Common Pleas, by the terms of Magna Charta, as originally granted by John and as subsequently confirmed by Henry III,[369] came to be held in a definite place, the king's palace at Westminster, instead of following the king from place to place,[370] the attorneys and officers of the court found places of living as near as convenient to both the palace and the city of London. The buildings taken for the purpose, called houses, hostels or inns, and distinguished from others as those of the "court,"[371] had earlier been used as the houses of the suppressed order of Knights Templars and the palaces of noblemen; the four inns of court were accordingly known as the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn. The practitioners in the courts had earlier been almost exclusively ecclesiastics, but in the thirteenth century the clergy were forbidden by the Church to practise as advocates in the temporal courts; the lay advocates were thereby undoubtedly increased in number and made more distinct as a class. The inns of chancery[372] appear to have been used more by the officers of the courts and younger students of law than by those who had been admitted to the higher ranks of the profession, but their origin may be reasonably assumed to have been similar to that of the inns of court. Each inn of chancery belonged to or was dependent on one of the inns of court. Clifford's Inn, Clement's Inn and Lyon's Inn (the latter torn down in 1868) were dependent on the Inner Temple; New Inn and Strand Inn (the latter destroyed in 1594), on the Middle Temple; Furnival's Inn and Thavie's Inn, on Lincoln's Inn; and Staple Inn and Barnard's Inn, on Gray's Inn. There is fragmentary historical evidence of other inns both of court and of chancery, but the ones mentioned were of most importance. Fortescue wrote of ten inns of chancery but a century later only nine of them could be positively identified. All the inns were supported by the rentals of chambers, charges for commons,[373] contributions of members and fees for admission and advancement to successive ranks; their societies owned no property except the houses and the personal property with which they were furnished. A review of the several classes into which the inmates of the houses were divided will show their relations to one another and to the state.

When a student began the study of the common law, he entered one of the inns of chancery, in which his elementary work was to be done. After two or three years of residence and work in an inn of chancery, he might enter an inn of court and later be

called to be an inner barrister; the next step was to become an utter barrister. The distinctions of inner barrister and utter barrister probably had no reference to the courts but only to the exercises in the houses. The chief exercises were in the form of moots or discussion of feigned cases. The cases were stated in the form of pleadings by the inner barristers (younger students) after supper in the common hall presided over by the reader; they were then taken up and discussed by utter barristers (older students). They were next discussed by the "cupboardmen" — two more advanced barristers who appear to have participated separately in the exercises of the meeting and occupied a position in the hall near the cupboard, — with whom the benchers present also discussed the legal questions involved in the cases; the reader finally closed the discussions by delivering a formal opinion on the cases. Moots were distinguished as "grand" and "petit," the former appearing to have been held in the inns of court at the time of the "grand readings," and the latter in the inns of chancery before the readers appointed for them, and were preceded by the less formal and elaborate "bolts," private disputations by students on legal questions with a bencher and two barristers. The student became an inner or utter barrister by being formally "called" by the reader to take part in the mootings; the distinction of "inner" and "utter" is said to have arisen from the fact that the younger students sat at the inkier end and the older students at the outer end of the form occupied during the disputations. The rank of utter barrister was attained only by participation in the required exercises in the inns, of which certificates had to be presented to the pension, parliament or council of the benchers. The readings were given and the exercises held chiefly in the vacations of court, though also during the term-times of court; the word vacation accordingly came to be used in the inns quite synonymously with the word term in other educational institutions.[374] Stowe in his *Survey of London*, states that the year was divided into three parts, (1) the learning vacations, (2) the term-times and (3) the dead or mean vacation; the learning vacations were two in number, the Lent vacation, beginning on the first Monday in Lent, and the summer vacation, beginning on the Monday after Lammas-day, each continuing three weeks and three days. The readers that officiated in the Lent vacation were full benchers, had read before, and were known as "double-readers"; those in the summer vacation had just been appointed, were reading for the first time and were called "single readers."

Barristers regularly became ancients by seniority, though sons of judges might attain their "antiquity" by right of inheritance and the rank was conferred cause *honoris* on persons of distinction. From the class of ancients the benchers in their periodical meetings elected the readers, whose function it was to lecture to the students on legal topics and preside over the discussion of the moot cases. The benchers (or "masters of the bench") were the governing bodies of the inns of court and filled their vacancies by co-optation from the numbers of the utter barristers; the preliminary step was the election of a candidate each year to the position of reader, from which after having read (or lectured) publicly he entered into the full status of a bencher. Sometimes candidates were made benchers without reading, a considerable fine taking the place of the actual work of reading; in some cases, also, the person elected reader became a bencher at once and made a deposit of a considerable sum to be repaid to him when he should at a future time have performed his duty of lecturing. They were not limited in number, though after the sixteenth century they arbitrarily restricted the admission of new members. They elected annually from their own membership as their presiding officer a treasurer or pensioner. At meetings called pensions, parliaments or councils and held quarterly or more frequently, they elected treasurers, readers and committees to audit the treasurer's accounts, and transacted the current business of their houses; barristers in the preliminary status of benchers were sometimes admitted to a limited participation in the proceedings. On entering an office the officer had to take an oath to faithfully perform his duties; likewise a common member began his membership with an oath to obey the rules and regulations of the society. By the common law the judges of the superior courts were the visitors of the inns and might entertain appeals from the orders of their governing bodies. All members of the societies of the inns (except the mere beginners below the rank of inner barrister) were comprehensively called *apprenticii*, but those who were permitted to practice in the courts were particularly known as *apprenticii ad leges*; the term junior barrister was applied to inner barristers and utter barristers, while the term senior barrister was substantially equivalent to *apprenticius ad legem*.

When a barrister was called to the rank of serjeant — and only benchers of inns of court were called to it — he ceased to be a member of the society and became an inmate of one of the two Serjeants' Inns, Serjeants' Inn in Fleetstreet and Serjeants'

Inn in Chancery-lane. From the serjeants-at-law alone all the judges of the superior courts were chosen, as well as the higher legal officers of the crown, such as the attorney-general and solicitor-general.

The inns of court had no organic connection with one another, and though their governing bodies often deliberated in conference on matters of common concern, the orders issued in consequence were made separately by each house;[375] no one of them enjoyed precedence over either of the others. The inns of chancery were governed directly by a principal and small body of ancients, and their readers were appointed by the benchers of the inns of court to which they were severally subject. Those who had studied in an inn of chancery dependent on one inn of court might enter a different inn of court on payment of a somewhat larger fee. For example, it was ordered in the tenth year of the reign of Elizabeth that if one had been of an inn of chancery belonging to the Middle Temple, he might enter that house upon payment of 40s.; if of any other inn of chancery, upon payment often.; if of no inn of chancery at all, he should pay £6 13s. 4d.

As in most other mediaeval institutions of education, the attainment of learning was not all that was sought; in addition to their study of law, the inmates of the inns of court and of chancery were taught to dance and sing, and to play on musical instruments; "upon festival days and after the offices of the church are over, they employ themselves in the study of sacred and profane history."[376]

Connected with each inn was a church or chapel, in which religious services were provided for the inmates; the Inner Temple and Middle Temple, however, made joint use of the Temple Church, in which the anomalous Master of the Temple officiated. The society of the inns was also enlivened by masques and revels, at which high officers of state were sometimes present, and by the elaborate celebration of festival days of the Church, especially of Christmas.[377] The regulations dealing with the attire, personal appearance and deportment of the inmates were numerous and minute. The order that the beard be not allowed to grow long was often made; it was made more definite in the Inner Temple, in the reign of Philip and Mary, by limiting the beard to three weeks' growth on pain of forfeiture of twenty shillings, though in other inns persons of the quality of knights were exempt from the restriction. Guests and strangers might not be admitted to the chambers; laundresses and victual-women under forty years of age and maid-servants of any age were rigorously excluded. The

fomenting of quarrels, especially on the occasions of revels and Christmas celebrations, was discouraged by appropriate penalties. In Gray's Inn no gown, doublet, hose or other outer garment of light color might be worn, on pain of expulsion. Playing at dice, cards or otherwise, in the hall, buttery or butler's chamber was forbidden except during the twenty days into which the Christmastidewas extended. At the end of the sixteenth century it was ordered in the Inner Temple that wearing a hat or cloak in the Temple Church, in the hall, buttery or kitchen, at the buttery-bar or dresser or in the garden, should be punished by a fine of 6s. 8d.; that fellows should not enter the hall with any weapons except their dagger or knife upon pain of forfeiting £5; and "that they go not in cloaks, hats, boots and spurs into the city, but when they ride out of the town."[378] So great was the success in inculcating gentility of manners by the governors of the houses that many persons of quality sent their sons to attend them not so much to study law as to acquire the habits of good society. Nearly every act of importance was accompanied by a banquet; in fact, that feature of the life of the houses outlasted more substantial functions.[379] Almost the only forms of punishment were"excommunication" (deprivation of the privilege of dining in common with one's associates) and expulsion from the inns, though fines were also imposed for a few offenses; members expelled from one inn were not admitted into others.

The brief description of the organization and life of the inns of court and of chancery that has been given applies to them in most respects as they existed in the fifteenth century. In the sixteenth century many evidences of decadence made their appearance. The membership, always largely restricted to the higher classes, became even more closely confined to the noble and wealthy. It was ordered by James I, in the first year of his reign, that "none be from henceforth admitted into the society of any House of Court that is not a gentleman by descent."[380] Many were allowed to omit the elementary stages of instruction; in the fifth year of the reign of Elizabeth it was ordered that admission to the Inner Temple should be only on payment of 40s., unless the applicant were the son of one of the bench or utter-bar, or had been for a year of one of the inns of chancery belonging to the house. The readings (or lectures) came to be perfunctory in character, and the mootings were neglected. Henry VIII issued a commission to "inquire into the form and order of study and course of living in the Houses of Court." In the reign of Elizabeth it was ordered by the two chief

justices, the chief baron and all the other justices of both benches and the barons of the exchequer that the readings in the inns of chancery be not discouraged by excessive charges and that readers be selected on account of learning and merit and not of mere seniority. In the seventeenth century further efforts were made (especially by Cromwell) to regenerate the houses, but with ill success; they came to be hardly more than mere "lodgings." In the nineteenth century, lectures and moot-courts have been re-established,[381] but hardly more than partial success can be expected without more radical reforms. A royal commission was appointed in 1854 "to inquire into the arrangements in the inns of court for promoting the study of the law and jurisprudence, the revenues properly applicable and the means most likely to secure a systematic and sound education for students of law, and provide satisfactory tests of fitness for admission to the bar." In the following year it suggested in its report the constitution of a university composed of a chancellor, barristers-at-law and masters of laws, the chancellor elective for life by all barristers and masters of laws, and aided by a senate of thirty-two members (eight elected by each inn of court), one fourth of whom should retire annually; the government of the university should be vested in the chancellor and senate; a vice-chancellor, treasurer and secretary should be elected by the senate; students should be examined for admission to the inns of court, on application for degrees and for admission to the bar, by examiners appointed by the senate; readers in addition to those already in service were to be appointed by the senate on its own initiative or on the application of the bench of any inn of court. The plan was not adopted, however, and the houses have remained substantially unchanged.

The inns of court, in the actual educational work of preparing lawyers for practice, have been largely superseded by other agencies, such as the universities and societies of lawyers.[382] The little that has been accomplished has been in the direction indicated by the suggestion of the commission of 1854. Even before the commission had been appointed the inns of court (in 1851) had aimed to secure concerted action through a Council of Legal Education composed of their representatives. In 1869, they issued "Consolidated Regulations of the Four Inns of Court" and shortly afterwards introduced a system of examinations. The inns of court and inns of chancery were essentially medieval institutions, so similar to the gilds and early universities that the similarity need hardly be suggested; and like other mediaeval

organizations that were not modified in form or given new functions in post-Reformation society, they were hardly more than survivals, after the beginning of the seventeenth century, of a past social order, not typical of the society in which they existed, not expressing any distinct force of the new time, and existing by the inertia of tradition rather in conflict with their social environment than in harmony with it.

XI. — Charitable Corporations.

If a strictly logical order had been followed in considering educational and eleemosynary corporations, the general subject of endowed charities would have preceded that of colleges and schools and would have followed that of the universities. A consideration of colleges and schools seemed to follow appropriately that of the universities, though organically they differed greatly. The general subject of endowed charities would include that of the colleges and schools, because the latter were only particular kinds of charities. It is suggestive of the new views of education entertained in the nineteenth century that the term charity does not usually suggest to the mind an educational institution, though until the beginning of the century the term was more widely used. The difficulty of classifying the corporations considered in this chapter also suggests the difference in principle between the universities and the eleemosynary corporations, including colleges, schools, asylums, almshouses and miscellaneous charities; the former assumed an organization prompted largely by forces within the group of scholars, a spontaneous form (if the term "spontaneous" is not too freely used); upon the latter a form was imposed by forces external to the acting groups, a form hardly described as spontaneous. But putting aside the question of classification, the endowed charities, exclusive of those of an educational character, consisted of asylums or hospitals, almshouses and miscellaneous institutions, which may be considered together. Little more can be said of them than has already been said of colleges and schools; a few paragraphs, indeed, will serve to fairly complete the subject and show the similarity of such institutions to others already described.

Before the Reformation, non-educational charities were not as a rule separately organized, but were administered as departments or appendages of organizations intended for a wider purpose. The churches and monasteries, though much of their

charity was unregulated, frequently had a fixed part of their organization devoted to its management; among the monasteries, especially, the organization varied from the mere maintenance of an official almoner who dispensed doles indiscriminately at the monastery gate to monasteries devoted almost entirely to the entertainment of travellers (particularly pilgrims), the care of the sick and demented, the rearing of orphans and waifs and the maintenance and repair of bridges and highways, — just as schools varied from those taught by the official scholasticus to the monastic houses of Oxford and Cambridge devoted almost entirely to study and instruction. The physical basis of the charities varied correspondingly; nearly all monasteries set apart certain rooms for the care of monks in their sickness or other incapacity; some had separate buildings for the purpose, especially when care was extended to outsiders; others had establishments at a distance supervised by a prior or master and his assistants in direct dependence on the superior abbot; finally, the establishment was in a few cases complete in itself and presided over by an abbot and convent of monks. Likewise the gilds extended aid in charity to their own members and sometimes even to outsiders, and maintained for the purpose separate buildings in charge of a master or governor, after the manner of the still existing London Livery Companies; it will be remembered that the bachelor fellowships found in a few of the gilds were maintained largely for the administration of the gild's charities among its common members or freemen. The municipalities also administered some charities, but not so often, like the gilds, from their own resources as from those placed in their hands by individuals. In very many statutes of university colleges and endowed grammar schools, themselves regarded as organs of charity, it was provided that a number of poor persons (not scholars) should be maintained on the foundation.

In the sixteenth century, however, with the suppression of monasteries and of hospitals and almshouses dependent on them, and with the partial decay of the town corporations, a large part of the stream of charitable benefactions was diverted in the direction of corporations created for the express purpose of administering them. Many of the hospitals, lazar-houses and almshouses formerly maintained by the monasteries were bestowed, with their endowments, on the towns corporations, to ensure the faithful performance of their duties by the towns, the bodies of burgesses were frequently modified by the addition of outside members, or their activity was subjected to the visitation of bishops or officers of state. Similarly a few of the new

endowments that would formerly have been placed in charge of ecclesiastical bodies were intrusted to such of the gilds or companies as survived the sixteenth century. But for the great mass of eleemosynary endowments new bodies of trustees or governors were created. And of such bodies there were, according to their composition, four classes; — consisting of (1) the original nominees of the founder and their successors chosen by co-optation to fill vacancies, (2) the incumbents of offices in Church and State or in other corporations, (3) the holders of particular lands, usually those constituting the endowment and (4) heirs of the founder or of persons designated by him. More properly it might be said that the corporations consisted of one or more of the elements described, for a very small minority of them would fall in only one of the four classes. Whatever the form of the corporate body, a visitor was usually (but not always) provided for in the person of an officer of Church or State.

The charitable purposes to which endowments were devoted were various. The preamble of the Elizabethan Statute of Charitable Uses[383] recited that

> "lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money and stocks of money [had] been... given, limited, appointed and assigned... some for the relief of the aged, impotent and poor people, some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities, some for repair of bridges, ports, havens, causeways, churches, sea-banks and highways, some for education and preferment of orphans, some for or towards relict, stock or maintenance for houses of correction, some for marriages of poor maids, some for supportation, aid and help of young tradesmen, handicraftsmen and persons decayed, and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers and other taxes."

Very frequently more than one charitable purpose was intended to be subserved by one foundation or endowment. For example, Lawrence Sheriff, when he founded

Rugby School, provided for the construction and maintenance of some almshouses on the same foundation with it; likewise John Lyon provided that the "keepers and governors" of his school at Harrow should also administer an endowment for the maintenance and repair of certain highways in the vicinity; in the last mentioned case, the estates of the two foundations were separate, but in many others a single endowment was intended to support several foundations; in some cases the founders were careful to provide the several fractions of revenue that should be devoted to several charities, while in others they were to be supported by the revenues of the endowment in gross. The bodies described were characterized by their simplicity and fixity of form. No distinct demarkation of classes of members, and especially of a governing class, appears to have been developed in them. In fact, they were, in themselves, only the governing organs of institutions and could hardly, in view of the fact that they were composed of few members (usually not more than twelve), have developed further in that direction. No dominant executive office was developed.

By the Elizabethan Act of Charitable Uses, passed in 1601, the first great statute for the regulation of such bodies, it was aimed to secure, largely through the instrumentality of the court of chancery, the faithful execution of their trusts by such bodies. It was provided that the Lord Chancellor or Lord Keeper of the Great Seal might award commissions to bishops and "other persons of good and sound behavior" empowering them to enquire either in groups of four of their own number or by juries of twelve men or otherwise, concerning the administration of property devoted to charitable uses as described in the preamble, and upon the results of their enquiry to make such orders, judgments and decrees as would secure the faithful employment of the trust estates. The orders, judgments or decrees were not to be repugnant to the orders or statutes of the founders of the charities and were to be valid and capable of execution until reversed or altered by the Lord Chancellor or Lord Keeper of the Great Seal; they were to be certified by the commissioners to the court of chancery, which might thereupon make such orders for their execution as it should consider fit; if any one should be aggrieved by them, he might, by making complaint to the Lord Chancellor or Lord Keeper of the Great Seal, secure an examination and hearing, with the possible result that the orders might be annulled, modified, altered or enlarged. The statute was not, however, to extend in its operation to colleges or halls of learning in the universities or to the colleges of Westminster,

Etonor Winchester, to cathedrals or collegiate churches, to cities or towns, or to charities in them having special governors, or to colleges, hospitals or free schools for which their founders had provided special visitors, governors or overseers. The chief result of the operation of this statute was to bring into harmony with the mass of "governing bodies" of charities others, rudimentary and imperfect in form, depending for their perpetuation upon successive re-enfeoffments of estates or the untrustworthy incidents of heirship and ownership of land; many such bodies were replaced by self-renewing bodies of from six to twelve members, modified frequently by the possession of members *ex officio*, subject to visitation by some officer of Church or State. The purpose of this statute, like that of the Statute of Laborers, and of most of the other chief enactments of the reign of Elizabeth, was conservative; it was to perpetuate old social relations through new social structure; the desires of founders were to be respected and executed, even if a reorganization of governing bodies should incidentally be necessary; in the present century, the reform of universities, colleges, schools and other eleemosynary corporations has been based on a recognition of the impossibility of executing the desires of the founders of past centuries under present social conditions.

From the sixteenth to the nineteenth century, then, the mass of eleemosynary corporations remained substantially unchanged. In 1818, in accordance with recent parliamentary legislation,[384] commissioners were appointed for the investigation of charities (except the universities and colleges) and continued, with their successors, to make frequent reports until 1830. The investigations were carried forward by similar commissions under later statutes until 1853, when by the Charitable Trusts Act[385] of that year a permanent body of four charity commissioners (with a secretary and two inspectors) was created, with power to enquire into the condition of all charities in England or Wales, and to demand and receive from them annual reports of their income and expenditures. Trustees of charities might receive from them on application instructions as to the execution of their trusts and be indemnified by following them. Suits relating to charities (except when property or relief should be claimed adversely to the charity) might not be prosecuted without the consent of the commissioners before whom they were laid for their consideration; they were also to have control of the form and manner in which they were prosecuted and might require that they be delayed; and they might certify cases to the attorney-general for

the exercise of his discretion in the institution of actions. Proposals of trustees to have timber cut, roads laid out or minerals mined on trust land or to sell it might be sanctioned by the commissioners. Schemes proposed by trustees for the application or management of a charity (if they could not be carried out by the courts) might be approved, either with or without modification or alteration, by them, but all such schemes should be annually reported to Parliament. Exempt from the operation of the act were to be the Universities of Oxford, Cambridge, London and Durham and colleges in them or in any cathedral or collegiate church, any building used *bona fide* for a religious meeting-house, institutions maintained by voluntary contributions and missionary institutions or societies — though the exemption might be waived by a formal application to be admitted to the benefits of the act. Between 1859 and 1869 such educational charities as had been within the jurisdiction of the charities commissioners were either reformed or placed under other commissioners.

By the legislation of the nineteenth century therefore the eleemosynary corporations of England have either been reduced or made readily reducible to a greater harmony with modern society through control by the state. In their composition they have had to submit to a liberal infusion of membership especially fitted for the execution of their duties, and to become rather representatives of society in the control of their institutions than bodies of persons enjoying a proprietary interest in them.

XII — Comparison of Educational and Eleemosynary Corporations.

The corporations considered in the present chapter, it need hardly be suggested, are most confusing in their variety of form and in the counter-currents of their development. The monasteries, cathedral chapters and collegiate chapters, the gilds and the later mercantile and colonial companies may with moderate ease be distinguished from one another, and may be seen to have an even development, but the educational and eleemosynary corporations have the characteristics of all the others in combination, have hardly a distinct form in themselves and are remarkably uneven in development. To add to the confusion, they occupy the whole period from the time of feudalism to the present, and are not confined as are the gilds or great commercial and colonial companies (broadly speaking) to either of the two great periods preceding and succeeding the middle of the sixteenth century, the dividing line between mediaeval and modern history. It may be conducive to clearness if the

chief features, their form and growth, be briefly recapitulated.

The universities and inns of court before the sixteenth century followed substantially the type of the early gild. The masters among the scholars corresponded closely to the masters of trades, but below the rank of the masters the analogy of the universities and trade gilds was not so close; the scholars corresponded somewhat to the apprentices of the masters of trades; when the bachelor's degree came to be distinctly recognized, it gave its holder a status similar to that of the journeyman; but in some of the European universities the custom of lecturing on probation for a few years after the master's degree was taken supplied a class more similar to the class of journeymen. The truth is that the universities anticipated the restriction of the powers of control to the masters of trades by early confining the corresponding functions to the doctors and masters. The universities of England were almost from the beginning corporations of masters[386] and did not include scholars in their organization except as a subject class.

The colleges in the universities and some of the public schools followed the ecclesiastical type exhibited in the monastery, cathedral chapter and collegiate church chapter. The head and fellows corresponded almost exactly to the abbot and monks or dean and chapter; the scholars were in nearly the same position as the novices of the ecclesiastical bodies. The relation was even closer than one of mere resemblance; the colleges were truly ecclesiastical bodies established and maintained in the service of the Church.

Such of the non-ecclesiastical grammar schools, elementary schools and charitable institutions as were governed by bodies specially created for them, were subject to the control of corporations very similar to what was left of the gilds and municipalities by the sixteenth century. They fall into the same general class as the close corporations of burgesses, the livery companies of London and the great commercial and colonial companies that flourished from the sixteenth to the nineteenth centuries. The universities were at first recognized by the State and Church merely as classes of individuals and not as organized autonomous groups. The powers necessary in the regulation of the relations of masters and scholars to each other and to the rest of the world were not delegated in a body but one after another until the organized groups had attained the status of corporations. At first they were considered as sustaining no more peculiar relations to the State or Church

than any other class of subjects as such sustained. When the State came to view the universities as bodies of learned men, of special importance to it because adding to the other glories of the realm that of learning, and the Church discovered in them their vital importance to it as training schools of its clergy, the attitude of both passed beyond that sustained to ordinary classes of subjects and justified the crystallization of class interests in a compact organization in the enjoyment of exceptional rights and powers. There was never as high a degree of dependence on the universities as on the municipalities or monastic orders, but the time came when the king found the universities quite indispensable as his supporters in obtaining a divorce, and when the pope found them among his strongest adherents against an independent episcopacy. It is worthy of notice that scholars were separated more distantly from the other classes of society as they approached the king or pope in the enjoyment of an exceptional status. They became the ardent supporters of the aggressions of both on the mass of subjects from whose ranks they had risen.

The rise of the colleges in the universities represented a double movement, that of disintegration within the universities and that of the reassertion by the Church of its control over learning. The disintegration began when the units of the domestic life of the scholars, the bodies of them living in halls, attracted some of the work of instructing and studying to themselves. At that point the Church both directly and indirectly through the Friars assumed control of the movement by giving to the common life of the bodies of scholars such a substantial and independent basis that the universities were eventually merely federations of colleges under the control of the Church. When the universities were throwing off the yoke of the Church, they were doing it as gilds of masters; when the Church reasserted its influence it did it through subordinate colleges modelled on its own corporations.

The corporations of the popular schools, and most of the grammar schools, as well as the charitable institutions, may hardly be said to have undergone any organic development in their relations to the state from the sixteenth to the nineteenth centuries; they were themselves developed forms of organization and carried forward the work that had previously been done, for the most part, by the Church and the gilds. There was no important addition to or subtraction from their bodies of rights and duties by the crown except such as was implied in remodelling some of the more formless of them into harmony with the others. Their work was recognized as public

in its character and the state was willing to accept it as such, while it made no serious effort to either supplement their activity with its own or to absorb it. In the nineteenth century the state reformed them by giving them a broader basis of membership and by causing the application of their revenues to purposes more clearly in response to the demands of present conditions.

The contact of corporations or of corporations and subdivisions of State and Church with one another and the consequent readjustment of their relations are always suggestive, especially when the corporations are organizations of social classes. The universities came into harshest contact with the municipal bodies of the cities and towns in which they were located. As the learned bodies were closer to the king and pope than were the bodies of burgesses, the latter had to yield step by step until (at least in the case of Oxford) they became virtually subject bodies; even in as large and influential a city as Paris, the university was steadily upheld by both king and crown in the exercise of privileges derogatory to the strength and dignity of the municipal corporation. It was not likewise, however, in the cases of colleges, schools and charitable institutions. Unlike the universities they were rather local than national in character and acted with reference to a local unit if not in actual organic subjection to it. Though sanctioned by either State or Church (and sometimes by both) they were considered to be following the directions of a founder or some local organization, though in so doing they might confer a general social benefit; the point of view was shifted and the special protection of the crown was bestowed in a lesser degree. They were considered as organs of a local unit and generally acted in harmony with it, not in opposition to it.

The chancellor as representative of the bishop originally granted licenses to teach to such scholars as had become qualified to do so; as the mass of scholars became free of the Church, the chancellor became the head of their body as organized in the university and was elected by it; later, when the university was brought into closer relations with the state, the chancellor became rather the representative of the university at court than its active head. The interior government of the university gradually assumed form in three representative bodies, of which one, representing the department of arts, had the power of preliminary rejection of measures, the second, the duty of the ordinary administration, and the third the duty of considering most important business. Masters had been those scholars who had been formally found

competent to instruct; degrees later indicated that the scholar had completed the work required of him; they became retrospective rather than prospective in significance — they were evidence of what the scholar had done, not his credentials for what he should do in future; hence the division of graduates into regents and non-regents, those who should be actually engaged in teaching and those who should regard their degrees as evidence of the completion of their studies.

The colleges, in their origin bodies of scholars living in common and aided in the prosecution of their studies by an endowment, became eventually bodies of graduates acting as governors and to some extent as instructors of the real scholars, now a subject class. So close was the organization of the life within and under the colleges that the instruction given directly by the university was at length displaced by that of professors, lecturers and tutors in colleges. The scholars under the masters of the university in its early stages came to be inmates exclusively of colleges and dependent halls, so that membership in the university was virtually derivative through the colleges. The university offices, too, came to be occupied by heads or appointees of colleges in rotation and the work of reducing the university to a federation of colleges was completed by restricting the membership of its chief administrative board to the heads of colleges.

In the non-ecclesiastical corporations for educational and other eleemosynary purposes, the relations that had been the product of the preceding centuries of university and college development were expressed by separating the corporation from the scholars or others subject to it, and by identifying them with the endowment rather than with the work of instruction, as had been the case with the earlier corporations.

VIII. National England.

The one word that most adequately describes the England of Elizabeth is the adjective "national." From whatever side it be viewed, the historical development of the English people since the Norman Conquest had been in the direction of a greater participation by every Englishman in the common life of all Englishmen.

On the political side, the overlordship of the Norman kings imposed on a feudal nobility had become the kingship of the Tudors with a national people for its subjects. A Great Council of feudal barons had been succeeded by a Parliament of the representatives of the English people. A system of national taxation, though crude and arbitrary, was year by year teaching every English subject that he and his fellow-subjects were joint participants in the new national life, while the crown was learning from it that it had strength and vigor only as it was truly representative of the common thought and sentiment of its subjects. Feudalism as a system had passed away and in place of the sovereignty of a king filtered through a hierarchy of feudal classes was a sovereignty based on the consent of the people. Elizabeth was the first monarch of national England. She was the first, and the last for two centuries, to understand that the English kingship was real and a thing of substance only as it participated in and absorbed the thoughts and sentiments of the English people.

In religion, the national pride had found in the Catholic Church and its popes a galling foreign power and had replaced them with a "Church of England" and the English sovereign at its head. And the Reformation had given to the movement of religious freedom in England such a distinctive character that the English people could see in the Church of England something peculiarly their own, something that they would love and defend rather from patriotism than from fanaticism.

The outburst of intellectual and literary energy that glorified the Elizabethan half-century of peaceful and conciliatory rule served more than all else to bring the English people to a consciousness of their nationality. The use of English as a literary language became a stronger bond of union for the English people. The knowledge of foreign lands as something more than the spoil of conquests brought

self-consciousness to the English nation. The study of English history and English life and the growth of the universities produced a broader sympathy of class with class.

If Elizabethan England was a nation from the standpoints of government, religion, literature and learning, it was not less a nation from that of economics and industry. Feudalism as an industrial system was dead and its hierarchy of industrial classes had decayed. The commutation of feudal dues had swollen the numbers of a free agricultural class. The class of artisans had grown up outside of and independent of the feudal system. The feudal nobility had accepted the verdict of industrial history and the first great period of enclosure had come to an end in 1530; henceforth they were to be landowners, like their freed tenants, differing from them chiefly in the mere extent of their holdings and the form of their industry, itself largely dependent on the size of the parcel of land controlled. The feudal nobility had become great wool-growers with hired laborers instead of feudal tenants for subjects. The gild system, as a form of industrial activity, had also sunk into impotence, and its functions of industrial regulation had passed into the control of institutions of the central government. Markets and fairs had facilitated intercourse among the people and had laid a broader basis of economic sympathy. The growth of a foreign market had introduced the elements of capital and competition into commerce, to a slight extent, and had broken down the barriers of feudalism and the gilds.[387] The care and relief of the poor had been taken from the Church and gilds and was now put by the Elizabethan Poor Laws under the control of local organizations of the national state. Except in a few industries, particularly the woollen industry, the development of England down to the middle of the sixteenth century had been internal; the reign of Elizabeth marks the overflowing of the cup of industrial growth; England was now to develop externally. The principles of internal control that had been justly inherited from feudalism and the gilds were now to be consistently applied externally to the relations of Englishmen with foreign peoples.

The general religious and intellectual activity of the sixteenth century had brought to the knowledge of the English people the existence of a great world of material wealth outside the restricted boundaries of their island, and for the Anglo-Saxon to know of its existence was for him to covet it. The peace and quietude of Elizabeth's long reign permitted a sufficient accumulation of capital in England to enable her

people to follow the lead of the Spanish, Portuguese and Dutch in the exploitation of new worlds. The distinctive feature of English corporate life in the seventeenth and eighteenth centuries was its development in the relations of English subjects to foreign lands. Internally England had attained forms of industrial life that would suffer little change until near the end of the eighteenth century; externally English life was to pass through forms analogous to the earlier forces of internal industry, — though in a shorter period of time, — and was then to fall into harmony with the general internal system.

The development of foreign commerce fleas regarded not entirely as a matter of interest and benefit solely to the individuals engaged in it, but even more as a matter of national interest and benefit. The motives that prompted it were three in kind, (a) industrial, (b) political and (c) philanthropic. (a) The motives were industrial in so far as the foreign commerce was expected to be a source of gain directly to the persons engaged in it and indirectly to the people of England whose economic demands would be more cheaply or fully supplied by it. (b) As there is necessarily a personal element in governments and institutions and their purposes and aims are bound up and identified with the personal purposes and aims of those in whom, for the time, the governmental powers are reposed, and as the individuals themselves who compose a state are inclined to personify their governments and institutions and find in the extension of their powers a source of personal gratification, the English crown directly stimulated and encouraged the growth of foreign commerce with the ultimate purpose of deriving pecuniary gain or more extended dominion from it; in so far as these considerations entered into the extension of foreign commerce, it was prompted by political motives. (c) Again, even the individual or spiritual welfare of the foreign peoples (in some cases savages) with whom the foreign commerce was to be engaged in, was a weighing consideration; or in the case of colonists, the welfare of depressed classes of the English people was aimed at; these motives, being hardly based on the desire of gain or of more extended dominion, ought to be distinguished as philanthropic. All three kinds of motives were usually blended together in such intricacy that no phenomenon can easily be referred to any of them to the exclusion of any other of them.

Whatever motive or motives might prompt an extension of foreign commerce in any direction, the practical question of means would necessarily arise. In the

seventeenth century there was little security on the high seas and the stranger in a strange land was not always hospitably entertained. International law, now so refined and reduced to such nicety of distinctions, was crude and quite insufficient for the protection of merchants. Just as in the thirteenth and fourteenth centuries it was quite impossible for the crown to afford adequate protection to travellers and traders on the highways of England, so in the seventeenth and eighteenth centuries it was quite impossible for the crown to provide protection for English vessels on the highways of the ocean. But protection was necessary and had to be provided, if not by the government of England, then by some other agency. The crown simply delegated its function of protection until it should be able to perform the function itself; in the meantime, it recognized the bodies of foreign merchants as performing functions deserving the encouragement of the state and delegated to them for their exercise such powers as should be necessary for the purposes of the trades according to the circumstances of their business and of the peoples with whom they were to deal. Such were the English corporations of the seventeenth and eighteenth centuries.

They may be divided into four classes, according to the ends they were intended to accomplish and the circumstances under which they were to accomplish them, as follows (1) Regulated Companies; (2) Regulated (with a tendency to become Exclusive) Companies; (3) Joint Stock Companies; and (4) Colonial Companies.

IX. Regulated Companies.

The Regulated Companies were most nearly connected with the older gilds; in fact, they were the result of the application to the foreign trade of England of the form of organization evolved from the experience of England in its domestic trade and industry. Their control was exercised mainly over trade and industry that had been carried on with foreign countries during the fourteenth and fifteenth centuries. They hardly extended into the field of "new trades," commerce to be "discovered"; when an effort was made to extend them over that field, they underwent such modification, as will be seen,[388] that the name "regulated" was not strictly applicable to them. They were, in general, organizations of the merchants carrying on commerce with Flanders, the Netherlands, Denmark and the Scandinavian and Baltic countries; the English merchants in France, Italy, Spain and Portugal appear never to have had an enduring corporate organization. Down to the fourteenth century, the foreign trade of England had been substantially engrossed by foreigners, of whom the most important organization had been the Hanseatic League, with its headquarters at the Steelyard in London.[389]

The earliest organization of English merchants that came in direct contact with foreigners was that of the Staplers or Merchants of the Staple. The staple was the town or place, whether at home or abroad, to which the English merchants engaged in foreign trade brought their goods to be exported or sold to foreigners, and the English merchants that came to them were called the Staplers or Merchants of the Staple. During the thirteenth century English merchants began to participate in the foreign trade. It is said that a wool-staple existed in the fifty-first year of Henry III. (1266–1267),[390] but the first evidence of the organization of the merchants engaged in foreign commerce dates from the early part of the fourteenth century. In two letters dated in 1313 and written by Edward II to the Earl of Flanders, Richard Stury de Salop is described as "major mercatorum de rebus nostro"; together with Sir William of Dean he appears to have been sent by the king to compose certain differences between their respective subjects.[391] Three charters were also granted in the same

year, the first being in the form of an ordinance requiring that "in consequence of the losses accruing to the king by merchants, as well natives as foreigners, buying wool and wool-fells within the realm and exporting the same at their will to Brabant, Flanders and Diartoys [Artois]" they should all thereafter send them to a certain staple (and not elsewhere) to be appointed by "the mayor and commonalty of the merchants."[392] The second charter was addressed to the "mayor and merchants of the staple." The third charter granted that all wool and wool-fells bought in England for exportation, whether by natives or foreigners, should be carried to only one staple abroad, to be designated by the mayor and community of the merchants engaged in the trade, who might also change the location of the staple if they saw fit; merchants carrying their goods to other places than the appointed staple might be punished by the mayor and council of the merchants by fines levied on them and on their goods for the use of the king.[393]

In 1341 Edward III established the staple of wool and other merchandise at Bruges in Flanders, appointed the first mayor and constables of the staple and conceded that their successors should be elected by the merchants themselves, both English and foreign; the mayor was to maintain a court in which controversies between the merchants should be settled according to the "law merchant" and infractions of rules made by the merchants should be punished by the imposition of fines and forfeitures.[394] During the fourteenth century, however, the staple, though usually at either Bruges or Antwerp, was frequently changed, often for political reasons, the concession or withdrawal of the staple being used as a consideration in adjusting international relations. In the reign of Edward III, the two extremes of having no foreign staple at all, the merchants being unrestricted in their exportation of goods, and of establishing the staples in England, the foreigners being compelled to come to England to make their purchases, were tried for short periods of time. In the reign of Richard II, near the end of the century, the staple was finally established at Calais, there to remain until the city should be retaken by the French in 1558. There were not only foreign staples, but also from five to ten home staples; goods exported had to be shipped exclusively to the former and from the latter, "where the king had his beam, his weights and his collectors of customs."[395]

In 1353, the management of the home staples was comprehensively dealt with in Edward's Statute of the Staple.[396] All goods exported from England were first to be

taken to either Newcastle, York, Lincoln, Norwich, Westminster, Canterbury, Winchester, Exeter or Bristol, where the home staples should be; there the sacks of wool and quantities of other goods to be exported should be weighed and sealed under the seal of the mayor of the staple, and the customs on them paid. From York such goods should be taken for export to Hull, from Lincoln to Boston, from Norwich to Yarmouth and from Westminster to London, at which places they should be again weighed by the king's customers. Goods brought to other staple towns should be weighed by the mayor of the staple in the presence of the king's customers and indentures made between them showing the quantities of all goods brought for export. The goods should then be exported by foreigners (not by natives), from whom the mayor of the staple and king's customers should take oaths not to hold a staple abroad. If goods had to be carried by water to reach one of the established staples, an indenture should be made with the bailiffs of the town from which the goods should be carried. The rent of buildings used by the staple merchants should be determined by the mayor and constables of the staple with four men of the town duly sworn by them. That the foreign merchants might not be delayed in the transaction of their business, speedy justice according to the law merchant was to be administered "from day to day and hour to hour." In each staple should be annually elected by the "commonalty" of the merchants, both native and foreign, a mayor learned in the law merchant, to govern the staple and dispense justice, and two constables to perform the duties "pertaining to their office in such manner as was customary in other staples." The mayor and constables should have power to preserve the peace, arrest wrongdoers in the staple and punish them according to the rules of the staple. The mayor, sheriffs and bailiffs of the towns in which the staples should be or of adjoining towns were to assist the mayors and constables of the staples in the execution of their offices.[397] If any one should be aggrieved by a decision or act of the Mayor or Constables of the Staple, he should be given speedy redress on appeal to the king's council. A certain number of "correctors," both natives and foreigners, were to make and record bargains between merchants. The mayor and constables should be sworn by the chancellor to the due performance of their duties, while the other officers and merchants of the staple were to be sworn by the mayor and constables, to be judged by them according to law and custom and to maintain the staple and its customs. Foreign merchants should be protected in the transaction of

their business; in matters of litigation touching them, two of their number should be chosen by the remainder to sit with the mayor and constables in judgment. A century later, in the statute of Edward IV, substantially the same provisions for the regulation of the home staples were enacted, though it was also required that all goods exported should be taken to the foreign staple at Calais and to no other place.[398]

When the merchants of the staple passed from the status of a broad class to that of a somewhat restricted company may not be definitely stated. In the middle of the fifteenth century the Company of the Staple of England appears to have assumed the form that it retained until the staple system virtually passed away at the end of the sixteenth or beginning of the seventeenth century. Definite evidence of the interrelations of the members of the company is singularly wanting. It is very plain that the merchants of the staple in the several English cities were separately organized and that the entire body was also organized, but it cannot be stated with certainty what organic relations existed between the local and national bodies. Most of the evidence also shows that not only the English but also the foreign merchants were comprehended in the staple organization, but it is difficult to believe that the English merchants were not separately organized for some purposes, especially in the later stages of the staple trade. In the fifteenth and sixteenth centuries the Company of Merchants of the Staple of England were in charge of the collection of the customs on exported goods, and made a return to the crown of a definitely stipulated sum in lieu of what they should collect; they accordingly complained when the crown granted to the merchants of particular towns the right to export their goods without taking them to the staple at Calais — a method of procedure that deprived the company of part of the revenue expected. In such relations to the crown the foreigners could hardly have participated, and the crown could hardly have held the whole body of merchants responsible; the company must have been a select body of the more influential and responsible merchants who had control of the trade.

The merchants of the staple had been engaged chiefly in the exportation of raw products, such as wool, wool-fells, leather, lead and tin; with the growth of manufacturing industries and especially of the cloth industry in England in the fifteenth and sixteenth centuries, the transactions of the staplers declined in volume, they being gradually displaced by the Merchant Adventurers, who had control of the rapidly developing trade in manufactured goods. After the fall of Calais in 1558, the

staple organization became obsolete, though it survived in some of its features until the nineteenth century and the Company of Merchants of the Staple of England still holds periodical meetings for convivial purposes. It can hardly be doubted that the loss of Calais had a vital influence on the corporation that had originally been based on the organization of the staplers largely for fiscal purposes. Malynes, writing in 1673 in defence of the rights of the company, claimed that Elizabeth in the third year of her reign (1560–1561) had granted to the Mayor and Constables of the Staple of England a charter in confirmation of "all such privileges and liberties as they did, might or ought to have enjoyed, one year before the loss of Calais, by grant, charter, law, prescription or custom, notwithstanding any non-user, abuser, etc."[399] No other refer once to the charter can be found, but the company's advocate could hardly have found occasion to make the statement, if the company's corporate status had not been exposed to attack by the loss of the staple town.

Viewed as corporations, the Company of Merchants of the Staple, or the companies in the several staple towns, were rudimentary. In so far as the organization tended to maintain the quality of goods through the facilities for inspection provided by it, and to lend security to dealings not only by affording them a convenient medium but by enforcing them through special courts, it was of advantage to the merchants themselves. But the principal motive for establishing the staples was to give the king control over the transactions with foreigners and especially to make the payment of customs more certain and convenient. The organization was rather imposed by the state as a public necessity than conceded by it in response to the demands of the private interests of the merchants. The view of Gross[400] that the "mayor and constables of home staples were public functionaries of the king" is hardly justifiable; the merchants of the staple were not organized as a part of the state, but were compelled by the state to organize themselves; the difference always exists between a political administrative body and a corporation. The royal purpose is well shown in the preamble of the proclamation of Edward III in 1341:

> "Whereas, many merchants and others, as well foreign as native, seeking their own gain at the expense of the state, have both by stealth and secrecy and by the connivance of royal officers exported wool and other merchandise from England without paying the

> customs due on it, and continue from day to day so to do, to the great damage of the crown and in contempt of it, we, in order to prevent so great wrong and to protect our own interests and those of our subjects, as we ought...."[401]

It is plain that the primary consideration was the protection of the royal treasury; the secondary consideration was the advancement of the private interests of the merchants. The general view of the foreign trade, as organized in the staples, was rather restrictive than promotive; the king's aim appears to have been to place the native merchant where the foreign merchant might find him, not to enable the former to seek the latter. Even when the legislation was not so restrictive as that of Edward's Statute of the Staple (1353), by which it was provided that goods sold at the staples should be exported only by foreigners, it generally viewed the trade as in need of restraint and not of encouragement.

The exportation of manufactured products, especially of cloth, which was to supersede to a great extent that of raw products, was during the fifteenth century largely under the control of the merchants who controlled the domestic trade in them. The Mercers' Company. one of the twelve great companies of London, was the most prominent organization in that connection. Many of the merchants engaged in the export trade in manufactured goods, called Merchant Adventurers, belonged to that company; indeed, such trade was apparently unorganized, except so far as it was comprehended in the domestic company mentioned, until the beginning of the fifteenth century.[402]

In 1407, Henry IV granted a charter "Pro Mercatoribus Halendiae," by which, observing the hardships that had been suffered for want of a better direction and government of their affairs and were likely to be suffered in future by the English merchants in Holland, Zeeland, Flanders and other lands oversee unless he should aid them by permitting them to maintain a government among themselves, he conceded to them the power of electing governors for the administration of justice and the adjustment of controversies among them. The governors should also have power to cause the reparation of all damage caused by or to the merchants and to seek and receive restitution or compensation for injuries inflicted on the English merchants by the foreign merchants with whom they came in contact. They should also, with the

common assent of the merchants, make and establish statutes, ordinances and customs for their better government and visit "contrary, rebellious or disobedient" merchants with reasonable punishments.[403] Nearly a century later the members of the Mercers' Company together with other adventures of London, acting under the name of the Company of Merchants of London, appear to have long exercised a predominating influence over the Merchant Adventurers; they dictated the elections of governors, and had even made an ordinance that no merchant should trade in Flanders, Holland, Zeeland and Brabant, unless he should first pay a fine to them; the fine, originally imposed by color of a right of the ancient fraternity of St. Thomas of Canterbury, of which the Mercers' Company claimed to be the successors, had at first been only nominal but had been gradually increased to twenty pounds. In 1496, it was enacted that the trade should henceforth be open and free to all and that no fine, imposition or tax of more than ten marks should be exacted from them for the liberty to buy and sell.[404]

For several years at the end of the fifteenth and beginning of the sixteenth century a contest was kept up between the Merchant Adventurers and Merchants of the Staple in which the former appear to have been the aggressors. The question of the limits of their respective powers came before the star chamber in 1504, whereupon it was decided that all Merchants of the Staple when engaging in the trade of Merchant Adventurers should be subject to all acts, ordinances and regulations to which Merchant Adventurers should themselves be subject, as well in Calais (the staple town) as elsewhere; likewise all Merchant Adventurers should be subject to the obligations of Merchants of the Staple when engaging in their trade.[405] The next step was the seizure by the Merchant Adventurers of the cloths of a stapler, not because he failed to pay a fine for engaging in the cloth trade, but because he engaged in it without first having secured membership in the Company of Merchant Adventurers of England; the king on complaint of the Merchants of the Staple addressed a letter to their opponents in which he interpreted the decree of the star chamber as not justifying more than the imposition of a fine or license fee.[406] What was the end of the contest is not known, but it must have been largely influenced by the decreasing trade of the one and the increasing trade of the other body of contestants. It is of most importance as indicating the crystallization of the two bodies of traders in distinct companies with control over separate kinds of trade. The geographical question

involved is not unimportant, in view of the later development of companies limited to exclusive territories; the Merchants of the Staple claimed exclusive jurisdiction in Calais, and apparently over all kinds of trade in it, while the Merchant Adventurers had their headquarters in Antwerp and resented what little interference was offered by their opponents outside of Calais.

Henry VII, in 1505, made the organization of the Merchant Adventurers more definite by adding to their power to elect a governor or governors that of electing "twenty-four of the most sad, discreet and honest persons of divers fellowships" of them to be assistants to the governors. Officers were to be appointed by the governor and assistants "to take, receive, levy and gather all manner of fines, forfeitures, penalties and mulcts of every merchant of English subject convicted [of] violating the statutes" made by the governor and assistants. The officers should have power, if need be, to seize the persons and goods of offenders, even in England and Calais. Assistants were removable for incapacity, but otherwise served for life; refusal to accept their office was punishable by fine, payable half to the king and half to the company. All merchants were to be admitted to the freedom on payment of ten marks, and all persons in the trade were to be subject to their government.[407] Whether the "divers fellowships" referred to were the groups of Merchant Adventurers in the several commercial cities of England, in the several foreign countries or in the several branches of foreign trade, cannot be determined with certainty, but they were probably those named second in order.

The often quoted description by John Wheeler of the Company of Merchant Adventurers in 1601 is so complete, while it is almost the only historical evidence of its condition at the time, that it may be quoted again.

> "The Company of Merchant Adventurers consisteth of a great number of wealthy and well experimented merchants, dwelling in divers great cities, maritime towns, and other parts of the realm, to-wit, London, York, Norwich, Exeter, Ipswich, Newcastle, Hull [and others.]. These men of old time linked and bound themselves together in company for the exercise of merchandise and sea-fare, trading in cloth, kersey, and all other, as well English as foreign commodities vendible abroad, by the which they brought unto the places where they traded,

> much wealth, benefit, and commodity, and for that cause have obtained many very excellent and singular privileges, rights, jurisdictions, exemptions, and immunities all which those of the aforesaid fellowship equally enjoy after a well ordered manner and form, and according to the ordinances laws, and customs devised and agreed upon by common consent of all the merchants, free of the said fellowship, dwelling in the above named towns and places of the land: the ports and places which they trade unto, are the towns and ports lying the rivers of Somme in France, and the Scawe [in Denmark] in the German sea: not into all at once, or at each man's pleasure, but into one or two towns at the most within the above-said bounds, which they commonly call the mart town or towns; for that there only they stapled the commodities, which they brought out of England, and put the same to sale, and bought such foreign commodities as the land wanted, and were brought from far by merchants of divers nations and countries flocking thither as to a fair, or market, to buy and sell.... The said company bath a governor, or in his absence, a deputy, and four and twenty assistants in the mart towns, who have jurisdiction and full authority as well from her Majesty as from the princes, states, and rulers of the Low Countries, and beyond the seas, without appeal, provocation, or declination, to end and determine all civil cases, questions, and controversies arising between or among the brethren, members, and supports of the said company, or between them and others, either English or strangers, who either may or will prorogate the jurisdiction of the said company and their court, or are subject to the same by the privileges and charters "hereunto granted."[408]

Malynes's complaint in 1622 that the Company of Merchant Adventurers was under the dominance of a coterie of wealthy merchants in London[409] seems to be borne out by the Parliamentary ordinance of 1643, which provided that none should trade in the territory of the company except such as were free of it on penalty of the

forfeiture of their goods, that no person should be excluded from the fellowship who should "desire it by way of redemption, if such person by their custom be capable thereof, and bath been bred a merchant"; moreover, the merchant "shall pay one hundred pounds for the same, if he be free and an inhabitant of the city of London, and trade from that port, or fifty pounds if he be not free and no inhabitant of the city, and trade not from thence. The ordinance appears to have been largely in confirmation of existing powers and its passage was probably secured by the company as a protection against interference with them by the Parliamentary party in the civil war. The company were given power to levy contributions on members and their goods for the support and maintenance of their government, and to imprison them and bind them by oaths to secure their conformity to the corporate regulations.[410]

During the sixteenth century the bodies of Merchant Adventurers in several of the important commercial cities of England assumed a separate organization and obtained charters of incorporation from the crown, as in Bristol, Chester and Newcastle. Whether organic relations subsisted between the local companies and the national Company of Merchant Adventurers seems impossible to ascertain, but their members must have been subject to its regulations, at least when engaged in commerce abroad. The form of their government was not peculiar in comparison with that of the companies of domestic merchants or that of the national company; it was vested in a master and wardens, or in a governor and from twelve to eighteen assistants, with minor officers such as clerks, beadles and searchers. In addition to the tendency towards dissolution into the companies of merchants in the several cities of England, the foreign trade had expanded beyond its original limits into other countries on the continent, and the Merchant Adventurers in the new territory sought separate organization in distinct companies according to the countries in which they traded. The trade with the original territory of the Company of Merchant Adventurers gradually became free and open to English merchants regardless of their corporate rights; by the eighteenth century, all vestiges of corporate control had disappeared; in the new territories, however, corporate organizations were longer maintained.

Among the rules of the Company of Merchant Adventurers was one forbidding its freemen to marry women born outside the realm of England.[411] Nor might they (in some of the municipal companies) keep shops or engage in a handicraft or retail

business,[412] except that in one case they might engage in a single retail business. One of the most notable features of the Merchant Adventurers, as well as of the Staplers, is the decreased importance assigned to their social-fraternal and religious elements. While they were not entirely wanting, they were assigned a position of much less importance than in the classes of corporations previously considered. The trade of members was minutely regulated, especially with a view to preventing an over-supply of goods in particular markets; a"stint" (or limit of amount) of goods that might be taken for sale to any market was frequently imposed and changed to suit changing conditions.[413] A quite elaborate system of correspondence was the means of correlating the separate ventures of the numerous Merchant Adventurers, so that they might not interfere with one another but rather act in harmony.

> "By the... governor and assistants are also appointed and chosen a deputy and certain discreet persons, to be associated to the said deputy, in all... places convenient, as well within as without the realm of England, who all hold correspondence with the governor of the company and chief in the mart town on the other side the seas, and have subaltern power to exercise merchant law, to rule, and look to the good ordering of the brethren of the company everywhere, as far as may be and their charters will bear them out.[414]

Membership in either the Company of the Staple or Company of Merchant Adventurers was not incompatible with membership in the other, as was also true of all the regulated and joint-stock companies. Moreover, while members of the London companies were restricted to one company, they might be members of any or all of the companies engaged in foreign commerce.

As compared with the Merchants of the Staple, the Company of Merchant Adventurers represented a step forward in the organization of the trade of English with foreign merchants. (a) The staple organization comprehended both native and foreign merchants, who united in electing the officers and enacting the statutes and ordinances by which they were governed; but the Company of Merchant Adventurers was composed of native merchants alone, who might not even marry alien women. (b) The trade of the Staplers was for the most part in raw materials, but that of the

Merchant Adventurers was in manufactured goods; in domestic industry the former had been virtually unorganized, except as it had been early organized in the merchant gilds, while the latter had acquired a structure in the later craft gilds and trade gilds and in their successors, the companies of the fifteenth and sixteenth centuries. The Merchants of the Staple may be said to have followed the model of the old gild merchant, while the Merchant Adventurers followed that of the companies evolved from the trade gilds and craft gilds, though the distinction is not plain in all details. The staple was an international fair while the market of the Merchant Adventurers was more nearly like the markets of English towns after the differentiation of their traders into separate gilds had taken place. (c) The government of the staple was imposed by the state primarily for public purposes, while the interests of the merchants were consulted only secondarily; on the contrary, the organization of the Company of Merchant Adventurers was sought by the merchants primarily in protection of their own interests, while the benefit of the state was expected to be only secondary. To secure the payment of customs was the royal purpose in organizing the staple, the legislation of Parliament in 1543 was

> "for the better encouragement and supportation of the fellowship of Merchant Adventurers of England, which bath been found very serviceable and profitable unto this state, and for the better government and regulation of trade, especially that ancient and great trade of clothing, whereby the same shall be much advanced to the common good and benefit of the people."[415]

The aim in the one case was to control what trade existed; in the other, to foster the trade and promote its increase. The one organization aimed to place the English market where the foreign trader might find it; the other, to enable the English trader to find the foreign market. (d) The governmental organs of the staplers were never so fully developed as those of the Merchant Adventurers, for the reason, probably, that the motive of private interest was so much weaker in one than in the other. The judicial element was more prominent in the first, the legislative element in the second; consequently the advisory body of assistants hardened in the second into a permanent part of its constitution, while in the first it remained rudimentary and

unimportant. A comparison of the two organizations is a sufficient preparation for the complaint of Malynes in 1622 that

> "all the trade of the Merchants of the Staple, of the merchant strangers, and of all other English merchants, concerning the exportation of all the commodities of wool into those countries where the same are especially to be vended, is in the power of the Merchants Adventurers only; and it is come to be managed by forty or fifty persons of that company, consisting of three or four thousand."[416]

In the sixteenth century, several new regulated companies were organized on the same general system as the Company of Merchant Adventurers. In 1564 a perpetual charter was granted to the Hamburgh Company, which appears to have been merely an organization of such members of the Company of Merchant Adventurers as had acquired an interest in trade within the Empire beyond their original territory. In 1579 a charter was granted by Elizabeth (and in 1629 confirmed by Charles I) to the "Fellowship of Eastland Merchants." They were to have the exclusive right of trading through the sound to Norway, Sweden, Finland, Poland, Lithuania (except Narva, which was in the exclusive territory of the Russia Company), Prussia (the province) and Pomerania (the western limit being the Oder River), the islands of Seeland, Bornholm, Oeland and Gothland; their principal mart-towns would be Copenhagen, Elsinore, Dantzig Elbing and Konigsberg. The government of the company was to be in the familiar form of a governor, deputy, or deputies, and twenty-four assistants, who should enact laws for the control of the merchants and the trade conducted by them. Only freemen of the company should participate in the trade, and non-freemen so doing might be punished by the company through fines and imprisonment. The purpose of granting the charter is said to have been to give an organization to English merchants that were opposed by the Hanseatic merchants. After the Revolution of 1688, the company was unwilling or unable to secure from Parliament a confirmation of its powers based on royal charters and thereby to conform to the new principle that monopolies of trade should have validity only in Parliamentary statute; they accordingly lost their control over trade but are said to have kept up their periodical meetings for social purposes until the nineteenth century. Complaint had been made

of them, moreover, that notwithstanding they were a regulated company, their fees were excessive and consequently restrictive. In 1690 it was enacted that all persons, whether native or foreign, after the first of May, 1693, might trade freely into Norway, Sweden and Denmark without regard to any powers claimed by the company under its charters; and that for the rest of its territory, admission to the company should be granted to any person on payment of forty shillings.[417] In 1560, a partial organization of the trade to France appears to have been given by Elizabeth in a charter to the merchants of Exeter under the name of the "Governor, Consuls and Society of Merchants Adventurers of Exeter"; they were to enjoy an exclusive trade to France and secured the confirmation of their privileges by Parliament in the succeeding reign,[418] but no traces of their activity can be found. A rudimentary organization of the English merchants in Italy was attempted as early as 1485 by the appointment of a consul for them; in that year Richard III, at the request of the English merchants in Italy, appointed Lorenzo Stozzi, a merchant of Florence, to be their consul for Pisa and adjacent territory, with authority to hear and decide suits and controversies among them and to do all other things *in judicio quam extra* which by law or the custom of other nations should appertain to his office; as compensation for his services he should receive one fourth of one per cent. of the amount of all purchases and sales by English merchants at Pisa.[419] Later, however, the trade came largely under the control of the Levant Company.[420]

The purely regulated companies developed as fully as the conditions of the international trade organized within them demanded. The key to an understanding of their rise and growth is in a due appreciation of the extent to which the political organization of England had been perfected. The lack of closer political relations with foreign nations as well as of those between the government of England and its subjects made it necessary to leave for the exercise of groups of subjects prompted by the motive of self-interest many powers that were later to be resumed by the state. When the state became able to extend its functions over the field of activity occupied by the companies, they became obsolete, though, like most English institutions, they were maintained in form long after their efficiency as organs of government had departed. By the middle of the eighteenth century they had all ceased to have an appreciable influence on English foreign commerce. The fact that the merchants of England trading in France were never organized in a corporation is adequately

explained by the close relations that had existed between England and France since the Norman conquest. The English government, in that field of activity, had maintained the international machinery necessary for the performance of its functions; the organization of corporations for their exercise was consequently uncalled for. That the regulated companies, where they flourished, were not more highly concentrated in power and management was due to the existence of such partially developed international relations as were possible. Their trade was with European countries west of Russia and Turkey and had previously to a large extent been in existence, but under the control of merchants of the foreign countries. What England accomplished through regulated companies was to substitute English for Hanseatic, Italian and other foreign merchants in a foreign trade that already existed; if the trade increased in volume, it was due not so much to the activity of the companies as to more general causes. It will be seen later[421] that where the trade had to be "discovered," as in Russia and Turkey, or created, as in India and America, the companies incorporated were either originally more compact in form and concentrated in activity, or if originally regulated companies, were soon so greatly modified that they were justly contrasted with purely regulated companies as belonging to a different class.

X. Regulated Companies Tending to Exclusiveness.

One class of regulated companies, owing to the peculiar environment with which they came in contact and to the equipment with which they were provided in conducting their operations, exhibited a tendency to exclusiveness of membership and concentration of powers that made them virtually a separate class, midway in development between the purely regulated companies and the joint-stock companies. The tendency was not in complete harmony with the form of organization used by the regulated companies, but, with fidelity to the principle usually followed in the development of institutions, the effort was made to use an established form in the expression of a new social force before a form more appropriate for the purpose should be evolved from experience. Full and unimpeded expression was given to the elements of exclusiveness and concentration in the joint-stock companies, but in the class of companies considered in this chapter the form of the regulated company seemed to be perverted and distorted to the extent that the characteristic elements manifested themselves.

The best example of the class of companies under consideration is the Levant or Turkey Company. The English trade with the countries on the eastern Mediterranean, with Greece and Turkey and with the Asiatic countries to the southeast as far as India had long been carried on wholly overland, or partly overland and by the Mediterranean as far westward as Italy or France; as far as England was concerned, it had participated in the trade only mediately, through the merchants of Venice and other Italian cities or of France. In the fifteenth century, however, the routes by water came to be used, and merchants of Portugal served partly as media for the supply of England with Eastern merchandise. In the same century English merchants began to meet this branch of foreign trade as it had met that of the Netherlands and Holland. In 1485 there appears to have been a sufficient body of English merchants in Italy to justify the appointment by Richard III of a consul for them at Pisa. Soon afterwards, in the reign of Henry VII, a few efforts were made by English adventurers to establish a trade in the Barbary states, from which were doubtless derived later accounts of a

so-called Barbary Company said to have developed into the Levant Company. But commerce by sea was hampered with many restrictions; it was rendered especially dangerous and uncertain in the western Mediterranean by the depredations of pirates and the lack of adequate protection from them. In consequence, no substantial progress was made in the extension of English commerce in the Mediterranean until after the middle of the sixteenth century.

In 1581, Elizabeth granted to Sir Edward Osborn, Thomas Smith, Richard Staper and William Garrett, their executors and administrators, and to such other English subjects, not exceeding twelve in number, as Osborn and Staper should appoint to be joined to the four named, together with two others to be appointed by the queen if she should desire, a charter to trade to Turkey exclusively of all other personas in such manner as they should see fit, under the name of "The Company of Merchants of the Levant." They should have power to enact by-laws (not repugnant to the laws of England) for their good government, though no business should be transacted without the consent of the governor, Sir Edward Osborn being named the first governor by the queen in the charter, and his successors being probably chosen annually by the company. Any other English subjects trading thither, either by ocean or land, without the company's license, should forfeit their ships and goods, half to the company and half to the crown. The exclusive powers granted were to be valid for a term of seven years, unless the crown, if they should appear to be "inconvenient," should see fit to revoke them on one yearns notice; if, however, they should not "appear to be unprofitable to the kingdom," the crown would renew them at their expiration, on application of the company, for a second term of seven years. The justification of the grant was found by the crown in the fact that Osborn and Staper "had, at their own great costs and charges, found out and opened a trade to Turkey, not heretofore, in the memory of any man now living, known to be commonly used and frequented by way of merchandise, by any of the merchants, or any subjects of us or of our progenitors: whereby many good offices may be done for the peace of Christendom," such as the relief of Christian slaves, and "good vent for the commodities of the realm" might be found, "to the advancement of the honor and dignity" of the crown, "the increase of royal revenue and the general wealth of the realm." It was significantly provided by the charter that the company, during the last six of the seven years of their grant, "shall export so much goods to Turkey as shall annually pay at

least five hundred pounds custom to the crown," exclusive of repayments on account of loss of goods by shipwreck and otherwise.[422]

Before the first charter had been granted, William Harbum, Edward Ellis and Richard Staper (one of the incorporators) had been sent by the queen to Turkey to negotiate for privileges of trading for English merchants, and had obtained from the sultan for them the "right to as freely trade and resort to Turkey as the French, Venetians and others."[423] Harbum went out as ambassador on the company's first voyage in 1582, and on his arrival appointed consuls in the several ports and established rules and regulations for the government of the trade, especially as it should come in contact with the sultan's subjects. Though appointed formally by the Queen or her representative, the ambassador, consuls and other officers were named at the request of the company, who also paid their salaries or other compensation and their expenses. Such further privileges of trade, called "capitulations," as were obtained from the sultan appear to have been conceded directly to the company, in contrast with similar privileges of the Merchant Adventurers and other regulated companies, which were usually secured through the negotiations of the crown with the foreign states. The charter must have been renewed on the expiration of the first term of seven years, though no documentary evidence of it has been found. In 1593, however, a charter was granted by Elizabeth that indicates a considerable development in the organization and work of the company. The members named in the charter now numbered fifty-three, "consisting of knights, aldermen and merchants," while the company might admit as new members any who should have served them as factors or in other capacities; leave was given eighteen others (three of whom were to be certain aldermen of London named in the charter) to become members of the company upon the payment by each of them of one hundred and thirty pounds to the company "towards their past charges in establishing the said trades"; members who should fail to conform to the rules and regulations of the company and to make the payments required of them should forfeit their right to membership, "whereupon the company may elect others in their stead." The name was extended to "The Governor and Company of Merchants of the Levant," — an indication of the greater prominence in the company of its governing body. An advisory body appears to have been created, for it was provided that in addition to the governor twelve assistants should be elected annually by the company. The trading

territory was extended and made more definite; it should include " (a) the Venetian territories, (b) the dominions of the Grand Seignior, by land and sea, and (c) trade through his countries overland to the East Indies, a way lately discovered by John Newberry and others." The exclusive right to trade in the described territory, the power to enact by-laws and the right to demand repayment of customs paid on goods lost at sea were continued, while duties levied on imported goods should be refunded if the goods should be exported within thirteen months by English subjects in English bottoms. "Four good ships, with ordnance and munitions for their defence and with two hundred English mariners, shall be permitted to go, at all times," unless the queen in time of war should notify the company that they could not be spared from the defence of the realm until the return of the royal navy. The company might have a common seal and "may place in the tops of their ships the arms of England, with a red cross in white over the same, as heretofore they have used." The members described in the charter and "their sons, apprentices, agents, factors and servants" should use the powers granted for a term of twelve years, unless they should be revoked, on eighteen months' notice, as "not profitable to the Queen or to the realm";[424] they might be renewed for a second period of twelve years, on request of the company, if the "trade shall appear to be advantageous."

With the liberality to corporations characteristic of the Stuarts, James I, in 1605, made the incorporation of the Levant Company perpetual, though he aimed to make it an "open" regulated company by extending admission to its freedom to all sons of members, all merchants on payment of £25, if under twenty-six years of age, and of £50, if older, and to all the apprentices of members on payment of twenty shillings. The machinery of government was more elaborate; all freemen were to elect annually a governor, deputy governor and eighteen assistants, who should have the entire management of the company's affairs; the times of lading vessels and shipping cargoes were to be determined at "general courts," as the annual meetings of all freemen were called.[425] During the civil war, the Levant Company, like that of the Merchant Adventurers, found it advisable to secure a confirmation of its powers by Parliament. In addition to a formal continuance of its incorporation, it was conceded "the free choice and removal of all officers" to be maintained by it either in England or abroad, whether ambassadors, governors, consuls, deputies or other; it should also have power

> "to levy money on its members and on strangers, upon all goods shipped in English bottoms, or in strangers' bottoms, going to or coming from Levant, for the supply of its own necessary expense, as well as for such sums of money as shall be advanced for the use and benefit of the state, by the approbation of Parliament"[426]

thus three distinct steps were gained by the company. The facts that the trade of the company was approaching the condition of a monopoly and that the company was suffering from the interference of independent merchants may justly be inferred from the strict provisions against so-called "interlopers":

> "no person shall bring from or send goods or ships into the limits of their charter, but such as are free brothers, or otherwise licensed by the corporation, on pain of forfeiture of the whole, or other lesser penalty to be imposed by this corporation on their goods or ships;... They may also impose fines on persons wittingly contemning or disobeying their orders, but not to exceed twenty pounds for any one offense, and in default, to distrain the goods of persons so fined; and if no sufficient distress can be found, to imprison their persons till they pay their fines, or otherwise give satisfaction."

Yet the provision for admission was substantially what it had been in the charter of James:

> "None shall be excluded from the freedom... who shall desire it by way of redemption, if such person be a mere merchant, and otherwise capable thereof, and shall pay fifty pounds for the same, if above twenty-seven years of age or twenty-five pounds, if under that age, or so much less as their fellowship shall think fitting."

The reason assigned for the grant is interesting, being merely "for the better government and regulating of trade"; while the purpose of previous grants had been to establish or increase the trade, the purpose of the present grant was to govern it;

the former had in view the activity of merchants, the latter, the form in which their activity should be exercised.[427] The restrictive tendency in the membership was recognized and promoted at the Restoration by the provision in the charter granted by Charles II that it should be confined to persons who were merchants of London or within twenty miles of it, except noblemen and gentlemen of quality, unless others should first become free of the city of London. As freedom of the city involved freedom of the city mercantile companies, the path to membership in the Levant Company was obstructed by a considerable additional expense.[428]

The tendency towards the restriction of membership and concentration of power was no less plain in the relations of the company to the crown and Parliament than in the interrelations of the members of the company and the other merchants engaged in the trade. During the seventeenth century after the concession of James's charter, the security of the Levant trade was gradually more fully established, communication between European countries became closer, new sources of trade similar to the Levant trade were discovered, and new routes of reaching the same trade were developed, as the water route to India; in consequence the necessity of the corporate organization of the Levant merchants became less apparent. Interlopers increased in number and boldness, and in some cases, as in that of the merchants of Southampton, obtained from the crown an exemption from the requirement of membership in the Levant Company. Yet the company, designed by James to be open to all merchants, did not expand to comprehend them. A coterie of influential London merchants, by manipulating the management of the company, made it a means of excluding merchants of other cities from the trade. They had sufficient power to secure the amendment of 1661, which partially sanctioned the control of the company by their oligarchy. In most of the regulated companies trade had been carried on in private ships or in ships owned by groups of members; such had been the manner of carrying on the Levant trade, but the company inaugurated the plan of using ships owned or controlled by it in its corporate capacity in addition to the private ships of its members, and made the new system a means of excluding from the trade members outside of London. It appears that in 1718 the company's vessels had not been used for a few years and the company had in consequence lost its control over the trade; in order to regain control a regulation was made that for the future all trading should be carried on by the company's vessels to the exclusion of others, and that they

should set out on their voyages at such times and from such places as the company should determine. The dates of sailing were arbitrarily postponed for the purpose of preventing the exportation of goods until prices in the foreign market should rise. London was designated as the port from which vessels should be laden, a measure manifestly prejudicial to the interests of merchants outside of London. Appeals to the ministry were unavailing and a threat of remedy by Parliamentary legislation was necessary to make the company (or the interior group in control of it) recede from their position.

The most prosperous period of the company's career was probably the first three decades of the eighteenth century but they confessed to a committee of the House of Commons in 1744 that their trade was at that time greatly decayed by reason, as they alleged, of the competition of French merchants and the interruption of their supply of silk by wars in the East; a pending bill to lay the trade open to all English merchants was defeated, Parliament considering, whether justly or not, that the trade could be better restored by maintaining than by abolishing the privileges of the company. But nine years later, in 1753, it was enacted that after the 24th of June, 1754,

"every subject of Great Britain, desiring admission into the Turkey Company, shall be admitted within thirty days after... request" upon payment of twenty pounds to the company;

> "all persons free of the company may, separately or jointly, export any goods... from any place in Great Britain to any place within the limits of the [company's] charter at any time and to any persons... free of the company, or to the sons or apprentices of freemen... so long as they shall remain under and submit to the protection and direction of the British ambassador and consuls... ; and may import... commodities purchased within the limits of the [charter] upon paying the king's duties and customs and such impositions as shall be assessed upon all Merchandise exported or imported, or upon ships laden therewith, for defraying the necessary expenses of the company."

The governor or deputy governor and company were to make, at a general court, such rules for the good government of the company as should seem necessary to the majority of members present, but they should not be valid unless comfirmed at a subsequent general court, held at least one month later on twenty days' notice by publication. If any seven or more of the freemen should think themselves aggrieved by any rule, they might appeal within one year after its enactment to the Commissioners for Trade and Plantations, who should, after an early hearing of the appeal, either approve or disapprove the rule in such manner as they saw fit.[429] The enactment of the law marked a revolution in the affairs of the company. The exclusive element in it was virtually destroyed. Admission into it and the commerce of its members were so conditioned that its purely corporate functions were hardly more than would have been reposed in an administrative branch of the English government. For many years in the latter part of the century the revenue of the company was insufficient for the payment of its expenses; Parliament accordingly granted to it from £5000 to £10,000 per annum to relieve its successive deficits. In 1803, the British government resumed the power of appointing ambassadors, which had long been reposed in the company. In 1825, in response to a suggestion from Canning, the company expressed their willingness to execute a deed by which they should surrender all the powers granted to them by their charters. Parliament, by an act[430] in the same year, provided that as soon as the deed should be delivered, the company should be dissolved and all its rights, powers and privileges should determine; all the company's property should vest in the crown, and all powers of government possessed by the company's consuls or other officers should in future be exercised by royal officers. The reason assigned for the enactment of the law was simply that "it would be beneficial to the trade of the United Kingdom, and especially to the trade carried on in the Levant Seas, that the exclusive rights and privileges of the governor and company... should cease and determine."

Very similar to the Levant Company in its organization and course of development was the Russia or Muskovy Company. Certain nobles and others named having "already fitted out ships for discoveries northward, north-westward and northeastward [to lands] not as yet frequented by subjects of any other Christian monarch" in amity with England, they were in 1554 granted a charter by Philip and Mary for further voyages and adventures as "The Merchants Adventurers for the

Discovery of Lands, Territories, Isles and Seigniories unknown, and not by the Seas and Navigations, before this said late Adventure or Enterprise by Sea or Navigation, commonly frequented."[431] Sebastian Cabot, during his life, was to be governor; four others, of the most "sad, discreet and honest of the fellowship," should be consuls; twenty-four other such members should be assistants. They had the usual power to admit new members, to make laws for the government of their members and trade and to punish offenders against their privileges by mulcts and forfeitures. As one of their ships had wintered in Russia and the adventurers had obtained the concession of important trading privileges from the Czar, they were given by the charter full permission to trade thither; other parts to which the company might trade should be only such as were not known to English subjects. They might make conquest of the lands of infidels discovered by them. As in similar companies, their right to trade in the territories described was exclusive, and non-members trading in them without their license were subject to forfeiture of their ships and goods.[432] Among the many privileges conceded to them by the Czar, their chief factor was to have full power to govern all the English in Russia and administer justice among them according to such laws as he, with his assistants, should make and enforce by means of fines and imprisonment; the Czar's officers were to assist the English in making and enforcing their laws even to the extent of affording them the use of prisons and instruments of torture; in general the Czar assured them justice in their relations with his subjects. A fen years later (in 1566) he granted the company immunity from tolls and customs in his dominions. Four years after their charter was granted they began the trade to Persia by way of Moscow and the Caspian.

In 1566 their charter is said to have been confirmed by Parliament.[433] The chief additional provisions were intended to restrict the trade of merchants outside the company and plainly indicate a strong tendency to exclusiveness. The company's territory was now defined as any part of the continent lying north, northwest, or northeast of London and not known or frequented by subjects before the company's first voyage, together with the Czar's dominions, Armenia, Media, Hyrcania, Persia, and the lands tributary to the Caspian Sea. No English subject should trade to them without the "order, agreement, consent, or ratification" of the company, on pain of the usual forfeiture; the reason given for the prohibition was

> "that sundry subjects of the realm, perceiving that divers Russian wares and merchandise are now imported by the said fellowship, after all their great charge and travel, some of which be within this realm of good estimation, minding, for their peculiar gain, utterly to decay the trade of the said fellowship, have, contrary to [their charter], in great disorder, traded into the dominions of Russia... to the great detriment of this commonwealth "

An exception was made, however, of such inhabitants of York, Newcastle, Hull and Boston as had been merchants for the past ten years, which shows some features of the company's management; they were permitted, by December 25, 1567, to

> "contribute, join, and put in stock to, with and amongst the company, such sums of money as any of the said company, which bath thoroughly continued and contributed to the said new trade from the year 1552, hath done, and before the said 25th of December, 1567, shall do, for the furniture of one ordinary, full and entire portion or share";

every such merchant who should "in all things behave himself as others of the society are bound to do, shall, from said date, be accounted free, as one of the said society and company in all respects." It is very evident that the activity of the company was not that of a purely regulated company; such merchants as those of "fair estimation" described in the preamble of the statute would otherwise hardly have been trading outside its membership. Even the merchants of the four eastern ports were not admitted so much because they were merchants as because they were so situated as to be able to engage in the independent trade most advantageously; even when they were admitted to share in the privileges of the company, they were limited in number by the requirement of ten years of mercantile life; moreover, they were limited in the amount of capital they should invest according to the amount invested by the original members of the company. Finally, the trading of the company was plainly carried on not by individual traders separately but by many in combination, though probably not all members were participants to the same extent

in successive voyages or adventures.

Considerable difficulty was experienced in getting confirmations from the Czar of the exclusive privileges of the company and of additional privileges for the company as distinguished from other English subjects. As early as 1571, the Czar deprived the company of the exemptions and other privileges granted so readily less than twenty years before, but soon regranted them. Later in the century the condition of their rights in Russia was unstable; every year efforts were made to regain lost powers, to gain new ones or to secure better protection of those nominally possessed. In the treaty of 1623 made by James I and the Czar, the company considered themselves as having made a distinct gain in the provision that the subjects of either monarch trading without his permission in the dominions of the other should be surrendered for punishment; the company expected that thereby they would secure the exclusion of English merchants trading in Russia without their license. On the execution of Charles I in England, however, the power of the company, as far as it was derived from the Czar, was greatly weakened. The facts that account for the hostile attitude of the Czar are not fully known. He is said to have claimed that a messenger from Charles II requested him to abrogate the privileges of the company. He was certainly disposed to resent the execution of the king by depriving his subjects, especially merchants closely identified with the rebellious classes, of the exclusive privileges he had granted to them. A more potent factor was doubtless the rivalry of Dutch merchants, who sought to improve their commercial relations with the Czar, as compared with those of the English company, by inflaming his mind against them. At all events, after 1649, the best status that the Russia company could obtain in Russia was one of equality with the Dutch merchants. In 1654, the trade from Archangel into the interior of Russia was not open to the company. They might remain at that port until they had disposed of their merchandise; unsold goods they might leave there or take back to England, as they saw fit, but they might take them no farther inland; in the same year the English are said to have been expelled entirely from Archangel on the request of an emissary of Charles II. The change in the attitude of the Czar must have seriously affected the ability of the company to maintain its monopoly even against other English merchants. When the first charter was granted, the company had consisted of 207 members; in 1600 there were only 160 members; in 1654 the number had decreased to only 55 members; the numbers

may be variously interpreted; they can hardly be construed as evidence of a decline in the trade between 1555 and 1600, while they may be so considered of the trade between 1600 and 1654; they probably indicate that during the whole time the trade was being concentrated in a few hands. In 1604, when the Free Trade bill was under consideration in the House of Commons, it was stated by the committee in its report on the bill that the directors of the company had limited the amount that might be adventured by individual members, they made "one purse and common stock," they placed all their exported merchandise for sale in Russia in the hands of one agent or factor at Moscow, they likewise placed all their imported merchandise for sale in England in the hands of one agent in London; after the business was entirely transacted it was charged that they rendered to common adventurers such an account as they pleased.

The Revolution of 1688 had its effect on the organization of the company. It had become plain that under its management as a monopoly it was of slight public service. Accordingly, in 1698, it was enacted by Parliament that after Ladyday in the following year admission to the fellowship should be freely permitted to any subject upon payment of five pounds.[434] During the eighteenth century the company remained intact but exercised no control over commerce; in hair and 1750, the trade with Russia (especially in silk) was still restricted to its free men; in 1854 customs were still levied by it though "every individual admitted into the company conducted his business entirely as a private adventurer, or as he would do were the company abolished."[435] In 1882 it was said of it that"in truth, for business purposes [it had] ceased to exist, its only meeting now being an annual social gathering."[436]

In this class of corporations ought also to be included the Morocco Company created by charter of Elizabeth in 1588 to the Earls of Warwick and Leicester and forty other persons for the development of a trade in Morocco, which proved not to be important or permanent. In 1604, James I incorporated the "President Assistants and Fellowship of Merchants of England Trading into Spain and Portugal,"[437] usually called the Spanish Company, which aspired to have France included in its grant. In the following year great Parliamentary opposition to its monopoly of the trade resulted in the Free Trade Act, providing that all the king's subjects should in future as freely trade into and from the dominions of Spain, Portugal and France as they had since the beginning of his reign or before the grant of the company's charter.[438] The

charter was thereupon revoked by the king. In 1665, Charles II chartered the Canary Company, to consist of all subjects who had traded to the Canary Islands within seven years past to the extent of £1000 annually and of all others who should be admitted to membership by them; they were to enjoy the trade exclusively, and were to be governed by a governor, deputy governor and twelve assistants. The preamble of the charter is the most instructive part of it; it is alleged in justification of the grant of powers

> "that the trade to the Canary Isles Noms formerly of greater advantage to the king's subjects than at this time, that by reason of the too much access and trading of subjects thither, ... merchandise was decreased in its value, and the Canary wines, on the other hand, were increased to double their former value, so that the king's subjects were forced to carry silver and bullion thither to get wines: and that all this was owing to want of regulation in trade."

The charter was vigorously assailed in Parliament, as in violation of the Free Trade Act of 1605, the Canary Islands being part of the dominions of the King of Spain. The House of Commons passed a resolution "that the patent of the Canary Company is an illegal patent, a monopoly and a grievance of the subject,"[439] and moved the king to revoke the charter. In the next year the king yielded to the opposition by revoking the charter, for which he was thanked by both Houses. When Lord Clarendon was impeached by the House of Commons one of the charges against him was that he had "received great sums of money for passing the Canary patent, and other illegal patents, and granted illegal injunctions to stop proceedings at law against them and other illegal patents formerly granted."[440]

Several other corporations organized for the prosecution of discoveries of new lands or ocean passages, and for engaging in commerce and in the fisheries would also have to be included in the class under consideration. Most of them were of little importance and none of them were permanent. A few may be mentioned as examples. In 1583, the "Colleagues of the Fellowship for the Discovery of the Northwest Passage," consisting of Adrian Gilbert and others, were chartered by Elizabeth for a term of five years.[441] Likewise in 1607 the "Colleagues of the Fellowship for the

Discovery of the North Passage," consisting of Penkevell of Cornwall and others, were chartered by James I for a term of seven years for the "sole discovery of a passage to China, Cathay, the Moluccos, and other parts of the East Indies by the north, northwest, or northeast."[442] The Russia Company and East India Company formed together a joint stock to engage in the Spitzbergen whale fishery in 1618 and maintained it for two years.[443] In 1636, Charles I prohibited the importation of whale fins or whale oil except by the Russia Company, which might form a joint stock for that purpose.[444] The "Royal Fishery Company of Great Britain and Ireland," of which the Duke of York, Lord Clarendon and others were the members, received a charter from Charles II in 1661. The "Company of the Royal Fishery of England," which may have been the successor of the preceding company, consisted of the Duke of York and others and was chartered by Charles II in 1677. By act of Parliament in 1693[445] Sir William Scawen and forty-one others were incorporated for a term of fourteen years as the "Company of Merchants of London Trading to Greenland."

The staple organization had comprehended the foreign trade as it existed, no change in the relations of native and foreign merchants had been contemplated; the most that had been sought was the regulation of established relations. The general purpose of the purely regulated companies was to displace the foreign merchants and to substitute the native merchants for them, with an incidental enlargement of the trade. The aim of the former was harmony, even at the expense of perpetuating the control of the trade by foreigners; on the contrary, the aim of the latter was to satisfy the ambitions of English merchants in their competition with foreigners. In both cases the trade was already established, and its further development was to be along lines already defined. The object of the regulated companies that have been distinguished as exclusive and concentrated (both terms being inexact) was the organization of newly "discovered" trade with lands like Turkey and Russia previously not "frequented" in trade by Englishmen or subjects of other Christian nations. It was the third stage in the growth of the English foreign trade as far as it was organized in corporations. In the first stage all the merchants, both English and foreign, were comprehended in one organization; in the second, all the English merchants to the exclusion of foreigners alone; in the third, only a part of the English merchants, to the exclusion not only of all foreigners but also of many English merchants.

The exclusion of the foreign merchants may be easily explained by the different national purpose that has been suggested as distinguishing the regulated companies from the earlier staple organizations. The normal purpose of social organization is to promote harmony between the social elements organized, not to enable one element to make a conquest of a field occupied by another. It was hardly in the nature of things that the merchants of the Eastland Company and Hamburgh Company should be expected to oust the Hanseatic merchants from international trade by being merged in one organization with them. But the second step in exclusiveness of corporate membership is not so easily explained. Some considerations bearing on the question may be profitably presented in detail.

1. The regulated and regulated-exclusive forms may be distinguished, from the standpoint of their application to the social activity contained in them, as subsequent and antecedent. The former was a structure that trade had acquired in the course of its evolution; the latter was applied to trade is its establishment and was intended as a structure within which its evolution should be at least begun. It is the difference that is frequently expressed by the terms “spontaneous” or “natural,” as applied to the former, and “arbitrary” or “compulsory,” as applied to the latter. The importance of the distinction is that fitness of form for content is usually assured by the test of experience in the former and subject to be determined by future experience in the latter, as is well exemplified in the Levant Company and East India Company, of which one became finally a purely regulated company and the other a joint-stock company. To express the distinction implied in the somewhat exceptional use of the terms “subsequent” and “antecedent” in a different and perhaps better way, the regulated companies were formed after and the regulated-exclusive companies before the trade was established, The effort involved in the establishment was capitalized, so to speak, in the form of an exclusive right to enjoy the trade established. The granting of a charter to the Russia Company had been preceded by a voyage in which the adventurers had demonstrated on their own initiative, and at their own expense, the possibility of developing a trade to Russia; likewise the granting of corporate powers to the Levant Company had rewarded the enterprise of a group of English adventurers who “had, at their own great costs and charges, found out and opened a trade to Turkey.” The fishery companies had their origin in the express purpose of establishing a new or reviving a decayed industry. With the merchants of the staple,

the "merchants of Holland" and Merchant Adventurers, it had been otherwise. They had established no new trade; the trade had existed before they were organized, though it had been carried on by foreign merchants. There was no effort of discovery or establishment to encourage or reward in their cases.

2. England enjoyed no settled international relations with the nations whose trade had been "discovered." The international relations that in the trade of the regulated companies had been maintained through the political machinery of the state were formed and maintained by the regulated-exclusive companies themselves in their commercial territory. Even the formal appointment by the crown of ambassadors and consuls in Turkey recommended by the Levant Company was soon discontinued, and the company was expressly allowed by charter to do directly what it had previously done indirectly, — to appoint the political representatives of the English nation in Turkey. When Elizabeth sent costly presents to the Czar, they were paid for by the Russia Company; it was virtually the corporation that was propitiating him, and the royal name was being used merely as a matter of form. From the side of England, then, a large part of the political sovereignty of the nation, or more properly, of the powers through which it was expressed, was reposed in the company — a far larger part than, in the state of political development in Europe, had been necessary in the commerce of the regulated companies in Western Europe. Perhaps it is not necessary to add that from the side of the nations in whose territories the companies traded, a very similar grant of powers was made. If England presented itself to the foreign nation in the personality of a trading company, the foreign nation acted reciprocally through the same medium. If trading privileges were granted, they were granted not at first through the normal political means of treaties between the sovereigns, but by "capitulations" directly conceded to the companies. From both sides the companies derived a considerable body of purely political powers. If the effort of discovering or establishing a new trade in foreign countries seemed to justify its restriction as a reward or compensation to the adventurers who had put forth the effort, the success in securing concessions from the rulers of foreign countries was even more deserving of reward; the concessions were usually either in derogation of exclusive privileges granted to traders of other countries or themselves exclusive of such other traders; in Turkey the English merchants were granted the same rights to trade that had previously been enjoyed by the French and Venetians to the exclusion of others; in

Russia they were granted an exclusive trade and suffered a loss when the Dutch were afterwards admitted to an equality with them. The English and foreign rulers had the same object in view, the increase of commerce by encouraging merchants through grants of exceptional powers. If the foreign ruler happened to be passive, and not desirous of the new trade, a less commendable motive had to be supplied through the bestowal of gifts or some other less disguised form of payment; in either case, the result represented an outlay of time, effort and goods, and formed a substantial basis for grants of powers to the groups of adventurers exclusively of their fellow-countrymen. Any interloper that tried to engage in a new trade established by English adventurers must have profited to a greater or less extent by their labors in founding the trade and in providing the political machinery necessary for its prosecution; if he were required to pay membership fees in just proportion to the advantages enjoyed by him as a result of the company's work, he might not hesitate, from a selfish point of view, to risk the forfeiture of his ship and cargo in preference to paying the large fees demanded. The prevalence of interlopers was not always convincing evidence of their unjust exclusion from the corporations. On the other hand, the companies, who perhaps regarded their privileges as property, had no inclination to undervalue them and accordingly demanded exorbitant payments for their acquisition by others; even further, they certainly placed arbitrary and unreasonable restrictions on the trade to perpetuate their exclusive enjoyment of it. What is important is not that they denied to others opportunities to participate in their trade — that was to be expected — but the conditions that made it possible for them to do so.

3. Corporations are, in a broad view, institutions of government. The regulated companies made rules for the government of their members in their individual activity, and exercised judicial and other functions readily recognized as governmental. For most purposes their activity may be said to have fallen into two classes, political and commercial, though the analysis is certainly superficial. The difference between the regulated and regulated-exclusive companies was, in general, from this point of view, that in the former the commercial activity predominated, while in the latter the political activity was greater in volume and more important in substance. The coercive power behind the political activity was stronger than the purely voluntary motive behind the commercial activity of the merchants. In

consequence of their greater ratio of political to commercial powers and of the normal difference in the effectiveness of the two powers, the regulated-exclusive companies developed to a higher degree in the direction of government; they did not stop at the regulation of the individual, but proceeded to absorb him and to merge his activity in the organic activity of the group to which he belonged; they built "company" ships and enacted that private ships should not be used in their trade; they passed beyond the imposition of a "stint" of trading by the individual and enacted that all trading should be by the group as such, or at least through the companies' factors; in fine, their governmental machinery was made to do not only the work of government, but also that of trading.

4. It may be contrary to some accepted theories of the state to suggest that, before an individual may safely be left to conduct his own business without regulation, he must be an efficient unit of activity. It is certain, however, that in the trade conducted by the regulated-exclusive companies the individual merchant was unable to act separately. It is not too much to say that if he had been permitted to do so, he would have acted contrary to his ultimate best interests; as it was sometimes expressed, he would probably have "spoiled" or "decayed" the trade. The companies were exercising the functions that were later to be exercised by the English nation through its government in providing the political framework within which the trade had to be carried on; the individual merchants, acting separately, could undoubtedly not have exercised them; the trade could only become "open" when the English government should have assumed the exercise of the companies' political powers, or should have separated the political from the commercial powers. The trade to Russia and Turkey in the sixteenth and seventeenth centuries was based on such an accumulation of capital as individual merchants had not attained. Trade by sea could not be in smaller units than single vessels, and the ownership of a whole cargo was undoubtedly beyond the capacity of the individual merchants of the time. But such was the insecurity of the sea from pirates and hostile peoples that the unit of trade to Russia and Turkey could hardly with prudence be less than a small fleet, provided with marines and armament as well as with sailors. The power of the governing bodies of the companies to designate the places and times of lading vessels for voyages was not wholly unwarranted; on the contrary it was quite necessary that it be exercised, though it was arbitrarily made an instrument of oppression. The concentration of

management was due, for the most part, to the conditions of the commerce of the time; increased exclusiveness of membership was derived from it through the undue advantage given by it to the interior body of members in whom the management was concentrated.

The history of the companies under consideration may be divided into periods and, though it has not been done before, it may add clearness to suggest such a division now. (1) They first appeared as groups of adventurers actuated by their personal interests in seeking new fields of commerce. (2) When the "new trade" had been discovered and foundations had been laid for its prosecution, the founders, with others taken into their groups, received grants of powers both from the English crown and from foreign rulers, by which their numbers were determined, and their relations to each other, to other subjects and to foreigners were settled. In this stage of development the terms during which the corporate relations should continue were limited, and the membership restricted. (3) The first charters were followed by others by which the powers already granted were supplemented by others wider in scope. This and the preceding period were the ones in which the characteristic exclusiveness and concentration of the companies made themselves manifest. This period was particularly the one in which interference from interlopers and private traders called for attention. (4) After the influence of private traders acquired sufficient strength, the trades were opened to all merchants by Parliamentary intervention and the companies became purely regulated companies. (1) As regulated companies they eventually became obsolete, exercising only a nominal influence over trade but in some cases exercising political powers such as would belong to an administrative department of the government. (6) Finally the nominal control over trade that had been permitted them was taken away and their political powers assumed by the state even if their technical corporate existence was not also terminated by a revocation of their charters. Such at least would be the periods into which the history of the developed corporations of the class might properly be divided. Such corporations as the Spanish Company and Canary Company were so manifestly out of harmony with the conditions under which they were created that they were very properly short-lived.

XI. Joint Stock Companies.

In the purely regulated companies the joint-stock principle was not theoretically applied, and in such of them as it prevailed was permitted to be introduced only covertly and in response to the demands of peculiar circumstances; it was at no time regarded as a legitimate part of their organization. In the joint-stock companies, however, the principle was fully applied and was the distinctive feature of their organization and growth. By far the most important of the joint-stock companies were the old, new and united East India Companies, which may fairly and by writers usually are regarded as different stages or phases of one great organization — the East India Company.[446]

The Levant Company, it will be remembered, was a regulated company, typical of the class that tended to become exclusive and in which the principle of the joint stock was introduced to only a limited extent by the coterie of merchants in control of them. The East India Company appears to have been an offshoot of the Levant Company or at least to have been closely connected with it at the time of its formation.[447]

On the 31st day of December, 1600, Elizabeth, "greatly tendering the honor of [the nation], the wealth of [the] people, and the encouragement of [her] subjects in their good enterprises, for the increase of... navigation, and the advancement of lawful traffic, to the benefit of [the nation's] common wealth," granted to George, Earl of Sunderland, and two hundred and fifteen others, that they " from henceforth be one body corporate and politic... by the name of the 'Governor and Company of Merchants of London, trading into the East Indies,'" have corporate succession with power to admit and expel members, be capable of receiving, holding and granting property, sue and be sued in the corporate name and use a common seal. "The direction of the voyages,... the provisions of the shipping and merchandise thereto belonging,... the sale of all merchandise returned in the voyages,... and the managing and handling of all other things belonging to the company" were reposed in a governor, deputy governor and twenty-four committees (directors) elected annually

by the members of the company at a general court but removable by them at any time; the first governor (Sir Thomas Smith) and committees were named in the charter. The governor and deputy governor were required to take an oath to well and truly execute their offices, and the members such an oath as should be prescribed for them by the company.[448] The courts (or meetings) should be held from time to time at any place in England or elsewhere. For a term of fifteen years the members of the company (and such others as should afterwards be admitted to membership) and their sons (more than twenty-one years old) were exclusively empowered to

> "freely traffic and use the trade of merchandise, by seas, in and by such ways and passages already found out and discovered, or which hereafter shall be found out and discovered, as they shall esteem and take to be fittest, into and from the East Indies,... and into and from all the places of Asia and Africa and America... beyond the Cape of Good Hope to the Straits of Magellan so always the... trade be not undertaken or addressed to any... place already in the lawful and actual possession of any... Christian prince or state in league or amity with [England] and who cloth not or will not accept of such trade, but cloth overtly declare and publish [it] to be utterly against his good will."

They might

> "make such... reasonable laws, constitutions, orders and ordinances as to them... shall seem necessary and convenient for the good government of [the company] and of all factors, masters, mariners and other officers employed in any of their voyages, and for the better advancement and continuance of [their] trade, "

if only they should be "reasonable and not contrary or repugnant to the laws, statutes or customs" of England; and in order to enforce them they might "impose such punishment and penalties by imprisonment of body, or by fines and amercements... upon all offenders [against] such laws... as to [them] shall seem

necessary, requisite and convenient for [their] observation," all fines levied to be for the use of the company. For the first four voyages, the company should be exempt from the payment of export duties, and thereafter, if exported goods were lost, the export duties paid on them should be refunded; import duties should be paid, half in six months and half in twelve months, and if imported goods should be exported in English bottoms within thirteen months after importation, no export duties should be levied on them. They might take out of England each year silver in foreign coin or in bullion of a value not in excess of £30,000, provided £6000 be first coined at the royal mint; within six months after the end of any voyage except the first the company was to bring into England at least as great value of gold or silver in bullion or foreign coin as had been taken out at the beginning of the voyage. "In any time of restraint, six good ships and six good pinnaces, well furnished with ordinance and other munitions for their defence, and five hundred [English] mariners, to guide and sail in [them] shall be... suffered to depart," unless they should be needed by the government for the prosecution of a war. The East Indies and other places described in the charter should not be "visited, frequented or haunted" by English subjects during the term of fifteen years except by license of the company,

> "upon pain that every such person... that shall trade or traffic into or from [the described territory] other than [the company] shall incur... the forfeiture and loss of the goods... which so shall be brought into [England] as also the... ships, with [their] furniture.... wherein [they] shall be brought,"

half to the company and half to the crown, should suffer imprisonment during the royal pleasure "and such other punishment as... for so high a contempt shall seem meet," and should not be released until he had executed to the company a bond in the sum of at least £1000 not in future to trade or traffic in their exclusive territory. Though the company might grant licenses to non-members to engage in the East India trade, the crown promised not to grant them without the company's consent. If not earlier terminated by the crown on two years' warning, the grant was to become void at the expiration of fifteen years, when it might be renewed on application of the company with or without amendment, if its continuance should be found "profitable''

and not "prejudicial or hurtful" to the realm.[449]

The first voyage was in 1601 and proved extremely profitable. Eight voyages undertaken from 1603 to 1613 also terminated, on the whole, successfully, though the vessels fitted out in 1607 were lost at sea. All of the voyages had been undertaken by groups of members of the company on joint stocks, and not by the company in its corporate capacity; in the seventh voyage, in 1610, several classes of "adventurers" had united and were called joint adventurers, each captain of the four vessels sailing under separate orders, but all the vessels forming one fleet.[450] The authority exercised by the corporation over the activity of its members was that of a regulated company. In 1612 it was resolved that thereafter the trading should be only by the corporation with a joint stock, but even under the new plan there was not what is now known as a joint stock. Each member subscribed or "adventured" as much as he desired, or even declined to subscribe any amount at all, to a common fund to be placed in the hands of the governor and committees (directors) for management in behalf of such of the members as had participated in the subscription. After the change of organization in 1612 a stock of £429,000, known as the "Company's First Joint Stock," was subscribed and devoted by the governor and directors to four separate voyages or adventures in the years 1613, 1614, 1615 and 1616, the profits being distributed *pro rata* among the subscribers according to the amounts of their subscriptions. In 1617–1618 the "Company's Second Joint Stock" was raised in the amount of £1,600,000, the company now having thirty-six vessels and 954 proprietors of stock.[451]

> "But as the accounts of the company have never been remarkable for clearness, or their historians for precision, we are not informed whether these ships belonged to the owners of the first joint stock, or to the owners of the second; or if to both, in what proportion; whether the 954 proprietors of stock were the subscribers to both funds, or to the last only; whether any part of the first joint stock had been paid back to the owners, as the proceeds came in; or whether both funds were now in the hands of the directors at once, employed for the respective benefit of the respective lists of subscribers: two trading capitals in the same hands, employed separately, for the separate

> account of different associations. That such was the case, to a certain extent, may be concluded from this, that of the last of the voyages, upon the first of the funds, the returns were not yet made. Afterwards, the directors had in their hands, at one and the same time, the funds of several bodies of subscribers, which they were bound to employ separately, for the separate benefit of each;... they, as well as their agents abroad, experienced great inconvenience in preserving the accounts and concerns separate and distinct; and... the interests and pretensions of the several bodies were prone to interfere."[452]

A "Third Joint Stock" followed, when a "Fourth Joint Stock" was projected in 1640 as the condition of the withdrawal by Charles I of the privileges of Courten and his associates.[453] The confusion of the several joint stocks and the fact that they did not belong to identical sets of subscribers became most apparent.

> "The proprietors of the third joint stock had made frequent but unavailing calls upon the directors to close that concern, and bring home what belonged to it in India;... payment was demanded of the capital of those separate funds, called the joint stocks of the company. To encourage subscription to the new joint stock, it was laid down as a condition, 'that to prevent inconvenience and confusion, the old company or adventurers in the third joint stock should have sufficient time allowed for bringing home their property, and should send no more stock to India, after the month of May [1640].' The subscribers to the new stock were themselves, in a general court, to elect the directors to who'll the management of the fund should be committed, and to renew that election annually.[454] As this was a new court of directors, entirely belonging to the fourth joint stock, it seems to follow that the directors in whose hands the third joint stock had been placed, must still have remained in office, for the winding up of that concern. And in that case there existed, to all intents and purposes, two separate bodies of proprietors, and two separate courts of directors, under one charter."[455]

In 1609 the company had obtained from James I a confirmation of their charter with an amendment making it perpetual, but revocable on three years' warning. Their monopoly had been maintained intact during the life of Elizabeth, but James, in 1604, had granted to Sir Edward Michelborne and his associates a license to discover "the countries and dominions of Cathaia, China, Japan, Corea and Cambaia and the islands and countries "hereunto adjoining, and to... trade with the... people inhabiting [them] not as yet frequented and traded unto by British subjects or people."[456] Interlopers less prominent interfered continually with the trade, eliciting repeated protests from the company that they were ruining it. In 1635, Charles I granted to William Courten and others a license to trade in the territory of the East India Company, on the ground that the latter had not made settlements and established trade as promised and expected.[457] In 1637 he confirmed the privileges of Sir William Courten (son of the earlier man of the same name) and his associates (later known as the "Assada Merchants") "as to all places in India where the old company had not settled any factories or trade before the twelfth of December, 1635"; but without prejudice to the old company in other respects.[458] When the Council of State was asked by the company in 1649 to recommend to the House of Commons the passage of an act favorable to their exclusive privileges, it was suggested to the company that they enter into a conference with the Assada Merchants for a termination of their long contest with them.[459] Accordingly the contending parties agreed on a union in 1649–1650, and a joint stock was subscribed by them for future trade. But the union did not long prove harmonious, and in 1654 a large group of the subscribers to the joint-stock, including the Assada Merchants, but known collectively as the "Merchant Adventurers Trading to the Indies" filed two petitions with the Council of State, in which they prayed

> "that the East India Company should no longer proceed exclusively on the principle of a joint stock trade, but that the owners of the separate funds should have authority to employ their own capital, servants, and shipping, in the way in which they themselves should deem most to their own advantage."[460]

The East India Company and Merchant Adventurers were engaged in fitting out

separate fleets for voyages. The select committee of the Council of State to whom the petitions of the Merchant Adventurers and counter petitions of the East India Company had been referred, could reach no conclusion after holding hearings of interested parties, and returned them to the Protector and the Council; finally the Council of State advised Cromwell to continue the exclusive trade and joint stock, and a new committee of the council was appointed to consider the terms of a charter.[461] The outcome of Cromwell's settlement was a nearer approach to the modern status of a joint-stock company. The interests of all the other adventurers in previous funds or joint stocks and "dead stock" were bought up by the members of the East India Company and Merchant Adventurers, and the new joint stock subscribed was the only one left in charge of the directors.[462]

On the accession of Charles II, a new charter was obtained, which increased substantially the body of powers already possessed by the company. The privileges granted in earlier charters were recited and confirmed. In addition, it was granted, " for the preventing of secret and clandestine trading," that no merchandise of the growth, production or manufacture of the territory in Asia, Africa and America exclusively limited to the company should be brought into England without their consent. All plantations, forts, factories or colonies in the territory should be under the power and command of the company, who should have power to appoint governors and all other officers to govern them. The governor and council of the several places in which the company had factories or places of trade, "may have power to judge all persons... that shall live under them, in all causes, whether civil or criminal, according to the laws of [England] and to execute judgment accordingly." If a crime should be committed in a place in which there were no governor and council, the offender might be sent for trial to some other place in India or to England, as the head authority of the place should deem the more convenient. The company were permitted to send ships of war, men and munitions into their factories or other places of trade

> "for the security and defence of the same,... and to choose commanders and officers over them, and to give them power and authority... to continue or make peace or war with any prince or people that are not Christians, as shall be most for the advantage and

> benefit of the [company] and of their trade, and also to right and recompense themselves upon the goods, estate or people of those parts, by whom [they] shall sustain any injury, loss, or damage, or upon any other people whatsoever, that shall anyways intercept, wrong or injure them in their trade.... It shall be lawful to erect and build such castles, fortifications, forts, garrisons, colonies or plantations... within the bounds of [their trade] as they in their discretion shall think fit and requisite,"

to send to them

> "all kinds of clothing, provision of victuals, ammunition and implements necessary for such purposes, without paying of any custom, subsidy or other duty,... to transport such number of men... and govern them in such legal and reasonable manner as [they] shall think fit, and to inflict punishment for misdemeanors, or impose fines upon them for breach of their orders."

They might "seize upon the persons of all [English subjects that] shall sail... or inhabit in those parts without [their] leave and license.... or that shall contemn or disobey their orders, and send them to England." All employees of the company should be liable to such punishment for any offenses committed by them as the company should think fit and the degree of the offences should require. If a person convicted and sentenced by the president and council in India should appeal, he should be seized by them and sent a prisoner to England, there to receive from the governor and company " such condign punishment as the merits of his case shall require and the laws of the nation allow of." "For the better discovery of abuses and injuries to be done unto the [company] by their servants," they should have power to examine them on oath "touching or concerning any matter or thing [concerning] which by law and usage an oath may be administered, so as the oath and the matter therein contained be not repugnant to the laws of [the] realm."[463]

In 1669, the island and port of Bombay, which had been ceded to Charles by Portugal in accordance with his marriage contract, was conveyed by him to the East India Company with power to govern it, to defend it by war and arms, to repel any hostile force from it, to pass laws for the government of its inhabitants and enforce them by punishment, fines, imprisonment and "taking away life or member," to appoint and dismiss officers and servants bound by oath to perform their duties, to maintain courts, sessions, forms of judicature and manners of procedure, "like unto those established and used" in England and presided over by judges appointed by the company, and even to declare and enforce martial law when occasion demanded. The laws enacted by the company, however, were to "be reasonable and not repugnant or contrary, but as near as may be agreeable to the laws, statutes, government and policy" of England. The powers granted with relation to Bombay were moreover to extend to territory afterwards acquired by the company elsewhere.[464] The island of St. Helena was granted to the company, in 1674, with substantially the same powers. The justification urged for the last grant is instructive:

> "For as much as we have found, by much experience, that the... trade with the East Indies bath been managed by the [East India Company] to the honor and profit of this our realm, and to that end and out of our earnest desire that the [company] may, by all good and lawful means, be encouraged in their difficult and hazardous trade and traffic in those remote parts of the world."[465]

In a subsequent charter in 1677, amendatory of that of 1669, was granted the power to coin money in India in such denominations as the company wished, except those of English money.[466] It had been originally provided that the vessels and cargoes of unlicensed traders should be forfeited and later that they should not be brought into England. It was finally granted, in a charter conceded by Charles II in 1683, that the East India Company might "seize all ships, vessels, goods and wares going to or coming from the East Indies," one half to be retained by the company and one half to be turned over to the crown. A special court was also to be established, to consist of "one person learned in the civil laws" and two merchants, all appointed by the company, with jurisdiction to pass on cases of seizures of vessels and cargoes, and

all other mercantile and maritime cases, "all which cases shall be adjudged and determined... upon due examination and proof, according to the rules of equity and good conscience, and according to the laws and customs of merchants."[467] Notwithstanding the comprehensiveness of their powers, they not infrequently exceeded their limits, while sometimes they were unable to use them fully; indemnifying provisions became common in later charters and appear to have been readily granted by the crown. In the charter of Charles II granted in 1677, the exculpatory provision was as follows:

> "Whereas divers transactions have happened, wherein the proceedings of the "company] may be liable to some question how far they are warranted by the strict letter of [their charters] and the charters themselves may be in danger to be impeached, as forfeited for some misuser or non-user of [their] rights, liberties and franchises... we, for the removal and prevention of all questions and doubts of that nature, ratify and confirm... all the rights, liberties and franchises to them formerly granted... notwithstanding any former misuser, non-user or abuser whatsoever."[468]

Even at the Restoration "the joint stock was not yet a definite and invariable sum, placed beyond the power of redemption, at the disposal of the company, the shares only transferable by purchase and sale in the market. The capital was variable and fluctuating, formed by the sums which, on the occasion of each voyage" or series of voyages "the individuals who were free of the company chose to pay into the hands of the Directors, receiving credit for the amount on the company's books, and proportional dividends on the profits of the voyage."[469] The final stage of development was hardly reached until after the Revolution of 1688. The greater powers given to the company in the charters of Charles II for the suppression of the traffic of those who engaged in "a loose and general trade" prepared the ground for such an organization as was attained under the charters of William and Mary.[470] For twenty years after the grant of the first charter of Charles II, in 1661, the company enjoyed its monopoly of the East Indian trample with comparatively little interruption.[471] Of course the rivalry of the Portuguese, French and Dutch (and

especially of the latter), the competition of a few interlopers and the drain of the "private trade" of its officers and servants had a hurtful influence on dividends, but such trade as was conducted was under the control of the company and subject to such limitations as they say, fit to impose. By 1682, however, the opposition to the company, which had been increasing, manifested itself in a project for a competing joint-stock company, which for the present was not attained. The opposition is said to have been prompted largely by the old Levant Company, whose traffic in Indian goods by way of the Gulfs of Persia and Arabia and the Mediterranean had been almost superseded by that of the East India Company by sea.[472] Though the opposition held an "open trade" in no more favor than the existing company, they were ready to accept the assistance of the interlopers, private traders and "pirates" (as the company were inclined to class those who traded without their license); in consequence, the number of interlopers increased rapidly. In 1685, the court (body of directors) of the company appear to have resolved to prosecute forty-eight of the principal interlopers in the Court of King's Bench.[473] What was evidently intended as a test case had been brought against one Sandys, wherein it had been decided in January, 1685, "that the Crown had a right to grant exclusive charters, and that such right had been repeatedly acquiesced in by Parliament"; the defendant had sought justification of his independent trade in the plea "that his attempt to trade to India was not contrary to the laws of the realm."[474] After the Revolution of 1688, the political theory that monopolies of trade could be granted only by act of Parliament acquired new force, and the Commons began an active interference in the affairs of the East India Company. A committee of investigation appointed in 1689, having extended hearings to both the company and interlopers or traders desirous of forming rival associations, reported in the following year a resolution

> "that the best way to manage the East India trade is to have it in a new company and a new joint stock and this to be established by act of Parliament, but the present company to continue the trade, exclusive of all others, either interlopers or permission ships, till it be established."[475]

On the failure of legislation by Parliament, the affairs of the company were left to

the king, by whom their chartered rights were confirmed without diminution in 1693.[476] In the same year, however, a new charter was granted, which recognized to some extent the rights of traders outside the old company by allowing them to participate in its business without affording them the opportunity of separate trading, and made the membership of the company more nearly co-terminous with the membership of the groups interested in the adventures. The "general joint stock" was to be increased by.£744,000; subscription books were to be opened to the public; no subscription was to be in excess of £10,000, and if the aggregate subscriptions were in excess of.£744,000, the separate subscriptions were to be decreased *pro rata*.

Each subscriber should have a vote in general court for each £1000 (but no vote for less) up to £10,000 subscribed.[477] Formerly sons (more than twenty-one years old) of members and their apprentices, factors and servants might engage in the trade; now persons formerly eligible to membership were to be admitted gratis to the freedom of the company, if they should subscribe for stock; other subscribers should pay £5 each for admission; the organic difference between a company whose members had the privilege of engaging in a particular business and one whose members were jointly engaged in the business seemed difficult to recognize. The governor and deputy governor were to be qualified for their offices by ownership of £4000 of stock; committees (directors), of £1000 of stock. The charter was to be forfeited if licenses were granted to private traders. All goods imported by the company were to be sold publicly "by inch of candle" in lots of less than £500 in value, except jewels. At least £100,000. worth of goods "of the product and manufacture" of England was to be exported annually. If demanded, the company should sell annually to the government five hundred tons of saltpetre (for gunpowder). The joint stock was to be continued for twenty-one years, during the last year of which books "for the continuance of the joint stock" were to be kept open.[478] In the next year, however, the House of Commons resolved that "it is the right of all Englishmen to trade to the East Indies, or any part of the world, unless prohibited by act of Parliament." It was plain to the East India Company that they must have their powers sanctioned by Parliament or eventually lose them; until it could obtain such sanction it must protect itself by insistence on the validity of its royal charters, by more vigorous prosecution of interlopers and by profuse and extravagant bribery of public officials and members of Parliament.

The struggle of the company for a Parliamentary confirmation of its powers against its opponents, whether favoring the right of private trade or the establishment of a new company, came to a head in 1698. The government being in need of funds to carry on the European war then in progress, the East India Company offered it a loan of £700,000 at interest of four per cent. in return for a confirmation of their charter by Parliament, but their rivals met the offer with one for a loan of £2,000,000 at interest of eight per cent. for a charter granting a monopoly of the trade but allowing the traders to determine for themselves whether it should be by joint stock or otherwise. The result was an act favorable (on its face) to the opponents of the old company. The subscribers to the loan of £2,000,000 were to be incorporated under the name of the "General Society Trading to the East Indies," and each of them was to trade for himself if he desired; if any number of them should wish to trade on a joint stock, they should have a charter permitting them to do so; the capital of all traders was to be equal to their subscriptions to the loan. The great majority were incorporated under the name of the "English Company Trading to the East Indies," with a constitution and powers almost identical with those of the existing company. The old East India Company, however, was not to be undone. By the terms of the statute it still had three years (until 1701) of corporate life, and had provided for its future by subscribing.£315,000 of the loan of £2,000,000. It obtained an act of Parliament (which could hardly be refused) granting it in 1699 a charter to trade by a joint stock (like the English Company) on its subscription of £315,000. When they presented the new charter to King William, he wisely recommended to them a union with the English Company.

The next (and in many respects the last) step was the union of the old or London Company and the new or English Company, or more properly, the absorption of the former by the latter. By an "Indenture Tripartite" between Queen Anne and the two companies, in 1702,[479] it was agreed that the English Company should transfer to the London Company at par enough of its stock of £1,662,000 to make the holdings of the two companies equal, the original stock of £315,000 of the London Company becoming part of that of the English Company. The "dead stock" (forts, buildings, etc.) of the old company was transferred to the new company. The two companies were to maintain separate organizations for seven years, during which period each was to distribute its "quick stock" (trading stock) among its members and do no

business on its separate account. During the same time the business on the joint account of the two companies was to be transacted by the English Company under a board of twenty-four managers, twelve elected by and acting under the orders of the governing body of each company; each company was to furnish one half the stock for the new trade. At the end of seven years the London Company was to distribute its stock among its members, thus making them stockholders in the English Company, and surrender its charters to the crown. The name of the English Company was then to be changed to the "United Company of Merchants of England Trading to the East Indies." By act of Parliament in 1707 it was provided that the subscription to the government loan should be increased from £2,000,000 at eight per cent to £3,000,000 at five per cent,[480] that £1,500,000 might be borrowed or raised by assessment of proprietors (shareholders), and that the amount of stock held by private traders[481] might be redeemed by the company on three years' notice after September, 1711; finally, the terms of the union of 1702 were confirmed.[482]

The constitution of the company during the eighteenth century was fairly simple. The Court of Proprietors (or stockholders) was composed of all holders of at least £500 of stock and elected annually at a General Court, a Governor and Deputy Governor, and a Court of Directors (early called Committees) twenty-four in number and qualified by the ownership of at least £2000 of stock.[483] The Directors elected two of their number Chairman and Deputy Chairman, and distributed the bulk of their business among ten committees. In India the business of the company was managed under the three presidencies of Bengal, Bombay and Madras, each independent of the other and acting directly under instructions from the Court of Directors in England. Each presidency was under the supervision of a Governor (or President) and a Council appointed by the Court of Directors. Under the powers conferred by their charter and supplementary legislation, a mayor's court and court of quarter sessions were established in each presidency, from which the president and council constituted a court of appeal. The presidents were the commanders-in-chief of the military forces of the company in their several jurisdictions.[484]

The success of the company's commercial activity was always necessarily dependent on political conditions. With its body of privileges owing to Royal or Parliamentary grant and likely at almost any time to be taken away if the king or legislature should be persuaded that the trade was "unprofitable for the realm," it had

to protect itself as corporations have usually found it necessary. Again, the relations, whether amicable or hostile, of England to the continental nations of Europe were certain to have an influence on the company's commercial activity in India and the other parts of its territory. Historians of the East India Company have all found it unavoidable to devote many pages to the foreign relations of England in order to make plain the course of events in the company's career in India. The Dutch, Portuguese and French were all interested in the Indian trade, and shared in it in the same general way as the English, through the medium of great commercial corporations. When the relations of England with any of them happened to be unfriendly, as was too often the case in the seventeenth and eighteenth centuries, the trade of the East India Company was exposed to all the dangers of war; even when the European countries were at peace, it was difficult for them to keep their companies in the East from coming into conflict. In India the commerce of the company was more completely dependent on the understandings that might be secured with the native powers. Until near the end of the seventeenth century the political privileges that the company obtained by treaty or otherwise from native princes were held subordinate to the commercial aims of the company; if they were profitable, they were rather indirectly so, because they enabled the company to prosecute their trade more successfully, than directly as a source of revenue. When the power of the Mogul went to pieces just before the end of the century, the company began, largely as a matter of necessity, because the great central power in India had been destroyed, to build itself up as a political power in India. After the beginning of the eighteenth century, when the union of the two companies had been accomplished, it might be assumed that a great increase in Indian trade took place, but such was not the case. During the whole of the eighteenth century the trade was much smaller than would be believed.[485] The truth is that the activity of the company was more largely political, instead of being almost wholly commercial. Alliances with native potentates or rival claimants to Indian thrones were paid for by grants of taxes or customs (which the company always called its revenue, as distinguished from its profits derived from trade) and territorial rights; and these were so closely connected with the administration of the courts that they also passed under the control of the company. The field of peaceful acquisition of political powers was left between 1740 and 1750 for the greater field of war and military conquest.

> "A new scene is now to open in the history of the East India Company. Before this period they had maintained the character of mere traders, and, by humility and submission, endeavored to preserve a footing in that distant country, under the protection or oppression of the native powers. We shall now behold them entering the lists of war, and mixing with eagerness in the contests of the princes."[486]

The servants of the company engaged in private trade at the expense of their master; the internal trade of India had been, theoretically, left largely to the natives, the company concerning itself rather with the import and export trade; the officers and servants now acquired enormous private fortunes from the internal or inland trade and were given great advantages over the native traders by exemptions from customs, duties and taxes obtained by them nominally for the benefit of the company, but really for their own benefit. From the native rulers and rival claimants they exacted immense bribes (commonly called presents) for affording them the aid of the company's military and commercial power. The treatment of the natives by the English was oppressive and tyrannical and occasioned loud and frequent complaints in England. It became constantly clearer that the mission of the East India Company written between the lines of its commercial charters was to build up in India a political dependency of England; the time must have come when such relations could not longer be sustained through the medium of a corporation designed primarily for the field of commerce.

The Crown and Parliament began to assert more vigorously the doctrine that political and territorial rights acquired by Englishmen were the property of the state and not of the company. The double government of Clive did not conceal the fact that the activity of the company in India was a political and military conquest. The English nation became conscious that the sovereign functions and powers delegated by it to the East India Company, if the time was not ripe for their reabsorption into the English state, ought at least to be regulated and controlled by the English government — and more truly so because their exercise had been perverted and prostituted to the enrichment of tyrannical and oppressive subjects. But it was no easy matter for the English government, in the second half of the eighteenth century, to

assume effective control over the East India Company, so powerful and ubiquitous was its influence in Parliament and among the controlling classes of English society. The liquidation of the great expense incurred by the government in assisting the company in its military enterprises in the middle of the century demanded attention so urgently that a committee was appointed by the House of Commons in 1767 to investigate the matter; as the result, the company agreed to pay £400,000 each year for two years, and two years later renewed the agreement for five years. In 1773, however, such were the straits to which the company had been reduced both by the maintenance of its immense political establishment in India and by the peculations and private trade of its officers and servants, that instead of its making the stipulated payments, it had to secure from the government a loan of £1,400,000, and submit to a reduction of dividends to six per cent. until it should be repaid; as an apparently necessary improvement of its administrative machinery in India, the presidencies of Madras and Bombay were subordinated to that of Bengal and Warren Hastings appointed Governor-General, while the mayor's court at Calcutta was replaced by one consisting of a chief justice and three associates to be appointed by the crown. Ten years later, when the company had to apply to the government for another loan of.£900,000, the ministry of Fox and North proposed the replacement of the Court of Directors and Court of Proprietors of the company by a body of seven commissioners; but their proposal failed of acceptance and the ministry fell from power largely because it was considered, whether justly or not, that the vesting of the appointment of the commissioners in Parliament (as was proposed) would unduly exalt the ministry above the crown.

The bill of the Pitt ministry, which became law in 1784, was not so radical in the reforms for which it provided. While the constitution of the East India Company was left nominally intact, a Board of Control consisting of six members of the Privy Council was to be appointed by the crown; the chancellor of the exchequer and one of the principal secretaries of state were always to be two of the six members, and in their absence the senior of the others should preside under the title of the President of the Board of Control. The duty of the Board was "from time to time, to check, superintend and control, all acts, operations and concerns, which in any wise relate to the civil or military government, or revenues, of the territories and possessions of the... United Company in the East Indies." The Court of Directors were, to appoint

a Secret Committee of not more than three members to transmit secret orders of the Board of Control without the knowledge of the other directors. Any act of the Court of Directors that had been approved by the Board of Control might be in no way affected by the Court of Proprietors. The servants of the company, on their return from India, were required to present an inventory of the fortunes that they had brought with them. A new legal tribunal to sit in England was created "for the prosecuting and bringing to speedy and condign punishment British subjects guilty of extortion, and other misdemeanors, while holding offices in the service of the king or company in India."[487]

The passage of the Pitt bill was the beginning of the end. The history of the East India Company during the remainder of the period of its existence was a succession of changes by which the great institution was deprived of the sovereign functions and powers, one after another, that had formerly been delegated to it. When the charter rights of the company were confirmed in 1813, it was provided that after April 10, 1814, the trade between the Cape of Good Hope and the Straits of Magellan, except the tea trade and all trade in China, should be open to all British subjects, though with many restrictions such as the exclusive use in it of the company's vessels; moreover, the exclusive privileges of the company should terminate on three years' notice after April 10, 1831, and on the payment to it of the amount of government loan held by it, — though the company might continue to engage in the trade on an equal basis with other traders.[488] By act of 1823 the trade was made free, except the trade in tea and the other trade with China.[489] The act of 1833 provided that after April 22, 1834, the company should close its commercial business and dispose of all its property that should not be necessary for the government of India; that the British territories in India should remain under the government of the company until April 30, 1834; that such debts of the company as should not be discharged from the proceeds of the sale of its property should be assumed by the English government; that annual dividends of ten and one half per cent. on the capital stock of the company should be paid by the Eng fish government, with the privilege of redemption at the rate of £200 for each £100 of stock after April, 1874, on one year's notice; that the company should pay to the government £2,000,000 to be made the basis of a sinking fund for the payment and redemption of the dividends; that commissioners for the affairs of India should be appointed by the king,

> "to superintend, direct and control all acts, operations and concerns of the... company; that the superintendence, direction and control of the whole civil and military government of all the... territories and revenues in India be vested in a Governor General and Councillors, to be styled 'The Governor General of India in Council,'"

the council to consist of three servants of the company appointed by the Court of Directors and one member (not a servant) appointed by the Court of Directors with the approval of the king, and all vacancies to be filled by the Court of Directors with the approval of the king.[490] By the act of 1858 the territories under the government of the East India Company and all its other property except its capital stock and future dividends were vested in the crown, together with all the governmental powers that had previously been exercised by it. The company and the Court of Directors and Court of Proprietors were to be replaced in the government of India by a Secretary of State for India assisted by a "Council of India," the Board of Control being abolished. The Council of India was to consist of fifteen members, eight appointed by the croon and seven by the company, who were not to sit in Parliament, were to serve during good behavior[491] but were removable on address by both Houses of Parliament; a majority of it were to have served ten years in India and not to have left India more than ten years previously; vacancies in the seats of the eight crown members were to be filled by the crown, in the seven other seats, by the Council itself. "The Council shall, under the direction of the Secretary of State... conduct the business transacted in the United Kingdom in relation to the government of India." The Secretary of State should preside over it, have authority to appoint and remove a vice-president for it and should divide it into [ten] committees. He might, moreover, send secret orders to India, when occasion required, without consulting the Council. Each year he was required to lay before Parliament an account of receipts and expenditures, indebtedness and other matters relating to India.[492] When the English government had finally been substituted for "John Company" in the administration of India, it retained almost intact the political structure that had been erected by the company. A proclamation by Queen Victoria announced the replacement of the company by the English government.[493] The company, however, was not immediately dissolved, but remained in existence for the purpose of

receiving payment of its capital stock and dividends By a later act of Parliament[494] it was provided that dividends should cease from April 30, 1874, and the company was finally dissolved June 1, 1874. Queen Victoria became Empress of India in 1877 by virtue of an act of Parliament of the preceding year.[495]

The most important of the other joint-stock companies, except such as are included in the class of colonial companies, were the African Company, the Hudson's Bay Company and the South Sea Company.[496] Each of them had an extremely interesting history, but in general they differed only in unimportant particulars from the East India Company. A brief consideration of some of their features may be of advantage.

Some latitude is used in speaking of the African Company, for there were four successive companies to which the name was applied, each more distinct from the other in form and composition than the successive East India Companies from one another; the several African Companies superseded their predecessors somewhat arbitrarily; they did not represent a continuous development as did the East India Companies, though it is nevertheless true that they fairly represented the several stages in the same course of development. The Portuguese had been the predecessors of the English in the trade to the west coast of Africa. As early as 1536 a voyage of discovery and trade was made by Englishmen to south Barbary. In 1588 Elizabeth granted a charter for ten years to merchants of Exeter and London for an exclusive trade to the territories tributary to the rivers Senegal and Gambia because "the adventuring of a new trade cannot be a matter of small charge and hazard to the adventurers in the beginning."[497] In 1618 Robert Rich and other merchants of London were granted a charter by James I to trade to the west coast of Africa on a joint stock, but the company suffered so much interference from interlopers that it was soon dissolved. Thirteen years later (in 1631) a similar company, organized by Sir Richard Young and others, and chartered by James I for thirty-one years to enjoy exclusively the trade from Cape Blanco to the Cape of Good Hope,[498] laid a more substantial basis for future commerce by erecting forts, factories (agencies) and warehouses in the territory. It seems to have accomplished very little else, however, for in 1651 a new company was chartered, not so much to engage in the trade as to control it by licensing others to engage in it, charging therefor ten per cent of the cargoes or three pounds per ton on the ships in which they were carried. A third company (if the "discovery" company be omitted) was chartered by Charles II in 1662 with the Duke

of York at its head and containing "many others of rank and distinction," chiefly for the purpose of transporting negro slaves to the English West Indies, which it was obligated to do at the rate of three thousand per annum, The fourth and last African Company, appropriately called the Royal African Company, followed in 1672, and contained among its subscribers of stock the king himself, his brother, the Duke of York, and many others of the nobility. The company paid its predecessor for its three forts and conducted considerable trade until the Revolution of 1688, when the trade became virtually open by reason of the hostility of Parliament to exclusive trading privileges; in 1698, however, it was provided by statute[499] that non-corporate traders should pay to the company a charge of ten per cent of their exports, probably in return for the use of its forts, factories and warehouses. In the early part of the eighteenth century it was continually under discussion in Parliament and by the pamphleteers outside whether the trade of the African Company as well as of the East India Company and others should not be opened freely to all merchants; in 1713 a resolution was passed by the House of Commons that the African trade ought to be free and open on payment by the traders of duties for the support of the forts and settlements. From 1730 to 1746 the company was reduced to such financial straits that Parliament granted it annually £10,000 (except in 1744, when the grant was £20,000) for the support of its forts and factories, while the trade was made free to all. In 1750 a unique settlement of the trade was made by Parliament. It was to be free and open to all English subjects. The Royal African Company was to be abolished as soon as its debts should be paid, and all merchants trading between Cape Blanco and the Cape of Good Hope were to be incorporated as the "Company of Merchants Trading to Africa," and to be made owners of all the forts, factories, settlements, coasts, islands, rivers and other property then claimed by the existing company. The new company should have no power to trade in its corporate capacity, to have a joint or transferable stock or to borrow money. All traders were to be admitted on payment of forty shillings and were to enjoy the use of all forts and other property for the storage of goods and protection of persons. The government was to be reposed in a committee of nine members elected annually, three each by the traders admitted to membership at London, Bristol and Liverpool; members of the committee and officers and servants of the company were to be removable for misbehavior by the Board of Trade and Plantations. The committee should pay the salaries of employees

and other expenses and retain the balance of the company's revenue for their own compensation, making annual reports to Parliament of all receipts and expenditures.[500] Two years later the old company was paid for its property and the new company was empowered to train soldiers at its forts, to visit offenses with punishments not extending to life or limb, and to maintain courts of judicature for mercantile and maritime cases.[501] Early in the reign of George III the fort of Senegal, with its dependencies, was vested in the crown,[502] and later re-vested in the company.[503] In the latter part of the century annual grants were made to the company for the support of its forts and other establishments; in 1795, £20,000 was allowed to it; as late as 1800, £20,000 was granted "for the forts on the coast of Africa." Finally, in 1821, it was enacted by Parliament that after the third of July of that year the company should cease and determine and should be divested of all the forts, castles, buildings, possessions and rights previously owned or acquired. All the forts between 20° north latitude and 20° south latitude were made dependent on the colony of Sierra Leone.[504]

Of the Hudson's Bay Companies, the "Governor and Company of Adventurers of England Trading into Hudson's Bay," less is to be said. As Prince Rupert and seventeen others, "persons of quality and distinction," had "at their own great cost, undertaken an expedition for Hudson's Bay, in order for the discovery of a new passage into the South Sea and for the finding of some trade for furs [etc.]," Charles II granted to them in 1670 a charter of incorporation conceding to them the exclusive commerce of all the bodies and streams of water within Hudson Strait, with all the land tributary to them and not already possessed by other English subjects or those of any other Christian prince or state. The company, as formally organized, might fall into the class of regulated exclusive companies, but it was always virtually a joint-stock company. A governor and "committee" of seven members (directors) were to be elected annually by the proprietors (stockholders); a deputy governor was also to be elected from among the committee. The governor and any three committeemen

> "shall have the direction of the voyages, and the provision of the merchandise and shipping, and of the sales of the returns, as likewise of all other business of the company; and they shall take the usual

> oath of fidelity, as shall also all persons admitted to trade as a freeman of the company."

They were given power, of course, to make by-laws for the government of their forts, plantations and for the regulation of their factors and other servants and to impose fines for their violation; to send out ships of war and erect forts and towns, to make peace and war with princes or peoples not Christians, to make reprisals on others who should interrupt them in the pursuit of their trade or otherwise wrong them, and to seize and send to England for trial all English subjects who should sail into Hudson's Bay without their license. It was a somewhat unusual provision that their land should be reckoned and reputed as one of the plantations or colonies of England in America and "be called 'Rupert's Land.'"[505]Prince Rupert was the first governor of the company. In 1690 it obtained from Parliament a confirmation of its charter, but for the limited period of eight years. In 1821 it was given, in conjunction with certain private fur-traders, a license for an exclusive trade during twenty-one years in what was called the Indian Territory of the British Possessions in North America; it soon secured an assignment of the interests of the private merchants and accordingly enjoyed the trade exclusively. The additional grant was renewed for a second term of twenty-one years in 1839; in 1848 Vancouver's Island was also added to the company's domain, but with the reservation that bodies of English colonists should be permitted to make settlements in it. In 1857 the affairs of the company were fully investigated by a Special Committee of the House of Commons, chiefly at the suggestion of the Canadian government. But it was not until 1868 that an act was passed by Parliament permitting the crown to accept a surrender of the company's grant of privileges on terms to be agreed on[506] By 1870 the negotiations were completed: the company was still to trade in its corporate capacity, to be paid £300,000 by the Canadian government for its franchise, to retain the ownership of all its posts and stations with a block of land at each of them, and to have a twentieth section of the "fertile belt"; titles to lands previously conveyed by the company were confirmed.[507]

The South Sea Company, the "Governor and Company of Merchants of Great Britain Trading to the South Seas and other parts of America, and for Encouraging the Fishery," was peculiar in several respects. It was the first of the great stock

companies for foreign trade (except colonial companies) that had not had a previous development in the form of a regulated or regulated-exclusive company; it was a complete joint-stock company from the time of its original incorporation in 1711. Certain debts that had accumulated during the European war, amounting to £9,471,325, were unpaid; their holders were incorporated as the South Sea Company by the crown in accordance with an act of Parliament,[508] their debt made to bear interest at the rate of six per cent. (£568,279. 10s. annually) and made redeemable on one year's notice after Christmas, 1716; for the payment of the interest (the surplus to be applied on the principal) certain duties, originally imposed temporarily, were made permanent until the debt should be repaid. Its government was vested in a governor and court of directors, but none of them during their terms of service might occupy a corresponding office in the Bank of England or East India Company. Their exclusive territory extended on the eastern side of South America from the Orinoco River on the north to Terra del Fuego on the south, and on the west side of the continent from Terra del Fuego to the "northernmost part of America," including all the territory within the limits described which should be reputed to belong to the crown of Spain, or which should be afterwards discovered within the limits or not more than three hundred leagues distant from the west side of the continent; the exclusive trade was not to extend to the territories of Holland, or to Brazil or other territories of Portugal; to the Portuguese territories all English subjects might trade freely. Trade, moreover, was not to be carried on by the company within the limits of the East India Company's grant; even sailing more than three hundred leagues west of the continent should be punished by forfeiture of goods, one third to the crown and two thirds to the East India Company. All the company's trading to the South Sea (Pacific Ocean) should be by way of the Straits of Magellan or Terra del Fuego and by no other route. One per cent of their capital stock might be employed in the fisheries, but not to the exclusion of other subjects. The penalty imposed on interlopers was unusually severe — forfeiture of ships and merchandise and double their value, one fourth to the crown, one fourth to the informer and one-half to the company. As usually, the power was given to establish courts of judicature in their forts, factories and settlements, to determine mercantile and maritime causes subject to an appeal to the queen in council and to raise and maintain a military force. In the following year the commercial privileges of the company were made perpetual and

not subject to termination by the repayment of its public debt.[509] By the treaty of 1713 with Spain, the so-called "assients contract" for the transportation of negro slaves to the Spanish colonies, at the rate of 4800 annually for thirty years, was granted to England "or to the company of [English] subjects appointed for the purpose, as well the subjects of Spain as all others being excluded"; the privilege of sending annually one ship of five hundred tons burden to the Spanish West Indies, laden with European goods, was also granted.[510] The contract had until that time been held by a French company (and even earlier by the Portuguese), but by the Treaty of Ghent its transfer to English subjects was agreed to. The queen immediately assigned the contract to the South Sea Company. In the first year of the reign of George I the company's capital (the amount of public debt held by it) was increased to £10,000,000, on which, two years later, the interest was reduced from six to five per cent; it was later increased to £33,000,000 at five per cent (reduced to four per cent. after 1727). The effort to incorporate the entire funded national debt into its capital resulted in the disastrous "South Sea Bubble" of 1720. The foreign commerce of the company was of minor importance; the assients contract was rather a burden than a source of profit, and the sending of the annual ship was hedged about with so many conditions and restrictions that it proved a disappointment; the fishery voyages, to the slight extent that they were engaged in, brought only losses to the company. In 1750,[511] when, by the Treaty of Madrid, England released to Spain the"assients of negroes and annual ship," on consideration of the payment of £100,000, the commerce of

the company practically ceased; the consideration paid by Spain was passed over to the company. The trade to no part of its exclusive territory was legally opened to English subjects, however, until 1807,[512] though an extensive commerce was carried on clandestinely. In 1815 it was deprived of the remainder of its exclusive privileges, though it was still permitted to trade on an equality with others; as compensation it was provided that the proceeds from certain customs and tonnage duties imposed on the trade from what had previously been the exclusive territory of the company, and known as "the South Sea duties," should be put into a guarantee fund until it amounted to £610,464, and should then be paid over to the company, while in the meantime the government should guarantee an annual dividend of one half of one per cent. on the company's trading stock.[513]

John P. Davis, *Corporations*, 318

The most important feature of the development of the East India Company was its contribution to the extra-national expansion of England. Remarkable as the extreme powers given to the company may appear, it is difficult to understand how they could have been less under the circumstances by which its activity was conditioned. The English state was not sufficiently developed to provide the conditions under which the trade in India might be carried on; it had in consequence to give the traders themselves the power to modify their conditions or create new ones. If even in times of peace among European nations, amicable relations could not be maintained between their bodies of traders, how could security of property and trade be provided among peoples with whom the Europeans enjoyed no settled international relations? The East India Company is the best illustration of the part performed by a corporation in national expansion, because its development was so evenly graduated. Great political powers were bestowed on it originally for the purpose of promoting the economic welfare of the English people and of swelling the revenues of the crown. It can hardly be said that any other purpose was entertained at the end of the sixteenth century. The building up of a political power in India by the company was only indirectly involved at first. The tendency to the increased restriction of corporate activity to the work of government observed in other kinds of corporations manifested itself in the history of the Ec st India Company in the gradual encroachment on the field of the political government in India, while its commerce either failed to increase or fell into the hands of officers and servants. The accumulation of political powers, at first a secondary aim, became eventually a primary aim, while the commerce for the protection of which it had originally been sought was subordinated to it in importance. So true was it and so clearly did the English government see the truth that for the last twenty years of the corporation's existence its commercial functions had been taken from it and it had been left as the government of India. The inevitable expansion of nationality enabled the English state to extend itself over the political field occupied by the corporation, first indirectly through an intermediate supervisory body and then directly by supplanting it. From being the commercial territory of the corporation, India became a province of England. Even the forms of the corporate political machinery were preserved; the only essential difference was that the national hand replaced the corporate hand at the lever.

Without entering into a discussion of the theoretical justice of the monopoly granted to the East India Company, or of the extent to which it was the result of an artificial element in the cupidity either of the sovereign or the East India traders, it is significant that it existed and continued to exist even in the face of vigorous and aggressive opposition. Until the end of the eighteenth century it was hardly a question whether individual traders might engage in the trade; the real question was whether the company should be a regulated company under which the activity of individual and associated traders should be correlated, or a joint-stock company under which their activity should be unified. It must be remembered that at the beginning the East India Company was (with some qualifications) "regulated" and that it became a purely joint-stock company only after a century's development. The change was so slow and yet so persistently in the same direction that it cannot be safely ascribed entirely to arbitrary personal influences. The corporations of the Middle Ages did not express the idea of combined but of correlated activity, not of association of effort but of harmony of individual effort. The former in each case is the idea expressed by the state in action; the latter, the result of the activity of the state on the subject. It was the growth of the political side of the East India Company that gradually caused the elimination of the regulated feature and made its restoration impossible until the English government itself stepped into the place formerly occupied by the company. The question might possibly be approached from the opposite direction. The individual trader was confessedly unable to engage in the trade, unless he might stealthily profit by the system of protection set up at great labor and expense by the company to whose support he did not contribute. The single vessel could not serve as the unit of transportation; the trade had to be carried on by fleets of merchant vessels — vessels larger than had ever before been known in England — accompanied by the necessary war vessels; moreover, the voyages were long and the risk great. The larger the unit of activity, whether imposed by physical conditions or by others, the greater the need of association. It was not correlation of activity that traders needed; it was association of activity. From both points of view, then, from that of the corporate group exercising political power and from that of the individual acting under the limitations of his environment, the evolution of a joint-stock company with a monopoly of trade from a regulated company open to all who wished to be admitted was quite in harmony with the conditions under which the East India

Company flourished. It might be contended that the monopoly was maintained longer than accorded with necessity or justice. Corporations, like all forms of social organization, acquire a momentum; if more force is required to set them in motion, more force is also required to stop them. In the presence of the traditional conservatism of English society, it is perhaps more remarkable that the East India Company was subjected to governmental control so early than that its monopoly was maintained so long.

Likewise the African Company and Hudson's Bay Company, though they did not positively lay a foundation for colonial governments, at least accumulated a body of political and territorial powers that were afterwards incorporated in colonial governments independently established. In preventing the subjects of other nations from gaining a foothold in their territories they performed a service for the mother country that may, with little exaggeration of its importance, serve as a justification for the extravagantly generous treatment that they enjoyed. The South Sea Company, however, performed no such service; substantially the only parts of their commercial powers that they exercised were those secured to them under the treaties with Spain, which did not involve the exploitation of new and unsettled territory; the powers that they did not use, though granted to them, might have resulted in a later extension of English dominion.

The African, Hudson's Bay and South Sea Companies were all representative of what has already been described as a secondary stage in the development of corporations. The East India Company filled a nearly legitimate field; the organization seemed to be demanded by the conditions under which the company had to act. But the three other companies do not appear so clearly to have grown out of the conditions of their activity; they were rather imposed on their fields of commerce than evolved from contact with their conditions. The circumstances of the foreign trade on the west coast of Africa and in the territory tributary to Hudson's Bay did not contain so much of the political element as to fully justify the presence of a concentrated organization like that of the East India Company. The career of the African Company clearly showed that it was not in harmony with its environment, and its supervision by a modified regulated company was hardly avoidable. The South Sea Company was clearly anomalous, from the standpoint of its commercial life. In a less formal classification it is doubtful whether it ought not to be classed

rather with the Bank of England than with the East India Company. It was primarily a body of holders of the national debt and the grant of its commercial privileges was in the nature of a premium on the debt held by it. Its character as a trading company was always insignificant when compared with the other companies or with itself as a lender of funds to the state. Though none of the great companies used the powers granted to them to their limit, the South Sea Company fell much farther short of the limit than any of the others. The corporate organization was hardly called for; the truth seems to be that the success of other great commercial companies had given a fictitious value to corporate privileges and had made it possible to "strengthen the credit" of the state by offering to its creditors the imposing structure of a great corporation with exclusive control of a trade that had outgrown the stage in which exclusiveness was either appropriate or possible. The South Sea Company was peculiar among the corporations of its class in having as a large part of its commercial territory the dominions of another Christian state; other things equal, that alone would indicate an abnormal development of structure; companies in such trade, where indeed they had existed in it at all, had developed but little above the grade of purely regulated companies.

The lands in which the joint-stock companies traded were not occupied by peoples recognized by the English or other western Europeans as being on the same level of civilization with them. The natives of India, and in a greater degree the negroes of Africa and the savage Indians of North and South America, were viewed by the Europeans as inferiors, to be subjected to control rather than to be dealt with. In general, no system of international relations existed between them and England; such political relations as were required had to be created by the English traders themselves. The facilities of commerce were wanting in the strange lands; their peoples had not engaged in international commerce, and even their internal trade had been rudimentary and unsystematic; such property as wharves and commercial settlements, which in commerce between European nations were provided by the state or by subjects of the state in which the commerce was carried on, was wanting and had to be supplied by the companies. Again the lands were far from England, and trading voyages to and from them were attended with the greatest risk of attack by pirates, shipwreck and destruction by savages; larger investments of capital were necessary, and the danger of losing it was greater. If the establishment of trade in

Russia and Turkey by adventurers involved effort which, when expressed in property in the trade, tended to exclude others from it and to concentrate its management in the hands of a few, how much stronger must the twofold tendency have been in the trade of India, Africa and North and South America, which had to be absolutely created; the former trade had been l:nown to exist in other hands or to be accessible; the latter did not exist and was not known to be possible until the trading companies demonstrated the truth by creating the commerce.

XII. Colonial Companies.

The expansion of England and of other nations of western Europe after the middle of the sixteenth century was promoted not only by establishing commercial relations with peoples of settled foreign lands, but also even more effectually by the colonization of new lands, previously unsettled or peopled only by savages, which the several nations claimed by virtue of prior discovery. Colonization was merely one of the agencies through which the general movement sought expression. There was one important element in colonization, however, that was not present in the establishment of mere commercial relations with foreign peoples. Wherever an English colony was planted, there was a body of English subjects to be governed. The English trade with other nations of western Europe and even with Russia and the Levant involved most prominently the establishment of international relations, whether directly through the national governments or indirectly through the medium of commercial corporations; the trade with India and Africa was to involve rather the absorption of the governments of the foreign peoples; but the colonial trade involved an extension of the national government of England over bodies of its own subjects. The colonial commerce did not consist merely in exchanging English products for the goods produced by foreigners through their development of the natural resources of their land, but much more largely in the primary production of goods by direct development of natural resources; the purpose had to be accomplished by actually settling the land with English colonists. Moreover, the tracts of land colonized were manifestly part of the domain of England and not of foreigners. The presence of bodies of English subjects on English domain as an essential factor in colonization is suggested at the outset because it had great influence on the social structure through which the colonies were planted and fostered. The government of England, largely because of its actual impotence, did not plant the English colonies directly, at least not those that were afterwards a part of the United States, but made use of the corporate system for the purpose, — it aimed to secure the development of colonies, a public purpose, through the stimulation of private interest by grants of political and

commercial privileges.

The necessity of providing governments for bodies of English subjects on geographical areas of English domain, and concurrently of establishing and regulating their economic relations with one another and with the merchants of England, caused a resort to two classes of institutions, as the one purpose or the other was magnified in importance; the two classes of agencies were accordingly the colonial proprietary, whose rights and duties were based on those of the older English nobility, and the colonial corporations, derived from the institutions in which the powers of regulation over English trade and industry were reposed; in a single colony, Georgia, the corporation was formed on the model of the English charitable corporation of the eighteenth century. Neither class of institutions conformed strictly to their model, and as both were engaged side by side in the same work, each was affected by the other in form and development.

By a charter of James I in 1606, the territory of "Virginia" between the parallels of 34° and 45° north latitude was divided for purposes of trade and colonization between two companies, the London Company and the Plymouth Company, the former to plant a colony at any place between the parallels of 34° and 41°, and the latter at any place between those of 38° and 45°, neither, however, to make a plantation within one hundred miles of one already made by the other. The colony of the London Company was to be called the "First Colony" and that of the Plymouth Company the "Second Colony."[514] Each company was to consist of certain "knights, gentlemen, merchants and other adventurers" named in the charter, together with such others as they should elect to be joined with them. Each colony should be governed by a resident council of thirteen members "in all matters and causes which shall arise, grow, or happen to or within the same... according to such laws, ordinances and instructions as shall be in that behalf" given by the king. Moreover, the members of the council should be "ordained, made and removed... according as shall be directed and comprised in the same instructions." In addition to the resident councils there was to be a "Council of Virginia" in England, consisting of thirteen[515] members appointed by the king, for "the superior managing and direction,... of and for all matters that shall or may concern the government, as well of the said several colonies as of and for any other part or place, within the... precincts of 34° and 45°."

The king was to grant land to any person recommended by the council of the colony

on its petition. Wherever a plantation should be made by either company it should have all the land extending directly inland one hundred miles from a coast-line fifty miles on each side of the plantation or settlement, and all the islands within one hundred miles of the coast and directly opposite the one hundred miles of coast-line. Each company might fortify its settlements in the discretion of its resident council, and resist or repel by military power, both on land and by sea, all who without its license should attempt to live in them or molest them in any way, and to seize all who should essay to traffic with them without having paid a duty of two and one half per cent. upon the goods "trafficked, bought or sold," if English subjects, or of five per cent if foreigners; for twenty-one years such customs duties should be for the use of the companies, afterwards, of the king. They had license to take out English subjects as colonists, and all such persons and their children born in the colonies should "have all liberties, franchises, and immunities, within any of [the king's] other dominions, to all intents and purposes, as if they had been abiding and born" in them. They might also transport goods and munitions from England to their colonies without paying customs on them for a term of seven years, "for the better relief of the several colonies and plantations." The companies and their servants and colonists should not "rob or spoil" the subjects of other nations. They were permitted "to dig, mine and search for all manner of mines of gold, silver and copper... and to have and enjoy" them upon yielding to the king one fifth of the gold and silver and one fifteenth of the copper. "For the more ease of traffic and bargaining," they might establish and put into circulation among the colonists a coin "of such metal, and in such manner and form," as their councils should determine.[516]

By virtue of the powers granted by the first charter, a substantial beginning was made in the colonization of Virginia. In 1607 Jamestown was founded and governed by a council as contemplated by the provisions of the charter. But it must soon have become plain to the adventurers of the London Company that the organization of the two companies under the Council of Virginia with its members, as well as those of the resident councils, appointed by the king, was lacking in the concentration of powers necessary to success. The intention of the king, in settling the terms of the charter, must have been to separate the political and commercial powers reserving the former for himself and bestowing the latter on the companies. The royal purpose appears from the character of the seals provided for the councils of the companies;

each should have the king's arms on one side and his image on the other; on one side of each of them should be the words, "Sigillum Regis Magnae Britanniae, Franciae, et Hiberniae"; on the other side of that of the "Council of Virginia," the words, "Pro Concilio suo Virginiae"; of those of the resident councils the words, "Pro Concilio primae (secundae) Colonize Virginia." An amendatory charter was accordingly asked for and granted.

By the charter of 1609 the request of the London Company was recited

> "that such councillors and other officers may be appointed amongst them, to manage and direct their affairs, as are willing and ready to adventure with them, as also whose dwellings are not so far remote from the City of London, but they may, at convenient times, be ready at hand to give their advice and assistance upon all occasions requisite."

The "Council of Virginia" had evidently been intended to represent rather the interests of the king than those of the company. It was accordingly remodelled to a council of about fifty members elected by the company annually from their own number, though the first members were named in the charter. The company should now be called the "Treasurer and Company of Adventurers and Planters of London for the First Colony of Virginia," and consist of all who should "adventure any sum of money in or towards the... plantation of the... colony in Virginia and shall be admitted by the council and company, as adventurers of the colony [and so] enrolled in the books or records"; the treasurer and any three of the council should have power to admit new members; any member might be discharged and disfranchised by a majority vote of the company in a general assembly. The treasurer should "give order for the warning of the council and summoning of the company" to their courts or meetings, and should appoint a deputy treasurer from the members of the council. The council should appoint all officers, and make all laws for the government of the colonies and the regulation of the voyages to and from it. The president and council in the colony, previously appointed by the king, were abolished. The treasurer and all other officers were to govern according to the laws enacted by the council; in the colony, in cases of necessity and lack of legislation by the council, the governor and

his officers should exercise their own discretion. In the company's colonial courts justice should be administered as well "in cases capital and criminal, as civil, both marine and other; so always as the... statutes, ordinances and proceedings as near as conveniently may be, be agreeable to the laws, statutes, government and policy of... England." In cases of mutiny or rebellion martial law might be enforced.[517]

The territory of the company was to be limited to a coast-line two hundred miles north and an equal distance south of Cape Comfort, to extend "up into the land throughout from sea to sea, west and northwest," and to include all the islands in each ocean within one hundred miles of the coast. Goods were still to be exported to and imported from the colonies upon the payment of merely nominal duties for seven years, and to be re-exported from England without additional duties, if within thirteen months of importation.

A third charter, granted by James I in 1612, conceded chiefly more particular powers for the government of the company. The treasurer and company might hold a court once a week or oftener, at their pleasure, "for the better order and government of the said plantation, and such things as shall concern the same"; any five members of the council, including the treasurer or his deputy, with fifteen of the"generality" of the company, should constitute a sufficient court for the disposition of all "casual and particular occurrences and accidental matters, of less consequence and weight... concerning the said plantation"; for

> "matters and affairs of greater weight and importance, and such as shall... concern the weal public and general good of the said company and plantation, as namely, the manner of government... to be used, the ordering and disposing of the lands and possessions, and the settling and establishing of a trade there, or such like,"

four "great and general courts" should be held each year. In the quarterly courts members of the council and officers should be chosen, laws and ordinances should be passed, new members should be admitted and members who refused to "adventure" in furtherance of the plantation should be expelled. The territory of the company was made to include all islands within three hundred leagues of its coast-line.[518] Incidentally, "for the more effectual advancing of the said plantation,"

the company was empowered to "set forth, erect and publish" lotteries.[519]

In its relations to the crown the company had established its substantial independence. The importance of its history after its third charter was granted lies in its political relations to the colonists, but before considering them it will be best to consider the economic relations that had been developed. By the "Articles, Instructions and Orders" composed by James I. it was provided that for five years the companies (the London and Plymouth or"first" and "second" colonies) should

> "trade together in one stock, or in two or three stocks at most, and should bring all the fruits of their labors there, with all their goods and commodities from England or elsewhere, into several magazines or storehouses, for that purpose to be erected [and] there should be annually chosen by the [resident] President and Council of each colony... one person of their colony, to be Treasurer or Cape-Merchant of the same, to take charge of, and to manage, all goods and wares, brought into or delivered out of, the said magazines ";

two clerks should also be appointed, one to enter all the goods coming into the magazine and the other to enter all going out of it.

> "Every person of each of the colonies should be furnished with necessaries out of the said magazines for the space of five years, by the appointment, direction and order of the President and Council of their respective colonies, or of the Cape-Merchant and two clerks, or the major part of them."

Similarly, in England, each company should appoint subordinate bodies of at least three members each, to remain in London and Plymouth respectively, and to

> "take care and charge of the trade, and an account of all the goods, wares and merchandise that should be sent from England to their respective colonies and brought from the colonies into England, and

> of all other things relating to the affairs and profits of their several companies "[520]

After the second charter was granted in 1609, the plan contemplated in 1606 was modified somewhat. For seven years a joint stock was to be maintained of which each share should be £12 12s. The investors were of two classes, the adventurers, who paid their subscriptions in money, and the planters, who went to the colonies and paid no money. One share was given to each adult and child over ten years of age who should go to Virginia; "everie extraordinarie man," such as a knight, gentleman or physician, should be given additional shares, in the discretion of the company. At the end of the term of seven years all the profits as well as the land should be distributed among the shareholders according to their holdings.[521] In 1619 it appeared that land had been distributed among many of the colonists in severally, and that a tract had been appropriated by the company in its corporate capacity. A fund subscribed in England for the founding of a college in Virginia in which "infidels' children" might be educated was administered by the company; a tract of ten thousand acres at Henrico was granted in aid of the project and tenants placed on it by the company to cultivate it "on halves," the profits to be applied in furtherance of the college project. Some lands were leased by the company to tenants who should pay a definite rent in produce. All persons who should settle in Virginia at their own expense should have a grant of fifty acres and fifty acres in addition for each person taken with them. Boys and girls were sent out to serve an apprenticeship of seven years in the colony; at the end of the apprenticeship they were each to have from the company a year's provision of grain and other supplies, a cow, forty shillings"for apparel," weapons, household utensils and agricultural implements. "Maids" were sent at the company's expense to become wives of the planters, who should reimburse the company for the expense incurred. A body of sixteen committees (directors), presided over by the deputy governor and known as the court of committees, was "to perform the orders of courts, for setting out ships and buying provisions for Virginia," and to manage the sale of goods brought to England in return. After the termination of the joint stock subsisting in 1619 the trade was to be free and open to all British subjects, on payment of the small duties prescribed by the charters. In future joint stocks for magazines the company should "bear part as an

adventurer; they shall ratably partake like profit, and undergo like loss, with other adventurers."[522] Only two features of the industrial development of the colony of Virginia under the London Company seem to be worthy of mention, but both of them serve to differentiate the company from others. (1) The economic as distinguished from the political affairs of the company passed under the control of a separate administrative body, the court of committees; that did not happen in any other of the great corporations (except colonial companies) because their work of government was not so much more important than their commerce. (2) The membership of the London Company expanded to include not only the purely investing element in England, but also the producing element in the colony, apparently for two reasons: (a) The colonists were British subjects and consequently in closer sympathy with the English investors, while the producers with whom other companies dealt were foreigners and many of them on a lower social level, and (b) the company did not trade with the colonists so much as it shared with them in production; its profits depended not on buying and selling what the colonists produced, but in enabling them to produce and then sharing the resulting gains; there was consequently an identity of interest between the producer and investor that did not exist in the purely commercial companies. In the nature of things the shareholders in the colonies could not participate in the deliberations of the company in England, though by the company's charter they had the right to do it. The expansion of membership laid a basis for demanding participation in the deliberations of the governor and council resident in Virginia.

The economic relations of the company and colonists could have hardly failed to be reflected in the wider and inclusive political relations, but they are hardly sufficient to account for the political institutions that were created by the company in Virginia. It can hardly be doubted that an enlightened desire on the part of the company to make an application of the political theories cherished by its members united with the demands of economic conditions prevailing in Virginia to influence them in the concession of modified popular government. More or less harshness characterized the contact of the colonists with the company's governor in Virginia, perhaps not so much because they were not represented in his government as because they were actually ill-governed. The appointment of a resident council for him, however, seemed to afford no relief. Samuel Argall, sent out by the company as

governor in 1617, was so tyrannical in his government that he had to be recalled on account of the opposition aroused in the colonists. His successor, George Yeardly, came in 1619 with "commissions and instructions from the company for the better establishing of a commonwealth," by virtue of which it was ordered that an annual assembly should be held in the colony, to be attended by the governor and his council and two burgesses elected from each plantation by its inhabitants; in such an assembly such laws should be made as to the entire body should seem best for the common good of the colony. The first assembly — the first representative legislature in America — was held in 1619 in the church at Jamestown, and was attended by Governor Yeardly and his council, and twenty-two burgesses representing eleven localities; all took part in the proceedings in the same room.

In 1621 the company at a general court took more for mat action by an "Ordinance and Constitution" for the government of Virginia.

> "The intent is 'by the divine assistance to settle such a form of government as may be to the greatest benefit and comfort of the people, and whereby all injustice, grievances and oppression may be prevented and kept off as much as possible from the said colony.' The governor is to have a council to assist him in the administration. He and the council, together with the burgesses chosen, two from each town, hundred and plantation, by the inhabitants, are to constitute a general assembly, who are to meet yearly, and decide all matters coming before them by the greatest number of voices; but the governor is to have a negative voice. No law of the assembly is to be or continue in force unless it is ratified by a general court, and returned to them under the company's seal. But when the government of the colony is once 'well framed and settled accordingly... no orders of court afterwards shall bind the said colony unless they be ratified in like manner in the general assemblies.'"[523]

Such grants of free and popular government, conceded by a company under the control of members of the liberal party in England, could not be suffered by a Stuart; James, therefore, consistently secured the dissolution of the corporation by

proceedings in *quo warranto* in 1624. He thereupon began the formulation under his own hand of a new code of laws for Virginia, but died before his world could be completed. Though Virginia became a royal colony Charles I was in too much trouble with his subjects in England to interfere with the rights of self-government formerly conceded to the colonists by the London Company; the only material change in the government of the colony consisted in the substitution of a royal governor and council for the earlier governor and council appointed by the company; in Cromwell's time, even the right of electing the governor and council was transferred to the colonists.

The Plymouth Company, which had been included with the London Company in the charter of 1606, was not so enterprising as its companion company. Its attempt to plant a colony at the mouth of the Kennebec in 1607–1608 ended in failure, and it appears to have later confined its interest in the colonization of North Virginia (called New England after Captain John Smith so named it in 1614) largely to granting to others licenses to trade, or to plant colonies on tracts of land granted to them. In 1620,

> "for their better encouragement and satisfaction.... and that they may avoid all confusion, questions and differences between themselves, and those of the... first colony," James I. was "pleased to make certain adventurers, intending to erect and establish fishery, trade and plantation, within the territories, precincts and limits of the said second colony... one several, distinct and entire body."

The territory was now to extend from sea to sea between the parallels of 40° and 48° north latitude so that it would not overlap that of the London Company. But the Plymouth Company, as reorganized under its new charter, was somewhat different from the London Company in its constitution.

The name should now be "The Council established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of New England, in America" — a name conveniently abbreviated to "The Council for New England" in common usage. The body was limited in number to forty members, who held their membership for life and were succeeded by members chosen by co-optation; the

members of the first council were named in the charter. A president should be chosen for a term limited by the council. All the corporate powers, such as the creation of offices and the appointment of officers, and the making of laws and ordinances, were reposed in the council. In other respects the company was very similar to the London Company. Its laws and ordinances were to be enforced by a variety of punishments; in cases of rebellion, insurrection and meeting, its governor might enforce martial law. It might mine the precious metals, yielding one fifth of the gold and silver to the crown. Customs duties should not be levied for seven years and goods might be re-exported from England without payment of duties within thirteen months of importation. Land might be conveyed to planters and colonies might be protected by the use of military power. No other subjects were to engage in trade in the company's territory without its permission, and the crown should not grant trading licenses without its consent. Neither the company nor its officers or colonists should "rob or spoil" aliens or others. The colonists should have all the rights of British subjects. Persons who should neglect to go to the colonies after having agreed to go, or having gone, should be seditious or return to England by stealth, or circulate ill reports of the company, and be impudent and contumacious when examined by the council as to their conduct,[524] might be bound with sureties for their good behavior, or sent back to the colony to be proceeded against and punished by the governor in his discretion or according to existing ordinances.[525]

The purpose of the Plymouth Company was not so much to colonize New England directly as to permit others to do it through grants of its lands. In the granting of lands and trading privileges it was more than liberal, often making grants with slight regard to other grants previously made. In 1621, it made a grant to the Puritans and the London adventurers who were interested with them in their colony of the Plymouth settlement; they had previously obtained a license to make a plantation from the London Company, but by error or deception had been landed outside of the company's territory. Likewise, Robert Gorges tried unsuccessfully to utilize a grant from the company by founding a colony in 1623 on Massachusetts Bay; his representatives were more fortunate in making settlements in the same year on the sites of modern Boston, Chelsea and Charlestown. Wallaston made a short-lived settlement on the site of modern Quincy in 1625. Sanctioned by the company, a fishing settlement was established as Gloucester in 1623 by merchants of Dorchester

in England, which was soon, however, removed to Salem, and was later aided in its development by English Puritans. The most important enterprise was inaugurated by a grant of land in 1628 to a body of adventurers afterwards incorporated as the Massachusetts Bay Company. In 1635 the Council for New England surrendered its charter to the king with the significant stipulation that the land held by it as a corporation should be distributed among its members.

The London and Plymouth companies appear to have developed in opposite directions, the former expanding its commercial and the latter its political side. What constituted the governing body of the former was what was incorporated in the latter. Even in matters of government the council of the London Company had been unable to maintain itself and the charter of 1612 had made the council merely a part of the real governing body, all proceedings being participated in by the "generality," but in the Plymouth Company what was virtually the generality was excluded from the corporation by the charter of 1620. The organic development of each was quite in harmony with its purposes; the London Company had as its aim the settlement of a colony and the establishment of commerce with and through it; it accordingly included in its membership all who should actually"adventure," and excluded all who should refuse to do so; on the contrary, the Plymouth Company aimed rather to let others settle the colonies and establish the commerce by virtue of its grants, while it should rely on its revenue from the land for its profits and should undertake the general supervision of the colony, especially on its political side. Much of the difference must have been due to the difference in character of membership. The London Company was composed largely of London merchants and men of eastern England, who infused into the work of the corporation the spirit derived from the commercial life with which they came in close contact; in political life they were largely liberals and opposed to the tyrannical methods of the Stuarts; the Plymouth Company, however, was composed more largely of landowners and gentlemen of the west of England, and contained much less of the mercantile element; they were more conservative in their ideas, and viewed the work of the colonization of America in the light in which a landlord might have been expected to view an agricultural enterprise, with the owner of the soil governing the body of tenants and deriving from his ownership a return that he did not primarily aid to produce.

In 1628 Sir Henry Rosewell and others secured from the Plymouth Company (or

Council for New England) a grant of the land from sea to sea between a point three miles north of the Merrimac River and another three miles south of the Charles River. In the year following the grant was confirmed by Charles I, and Rosewell and his associates incorporated as the "Governor and Company of the Massachusetts Bay in New England." A governor and deputy governor and eighteen assistants (the first ones being named in the charter) were to be periodically elected from the freemen of the company, and were to meet once a month or oftener (at least seven assistants and the governor or deputy governor attending) in court or assembly "for the better ordering and directing of their affairs." Four "great and general courts," to be attended by the governor or his deputy, at least six assistants and the freemen, were to be held each year for the admission of new freemen, the constitution of offices, the election of officers (by a majority vote of those present) and the enactment of laws and ordinances not repugnant to the laws of England; the general court at which officers were chosen was called (though not in the charter) the "Court of Elections." The company had most of the powers, exemptions and disabilities characteristic of colonial companies, — to transport colonists and goods from England, to retain English citizenship for the colonists, to be free of customs duties for seven years, to make and enforce laws on its members and colonists, to expel intruders by force of arms, to refrain from "robbing and spoiling" other subjects and friendly aliens, and to permit other English subjects to fish in the waters adjacent to their land and use the land on the shores as much as should be incidentally necessary.[526]

The economic relations of the company to its colonists were remarkably similar to those of the London Company to its Virginia colonists after 1609 (the date of the second charter). The stage of semi-communal industry passed through by Virginia under the charter of 1606 appears to have been wanting in the experience of Massachusetts Bay. The distinction between adventurers and planters was maintained but not reflected in the organization of the company. Mere adventurers (investors) should be granted two hundred acres of land for each subscription of £50 to the company's enterprise; such as settled in the colony should have fifty acres for themselves and fifty acres for each person that they should take to the colony with them. If the settlers should be of superior social "quality," they should receive such additional allotments of land as should seem to the governor and council to be just. Special grants were made to a few persons by way of reward for services rendered

or influence exerted. A tract of land was also set aside by the company for cultivation by it in its corporate capacity through servants and employees. But the system was not so fully developed in Massachusettts as in Virginia; the company soon transferred its land to the separate towns of the colony. Likewise the management of the company's joint stock and "magazine" was delegated to a subsidiary board of "undertakers," but early dwindled to a matter of slight importance, and private trade supplanted trade by the corporation. In fact, the Massachusetts Bay project was so predominantly political in character that its economic organization had almost no influence on its execution. When the election of colonists to the freedom of the company came to be passed on in Icy, there was no mention of their economic relations to it as a qualification; the test imposed was the broader one of general social fitness, though it was narrowed somewhat by reduction to membership in colonial churches.

The significant development was in the political rotations of the company to its colonists. From the beginning the company was more closely identified in interest with its colonists than the London or Plymouth Companies had been. Behind the movement was the same desire of the Puritans to escape religious oppression in England that had justified the foundation of the New Plymouth settlement; it was shared alike by the incorporators and the colonists sent out by them. Moreover, the purely commercial purposes of the company were less prominent than they had been in the preceding companies; while the membership of the London Company had been restricted to "adventurers," that of the present company contained many statesmen, clergymen and scholars. Even before the charter had been granted, a body of colonists had already been sent to join those at Salem who had originally settled at Gloucester. As soon as the charter had been granted, the company removed its "domicile" to New England, many of its members themselves becoming residents of the new colony; whether the removal was technically legal or illegal, it made possible organic changes within the corporation that in preceding colonial companies had taken place outside of them. As early as 1630 the freemen had become so numerous that, divided as they were among several towns, they were unable to make their influence felt in the government of the company; the election of the governor and deputy governor and the enactment of laws consequently fell into the hands of the body of assistants; in the next year it was provided that the assistants should retain

their offices until deprived of them by vote of the freemen. The concentration of powers was, up to that point, quite similar to the movement in the English gilds that developed into the London Livery companies; in fact, the constitution of the Massachusetts Bay Company needed but little further modification to attain the model furnished by the London companies. But the activity of the colonial company came too often in contact with that of its colonists for the establishment of an oligarchical court of assistants. Accordingly when the freemen of Watertown were assessed £60 as a contribution to the expense of colonial fortifications at Cambridge, the assessment encountered the objection that the freemen were being "taxed without representation." At a later general court it was provided that the freemen should participate in the proceedings of the company through representatives, two to be chosen by each town to sit with the governor and assistants in deliberation on the affairs of the colony; even the election of the governor and deputy governor was reposed in the representatives after having been for a time exercised by the freemen according to the orginal provisions of the charter. In 1644 a question of jurisdiction in the celebrated "pig case" occasioned a disagreement between the assistants and representatives that caused them thereafter to hold separate sessions. The government of the colony had assumed a form that it maintained until the charter of 1691 was granted.

Within five years after the granting of the corporate charter in 1628 it was a just ground of complaint in England that a separate and independent state and church were being established in Massachusetts. An oath of allegiance was exacted of prospective colonists and a royal commission was sent to New England in 1634 for the general purpose of re-introducing harmony between the colonists and the home government, with the power to use the extreme remedy of revoking colonial charters. In the following year, on writ of quo warrants, the charter of the "Governor and Company of the Massachusetts Bay in New England" was annulled, though the home government was unable to execute the decree.

Until after the Restoration, Massachusetts was allowed to go its own way with little interference from England. The framework of the corporation had become the political constitution of a colony. In 1664 four royal commissioners were sent out to restore the colonists of New England to their allegiance to the English crown, and to reduce the independence to which they had attained, whether under corporate charters

or under governments originated and fostered by them in the absence of supervision or regulation by the English government, — an independence that had been greatly strengthened by confederation of the several colonies. The commissioners, having accomplished nothing, returned to England. In 1684, another writ of *quo warranto* was followed by a decree in the high court of chancery in England annulling the charter of the company, that had become an English colony. New England was now to be governed by James II, if possible, through a royal governor and council, whose jurisdiction was expanded in 1688 to include the colonies as far southward as Delaware Bay. With the Revolution in England Governor Andros and his council were driven out of office and the colonial charters restored.

The Massachusetts Bay Company had ceased to exist and its direct work in the establishment of the colony had been done. The charter of 1691 must be considered not because it is a part of the history of the company, but because it is evidence of the enduring effects of corporate activity on the constitution of the political communities of New England. By the charter of William and Mary the colonies of Massachusetts Bay and New Plymouth, the province of Maine, the territory of Acadia or Nova Scotia and between it and Maine were united under the name of the "Province of the Massachusetts Bay in New England." A governor, deputy governor and secretary were to be appointed by the crown, and twenty-eight assistants or councillors to "advise and assist" the governor were to "keep a council from time to time" with him when summoned to do so. A general court or assembly was to be held each year, consisting of the governor and his council and two deputies elected by the inhabitants of each town to represent them, the number to which each "county, town and place" should be entitled being left to future regulation by the general court. The governor was given power to adjourn, prorogue and dissolve the general court. The councillors were to be chosen each year by the general court, eighteen being allotted to Massachusetts Bay, four to New Plymouth, three to Maine and one to the territory between Maine and Nova Scotia,[527] and they should be removable by the general court. The governor, with the advice and consent of the council, was to appoint all judges, sheriffs and other officers. Wills were to be probated by the governor and council. Judicial courts for hearing causes of all kinds were to be established by the general court, but an appeal to the king in council should be permitted in all controversies involving an amount in excess of £300. The governor and general court

should make all laws and enforce them by fines, mulcts and imprisonments, and should have power to levy taxes. The governor should have a veto on all acts of the general court, and no act should be valid without his approval. All laws enacted should be referred to the king in council, by whom they might be annulled within three years. Lands should be granted by the governor and general assembly. The governor, for the protection of the province, should have power to raise, train and instruct the provincial militia, undertake military expeditions and enforce martial law in time of war. The right of English subjects to fish in provincial waters should not be abridged.[528] The election of a speaker of the house of representatives had not been provided for in the charter of 1691; it was accordingly granted by George I, in 1726, that he should be elected by the general court and approved by the governor; if a vacancy should occur in the office or if a candidate elected by the general court should be disapproved, the vacancy should be filled by the same procedure. It was also provided that the general court might adjourn from day to day or for two days, but not for a longer time without the consent of the governor.[529]

By the charter of 1691, and the charter of 1726 in amendment of it, the governmental structure of Massachusetts Bay as a colony, rapidly evolved by it from the structure conceded to the Massachusetts Bay Company as a corporation, was merely perpetuated. The governorship was somewhat exalted in the provincial government, as is likely to happen when the state essays to absorb the results of independent corporate activity, but the other branches of the government suffered little modification; the council and house of representatives, by far the more important parts of the provincial constitution, remained substantially what they were after the colonial company had adjusted its structure to the colonial environment with which it came in contact, and had expanded until it was virtually identical with the colony.

The two charters of Connecticut. and Rhode Island granted by Charles II, the former in 1662 and the latter in 1663, would in a classification of the charters of colonies, companies and provinces stand midway between the charter of the Massachusetts Bay Company and that of the Province of Massachusetts Bay. They represent with a fair degree of fidelity the colonial constitution of Massachusetts after it had been transformed from a colonial company into a politically organized colony and before it had been restored to organic subordination to the English crown as a

province. The earlier constitutions of both colonies had been such as they had independently devised for themselves, though of course they had been affected by the prior experience of their framers in other colonies and by their knowledge of the constitutions concurrently in force in neighboring communities.

The "Governor and Company of the English Colony of Connecticut in New England, in America" was to consist of John Winthrop and eighteen others named in the charter, together with such others as should be "admitted and made free of the company and society." A governor (and deputy governor), twelve assistants and a representative body of two deputies from each "place, town, or city," elected by their freemen, should constitute the government and should hold a "general court" twice a year or oftener. The governor as well as the assistants was to be elected from the freemen, and might summon them at will "to consult and advise of the business and affairs" of the company. At the general courts laws should be enacted and freemen admitted; at one of them the officers should be elected. Colonists might freely be transported to the colony, should take the oath of supremacy and obedience and (with their children) should have all the liberties and immunities of natural British subjects. Goods, merchandise "and other things... useful or necessary for the inhabitants of the colony" might without restriction be exported thither. Courts of justice might be established by the general courts for the enforcement of laws by proper penalties and executions. Military power might be employed for the protection of the colony and martial law might be exercised when occasion should require. Rights of fishing of English subjects should be respected. The territory of the company should extend to the South Sea (Pacific Ocean) on the west.[530] In 1643 the Governor-in-chief and Commissioners of Plantations had granted to the inhabitants of the towns of Providence, Portsmouth and Newport,

> "a free and absolute charter... to be known by the name of the Incorporation of Providence Plantations, in the Narragansett Bay, in New England... with full power and authority to rule themselves by such a form of civil government, as by voluntary consent of all, or the greater part of them, they shall find most suitable to their estate and condition "

and to make and execute laws accordingly.[531] When later a charter was granted by Charles II, in 1663, it differed from that of Connecticut, of the preceding year, only in details. The name given was the "Governor and Company of the English Colony of Rhode Island and Providence Plantations, in New England, in America." The assistants were only ten in number. The deputies were not equally apportioned to the several towns, but Newport should have six; Providence, Portsmouth and Warwick, each four; and each other town two. The colonists should not make war on the Indians within the limits of other colonies without the knowledge and consent of the others, nor should the other colonies molest the Indians within the Rhode Island colony without the knowledge and consent of its governor and company. In matters of controversy between the colony and others in New England, it might appeal for redress directly to the king. The inhabitants of the colony, it seemed necessary to concede, might

> "without let or molestation, pass and repass with freedom, into and through the rest of the English colonies, upon their lawful and civil occasions, and converse, and hold commerce and trade, with such of the inhabitants of other English colonies as shall be willing to admit them "hereunto, 'they behaving themselves peaceably among them.'"[532]

The political organization contained in both the Connecticut and Rhode Island charters was a developed form and underwent no serious modification until the charters were superseded by state constitution, in Connecticut, in 1818, and in Rhode Island, in 1842. So clearly was the charter organization recognized as a fit structure for the government of the commonwealth that when the formation of state constitutions was recommended by the Colonial Congress in 1776, it was merely enacted in Connecticut

> "that the ancient form of Civil Government, contained in the Charter from Charles the Second, King of England, and adopted by the People of this State, shall be and remain the Civil Constitution of this State, under the sole authority of the People thereof, independent of any

King or Prince whatever."[533]

All the charters of colonial companies heretofore considered were granted between 1606 and 1663 and followed quite closely the model of the foreign commercial company. The charter of the "Trustees for establishing the colony of Georgia in America" was not granted until 1732, and approached most nearly the type of the prevailing English charitable corporation. The primary motive for granting the charter appears in the recital

> "that many... poor subjects are, through misfortunes and want of employment, reduced to great necessity, insomuch as by their labor they are not able to provide a maintenance for themselves and families; and if they had means to defray their charges of passage, and other expenses, incident to new settlements, they would be glad to settle in provinces in America, where by cultivating the lands, at present waste and desolate, they might not only gain a comfortable subsistence for themselves and families, but also strengthen [the] colonies and increase the trade, navigation and wealth of [Great Britain]."

A subsidiary motive was the protection of the Carolina colonies against the Spanish and Indians on the exposed southwestern border. The corporation erected to receive, manage and dispose of contributions made by philanthropic persons was to consist of Lord Percival, James Oglethorpe and eighteen others, and such others as they should afterwards elect at annual meetings. The government was vested in a president and common council of fifteen, later to be increased to twenty-four members, elected by the corporation at annual meetings and serving during good behavior. The common council should have a chairman enjoying both an original and casting vote, and its members were to serve in rotation as chairman and president without salary. No member of the corporation should have a position of profit under it; all officers were eligible and removable by the common council, but the governor was to be approved by the crown. Annual reports of receipts and expenditures should be submitted to treasury officers of the crown, and of all " leases, grants, conveyances,

settlements and improvements," to the auditor of plantations. The corporation had power to make by-laws for its own government and ordinances for the government of the colony, not repugnant to the laws of England, and to enforce them by reasonable pains and penalties; but laws for the control of the colonists revere to the approval of the king in council. Power was given to take out settlers as colonists and the necessary military and other supplies; the rights of British subjects were preserved for the colonists and their children. For twenty-one years the power of establishing courts "for the hearing and determining all manner of crimes, offenses, causes and things whatsoever " should be exercised. The territory granted should extend from the Savannah to the Altamaha River and westward within the meridians of their sources to the Pacific Ocean, and should include unsettled islands within twenty leagues of its Atlantic coastline. Land might be granted to colonists, but not more than five hundred acres to each one, and none to members of the corporation; after the expiration of ten years from the date of each grant the crown should receive annually four shillings for each hundred acres granted. A militia might be formed and trained and military expeditions engaged in. Georgia should be a separate province and subject to the laws of no other colony, except that its militia should be subject to the command and direction of the governor and commander-in-chief of South Carolina. At the end of a term of twenty-one years "such form of government and method of making laws... for the better governing and ordering of the said province of Georgia... shall be established... as [the crown] shall hereafter ordain," and the governor and all other officers, civil and military, should be appointed by the crown.[534] After having met with only moderate success in the establishment of a colony, the corporation surrendered its charter in rem, and its government was replaced by that of a royal province.

The purposes of the state in granting to colonial corporations charters conceding to them for their exercise such extensive powers over persons and property may be said to have been five in number, though some of them are manifestly comprehended, partly or wholly, in the others. The purposes were as follows: (1) The colonization of new lands; (2) The establishment and extension of commerce; (3) The extension of the dominion of the English crown; (4) The propagation of Christianity and (5) the relief of distressed classes of British subjects. Such purposes were shared by the companies and colonists themselves, but one other purpose frequently executed by

them was of course not endorsed by the state, (6) the escape from political and religious oppression in England.

(1) Colonization is for the greater part inspired by purposes comprehended under succeeding heads, but there is still a broad field within which it may be viewed as an end distinct in itself. It was an extreme form of the efforts of the sixteenth and seventeenth centuries to realize what is vaguely described as the "world idea," the knowledge of new worlds and the desire to exploit them. Much of the world's colonization has doubtless been promoted not by rational plans to better the social conditions of colonists but by the mere indefinite desire for change and movement, — by the stimulated consciousness of individuality and an impulse to nourish it by contact with new environment, so characteristic of the period of the Reformation. The first step in the process, the discovery of new lands, was certainly not always taken with the expectation of eventually deriving an economic, religious or political advantage from it; it was prompted most by the mere spirit of adventure. The spirit of colonization was appreciated in England as keenly by the king as by any subject; it never lacked royal encouragement. But the state as organized was unable to comprehend the movement; like new movements in other and even narrower fields of social life, it was conceded a social structure, which, while not truly a part of the state, yet derived its strength and vigor from it. The general work of colonization, especially in the presence of a government so lacking in harmony with the political conditions surrounding it as was that of the Stuarts, was especially appropriate for corporations.

(2) The strongest particular motive for the formation of colonial companies was doubtless the economic purpose of establishing and extending English commerce. The crown found in it a larger source of revenue by reason of the increase of exports and imports and a larger body of national wealth to be taxed. Besides, from the exaggerated reports of the deposits of the precious metals, the royal reservation of a percentage of the gold and silver mined was expected to result in a direct income for the crown. The reservation in the Massachusetts charter of 1691 of all trees in the province more than twenty-four inches in diameter for masts for the royal navy, and the exaction of four shillings per hundred acres on land granted to Georgia colonists are indicative of the royal view of the colonies as a source of supplying royal needs.[535] The success of other "adventurers" in Russia, Turkey, Africa and India had

encouraged the investors of capital in American voyages to hope for similar success. In the Virginia charter, the general purpose of colonization appears to have been even subordinated to the commercial purpose; the settlements were intended to some extent as establishments for trading with the nations; further than that the organization of the early colonies on the basis of communal holding of land was intended to facilitate the absorption by the adventurers of the economic results of the project. Even when the extension of commerce was not the primary purpose of establishing a colony, it was permitted to serve incidentally as a basis for securing the pecuniary assistance indispensable to the success of the colony. In a few cases, as in those of Connecticut and Rhode Island, the grant of powers appears to have been regarded not so much as an incentive to future economic activity as a reward for past exertions. The crown was more than willing to grant such comprehensive powers to corporations that, by their exercise of them in pursuit of private gain, the royal exchequer might incidentally be benefited.

(3) "The enlargement of our own dominions" was one of the agreeable results of colonization contemplated by the crown. One reason assigned by Charles II for granting to John Winthrop and his associates the charter of Connecticut was that the territory "or the greatest part thereof, was purchased and obtained for great and valuable considerations, and some other part thereof gained by conquest, and with much difficulty, and at the only endeavors, expense and charge of them [was] subdued and improved, and thereby became a considerable enlargement and addition of our dominions and interest there." National pride, or personal royal pride, or whatever it may be called, that, without the added hope of economic gain or other material advantage, has provided a motive for most of the world's conquests, had its influence on the development of the American colonies. In order that the new world might be settled by colonists who should carry with them their allegiance to the English crown, their settlements were encouraged, not directly, but indirectly through its delegating to bodies of subjects such powers, political, economic, military and other, as should be necessary for the success of the enterprises. On the other hand, the adventurers and colonists, to the extent that they were actuated by the same sentiment, needed only opportunity to indulge it. Extension of dominion was a public purpose; it was accomplished to some extent through colonial corporations by affording to the subject through them an opportunity for an expression of his personal

love of king and country. The purpose of acquiring new dominion was sometimes thinly veiled in the charters under the ostensibly philanthropic purpose of reducing the savages in the new land to "civil government" and thereby laying "a sure foundation of happiness to all America." The frequent reservation of the appointment of colonial officers, the supervision of corporate action and the approval of corporate laws, as well as the requirement of oaths of supremacy and allegiance, and the guarantee to the colonists and their descendants of the rights of British citizenship, is evidence that the crown aimed to make the extension of dominion not merely apparent.

(4) No purpose is more uniformly mentioned in the charters than the conversion of savages to Christianity. The design in granting the Connecticut charter was to have the

> "people inhabitants there,... so religiously, peaceably and civilly governed, as their good life and orderly conversation may win and invite the natives of the country to the knowledge and obedience of the only true God and Savior of mankind, and the Christian faith; which in our royal intentions, and the adventurers' free profession is the only and principal end of this plantation "[536]

The Massachusetts charter of 1620 contains evidence that the purely pious purpose was sometimes confused with others more worldly, and that the attainment of it was not without serious limitations:

> "For that... within these late years there hath by God's visitation reigned a wonderful plague, together with many horrible slaughters and murders, committed amongst the savages and brutish people there... in a manner to the utter destruction, devastation and depopulation of that whole territory, so that there is not left for many leagues together... any that do claim or challenge any kind of interests therein nor any other superior lord or sovereign to make claim thereto, whereby we in our judgment are persuaded and satisfied that the appointed time is come in which Almighty God, in His great

> goodness and bounty towards us and our people, bath thought fit and determined that those large and goodly territories, deserted as it were by their natural inhabitants, should be possessed and enjoyed by such of our subjects and people as... shall by His mercy and favor and by His powerful arm, be directed and conducted thither. In contemplation and serious consideration whereof, we have thought it fit, according to our kingly duty, so much as in us lieth, to second and follow God's sacred will, rendering reverend thanks to His Divine Majesty for His glorious favor in laying open and revealing the same unto us before any other Christian prince or state, by which means without offense, and as we trust, to His glory, we may with boldness go on to the settling of so hopeful a work, which tendeth to the reducing and conversion of such savages as remain wandering in desolation and distress, to civil society and Christian religion, to the enlargement of our own dominions, and the advancement of the fortunes of such of our good subjects as shall willingly interest themselves in the said employment to whom we cannot but give singular commendations for their so worthy intention and enterprise."

To whatever extent the propagation of Christianity might be furthered it was legitimately incidental to the work of colonization and afforded a sufficient basis for grants of corporate powers.

(5) The relief of distressed classes of British subjects was the special purpose of creating one colonial corporation and must have been implied to some extent in the general purpose of colonization furthered by the creation of all the others. To whatever degree colonization may be accounted for on more general grounds, it must undoubtedly be attributed largely to the desire of the colonists to better their economic conditions. All colonial corporations, and particularly the Georgia corporation, would therefore find justification for their existence in the same social principles on which eleemosynary corporations in general are based. The colonial company was the medium through which the public purpose of disposing of surplus population or distressed classes was accomplished by giving vent to private interest, whether in the form of cupidity or philanthropy.

(6) To escape from political and religious oppression by England could hardly be recognized by the crown as a valid motive in subjects for seeking a body of corporate privileges. It was accordingly not mentioned in the charters; but it was nevertheless present in most cases, however carefully it might be concealed. The outcome of colonial and provincial history in the separation of the American colonies from England is emphatic evidence of the extent to which the hidden purpose was aided in its attainment by the granting of corporate powers for other purposes. The social structure of corporations, like most other legally sanctioned social structures, may more or less easily be diverted from the purposes for which the state intended it, to be used for others detrimental to the state or, in extreme cases, actually subversive of it.

At first sight the colonial proprietaries appear to have differed very little from the colonial corporations. The charters by which the powers and duties of both were defined bear a strong resemblance to each other. The purposes of granting them to the proprietaries were to enable the grantees to colonize the new land, "to enlarge our English empire, and promote such useful commodities as may be of benefit to us and our Dominions, as also to reduce the savage Natives by gentle and just manners to the love of civil society and Christian religion.'"[537] Behind the expressed grounds for seeking the charters, the latent purpose of escaping and assisting others to escape unjust or distressing conditions in England, whether political, religious or economic, actuated many of the proprietors. In all cases but one the territory to be owned and controlled was definitely limited and constituted a separate province; in the exceptional case of Raleigh, whose charter was the earliest granted,[538] the patentee was permitted "to discover, search, find out and view such remote, heathen and barbarous lands, countries and territories, not actually possessed by any Christian prince, and not inhabited by Christian people, as to him shall seem good," and "to have, hold, occupy and enjoy" them with all incidental rights and privileges; but he was conceded power to expel from the land only such persons as without his license should inhabit within two hundred leagues of places at which settlements should be established before the end of six years. In no other charters, save that of the London and Plymouth Companies, in 1606, was the control of the land dependent on actual occupancy of it, except in so far as a charter was on general principles forfeitable for nonuser in cases of absolute failure to plant colonies.

In order to enable and encourage the proprietaries to accomplish the purposes for which their charters were granted, they were empowered, like the corporations, to take out colonists and goods, to erect fortifications and otherwise use military power in the defence of their colonies by the expulsion of intruders, the resistance of attacks and the pursuit of enemies and pirates, and to enforce martial law in cases of rebellion, sedition and mutiny. The colonists and their children were to retain their rights as British subjects and not to be absolved from their correlative allegiance to the English crown. The proprietaries and their heirs and assigns had full power to "correct, punish, pardon, govern and rule " the colonists according to such laws as should seem to them to be necessary, "whether relating to the public state of the province or the private utility of individuals," with the uniform condition that they should be "consonant to reason," and not repugnant but as nearly agreeable as possible to the laws and customs of England, — and to enforce them by fines, imprisonment and other penalties. By the terms of most of the charters, notably of those of Lord Baltimore and William Penn, the laws should be made "of and with the advice, assent and approbation of the freemen of the.. . province,... or of their delegates or deputies.. called together for the framing of laws" by the proprietaries; in cases of emergencies, not provided for by regularly enacted laws, the proprietaries or their representatives might use their own discretion, as conceded in the charter of Charles I to Sir Ferdinando Gorges (1639), but such laws might not extend to persons' "lives, members, freeholds, goods or chattels." Moreover, the colonial laws were frequently made "subordinate and subject to the power and 'reglement'" of the Lords and Commissioners of Plantations, or made approvable or voidable within a limited time by the king in council, "if inconsistent with [his] sovereignty or lawful prerogative... or contrary to the faith and allegiance due [him]" or otherwise objectionable.

Incidentally "cities, boroughs and towns" might be incorporated, "markets, marts and fairs " be established, ports designated and the provinces divided into "towns, hundreds, counties" and manors by the proprietaries. Likewise churches and chapels might be founded and all ecclesiastical control exercised over them, and over the colonists in reference to them, except in so far as special privileges should be conceded to them by the charters. The proprietaries had power "to confer marks of favor, rewards and honors, on such subjects... as shall be well deserving, and to adorn

them with titles and dignities (but so that they be not such as are now used in England)." Offices might be created and all officers appointed. Courts might be erected for the hearing of all manner of causes, civil, criminal, ecclesiastical and marine — even courts feet and courts baron, — and view of frankpledge might be held; but appeals were usually permitted to the proprietary, or to his governor or other representative, or even in cases of importance to the king in council. Licenses to trade were issuable by the proprietary, but a percentage of the gold and silver mined and of the profits of the pearl fishery were reserved by the crown, and other British subjects should not be excluded from the fisheries. Ordinarily the power of taxation was not reserved by the king; in the Maryland and Pennsylvania charters it was expressly waived, unless (in the latter) "with the consent of the proprietary or chief governor and assembly, or by act of Parliament in England." The proprietaries might convey lands to settlers and lay customs and duties for their own use. "Spoiling and robbing" other subjects and friendly aliens were prohibited on pain of outlawry if speedy compensation should not be made for the damage caused.

Thus the proprietaries were quite identical with the colonial corporations in the purposes for which unusual powers were conferred on them by the English crown, and very similar in the variety and scope of powers conferred, as far as they affected their external relations, either to the crown or to the colonists. But there was one important difference between them. The corporations had forms of organic social structure conceded to them by their charters that the proprietaries, even when more than one in number, did not possess. The relations of the members of the corporations to each other were definitely ascertained and enforced through the medium of a form of government within them; it was possible for political constitutions of colonies to be developed from them without destroying the continuity of the infra-corporate relations. The proprietaries were merely individuals. When there was only one proprietary, any development of political institutions in his colony had to come from actual delegation of his powers. Even when a plural number of proprietaries were united, as under the Carolina charter, no organization of membership was provided that could form the basis of colonial institutions; they were merely joint proprietaries, limited in number. Again, in the corporations even when their constitutions could not be converted into constitutions for their colonies, and the organization of the colonists had to be by the delegation of powers, the

structure of the corporation might serve as a model for the constitution of the colony. In the proprietaries, however, if political institutions had to be provided for the colonists, there was present no constitution to serve as a model, a model would have to be sought elsewhere.

The proprietary colony was based on the English lordship or county palatine; the colonial company on the English foreign trading company. The former seemed to derive most of their powers and duties from the ownership of the soil; the latter, from the terms of its charter. The inference is unavoidable that it was the presence of the land settled by a body of English subjects that caused the growth of the double system. The great foreign trading companies owned a commerce and controlled only their members and servants; the feudal English lordship would have been an unsuitable structure for them; they assumed the form derived through the London companies from the older gilds. When the newly discovered land in America was to be settled as English domain, with English subjects, largely through the use of commercial gain as an incentive, it is not surprising that confusion in the social form of the colonizing agents resulted, with the English lordship and the English commercial company side by side, each, however, having some characteristics borrowed from the other. The difference in type of the proprietary is accountable for many minor variations in the bodies of powers granted in the charters. Though the corporations were to be the lords and proprietors of the soil, their provinces were not called seigniories, as was Penn's province of Pennsylvania. The power to incorporate cities, boroughs and towns, to establish manors and manorial courts, to bestow titles and dignities and to hold view of frankpledge were not given to the corporations, though they were given to proprietaries; such powers, in their historical development, seemed to be quite inseparable from the older feudal conception of government based on the ownership of the soil, and accordingly incompatible with the activity of corporations.

The political or governmental powers bestowed on the corporations and proprietaries, it need hardly be added, were incidental and subsidiary to the other powers to be exercised by them. Such of them as related to the internal organization of the corporations themselves were of course involved in their very nature as organizations of corporate groups of persons; some of them, if not expressed, would have been implied in the legal creation of the corporations. It was provided in the

Connecticut charter of tam, and in charters of other colonies, that laws should be enacted and executed "according to the course of other corporations within... England." The powers to be used for the control of other English subjects (not colonists) may be viewed in the same light, though they were largely negative, and not positive in operation, rather preventing others from acting than compelling them to act or imposing conditions under which they should act. The restriction of the field of colonial activity to the grantees of charters was intended not so much to afford a reward for their doing or aiding the work of colonization as to supply a necessary condition under which it might be done; they were doing work of which the major part was the legitimate work of the state and subject to all of the limitations to which the activity of the state is subject; their several fields of activity had to be exclusive. The body of powers to be used for the government of the colonists owed their delegation to the inability of the state to exercise them. Political organization of population was necessary in the American colonies, — perhaps more necessary there than elsewhere, — and if not exercised by the state, had to be exercised by some subordinate agency.

> "Forasmuch as upon the finding out, discovering or inhabiting of such remote lands, countries and territories... it shall be necessary for the safety of all men, that shall adventure themselves in those journeys or voyages, to live together in Christian peace, and civil quietness each with the other, whereby every one may with more pleasure and profit enjoy that whereunto they shall attain with great pain and peril."

was the reason assigned by Elizabeth for granting to Raleigh the absolute power of governing the members of his prospective colony in Virginia. The grounds for the original bestowal of liberal powers were equally strong for a liberal legal interpretation of them; "these our letters patent," was the universal promise,

> "shall be firm, good and effectual in the law, to all intents, constructions and purposes whatsoever, according to our true intent and meaning herein before declared, as shall be construed, reputed, and adjudged most favorable on the behalf, and for the best benefit

and behoof of the... . governor and company."

By far the most important feature of the development of the colonial companies was their influence on the political institutions of the colonies. The opposition caused by the tyrannical government of Argall in Virginia had for its first result the appointment by the company of a council for him. When that seemed to be insufficient and nothing short of participation by the colonists in the government of their affairs promised permanent relief, the liberal members in control of the company conceded to the colonists under Governor Yeardly the power of forming through their deputies and together with the governor and his council a colonial legislature. The political organization of the colony became thereby a reproduction of that of the company itself, except as to two features: (a) the independence of the governor and council as related to the burgesses and electorate was due to their representing the interests of the company rather than those of the colonists; (b) the principle of representation applied in the election of burgesses was an improvement on the direct participation by members of the company in the consideration of its affairs. The Plymouth Company suffered a reverse development, not only conceding no political institutions to the colonists of New England, but itself shrinking into a mere organization of its own governing body and leaving contact with colonists to persons not included in its membership. Even such members of the Council for New England as engaged in colonizing projects did so not in the capacity of members or representatives of the company, but in that of its grantees. The development of political institutions in New England must consequently be sought, not in the relations of the Plymouth Company or Council for New England to the colonists, but in those of their grantees to them. The Massachusetts Bay Company, incorporated after it had received a grant from the Council for New England, represented an advance beyond the position of the London Company in that it did not delegate a political organization to its colony but became actually identical with it through the admission of colonists to its membership as freemen. The constitution of the company became the constitution of the colony, with its governor, elected by the freemen and advised by the assistants, responsible for the execution of the laws, and the deputies and assistants or councillors, likewise elected, responsible for legislation. The third step was taken when by the Connecticut and Rhode Island

charters the colonies were given colonial constitutions under the guise of semi-commercial corporations, with governments similar to that of Massachusetts Bay; but the two charters were less in creation of new constitutions than in confirmation of older ones which had developed in imitation of those of Massachusetts Bay and New Plymouth. The Georgia Company was somewhat anomalous in the colonization of America. Its centre of force was not so much in its colonists in America as in the philanthropists in England that supplied it with resources; its content was not so much colonization as the administration of charity funds; it was quite independent, as far as its corporate life was concerned, of the social activity of the colonists; consequently it neither generated a colonial constitution nor permitted its own constitution to become one. The colonial constitutions developed in Virginia and Massachusetts on the form of the commercial corporations contained the following elements: (a) The executive was a governor, either appointed by the company or elected by the colony, who was advised and assisted by a council, likewise either appointed or elected; (b) the supreme judiciary of the colony consisted of the governor and council; (c) the legislature consisted of the council and a representative body of deputies elected by the local divisions of the colony, at first deliberating in joint session but later separately, the governor having either a veto, or a casting vote in the sessions of the council.

The colonial constitutions of Virginia and Massachusetts Bay served as models for the other colonies. When settlements were made in New Hampshire, Rhode Island or Connecticut, in the north, or in Maryland or the Carolinas in the south, to a large extent by emigrants from the two older colonies, the demands for local representative institutions were met by the concession or assumption of forms of government similar to the two models. By the time when the middle colonies passed under English control, the southern colonies (except Georgia) had all conformed to the model of Virginia, and the New England colonies to that of Massachusetts. When William Penn gave form to the representation of the colonists of Pennsylvania and Delaware, as provided in his charter, the system developed in Virginia and Maryland was substantially reproduced. Even the Duke of York authorized the governor to call an assembly in New York in 1682 for the enactment of laws, which in the following year provided for a government like that of the New England colonies in response to a popular petition. In New Jersey a similar system was conceded before the colony

was divided into East Jersey and West Jersey, prevailed in the separate parts and was finally perpetuated when the parts were reunited in bloc. The only material modification of the system in its developed form was found in Pennsylvania and Delaware, where the legislative body consisted of the popular representatives alone to the exclusion of the council. The prevalence of the system based on the earlier colonial corporations of Virginia and Massachusetts is perhaps the more remarkable when it is considered that all the other colonies south of New England, excepting Georgia, were proprietary colonies. The failure of Locke's "Fundamental Constitutions" in the Carolinas and of Gorges' earlier but similar scheme in Maine showed that it was impossible to successfully follow the feudal type of organization farther than it had been followed in the creation of the proprietaries.

It has been suggested that corporations have usually, in history, served as temporary social structures until the activity organized within them might be absorbed by the state or co-ordinated with other activity exercised under the state. The process of absorption in the case of colonial corporations and proprietaries is represented, though imperfectly, in their replacement by provincial governments. When the process began, it was soon found that the forms of government established in the colonies under the liberal powers of the royal charters had acquired so great fixity and stability and were so nearly in harmony with the conditions of colonial society that they could not be changed. All that the crown could do in most of the colonies was to assume the appointment of the governor and council, leaving the body of popular representatives intact. Speaking broadly, the colonies had become states whose sovereignty and independence were limited only by the appointment of some of their constitutional bodies by a superior state. In Connecticut and Rhode Island, even the governor and council were elected by the colonists. In Massachusetts, the governor alone was appointed by the crown. In Pennsylvania, Delaware and Maryland the governor and council continued to be appointed by the proprietary. In the remaining colonies, both the governor and council were appointed by the crown. England, as politically organized, could do no more; later efforts to make its sovereignty over the American colonies real and effective resulted in their revolt and eventual independence not only of England but also of such proprietaries as still retained their powers. "The colonies formed by the Europeans in America are under a kind of dependence, of which there is scarcely an instance in all the colonies of the

ancients, whether we consider them as holding of the state itself, or of some trading company established in the state."[539] The feature of corporate autonomy had been allowed such free development in the American colonies that England was unable to reduce them to complete organic dependence. When the colonies became independent States they reproduced in their State constitutions the features of government with which they had become familiar in their colonial experience. Finally, when the Federal constitution was framed, much of the material to which they resorted had been accumulated during the growth of the States from colonies. The constitution of the colonial trading company was therefore perpetuated to a large extent in the State and Federal constitutions of the United States.

It would be beyond the province of this study to present in detail the features of the State and Federal constitutions that were derived from the original colonial companies; it must be said in general, however, that the constitutions of the Virginia Company and Massachusetts Bay Company served as foundations for the future constitutions of the colonies and of the States and Federal state that succeeded them. The chief modifications came from three sources: (1) colonial experience; (2) imitation of the British constitution; and (3) the application of abstract political philosophy. The concrete changes consisted in the introduction of the following elements: (1) The governorship was exalted in many colonies by its separation from the electorate due to its representing the interests of the king, a proprietary or a colonial corporation; even when reduced to election by the people, the governor was an officer of far greater power and independence than the governor of a colonial company had been; in none of the commercial companies of the class to which the colonial companies belonged had the governor enjoyed a veto; in most of them he was a mere executive officer; in some of them he degenerated into a mere figurehead. (2) The bi-cameral legislature had not existed in the older corporations; its existence in the colonies was possibly due in some measure to imitation of the English Parliament, but more probably to the representation by the council and house of representatives of opposing interests and to their exercise of different grades of power. (3) The representation of local communities did not exist in the commercial companies; its introduction into the colonies was a matter of necessity; it was a refinement of representation by proxy, which actually existed in Maryland as a stage in development between the attendance of all the freemen and their representation by

towns and other local units. (4) The restriction of the franchise was not a feature unknown in corporate organization; it had been applied in the East India Company and others, but not in the London Company, except to the extent that non-adventurers might not vote; in the colonies the system was extended somewhat. (5) The separation of judicial from executive and legislative functions that characterized the State and Federal constitutions was never more than rudimentary in commercial companies, largely because they judged only infractions of their own laws, while in the colonies a body of English common law was enforced that seemed to be independent of the influence of the colonial legislative authorities; the theory of the existence of a body of customary law and of "natural rights" antecedent to the enactment of positive law by the colonial legislature probably gave rise to the independent judiciary. (6) The general system of "separation of powers" and "checks and balances" was quite foreign to the organization of the typical trading company; it was infused into the colonial governments just as into the English government by the representation of conflicting social interests in separate parts of the government.

The growth of politically organized colonies from commercial corporations was quite in harmony with the course of development in other classes of corporations. The political powers of the companies were the ones that survived, while the others perished. If the London Company had enjoyed a longer corporate life, it might have been expected to shrink into an organization of its governing body, just as happened in the case of the Plymouth Company when it became the Council for New England; as it was, its commercial importance decreased and it became more largely a body of liberal-minded English citizens whose aim was rather to put in force in the company's colony a system of government in accordance with the political theories that they cherished. The Massachusetts Bay Company, though ostensibly organized as a trading company, readily divested itself of its commercial attributes and expanded the political side of its organization into a complete colonial constitution. In the Connecticut and Rhode Island corporations, the economic basis of the organization w as hardly more than a pretext; their charters virtually conceded to the colonists political constitutions for their government. In fact, though technically corporations, they deserved the name little more than Canada would deserve it now. Self-government or political autonomy alone does not constitute a corporation, particularly when exercised by all the members of a politically organized group, and

not merely by a smaller group within it. Connecticut and Rhode Island were autonomous provinces, not corporations.[540] The Georgia corporation experienced no development at all, either directly within itself or indirectly through the body of colonists subject to it. It had from its beginning a form already virtually established. No change could more easily have taken place in it than in the average charitable corporation on which it was modelled. In its essence it represented the governing body of the philanthropists whose contributions it administered. The colonists were a class dependent upon them, and therefore normally subject to their government. Not only were American governmental institutions largely derived from corporations, but American conceptions of political liberty were colored by conceptions of corporate activity. If they were not so colored, it may at least be said that they were given greater vigor and effectiveness through forms of organization derived from corporations. The growth of political liberty in England was hampered by the presence of feudal institutions; it has had to be developed even to the present day under restrictions imposed on it by the necessity of expressing itself through forms not fitted for it or of expressing itself in actual opposition to them. In America, however, the field was almost clear; feudal institutions took no firm root in the new soil. In England, corporations had been the framework within which society had made most of its progress out of the feudal organization; in America, then, where there were few remnants of feudalism, it might have been expected that corporate organization would afford the means of rapid social progress. It was the presence of the feudal element in England and its absence in America that, more than any other difference, widened the breach between the mother land and the colonies until it could not be closed again. The theory of voluntary association, with the subsequent obligation of maintaining the relations assumed until the purpose of the association is attained — the theory on which the corporation is based — is identical, when applied to the state, with the theory of the "social contract." The relations assumed by the American colonists seemed to be voluntarily assumed, but the consequences of assuming them could not be avoided; the existence of a power higher than that of the colonies, from which the latter derived its validity, obscured the element of necessity in colonial institutions, and substituted the less substantial idea of their corporate origin. A corporation is created by the state, by a higher power, before which it is strong because it may rely on it for the protection of its exceptional rights

and weak because it depends on the higher power for its existence. Its strength and its weakness both demand a strict definition of its rights and duties; it must therefore have a charter. The perpetual recourse to charters taught the American colonists to value a written constitution. Corporations and colonies modelled on them did not rely for stability and certainty of rights and duties on a body of customs; when the colonies became States and later the States became part of a Federal state, the habit of relying on charters manifested itself in the formation of written constitutions.[541] The principle of the "strict construction" of constitutions, so familiar to students of American public law, is merely an application to the state of the principles applied in ascertaining the rights and duties of corporations; the theory of "implied powers," which has been partially expressed in the Federal constitution, extends no further in American public law than in the law of corporations; if a corporation be granted existence for certain purposes and the right to exercise certain powers, it is granted by implication the powers incidental to its corporate existence, powers clearly in harmony with the purposes for which it is created and the powers incidentally necessary for the exercise of its expressed powers. In truth, as far as concerns the system of public law developed in the United States, the people have simply created corporations of themselves and construe their rights and duties accordingly. Quite in harmony with their attitude towards themselves is the organization of the state behind the constitution — the state that has created corporations of itself — with a supreme court to stand between the state as state and as corporation, and to protect it in either capacity against itself in the other capacity.[542] When the colonies became independent States, they simply substituted the American people for the king of England as the source of political power and left themselves as politically organized where they had been before, midway between themselves as sovereign and themselves as subjects.

XIII. The Legal Conception of Corporations.

The conception of an institution found in a prevailing system of law is not always identical with a sociological conception of it; it would be nearer the truth to say that such identity never exists. The system of law lingers behind society in its progress and delays to translate newly formed social relations into enforceable rights and obligations until (in many cases) long after they have been fully formed. Not only does the law negatively fail to interpret promptly and fully new social relations, but it positively preserves decadent social relations in form long after they have (in many respects) ceased to be effective in substance. Even when the point is reached at which new social relations can be no longer left without legal expression, they are expressed in terms of the existing system of law with the least possible disturbance of the principles of which it is composed; if necessary to reduce the new relations to harmony with the old in the system of law, resort will even be had to fictions — intentional assumptions of things as facts that are in truth not facts. In a perfect system of law there would be no fictions; the use of them is a confession of weakness, of the inability of the system to faithfully reflect and support social relations. The failure of a system of law to adequately express new social relations is very apparent in the United States at the present time, where the principles of equality before the law, freedom of contract and the preservation of private property seem to be seriously out of harmony with the actual social inequality of individual members of society, the limitation of the power to contract by the organization of trusts and trades unions, and the extended modification of the private control of physical things (private property) by the increasing complexity of social relations. As an example of the conservation of old institutions in the law after they have actually decayed in society, one has only to refer to the preservation of monarchy in European governments, in public law, or the persistent adherence to the feudal system of land tenure until a very recent day, in private law. No better example exists of the use of a fiction to bring new social relations into harmony with established law than the legal view of a corporation as an artificial person, a *persona ficta*. far as the modern

law of corporations is subject to criticism, it is due to the three features suggested, (a) its positive conservation of obsolete social relations; (b) its negative failure to recognize new social relations; and (c) its employment of a vicious fiction to provide an apparent harmony between an old system of law and new elements of society.

The conception of corporations at the foundation of the modern law of them matured in England in the fifteenth and sixteenth centuries and found its chief expounder in Sir Edward Coke. When Sir William Blackstone wrote his *Commentaries on the Law of England*, published in 1765, he did little more than to bring together the principles scattered through Coke's *Institutes* and *Reports*, and to present them in a more compact and serviceable form. The conception remained substantially intact until after the beginning of the nineteenth century and is still the basis of the present law of corporations, though seriously modified by legislation and judicial decisions since 1850. The state of the law as interpreted by Coke and Blackstone may therefore be taken as the starting-point for a study of corporations on their technical legal side, as it was at once the culmination of previous development and the foundation of future changes; the earlier changes had been constructive, while the modifications of the nineteenth century have been destructive in their tendencies. The elements of the law, as somewhat unsystematically expounded in Coke's *Institutes* and Coke's *Reports* (especially the report of the leading case of Sutton's Hospital),[543] and in Blackstone's chapter on Corporations in his *Commentaries*,[544] may perhaps best be distributed, for the sake of clearness and succinctness, under the three heads of (a) relations to the state, (b) internal relations, and (c) relations to society.

(a) *Relations to the State*. — Corporations, called also bodies politic or bodies corporate (*corpora corporata*), were erected, with the consent of the state, by common law, prescription or expressly by royal charter or act of Parliament. Their erection was not dependent on the use of express words of incorporation but might be implied in the nature of the powers granted, as the incorporation of a municipality was implied in the grant of *gilds mercatoria*. Even this erection in future might be anticipated and legalized in advance on the fulfillment of conditions presently imposed. They might be created by the state either directly or mediately through agents to whom such creative power should be delegated. They might be dissolved by act of Parliament, by the death of all their members (in the case of corporations

aggregate), by surrender of their franchises to the king or by forfeiture of them through neglect or abuse of them. The general purpose of creating them was to subserve "the advantage of the public" as in "the advancement of religion, of learning, and of commerce";[545] the particular purposes of the creation of each corporation appeared in the body of rights and obligations confirmed to it by common law or prescription, or expressly by act of Parliament, royal charter or founder's charter. As a negative corollary, it might not be erected for illicit purposes. The chief legal quality conferred on a corporation as a means to the accomplishment of its purposes was the capacity to "take in succession." "It is impossible to take in succession for ever without a capacity; and a capacity to take in succession cannot be without incorporation; and the incorporation cannot be created without the king."[546] The accomplishment of the corporate purposes was ensured by the visitation of civil corporations by the king through the court of king's bench, of ecclesiastical corporations by the ordinary and of eleemosynary corporations by founders, their heirs or persons designated by them. On the dissolution of a corporation its lands and tenements reverted to the person, or his heirs, who had granted them to it,

> "for the law cloth annex a condition to every such grant, that if the corporation be dissolved, the grantor shall have the lands again, because the cause of the grant faileth. The grant is indeed only during the life of the corporation; which may endure for ever: but, when that life is determined by the dissolution of the body politic, the grantor takes it back by reversion, as in the case of every other grant for life."

(b) *Internal Relations*. — Corporations were sole, consisting of one person, as the king, a bishop or parson; or aggregate, consisting of more than one person, as the mayor and commonalty of a city, the head and fellows of a college or the dean and chapter of a cathedral church.[547] They enjoyed "perpetual succession," the former through a succession of single persons and the latter through the maintenance of the body of members by the admission of new members to fill vacancies. Corporations aggregate might enact by-laws or private statutes for their better government, but only such as should not be contrary to the laws of the land or the statutes provided by founders. Membership in them was forfeited by infraction of the corporate statutes

or of the law of the land, or might be voluntarily resigned. The corporate will was determined by vote of a majority of members. The corporation could act only thorough its organization; consequently, if an integral part of it should be wanting, the activity of the corporation was suspended until the wanting part should be supplied; thus during the vacancy of the headship, if one were a part of the corporate constitution, the corporation could perform no act until it had first elected a head. Nor might the head, in most matters, act without the body.

> "A sole body politic that hath the absolute right in them, as an abbot, bishop, and the like, may make a discontinuance; but a corporation aggregate of many, as dean and chapter, warden and chaplains, master and fellows, mayor and commonalty, etc., cannot make any discontinuance; for if they join, the grant is good; and if the dean, warden, master, or mayor makes it alone, where the body is aggregate of many, it is void and worketh a disseisin...."

(c) *Relations to Society*. — In their relations to society, corporations were "artificial persons," "persons incorporate or politique created by the policy of man (and therefore... called bodies politique)" as distinguished from "persons natural created by God." As such juristic persons they were separate and distinct from the natural persons of whom they were composed. They accordingly had to have corporate names, in which they might "sue or be sued, plead or be impleaded, grant or receive," purchase and hold lands, goods and chattels[548] "and do all other acts as natural persons may." It was the opinion of Coke that a corporation must also have "a place, for without a place no incorporation can be made." "A corporation aggregate is invisible, immortal, and rests only in intendment and consideration of the law." As it could not "manifest its intentions by any personal act or oral discourse," it had to "act and speak " by a common seal and appear by attorney. Because it could not appear in person, it could not do fealty or homage, for they had to be done in person, — yet it could receive homage a corporation sole might do homage, however, and it had been likewise possible for an abbot, because his convent had been "dead in law." Having no physical body, a corporation aggregate could not be an imbecile, commit a crime, be guilty of treason or suffer an assault or battery; nor could it be imprisoned

or suffer attainder, forfeiture or corruption of blood; it could not be outlawed but had to be coerced through its lands and goods. Having likewise no soul, it could not be bound by oath (and consequently might not act as executor or administrator), could not be excommunicated or summoned into ecclesiastical courts (which could act only *pro salute animi* and punish only by spiritual censure). As the ideal personality of the corporation and the natural personality of its members were entirely distinct, "the debts of a corporation, either to or from it, are totally extinguished by its dissolution; so that the members thereof cannot recover, or be charged with them in their natural capacities," as indeed they could not while the corporation was in existence. The chief distinction between the natural persons that composed corporations and the natural persons with whom they came in contact lay in the capacity of the former to "take by succession." Those who took lands, goods or chattels by succession, whether individual persons or groups of persons, were conceived to form, together with their predecessors and successors, the ideal, immortal person of the corporation.

> "As all personal rights die with the person, and as the necessary forms of investing a series of individuals, one after another, with the same identical rights, would be very inconvenient, if not impracticable, it has been found necessary, when it is for the advantage of the public to have any particular rights kept on foot and continued, to constitute artificial persons, who may maintain a perpetual succession, and enjoy a kind of legal immortality.... As the heir doth inherit to the ancestor, so the successor doth succeed to the predecessor, and the executor to the testator."

"Continuance of blood" in ancestors and heirs was replaced by "privily of succession" in corporations.[549]

The core of the developed legal conception of corporations is easily discerned in the view of them as artificial persons — natural persons expanded in some directions and limited in others. When, however, an effort is made to discover the technical legal sources of the conception so fully elaborated by Coke and Blackstone, it encounters difficulties that open up a wide field of speculation. The germ of the conception was in the English law itself, but in its development it was influenced by

both the Roman law and the canon law. The greatest difficulty lies in the impossibility of attributing particular changes in the English law to forces within it or to the external influences of the other two systems of law; in many cases all three systems are found to have exerted concurrent influences, which it is quite impossible to separate or compare in strength. Certain periods of English history or certain branches of English law may be designated in which it may be asserted with safety that the legal interpretation of English institutions was working itself out through the common law and supplementary statutes without external influence, or in which either the civil law or canon law was to a greater or less extent being infused into the English law; but when a particular definite change is found to have taken place in the English law, such as the recognition of the corporate nature of municipalities, it is unsafe to say that the change was due wholly to the natural evolution of English law, or to estimate the extent to which the Roman law or canon law directly or indirectly contributed to it. Outside of the field of technical law, in which legal principles may be considered as derived from existing systems of law, is the wider field of social development, largely independent of the system of law, yet also either promoted or restrained by it; eventually, however, the system of law must inevitably be reduced to harmony with permanent changes in society itself. The prominent features of the evolution of the English law of corporations may be grouped under the heads of (1) English law, (2) Roman law, (3) Canon law and (4) Social development.

1. *English Law*. — In the beginning the germ of the future conception of a corporation made its way into the English law through the recognition of the"communities" of cities and towns, and of the body of rights and duties appertaining to residence in them. That cities and towns and bodies of population grouped about castles performed functions of exceptional importance, involving exceptional rights and duties, had been recognized before the Conquest, as appears from the records of Domesday. William the Conqueror, however, made the recognition sharper and more distinct. The grant of a charter to the city of London implied the sanction, to a limited extent, of the peculiar privileges that its citizens enjoyed. More generally he proclaimed in his laws that "castles, boroughs and cities were founded and erected for the protection of the people of the land and for the defence of the realm, and that therefore they ought to be preserved in all their freedom and integrity."[550] "If any bondman," moreover, "shall have remained without

claim for a year and a day in our cities, or in our boroughs surrounded with a wall, or in our castles, from that day he shall be made a freeman, and he shall be for ever free from the yoke of servitude."[551] The law crystallized at first about the term "liber burgus," but it denoted rather a medium through which the law viewed the burgess himself than a legal entity. During the first two centuries after the Conquest, the twelfth and thirteenth centuries, the conception was hardly more fully developed. The next step, covering the fourteenth and fifteenth centuries, is fairly indicated by the use of the term "community" somewhat more technically, and finally, towards the end of the period, by the employment of derivatives of the term "corpus." The use of the term "corporation" at the end of the series became common in the sixteenth century. In the general use of the first term, "community,"[552] it comprehended counties, hundreds, townships, gilds, universities and monastic orders;[553] in Magna Charta it was applied even to the English nation — "tout la commune Dengleterre." When the city of London was described as a commune in 1191, it is still a matter of controversy whether the word was used generally or technically. But in 1304, in an action brought by the Abbot of St. Edmund's against some of the townsmen for usurpation of political powers, he charged "quod non habent guildam mercatoriam, nec cognitiones Placitorum ad guildam mercatoriam pertinentes, nec *communitatem*, nec sigillum commune, nec majorem...";[554] the "point" of the case was whether the townsmen had a technical "community." In a charter granted by Edward III in 1345 to the tenants of the manor of Cheylesmere in Coventry is the following concession: "dictis hominibus de Coventre tenentibus dicti Manerii quod ipsi et eorum heredes et successores Communitatem inter se decetero habeant, et Majorem et Ballivos idoneos de seipsis eligere et creare possint anneatim..."[555] As terms midway between "community" and "corporation" are found such as "communitas perpetua," "communitas perpetua et corporate," "corpus corporatum et politicum" and the like. By the charter of Henry VI to Kingston-upon-Hull in 1440, in which Merewether and Stephens somewhat arbitrarily find the first grant of a complete incorporation, the "burgesses, their heirs and successors" were made"one perpetual corporate commonalty"[556] The Conqueror had most prominently in mind, apparently, the physical town, with its castles and walls and inhabitants to defend them; in the "liber burgus" the law saw most clearly a body of tenants enjoying special privileges of land tenure, commerce and the like, by virtue of their residence in the borough; in the

community, when the term was used generally, the group of people was seen, though dimly, to be the subject, as a group, of legal rights and duties; when the term was used technically or replaced by some derivative of *corpus*, the organized group was clearly separated as a legal personality from the aggregate of persons of which it was composed. Concurrently with the emergence as a distinct legal personality was the gradual substitution of "successors" for"heirs" as the persons upon whom the corporate rights and duties should devolve. In many early grants, the powers conceded, being largely dependent on the tenure of land, were made simply to groups of tenants, on the assumption, doubtless, that they would descend to their heirs without express provision.[557] In William's charter to London privileges were granted to the citizens and their heirs. Likewise John confirmed the grant of the sheriffwick of London and Middlesex to the "citizens of London and their heirs" to be enjoyed by them "hereditarily."[558] In later charters to other cities and boroughs heirs and successors were mentioned together, as in the charter of Richard II to the men of Basingstoke, in which it was conceded "hominibus ville predicte quod ipsi, *heredes et successores* sui unam Communitatem perpetuam de seipsis et unum Commune Sigillum habeant imperpetuum..."[559] When the conception of the corporation was complete, the successors alone should theoretically enjoy corporate rights and perform corporate duties. The transformation was apparently never fully accomplished. In both towns and gilds heirs of townsmen and gildsmen were accorded special consideration, in the former even until the nineteenth century, in the latter, as long as they existed. Even in the early centuries, when the heirs of townsmen appeared formally to be the only persons to enjoy their rights after them, it had been almost universally possible for the status of burgess-ship to be acquired by outsiders, as in the familiar case of villeins that had escaped from feudal manors.

The coming into distinctness of the conception of the community as a legal entity separate from its individual members was accompanied by the more formal concession of the element of perpetuity. In few cases had corporate privileges been bestowed on groups of tenants or burgesses for limited periods. The group had been reasonably considered perpetual and its enjoyment of a privilege presumptively unlimited in time. When the body of privileges came to be viewed as inhering in a technical "community," a medium through which burgesses enjoyed the privileges rather than an aggregate of them, when the burgesses were said to have a community

rather than to be one, then the element of perpetuity seemed an attribute of the artificial community to be expressly attached to it rather than an inherent quality of its nature. The "limited liability" so much considered in modern corporations had an origin similar to that of the element of perpetuity — in the legal separation of the community or aggregate of members from the members themselves. In a rough way, the members of medieval gilds and municipalities were held jointly responsible for the debts of members, whether incurred in personal transactions, or in transactions relating to matters of common concern; it was only when the process of separating the members from the community in thought and action and legal rules was complete, in the fifteenth century, that the well-known principle of the civil law, "Si quid universitati debetur, singulis non debetur, nec quad debet universitas, singuli debent,"[560] became applicable in England. A common seal appears to have been used by groups of population, such as counties, that never attained the status of corporations; on the contrary it seems not to have been used by many bodies that might properly be considered corporations; in some cases the private seal of an officer was attached to corporate documents; in fact, hardly a statement can be made of the use of seals before the fourteenth century that would not have to be guarded with many exceptions. It is sufficient for the present purpose to say that during the fourteenth century the grant to a community of the privilege of using a common seal became one of the usual features of corporate charters. It was undoubtedly one of the manifestations of the evolution of the community as a distinct legal personality, and afforded Blackstone, in the eighteenth century, a technical justification for the statement that a corporation must "act and speak" only by its common seal.

The classes of corporations (in the general sense of the term), other than municipalities, affected by the development of the law of corporations before the sixteenth century were the ecclesiastical corporations (with the allied educational and eleemosynary corporations) and the gilds. The former came into contact with the English system of law largely through their landholding capacity; for the most part the conception of them was derived from the canon law, the law of the Church; as far as the temporal law sought to interpret them, it must have sought to appreciate and reflect a conception of them that had already matured within the organization of the Church. As far as the gilds were concerned, they were easily fitted into the conception already formed with relation to the municipalities. They undoubtedly

accentuated the personality of the towns in which they flourished and thereby aided the legal conception of corporations to an earlier and more vivid realization, but by the time the conception was approaching fullness, the gilds were in decay. It was to only a limited extent that the gilds, as such, appeared as parties in litigation. On the whole they were subordinate to the towns, especially during the fifteenth century, when the legal conception of a corporation was crystallizing. The gilds of London appear to have been exceptional, for London was so large and had such varied separate interests that it never attained the distinct personality characteristic of many smaller cities and towns; the gilds were consequently nearer to the conception of a corporation than the city itself and continued in existence long after gilds in the rest of England had virtually disappeared.

2. *Roman Law*. — In attempting to estimate the influence exerted on the conception of a corporation in the English law by the conception of it in the Roman law, one comes almost at the outset upon a remarkable similarity in the bodies of corporation law in the two systems. The similarity, close as it must be conceded to be, is far too easily accounted for by the assumption that "the [English] conception of a corporation] has been taken full-grown from the law of Rome,"[561] though it has been made by many writers.[562] Two serious obstacles are encountered by the assumption: (a) The most prominent feature of the conception in the English law is wanting to that in the Roman law, and (b) the occasion or medium of the absorption by the English law of the particular branch of Roman law cannot be shown from the historical facts.

(a) In the *Corpus Juris Civilis*, the developed body of Roman law with which the English system came in contact, corporations were not regarded as "artificial persons."[563] Contrasted with *singulares personae* were *societates*, *collegia*, *universitates* and *corpora*. The *societas* corresponded closely in general to the modern *society*, neither encouraged nor forbidden by the state, except as its purposes should be positively unlawful; but the term was also applied to associations formed for farming the taxes or other public revenues, or for working gold, silver and salt mines,[564] the latter being apparently intended as an indirect source of public revenue. Social-religious organizations quite similar to the social-religious gilds of mediaeval England were usually formed on the basis of some community of interest, as tenancy on estates of land; as political purposes were sometimes secretly combined with those

strictly social or religious in character, such organizations were always the cause of more or less anxiety and apprehension to the government. Corresponding to the English craft gilds were the Roman *collegia* of fellow artisans or fellow-workmen, such as bakers, smiths, fishermen and mariners.[565] Later monastic convents, cathedral chapters and chapters of collegiate churches were anticipated in the collegia of priests attached to temples. Even some departments of the government, as the treasury, *fiscus*, were viewed as being subjects of rights and duties, and approached the status of later English "corporations sole." But the most fruitful sources of corporation law in Rome, as later in England, were the subordinate political communities, *civitates*, *municipia*, *coloniae*, *vici*, comprehended under universitates, the body contemplated by the law appears to have been sometimes the whole community, sometimes only the governing body. The term *corpus* was the technical legal term implying the recognition and sanction of the *collegium* or *universitas* by the state, but *universitas* was frequently used synonymously with it, and collegian was also used with the presumption that it was a legal corpus. As in English law so in the Roman law the relation of the state to the formation of corporations ranged from no restriction at all, except for purposes declared to be illegal,[566] to absolute prohibition, except with the express license of the state.[567] *Collegia illicita* were dissolved and their common property divided among their members.[568] Serfs might not be admitted to membership in some colleges without the consent of their masters.[569] A person might be a member of only one collegium at one time; if he should belong to more, he was required to choose the one to which he should adhere and leave the others.[570] At least three members were necessary to constitute a collegium or universitas,[571] though it should not cease to exist by its reduction to a membership of one.[572] Corporate action was determined by vote of a majority,[573] though it appears that (at least in municipalities) two thirds of the corporation or governing body had to be present.[574] The universitas could act in litigation and dealings with the world only through its agent, its *syndicus* (permanent representative) or its *actor* (agent for a particular purpose or occasion). Debts due to a corporation or owing by it were payable neither to nor by its individual members.[575] Things (*res*) were of five kinds: (1) *communes* (as the air); (2) *divinae* (*res nullius*, things belonging to "nobody"), including (a) *res sacrae* (temples), (b) *religiosae* (burial-places) and (c) *sanctae* (city walls);[576] (3) publicae (rivers, ports, streets, public edifices); (4) *res universitatis* (corporate things, theatres,

race-courses, public slaves);[577] and (5) *singulae* (private things). In contemplation of law the member of the corporation appeared to sustain the same relation to the corporate property that the citizen sustained to the property of the state.[578]

As the municipalities emerged in Roman history, and forced themselves in between the citizen and the state, the political powers that were detracted by them from the state lost their standing in the *jus publicum* and became subjects of *jus privatum*. The evolution was not at all dissimilar to that experienced by English cities and boroughs. Moreover, the point was reached at which the property of the corporation could be viewed as not the property of the members, and not even to be used by them in common.[579] But the Roman law never reached the point in development at which the corporations were included in the category of "persons."[580] The only expression from which it may be inferred that the conception of "personality" was entertained is found in the provision relating to succession by inheritance: "Mortuo reo promittendi et ante aditam hereditatem fidejussor accipi potest, quia *hereditas personae vice fungitur, sicuti municipium, et decuria, et societas*."[581] There, apparently for the purpose of illustration and comparison, the body of rights and duties eventually to be attached to some person by virtue of the possession of the goods comprised in the inheritance are likened to the body of rights and duties attached to a corporation and not exercised by its particular members. When commentators write of "juristic persons" in the Roman law, they use their own expression to describe what the Romans themselves did not recognize as persons.

(b) What was the occasion or medium of the absorption of the Roman law of corporations into the English law? It is quite universally conceded that from the time of the conquest of Britain by the Anglo-Saxons in the fifth century until the discovery of the Justinian *Corpus Juris Civilis* at Amalfi in 1130 and the revival of the study of Roman law at Bologna, a period of about seven hundred years, the Roman law exercised no influence on the English law. The influence so extensively felt on the continent did not penetrate to England. After the Norman Conquest and even before Vacarius lectured on the civil law about the middle of the twelfth century, some indirect influence may have been exercised through the large number of ecclesiastics that came to England with the Norman kings, but it is said that even they applied themselves to the study of the common law. The use of Norman French in the courts would have facilitated the absorption of foreign elements; but if there was any such

movement, except as some principles of Norman law were imported, its effects must have been slight, for no evidence of them is to be found. In the reign of Stephen, however, when Theobald was made Archbishop of Canterbury, he brought to England with him Vacarius, an Italian priest, who began to lecture (at Oxford, it is said) on the civil law in 1149. The revival of the study of the civil law was one feature of the "twelfth century Renaissance" and the inauguration of the lectures of Vacarius may be taken as the beginning of its influence on English law. Stephen at first prohibited by proclamation the study of the civil law in England, but his opposition was either soon withdrawn or disregarded. Under his successor "those [civil] laws were, with more safety, cherished here, and held, at least by some, in much greater esteem than before."[582] From the middle of the twelfth century to the beginning of the reign of Edward III, in the first half of the fourteenth century, the civil law enjoyed its greatest influence on the law of England. The judges, court officers and lawyers were ecclesiastics,[583] all learned in the Roman law. The kings, favoring the Imperial principle of the Roman law, "quod principi placuit legis vigorem habet," may be assumed not to have been averse to its use in England, though they may have opposed its teaching and interpretation by the Roman Catholic Church.[584] The common law itself was not a settled system[585] and lacked the strength of a body of written law in an age when a written text was accorded the presumptive weight of tradition.[586] During the period a state of hostility between the laity and clergy is said to have resulted from their rivalry in the support, respectively, of the Common law and Civil law. The establishment of the court of common pleas permanently at Westminster in accordance with the terms of Magna Charta, and the founding of the Inns of Court — the "University of the Common Law" — are represented as preserving the common law from being overwhelmed by the Civil law. Henry III, in 1235, certainly issued an order to the mayor and sheriffs of London "ne aliquis scholas regens de legibus in ea civitate de caetero ibidem leges docent," which, whether it referred to the Civil law alone[587] or to both the Civil law and Common law,[588] must have given greater importance to the work of the Inns of Court. In the following year, when all the influence of the Church was exerted to secure the incorporation in the English law of the civil law rule (enforced in the ecclesiastical courts) for the legitimization of bastard children by future marriage of the parents, "all the barons and earls with one voice answered, that they would not change the

laws of England, which have hitherto been used and approved."[589] In 1164 Pope Alexander III had forbidden monks to teach either medicine or the Civil law outside of their monasteries; later Innocent IV forbade the clergy to read the Common law, "because its decisions were not founded on the Imperial constitutions, but merely on the customs of the laity."[590] It might reasonably be inferred that many features of the Roman law would be found in the English law as the result of the contact, but of Glanvil's compendium of the law, written in the reign of Henry I, it is said by a competent authority that

> "though it bears traces of his acquaintance with the Roman law, and adopts in some few cases its terminology, [it] is otherwise entirely free from Roman influence and shows the almost complete purity of the English law at the end of the twelfth century from Roman elements."[591]

The common law, though an undigested mass of court-sanctioned customs, had remarkable vitality because it was in so great harmony with the actual conditions of the English people; its lack of systematic arrangement was perhaps an indication of its greatest virtue; it was unsystematic because society was not systematically organized.

The attainment of a perfectly formed system of law may be an indication of social decadence, for social progress is always uneven and is reflected in incoherence in laws and branches of law; it is true at least that the Roman law did not attain symmetry and formal perfection until Roman society was in decay; likewise the feudal system of law was attaining the virtue of a system only when feudalism was beyond the first stages of disintegration. Moreover, the principles of the public law of Rome, favoring imperialism and monarchy, must have been odious to the English baronage and common people (as far as the latter participated in political life) and even to the Church at a time when it was asserting its superiority over emperors and kings; and the odium of the public law was perhaps imparted to the private law as part of the same system.

Bracton's *De Legibuset Consuetudinibus Angliae*, written in the reign of Henry III after the middle of the following century, contains much that was taken directly from

the *Corpus Juris Civilis* (or the *Summa* of Azo), but it is very questionable how far the portions relating to corporations were applicable to existing English corporations. The jurisdictional privileges of cities and boroughs and of citizens and burgesses were recognized;[592] and of royal charters, some were said to be private, others common and others for a corporation (*universitatis*);[593] thus far, evidently, no resort was had to Roman sources.

> "Things belong to corporate bodies (*universitates*) and not to individuals, which are in cities, such as theatres, stadia, and such like, and if there are any things in cities which are common... these things are said to belong to corporate bodies as regards both the dominion and the use. But the use of things is said to belong to corporate bodies, not as regards their [actual] use, but as regards their dominion and products, such as land and serfs, which are said to belong to cities, because they so belong to all the citizens as not to belong to any one person by himself";[594] "a thing cannot be the subject of donation, which cannot be the subject of possession, as a thing which is sacred or dedicated to religion, or is, as it were, so, as a thing which belongs to the public treasury, or things which are, as it were, sacred, such as the walls and gates of a city;... of sacred things some are not holy but sacred, such as the walls and gates of a city, and they are sacred on that account that they have been sanctioned by kings or by citizens abiding in them; for capital punishment is appointed for those, who with rash audacity overleap the walls or gates of a city; likewise of tenements, some are neither sacred nor holy, but public, of some body, to wit, a corporation, or of a commune (*universitatis*, *communionis*) or of all and not of any one private man or a single person, such as are theatres and stadia or public places, whether they are in cities or outside of them."[595]

The portions quoted are plainly taken bodily from the Roman law, and they are as plainly inapplicable to contemporary cities and towns in England. There were no theatres and stadia in English towns; gates and walls were not regarded as sacred; no

theory of public municipal property had been worked out; corporations owned no serfs. If the portions of Bracton's work taken from the Roman law and clearly inapplicable to existing conditions be disregarded,[596] it contains no evidence of the absorption by the English law of the Roman law of corporations. The same may be said of the abridgments of Bracton's work in the reign of Edward I, that of Thornton, the *Fleta*, the *Mirror of Justices* and the work bearing the name of "Britton."

The beginning of the reign of Edward III (1327) may be taken as the date when the direct influence of the Roman law on the law of England ended. Earlier the Year Books contain records of the use of the Roman law as accepted authority, either to support a principle of English law or to supply it when wanting;

> "where an express rule was wanting in [the English] law, recourse might then be had to the rule of the Civil law, as far as grounded on reason, and when both laws were conformable to each other,... then the matter in debate was in some measure confirmed or explained by the words of the Imperial law."[597]

But after that time the Year Books were void of citations of Roman law as authority, English lawyers boasted of their ignorance of it and judges were inaccurate in their interpretations of it.[598] Judges and lawyers were no longer chosen from ecclesiastics. For the future its influence was to be due to its value as a systematized body of law, evolved from the experience of centuries of Roman history. It was studied by the judges, lawyers, statesmen and churchmen. The universities taught it. It was a prominent part of a liberal education. It remains to-day the greatest monument of analytical legal reasoning. Its influence was therefore subtle and impossible to estimate, but it must nevertheless have been considerable. If it failed to manifest itself in its recognition as authority in the adjudication of cases, it was felt perhaps hardly less in moulding the thoughts of judges and lawyers and giving them form and system. It was the source of a body of maxims, recognized as having weight because founded on reason.[599] It contributed likewise a mass of legal terms. But no more in the particular field of the law of corporations than in the general field of English law can the extent of the influence be estimated. Remarkably enough, the date of the end of the direct influence of Roman on English law is just the date at

which the "communities" of English municipalities begin to emerge in technical distinctness from their individual members. If it may be said that during the period of the greatest influence of the Roman law none of its principles of corporation law were absorbed by the English law, so it may be said that during the period in which the English law of corporations was attaining technical perfection the Roman law had the least appreciable influence on it. During the fourteenth and fifteenth centuries and the first half of the sixteenth century, the principle of artificial personality, with all its material deductions and corollaries, was completely evolved; yet at no step in the evolution may the law of Rome be shown or reasonably assumed to have been used as a model.[600]

The use of the principles and procedure of the Civil law, or of the Canon law modified by it, in the ecclesiastical courts and in those of the universities may be readily traced to the influence of the Church and its predilection for the Civil law. The king's chancellor, from whom emanated the body of adjudications to correct and supplement the Common law, was an ecclesiastic. Masters and scholars were clerics and subject to the jurisdiction of the courts of the Church; when the courts of the chancellors of the universities took their place, the Civil law remained the basis of their procedure and adjudications. The use of the Civil law in the Marine or Admiralty courts and in the Court of Chivalry was probably due to the fact that the rights of foreigners often came before them, and seemed to demand the application of the Civil law for the same general reason for which it has contributed so largely to the body of International law.[601] But for the matter under consideration, it must be said that it would be very difficult to show any positive influence on the law of corporations from the use of the Civil law in those courts.

The truth is that the Roman law and English law passed through parallel courses of development, corresponding to parallel courses of development in the states whose social relations they registered and interpreted. The English law reached the point of development indicated in the *Corpus Juris Civilis* towards the end of the fifteenth century and passed beyond it in the following century to a point that the Roman law had not attained. The development of the English law no doubt proceeded in a more orderly and systematic course, and unfolded its successive conceptions in greater distinctness through the influence of the Roman law, as an elaborated system, on the minds of the men who gave it form and system. The close similarity of the two

systems in the department of corporation law remains as a basis for the inference that the intangible influence of the Roman law was exerted in somewhat greater strength on that than on other branches of English law, but it is far from conclusive evidence of a direct "borrowing" or "taking" of the one by the other.

One other avenue through which the Roman law reached the English law and undoubtedly modified it in both form and substance may be anticipated. The Canon law, the system of law built up by the Roman Catholic Church, was in most respects based on the Civil law of Rome and derived its methods and maxims from it. Each was permitted, on principle, to supplement the other in its application.[602] The inclination of the canonist was to apply the Civil law, rather than the Common law, in the field of temporal rights and obligations, if the Canon law could not be extended to comprehend it. As far, therefore, as the Canon law influenced the law of England, to such extent it must be conceded that the Roman law exercised an indirect influenced.[603]

> "It is obvious that the republication of the Canon law could not but operate as a fresh recognition of the lasting validity within its own limits, of the Roman Civil law, while the language and forms of the new Canon law codes tended to reproduce and preserve the ancient legal phraseology and logical forms of thought."[604]

After the reign of Stephen the Civil and Canon law were so "inseparably interwoven with each other"[605] that their effects could not be separated.

3. *Canon Law*. — The Canon law exercised a peculiar influence on English law, quite in harmony with the general influence of the Church on the social organization of the Middle Ages. Broadly speaking, the Roman Catholic Church performed for Europe the inestimable service of preserving the organic framework of decaying Roman institutions during the shock of the barbarian conquests until it might again serve as the framework of society after its reorganization. As a part of the service the Church built up within itself a form of government and a body of law modelled on those of Rome. The Canon law was the law of Rome modified and tempered by the teachings of the fathers of the Church and the religious doctrines of Christianity. As a vague presumption of universality attached to the government and laws of Rome,

the presumption that inspired the dream of the mediaeval empire, so the claim of the Church to be universal afforded a basis for the claim that its laws were universally applicable in spiritual matters, which gave to the *Corpus Juris Canonici* all the strength that it enjoyed.[606]

The earliest corporations were those of the Church, the monasteries and cathedral chapters. Their internal relations as well as their external relations to the Church were the product of Canon law and subject to its regulations. If at first the bodies of medieval masters and scholars assumed the form of gilds after their separation from the direct control of the Church, they were later re-organized in educational colleges that abjectly followed the ecclesiastical type, while their members remained cleric). The hierarchical feature of the organization of the Catholic Church and Catholic Christianity was reproduced in the corporations, both ecclesiastical and educational; as a matter of legal interpretation, accordingly, the monks were "dead in law " and their personality was absorbed in that of their abbot. The English lawyer might liken dean and chapter to husband and wife, and say that the chapter was *covert* of the dean, but the temporal law, for the most part, merely accepted the interpretation of ecclesiastical institutions adopted by the Church, and enforced it with the least modification necessary to ensure harmony with the Common law.[607] If the Church corporation owned land, it was vested in the bishop or abbot, not because it was demanded by the principles of the Common law, but because the view held by the Church in its law was accepted by the state when the corporation came in contact with the temporal side of society. The doctrine of the absorption of corporate powers by the head of the corporation, favored by the Church on account of its veneration of authority and the hierarchical form of its government, was partly accountable for the exaggeration in temporal corporations of the importance of the headship of the mayor or alderman. The conception of the submergence of the personality of the individual in that of the group was especially favored by the Church; it is frequently found expressed in the Scriptures,[608] the patristic writings and the literature of monasticism; the bond of religious unity was so close that the conception was often reflected in the life of the early social-religious gilds.

Yet, after all, what the Canon law borrowed from the Civil law was largely its form and structure, its system, terminology and procedure; though its substance was also largely absorbed, yet the rights and obligations recognized and enforced by the Canon

law were derived to a great extent from the thought and literature of the Church. There was nothing in the corporation law of Rome that favored the doctrine of the legal absorption of the group in its headship; that was a doctrine evolved from Christianity as an interpretation of the social relations of men; when the English law enforced it, as it did to a great extent, it was not borrowing from the Civil law of Rome, but from the Canon law, the ecclesiastical system of interpreting and enforcing social rights and duties.

When the relations of corporations to their members and to society came to be subjected to the test of philosophy, it was the scholastic philosophy, the philosophy of the monastic and cathedral schools, that was first applied. It was the speculative canonist and the scholastic philosopher that invented the mystical "personal" elements in the conception of the corporation; it was they that described it as a *persona ficta* long before it was adopted by the English lawyers as the basis of a system of corporation law. Innocent IV earned the title of "the father of the modern learning of corporations" by giving formal sanction to the results of their quibbling analyses. If the source of the conception of a corporation as an artificial person is to be found, it must be sought among the speculations of the canonists and scholastics of the thirteenth century,[609] not among the interpretations of Roman or English jurists. The conception, moreover, was most promoted in its development by ideas and thoughts drawn from the literature of the Church.

4. *Development of Society*. — Whatever may have been the capacity of the English law to expand, or to absorb elements of the Roman and Canon law, so far as to eventually evolve a complete system of corporation law, the evolution was greatly influenced by this fundamental characteristic of the Common law: It was based on the individual as the unit of society. It cannot be said with entire truth that it expanded so as to comprehend corporations; the body of principles apparently necessary for the regulation of their relations have been attached to the main body of English law by means of fictions, assumptions of things as true that are not true. For that reason it has always been necessary for the historian or jurist, in writing of the states of western Europe and the United States, or of their systems of laws, to supplement the main body of his work at intervals with additional chapters on corporations. If the purpose was to analyze the organization of the state, corporations were found outside of the scheme of districts, counties and townships; if the purpose

was to study the grouping of citizens, bodies of individuals enjoying exceptional rights that had crystallized in corporations were found outside the scheme and had to be accounted for in supplementary chapters or apologetic footnotes. It has always been a question whether they were public or private in nature, or whether they were divisions of the state or associations of citizens — a matter of importance in technical analysis; and whichever view was taken, it had to be expressed with more or less qualification.[610] Chapters on "Corporations" always give the impression that they have been"tacked on."

Both the later Roman law and the Canon law were like the English law in holding the individual in legal contemptation as the social unit, but in both of them the full elaboration of individual relations was impeded by the unpropitious nature of the media through which they had to be interpreted and enforced — imperialism in the state and hierarchy in the Church. Both the Roman and English law had early been based on an aggregate social unit, the family or clan; the rights and duties that they had enforced were those that inhered in men by virtue of their participation in the social life of a composite unit. It was due in both of them to the inability to perfect the transition from the composite unit to the individual unit that left a large number of semi-public, semi-private corporations between the state and the private citizen; other bodies and even individuals were brought within the comprehension of the term, but hardly for any reason than that they resembled corporations in some important particulars. The defect of Roman civilization was apparently that it had not a content of individual life capable of further development. Imperialism in form is not necessarily subversive of individual liberty; it is imperialism in substance that is fatal to it; just as formal democracy may be only a mask for tyranny. When a society is progressing from the condition of a federation of composite units to that of a nation of individual citizens, the system of law must be developed on the side of rights rather than on the side of duties. When the transition has been completed, the system of law normally seeks an adjustment of rights and duties that leaves neither exaggerated in comparison with the other. But a system of law, however highly developed on the side of rights, can hardly be promotive of liberty unless the subjects to whom it is applied are capable of development. The decay of personal life caused the downfall of Rome; what the invasions of the Germanic tribes contributed to the society of Europe was assertive individuality — or "personal independence," as

Guizot described it. But the first effect of the sudden injection into the semi-Romanized life of western Europe of the unassimilated life and customs of the Germanic races was the feudal system — a negative product — not so much an end as a beginning — a state to which society retrograded until it might resume progress. The problem of civilization thereafter, on its legal side, especially in England where the subfoundation of Roman institutions was wanting, was to evolve a system of principles, rules and procedure through which the element of assertive individuality might be permitted orderly and harmonious development.

The social unit under feudalism was the manorial village. The relations of villeins of one manor to villeins of another, if they may be conceived to have enjoyed such relations, had to be sustained through the lord of the manor; even within the manorial group many of the relations of fellow-villains had to be sustained through the feudal lord, though enough of them found a medium in the communal organization of the villeins themselves to afford a sound basis for their self-government after the loss of control by the feudal lord. The departure from the feudal system, it is hardly necessary to suggest, was accomplished largely through a chaotic mass of exemptions of subjects from feudal obligations. The unevenness of the development of exemptions, combined with the inability of the state to absorb the political powers lost by the feudal nobility — in other words, its inability to substitute, until after centuries of development, a national state for an aggregate of feudal manors — left here and there bunches of political powers vested in communities that were afterwards viewed as technical corporations. The work of the English law, during the twelfth, thirteenth and fourteenth centuries, as far as the promotion of liberty was concerned, was largely to construe and enforce the mass of exemptions. The jurist comprehended the nature of individual rights and obligations by comparing or contrasting them with normal rights under the decaying feudalism; from that point of view, all (or nearly all) individual rights and obligations were in a sense exceptional. But the exception became the rule when with the passing away of feudalism the system of law reached the level of the individual and interpreted his rights and obligations directly, rather than by contrasting them with a prior status, even though it continued to use in describing them the obsolescent terminology of feudalism. The communities to which clusters of powers had been transferred were now compared, not with the feudal lords by whom the powers had been conceded,

but with the normal English subject. While formerly members of communities, in legal view, had been merely members of a larger society, enjoying exemptions, like their fellows, they now occupied, by virtue of their communities, an exceptional status in the society, *unlike* their fellows. *The law recognized no technical corporations until it had reached the basis of the individual as a social unit.* Only when the background of individual rights and obligations became plain to the eye of the English law was it able to see corporate rights standing out in relief against it. There was no place in the system of law for the bodies of citizens (as units) enjoying corporate powers, especially when the powers were translated into common property in lands or goods or the exclusive right to perform political functions. The extreme individualistic tendency of the law prompted it to insist on finding a person, natural or other, to stand for the scattered powers, unabsorbed by the state, that were left over from the feudal period. The Roman law was able to view property as belonging to the State, Church or corporations, or when contrasted with the property of individuals, as that "of no one" (sullies); but in the English law such property must belong to the king, a lord, bishop, abbot or some other person, though in Bracton's day the churchmen might be said to hold property "in right of" the Church. The result was the fiction of corporate personality. The maturity of the conception was in the fifteenth century, the century of transition between the older feudal order and the new national order.

If the history of English law were to be divided into periods, they might be as follows: (I.) The feudal period, ending in the middle of the twelfth century. (II.) The post-feudal period, until the end of the fifteenth century, during which the English system was slowly evolving itself from the feudal system through a mass of exemptions from its principles. (III.) The first individualistic period, the sixteenth and seventeenth centuries, during which the elaboration of the system on the basis of the individual was impeded by the absolutism of the Tudors and Stuarts. (IV.) The modern system of law, dating from the last quarter of the seventeenth century, based on the individual and afforded nearly complete development through democratic government. During the first and second periods the personality of corporations was not recognized by the law, except imperfectly at the end of the second period. In the third period, the soil of absolutism in the state proving very fertile for the legal conception of corporations, it matured fully. In the fourth period, at least until after

the beginning of the nineteenth century, the conception has undergone no change, having apparently become firmly established as a part of the law.

The maturity of the conception of corporations in the English law was undoubtedly facilitated by the development of the corporations themselves. It was not entirely fortuitous that the conception of corporations as artificial persons was nearly coincidental with the completion of the process of "shrinkage" of corporations from entire communities to smaller select bodies within them. The close bodies in gilds and municipalities were crystallizing during the fourteenth and fifteenth centuries. It was when they ceased to derive their life from the communities themselves and appeared to enjoy an existence independent of them, not in harmony with them but rather in opposition and contrast to them, that their distinct "personality" emerged. Moreover, the development facilitated the substitution of the private for the public view that might be expected to be taken of the communities. The close bodies, as well as the rest of the community, regarded the powers reposed in them largely as sources of private advantage; the state was accordingly much more readily inclined to assign them to the department of private law than to that of public law. The nearer they approached the plane of private persons in their activity, the easier it was for the jurist's imagination to impute personality to them.

The Canon law, under the influence of the hierarchical organization of the Church, was able to partially avoid the difficulty experienced by the Common law, through the principle of "the absorption of the corporate group in the headship," if the expression may be used. One is at first surprised in examining the bulky *Corpus Juris Canonici* to find no mention of ecclesiastical corporations, though he finds much of ecclesiastical persons and of the requirement that bishops and abbots be elected by chapters and convents and act in many respects only with their consent. For a time the English law would accept the view and enforce laws in accordance with it, but it was fundamentally out of harmony with its system and soon or late dean and chapter and abbot (or prior) and convent had to be included in the category of artificial persons with other corporations. The monasteries were swept away by the Reformation before the view that monks were "dead in law" and their legal personality absorbed in that of abbot or prior could be reconciled to the principles of English law; they remained long enough, however, to trouble Coke in his analysis of corporations.

John P. Davis, *Corporations*, 384

The peculiar manner in which a system of law is erected is accountable for much of the confusion that has entered into the conception of a corporation and the heterogeneous mass of principles and rules collected about it. The judge and lawyer, in classifying institutions, have regard rather for the social effects of their analysis than for the generic qualities of the institutions. Certain social effects are desired, or already settled in accordance with a standard approved by custom or public opinion. The purpose of analysis and classification is to obtain the desired practical effects, and institutions and men are grouped accordingly. If the regulation of the relations of dean and chapter is desired, and the merging of the personality of the latter in that of the former seems expedient to accomplish it, it would not be surprising to find deans called artificial husbands and chapters artificial wives. If it is in substantial harmony with ideas of justice that sleeping car companies be held liable for the security of goods taken into sleeping-cars by their occupants, they may be found classified with either common-carriers or inn-keepers. In the system of English law true corporations have found themselves in strange company; their name has been extended to comprehend other bodies and persons to the manifest confusion and inconsistency of the law, as one feature or another has been exaggerated and made the basis of classification. Corporations are associations; therefore the State, the Church, the county, the township and the family are corporations, and the tendency of the present century is to view partnerships as closely akin to them. Corporations are created by the state; therefore legalized societies and private clubs as well as bodies of public officers, like boards of regents of universities, are corporations. Corporations may endure forever and take property in succession for public purposes; therefore bishops, abbots and rectors are corporations sole, because their corporate property is inseparable from their offices, which may be perpetual. In each case the person or group brought within the definition is wanting in some essential attribute of corporations other than the one used as a test.

A great change that is still not without its effect on the law of corporations took place, or more properly, culminated in the sixteenth century. The standpoint from which all institutions were viewed was shifted from society as a whole to the individual. Social forces were conceived as moving from below and not from above. The destruction of tradition and the elevation of reason was one phase of the change. To be sure, the view was not to find full expression in philosophy until the eighteenth

century, but the Reformation was a practical application of it. Private contrast largely superseded status in the determination of social relations. Corporations were viewed not so much as divisions of society as associations of individuals.[611] They were now enlarged individuals, not reduced societies. The legal theory of artificial personality was in such complete harmony with the view of society and the individual from the shifted standpoint that it acquired great permanence in the course of the sixteenth century.

XIV. Modern Corporations.

When the field of modern corporations is entered, the feature of it that first attracts the attention of the investigator is the absence of the older corporations, or their presence in such a modified form or under such exceptional conditions that he may leave them out of account without doing serious injustice to the subject. Most of the corporations considered in earlier chapters have gone out of existence; some of them have been so remodelled by the state that they have virtually lost their corporate identity by becoming administrative organs of the state; only a few of them remain as obsolete survivals of a past state of society. Modern corporations seem to be substantially new bodies, modern not only in time but also in the nature of their activity. So great is the change from the old to the new that a superficial view of the subject almost justifies a doubt whether a study of old corporations is profitable as a preparation for the study of modern corporations. A second thought, however, is convincing that the corporate element in the organization of society is substantially the same. Society has changed, both in structure and activity, but, the service performed by corporations as a part of the structure within which some of its activity takes place is unchanged. Social progress may demand that new definitions be found for the terms "public" and "private," but, when a group of associated individuals is confirmed in its character as a group for the accomplishment of a public purpose through the pursuit by the group of private interest, the group is as much a corporation under the new definitions as it would have been under older ones.

Of the corporations included in Class I. and described as Local-Internal Corporations, those of the Church that survived the Reformation in England have become hardly more than administrative units of the national Church (or State); their activity is conditioned and regulated by ecclesiastical commissions and similar bodies of a supervisory nature to so great a degree that they would hardly be recognized as corporations at all if it were not for the demands of an obsolete system of land tenure. In the United States, in general, no such bodies have existed in the Protestant churches; their organization has been effected, though without absolute

uniformity in the several States, on the basis of societies regarded by the law as purely civil in nature, and hardly more justly to be regarded as corporations than the residents of an English parish; the only bodies in them that resemble corporations are the boards of trustees in whom are vested the title and management of the property of the church, but they are merely elected representatives of the church society, no more corporate in character than the legislature of a state. Even the organization of the Roman Catholic Church, with its greater regard for tradition, has been so expanded and amplified that the religious orders have become substantially component parts of it, rather ranks inside of it than autonomous groups outside of it. The English municipalities, with the glaring exception of metropolitan London, were reformed during the early part of the nineteenth century until they became self-governing divisions of the state; if the term "corporations" is still applied to them, as to cities and towns in the United States, it is in disregard of the nature of the changes that have taken place. The mediaeval gilds have passed away entirely, except in so far as they are perpetuated in the clearly anomalous London companies; modern trades unions are not the successors of the older gilds, much as they resemble them in many respects. Educational and eleemosynary corporations, identified with universities, colleges, schools, hospitals, almshouses and the like, have been greatly modified by the state through its administrative, legislative and judicial organs; for the most part, especially in the United States, the plain tendency has been in the direction of replacing them by institutions maintained by the state itself; in England many have been merged in public institutions, others have been reduced to a similar condition through the regulation of the appointment of members, and all are so closely supervised by governmental departments and commissions that they lack genuine corporate autonomy. Even the venerable Universities of Oxford and Cambridge, the most conservative of corporations, have been subjected to the influence of the prevailing tendency, while their colleges have been reduced nearly to the status of departments in them; the later institutions, such as the University of London, bear plainly the stamp of state initiation and control. In the United States, state universities, colleges and schools, and those under the control of religious denominations, administered by representatives of large social groups, have very generally taken the place of the semi-monastic foundations familiar in English history, though several of the older institutions approximate the latter type.

Of the corporations included in Class II and described as National-External Corporations, even fewer remain as a part of the organization of the society of the twentieth century. The Regulated Companies passed away with the expansion of the international political organization of modern states; the functions of their officers, as far as they have not been entirely dispensed with, are now performed by officers of the state; their control and protection of individual merchants in their foreign trade, to such extent as they are still enforced, find expression through the medium of administrative departments of the state. The Regulated-Exclusive Companies shared the fate of the Regulated Companies, differing from them only in the element of exclusiveness that has been perpetuated in modern commercial companies. The great Joint-Stock Companies of the type of the East India Company have passed away, except as they are used to a limited extent in Africa and a few other places in which England is still seeking to "expand"; the enduring product of the East India Company is found in the political machinery through which England governs her Indian possessions; history may reasonably be expected to repeat itself in Africa. Even the United States has had an Alaska Commercial Company in the present century to which it has virtually delegated the duty of regulating the seal fishery of the Pribiloff Islands. But the monopolistic joint-stock company, wielding political powers, is an institution of the past and confessedly exceptional in present society; the Hudson's Bay Company, denuded of its monopolistic trading privileges, is easily classified with modern commercial companies. The Colonial Companies, short-lived as they were, existed long enough to contribute through transformation or imitation a large part of the political foundations of American Colonies and States and of the United States; they have not been used as models for subsequent corporations.

The great fact of the history of the old corporations is that the state has wholly or partially absorbed their powers. To such extent as the social activity of the surviving corporations has been supplemented in response to greater public demands, it has been done almost entirely through the medium of new institutions, created, maintained and administered by the state, and not through new corporations. The absorption of the powers of a corporation by the state does not imply merely the resumption of powers previously granted by it; some of the powers may have been inoperative, when granted, from lack of subject-matter on which to have effect; on the other hand, it does not follow from the absorption of corporate powers by the

state that the state continues to exercise them as the corporation has previously done; they may be allowed by the state to lie dormant under the influence of political theories repugnant to their exercise. The Local-Internal Corporations were not so much the means through which the State and Church accomplished the transition from an agglomeration of local units to a national or even (in the Church) to a world unit, as the measure of their inability to readily complete the transition. Likewise, though in a different field, the National-External Corporations did not so much provide the means through which the states of modern Europe expanded, as they represented their inability to readily accomplish the great movement. In both cases, as nationality was gradually perfected (the parallel movement in the Roman Catholic Church was not so successful) the *raison d'être* of the corporations ceased. Modern corporations, though they exercise their activity in a field somewhat different from that of their predecessors, are evidence of the same lack of ability on the part of the state (society politically organized) to fully comprehend and correlate the social life of its citizens. The plane of corporate life has been depressed, in a sense, to a lower level. The purpose of the modern corporation is less plainly to contribute to national development and is apparently confined, to a large extent, to the amplification of the individual. The view of the subject is obscured by the fact that society is now working from a different standpoint, from that of the individual instead of from that of the state. The result can hardly fail to be the same — an eventual disintegration of corporations, an absorption of their political elements by the state and the relegation of the remaining elements to the individual. As contrasted with earlier corporations, modern corporations are national, not local, in the scope of their activity, and aim at the perfection of the infra-national relations of men. They resemble each class of their predecessors in one respect and differ from each of them in another respect. There is a sense, to be sure, in which some modern corporations are local in the extreme, but it is in respect of the subject-matter of the activity and not of the individuals organized; on the other hand, many modern corporations are international in character, but not so much in respect of the subject-matter as of the component individuals; thus they are contrasted with earlier corporations in their exceptional phases, for the Local-Internal-Corporations, as far as they were more than local, were so on the side of their activity rather than on that of their member ship, and National-External Corporations, as far as they were international, were likewise so

on the side of their activity rather than on that of their membership.

A classification of modern corporations is quite sufficient in itself to indicate the wide difference in nature, but in activity rather than in form, by which they are separated as a class from the two classes of older corporations. The most serviceable basis of classification is doubtless the "public" element in them; they will be arranged in order, therefore, according to the degree of distinctness in which their activity is recognized as public in the opinion of society. An exception will be made of the division of Economic Corporations, however, and they will not be classified on the basis selected; but their subdivisions will be so arranged. For the purpose of making the divisions and subdivisions more distinct, corporations excluded from them will be contrasted with such as are included in them.[612] Incidentally such comments will be added as limited treatment will permit.

III. Modern Corporations are so called because they are an integral part of modern society, of the society that originated in the sixteenth and seventeenth centuries, distinguished by individualism in general, but more particularly by democracy in the state, and by the destruction of tradition and the elevation of reason in religion and science. They might be described, in contrast with earlier corporations, as National-Internal Corporations, because generally restricted in scope to national limits and tending to perfect the relations of individuals within it rather than to extend their political or economic influence without it. From another point of view they might well be described as Individualistic Corporations, because more distinctly regarded as groups of individuals than were earlier corporations; by the use of such a term, however, they would not be clearly distinguished from the National-External Corporations, though not improperly contrasted with the Local-Internal Corporations, which might well be called Socialistic Corporations, as approaching the ideal of totally organized social groups. Modern Corporations may be divided as follows:

1. Political Corporations, such as the numerous Societies for the Prevention of Cruelty to Children, and to Animals, including only such as actually exercise political powers through their agents by arresting law-breakers, assuming custody of children by force, seizing unlicensed private property (especially dogs) and destroying it. Some Civic Associations would be included, because they assume some of the functions of city government (though only permissively on the part of the state) such as the cleaning of streets and the maintenance of the sanitary condition of public and

private property. At least one penitentiary in the United States is maintained and conducted by a "private" corporation, but as the motive is private gain, derived from fees from the State and its counties and cities and from the United States, the corporation would probably have to be included in "Economic" Corporations. Many similar organizations, such as Law and Order Leagues, wield no political powers directly, but frequently seek to procure the enforcement of laws for the regulation of the traffic in intoxicants and for the suppression of vice by gathering evidence and "arousing public opinion"; such corporations could hardly be classed as political, but would have to be placed under the head of Scientific Corporations, as aiming to promote the formation and enforcement of more correct public opinion. For reasons that have appeared in preceding pages — but which will probably appear inadequate to those who have adopted the conception and classification of corporations found in most legal treatises — counties, cities, towns, school-districts and the like are not included in political or other corporations. At the risk of unnecessary repetition it is again insisted that they are departments of the state, and bear the name of corporations only by virtue of traditional usage.

2. Eleemosynary Corporations, such as maintain and conduct hospitals, asylums, infirmaries, public libraries and like institutions, and administer the funds for their support. The field of such corporations is characterized by the extent to which the state and its subdivisions have encroached on it through their own institutions from one direction, and the extent to which, from another direction, such corporations have ceased to be autonomous and have become merely representative bodies of large divisions of society based on religious, racial or other bases. Such of them as still possess sufficient autonomy to be called corporations date as a class from the fifteenth and sixteenth centuries, the period of the destruction of gilds and monasteries, the chief organized agencies of charity in the Middle Ages. It need hardly be added that in the category of such corporations would not be included the governing bodies of state institutions, appointed or elected officers serving merely in a representative capacity; some hesitancy would be justified in including even similar bodies appointed or elected by religious denominations.

3. Educational Corporations, such as the "close" bodies maintaining or conducting universities, colleges, training schools, technical schools, seminaries and "institutes" of many kinds. Much that has been said of eleemosynary corporations is applicable

to such corporations. Their field of activity has been even further encroached upon by the state (especially in the United States), religious denominations and other large and more or less indeterminate groups of citizens. If the English universities and colleges of the ecclesiastical type be omitted, the class may be said to date from the sixteenth century. Boards of regents and other governing bodies of state universities would not be included.

4. Scientific Corporations, such as the Royal Society, the American Musical Association, and many of the numerous other associations for the advancement of literature, politics, science and the arts, and, more generally, for the promotion of culture and morality in society. Not all such associations could be properly considered corporations, even if legally "incorporated" for the purpose of holding property or some similar purpose. The grounds on which many of them would be excluded are most frequently the want of responsibility attaching to membership, indefiniteness of membership, incapacity to enforce "group will" either on members or non-members and want of continuity of organization. A few such associations antedate the nineteenth century; the great majority of them have originated in very recent years.

5. Religious Corporations, such as the boards of trustees of some churches, or more properly the bodies of communicants themselves, of which the boards of trustees serve as governmental organs. The chief difficulty in classifying such bodies arises from the fact that they are usually only subdivisions of a large class in society, to be viewed in the same light as a social order. For many purposes, however, they are considered to be separate and distinct, especially in contemplation of the law, which regards them as merely civil societies. Some recent organizations subsidiary to the churches have sustained relations to them very similar to those sustained by corporations to the state, with some similar unfortunate consequences. Some such societies as the Young People's Societies of Christian Endeavor, encouraged in their religious zeal by the churches, have formed national organizations largely independent of the churches, and have thereby excited apprehensions that they would get beyond their control.

6. Social-Fraternal Societies, such as the Knights of Pythias, Odd Fellows, Redmen, Foresters and many similar bodies. They would have to be regarded in almost the same light as the religious corporations, organizations of very large social groups,

composed of many smaller groups in many respects distinct and independent, especially in legal contemplation. In their present state of development, bar associations, medical associations, trades unions, boards of trade and even stock exchanges would have to be included in the class. The meaning of the term "fraternity" is not unduly extended if it be used to comprehend the element of mutual fair dealing infused into the mercantile life of stock-brokers by their organization in exchanges.

7. Economic Corporations,[613] of which there are many kinds, but all distinguished from other corporations by being a part of the machinery of society for producing, exchanging and distributing wealth. They may be subdivided, in the order in which their functions are most distinctly recognized as "public," as follows:

(a) Improvement Companies, such as are organized for the reclamation and improvement of large tracts of unoccupied land, establishing town-sites, building towns, (e.g., Pullman, Illinois), "booming" new settlements and incidentally developing mines, ranches and other economic projects.

(b) Transportation Companies, for the transmission of persons, goods and intelligence, including railway, stage, toll-road, canal, ferry, express, messenger, telegraph, telephone, gas, electric light, water, irrigation and drainage companies. Associations of pilots would probably have to be included in the class. Hardly a single kind of the companies mentioned existed before the beginning of the nineteenth century, many of them not until after 1830; many of them have originated during the past twenty years; they are essentially the product of conditions peculiar to the nineteenth century.

(c) Banking Companies, ranging from the great bank which serves as the financial agent of the state, such as the Bank of England and the historical Bank of the United States, through the present national and State banks of the United States, to the so-called "private banks." If the great"state banks" be left out of account, banking corporations may be said to be peculiar to the nineteenth century. The Bank of England stands in classification near the line that separates the great national-external companies from the infra-national economic corporations. The East India Company and South Sea Company were both holders of government loans; in the latter, commercial activity was merely incidental to the loaning function, but it was connected with foreign trade; the Bank of England was very similar to them, except

that the commercial privileges, attached as a kind of bonus to its holding of government debt, had to do with the infra-national economic relations of citizens, and promoted rather internal national development than external national expansion.

(d) Insurance Companies, including fire, life, marine, accident, cyclone and other insurance companies, as well as the several kinds of guaranty companies, and ranging in form from the compact "old line" companies to the individualistic Lloyd's companies. Some of the mutual companies would have to be included under the head of social-fraternal corporations; that they would be properly so included seems to be confirmed by the recent growth of "insurance departments" as adjuncts of the Masonic and other fraternities. As a class, insurance companies date their origin from the end of the seventeenth century, though they have had their greatest growth in the nineteenth century.

(e) Trust and Investment Companies, representing a differentiation of the capitalist and investor's agent from the banker. Most savings banks would have to be included in the class. Many insurance companies, moreover, apparently make the business of insurance hardly more than collateral or incidental to that of an investment company.

(f) Commercial Companies, if the term "commercial" may be used broadly enough to include corporations for mining, agricultural, manufacturing and trading enterprises, and narrowly enough to exclude corporations previously described. The term "private corporations" is commonly used to describe them. The varieties are almost innumerable; some of them are difficult to distinguish in form from the kinds of modified partnerships known as "limited companies." It is in this class, moreover, that the corporate form of social structure has been abnormally developed and subjected to most abuse in application. A few of them are found in the history of the eighteenth century, but they were almost universally monopolistic in character, formed by individuals and sanctioned by the state for the purpose of protecting or promoting the use of improved processes or inventions, or to encourage the development of the natural resources of localities. With a few such exceptions, all of the class belong to the nineteenth and twentieth centuries and have multiplied most rapidly since 1850.

With the exception of several educational and eleemosynary corporations, a few scientific associations, banking corporations, insurance companies and monopolistic "patent" companies, the class of corporations described as essentially modern are

products of the nineteenth century. In the United States only a few corporations of any kind are found before the beginning of the century; they were of slight importance to society, though the historical facts relating to them are full of interest. The charters of some of the old American universities indicate that they were intended to some extent for the conversion of the heathen (Indians) to Christianity and for the dispensation of charity; the bodies of some of them were modelled closely on the prevailing ecclesiastical type of the English university college. In South Carolina a corporation very similar to the English "incorporated wild" was created, with the power, among others, of maintaining a school; remarkably enough, the corporation is still in existence. Since the beginning of the nineteenth century, however, the multiplication of corporations has proceeded with great rapidity. In the absence of trustworthy statistical or other data it is impossible to state with a reasonable degree of exactness how many have been created or are now in existence, or to otherwise estimate the extent to which they have entered into the social life of the century, but it cannot be denied that the growth of corporations in western Europe and the United States signifies nothing less than a social revolution. Though the great change cannot be fully accounted for at the present time, as well because it is still in progress and has not yet accomplished itself, as because the requisite data are not at hand for the purpose, a few general considerations may be offered as at least a partial explanation of it, under the heads of (1) economic conditions, (2) political conditions and (3) the reaction of economic development on society.

1. *Economic Conditions*. — The growth of modern corporations has been most largely on the economic side of society. As far as their growth has taken place on the other sides of society, it has been due almost entirely to the reaction of economic on political and religious conditions. The nineteenth century was the century of economic development as former centuries have been distinguished by their development in politics, religion or some other department of life. The last half of the seventeenth and the first half of the eighteenth century were remarkable for the small addition of corporate structure to that already in existence. The only legitimate field for corporations was apparently the exploitation of new foreign lands. Even when several corporations were designed by the Stuarts for the field of foreign commerce, they proved abortive, because they were given control of trade already established instead of trade to be created by them in new lands. There was little room for further

extra-national expansion. In the internal economic relations of England and America, there was no growth of corporations during the period for the general reason that there was no growth on the economic side of internal national life. One is almost surprised to find in the literature of the seventeenth and early eighteenth centuries so much evidence that England was considered to be over-populated and that the colonization of America was regarded as necessary to relieve it of its surplus people. Such expansion of economic life as took place was extensive rather than intensive; the aim was to utilize the forces of nature by reaching them at more points, not by exploiting them more vigorously at given points. The existing structure of society was sufficient for the economic activity organized within it; no new structure was needed and new corporations were consequently not brought into use. Even the creation of the Bank of England at the end of the seventeenth century was hardly exceptional; its privileges, or such of them as concerned the relations between citizens, were hardly more than a premium on the public services performed by it as a lender of money to the state. In the second half of the eighteenth century, however, what Arnold Toynbee described as an industrial revolution took place. The great inventions of the period increased the control of men over the forces of nature and presented to them the possibility of a greater economic development than they were able to organize in existing social forms. The first effect of the movement on the creation of corporations was very similar to the effect so manifest in the early history of the great companies for foreign trade. As the body of "adventurers" that discovered and developed a "new trade" in foreign lands were considered entitled to the exclusive enjoyment of it because they had discovered and developed it, so now in domestic trade the discoverers of inventions and the promoters of new industries (whether based on inventions or not) seemed to be entitled to the exclusive enjoyment of their fruits. As such advantages had in earlier centuries been under the control of gilds, now, since their decay, they were subject to a large extent to the control of close municipal bodies, the "corporations" of whose restrictions Adam Smith complained. Such advantages might be enjoyed, in some degree, in the new municipalities, free from the restrictions of the older ones, but in general incorporation was necessary. They depended negatively on exemptions from the control of existing social organs, and needed positively powers of control over industry similar to those wielded by existing corporations. Moreover, in the

incorporation of such bodies, the state could not undeceive itself that it was incorporating the entire groups of persons engaged in the industries, capitalists, masters, workmen and all, though it reserved the effective powers of control for the exercise of limited interior groups which deserve to be considered the real corporations. Such corporations as the London companies seem to have served as models. When the enterprise in view was a unit in itself, as a bank, insurance office, canal or railway, instead of an industry requiring a body of artisans, or when the factory system became firmly established, concentration easily took place, resulting in the incorporation of the owners alone. The movement by which regulated companies developed into joint-stock companies in the foreign commerce of England was paralleled in domestic trade by the incorporation of the unit of industry instead of the whole industry.

The purpose of the state in so granting corporate powers was, of course, to give to society the benefit of the possibilities opened to it by developing industry; in order to do so, it was necessary to confer upon groups of citizens the powers of organization incidental to the control of the new activity, especially in the presence of the restrictive social organization with which they came in contact. In the light of the development of earlier corporations, it can hardly be said that the movement was at all extraordinary. In an unusual development of any side of society the existing organization of the State (or Church), unable to accommodate it, if it is not actually restrictive of it, concedes it an organization in the form of corporations. Three factors, therefore, only the last of which has since become inoperative, appear to have entered into the growth of corporations at the end of the eighteenth century: (a) The possibility of an absolute growth of industry itself, (b) the desire of the state to promote it by affording it necessary and appropriate organization and (c) the presence of restrictive social organizations, whether governmental or corporate, with which new industries came in contact. It is often assumed at the present day that all modern industrial corporations have owed their existence to the necessity of "massing capital"; that would account, to a slight extent, for the feature of association in them before the beginning of the nineteenth century, but would be wholly inadequate to account for the corporate form of organization or the semi-political powers with which they were endowed. The massing of large amounts of capital in industries was one of the effects of the factory system of industry and the opening of wider markets

through the development of improved facilities of transportation. Modern corporations in their early stages were merely organizations that enabled men to gain a reward for giving to society the benefit of inventions and new industries, with slight reference to the amount of capital employed.

2. *Political Conditions.* — If it is true that corporations are in general social organizations midway between the state and the individual, owing their existence to the latter's need of organization and the former's inability to supply it, their prevalence must be largely dependent on political conditions, the nature of the state and the degree of perfection and stability attained by it. The attitude of society to its political institutions during the seventeenth and eighteenth centuries was essentially destructive. The attainment of nationality in the sixteenth century had been expressed in an exaggerated monarchy; no sooner was nationality accomplished than the infra-national relations of individuals demanded increased attention. Under existing conditions the effort to establish individual liberty was necessarily destructive in its effects on political institutions. It seemed to be necessary first to deprive them of their strength, to reduce the monarchy to an institution of comparative insignificance, to materially modify the aristocratic element in the organization of the state. The constructive process, the formation of political institutions that would be harmonious with theories of individual liberty, was only slowly working itself out and was to wait for its completion until the nineteenth century, though it was long anticipated in America. While the work of disintegration was in progress, the state, viewed as identical with the parts of society that actually wielded political powers, was more or less justifiably considered as something apart from the mass of citizens, something to be opposed, at best little more than an unavoidable evil. Individual liberty was reflected on its legal side by an exaggeration of rights. While the monarchy based itself on divine right, the people went to the opposite extreme in maintaining that government was based on the consent of the governed. Philosophy eventually systematized the prevailing thought and explained not only the political organization of society, but finally its entire organization by the assumption of contracts between individuals. It seemed inevitable that in thought society should suffer disintegration before it could again be harmoniously organized.

The importance of the fact in a study of corporations lies in the denial of expansion of activity to the state. The mercantile system was the first stage in the liberation of

industry from control by the political organization of society. The standpoint was not yet wholly changed. The development of the nation was still consciously the goal, but it was not identified with the development of the individual; the individual was to be regulated in his activity so as to contribute by it directly to the development of the nation; even more narrowly, in practice, the political interests of the state as organized had to be subserved; if a new trade was to be discovered or established or new lands colonized, it had to be so done as to extend the dominion of the English crown and swell its revenues. It is significant that the mercantile system was applied most fully in matters relating to foreign commerce; it could not have been extensively applied in domestic trade, as became plain from the opposition aroused by the "monopolies." When the time came for the industrial revival at the end of the eighteenth century, the theory was that the "wealth of nations" was best increased by giving to the individual the greatest possible freedom to increase his own wealth. All local and national restrictions might best be removed; the first form in which such restrictions were removed was in bodies of exemptions contained in charters of incorporation. Moreover, if a social function was of recognized public importance, it was safer for society that the state delegate to groups of individuals the power to perform it than for it either to perform it itself or to closely supervise its performance. That was the difference (not always easy to discover) between the general liberation of the industry of individuals from political restrictions and the creation of corporations; when the individual was liberated, it was considered that his interest was identical with that of society and that he would subserve the latter by pursuing the former, if merely permitted to do it; when the corporation was created, its work was recognized as of public importance but it was considered that it would not perform it without encouragement by the removal of restrictions or oftener by the positive delegation of public powers. In further contrast with the liberation of the individual, corporations were given a social form, an organization, that in earlier history had been found capable of serving as constitutions for semi-autonomous colonies, and that, even in industry, might expand so far as to menace the social integrity of the individual. Distrust of the state as organized caused the accumulation of political powers in the hands of minor states, corporations, which excited no apprehensions because they were democratically organized and did not seriously conflict in their activity with established industrial relations; moreover, were they not

based substantially on individual contract and was not "freedom of association" one element of liberty? If the entire state had been formed and organized like the corporation, would not philosophers and political theorists have had to confess that it was an ideal state?

After the experience of a century the distrust of the state has not ceased to be a potent factor in the organization of industry. The constitutions of the United States and of the several States were constructed on the principle that government is hardly more than a necessary evil, the less of which is had, the better for the citizen. The less responsibility imposed on congresses, legislatures and councils and on national, State and municipal administrations, the more their ability to discharge their functions has decreased, just as the physical member withers from lack of use. If railways, lines of telegraph and other public enterprises were to be maintained, the state should delegate its power of eminent domain, its public lands, its highways and streets, and renounce its power of taxation to corporations, so that the individual might be protected against the state in the contest of "man vs. the state." But there is much evidence that the true nature of corporations is gradually becoming plainer, though least in the system of law. When the workman finds his wages determined by the corporation that controls the business employing his labor, and seeks refuge in a trade union that deprives him of his individuality, when the farmer finds his connection with a market dependent on the regulations of a railway company, when the business-man finds the volume of credit and currency subject to the curtailment or expansion of banking, trust and investment companies, when the small investor finds his only avenue of investment in savings banks and trust and investment companies, when the citizen finds his social intercourse conditioned on membership in church organizations and social clubs, when the scientist or professional man finds that he cannot bring his efforts to bear on society except through the medium of associations, — they all begin to realize that they are governed more by corporations than by the state, that they are the major part of the mechanism of government under which they live. But the distrust of the state still exists in a large measure; corporations, it is said, must be controlled by the state through commissions — the state must not absorb them and cannot be trusted to control them directly.

The principal source of the increase of corporations, which might be included under either "economic conditions" or "political conditions," has been the internal

economic development of western European nations and the United States (especially the latter) in the presence of political institutions and political theories by which the activity of the state has been strictly limited. The demand for canals, railways, banks, telegraph and telephone lines, water-works, electric light and gas plants and the many other factors of modern economic progress, has at times approached the condition of a "craze." It has appeared in the minds of men to justify prodigality in the concession of public powers to corporations. The past century has witnessed greater economic expansion than any previous century in the world's history. Nations, states, cities and geographical sections have competed with one another in the extension of encouragement to corporations for the development of their natural resources. Early in the century it was not considered justifiable to create corporations for any purpose not clearly public in nature; each application was considered by itself, and if favorably was followed by a legislative act of incorporation. Not only was it always difficult to distinguish between public and private, but the view that individuals should have the freest possible opportunities to create wealth encouraged the presumption that every business was of public importance in the respect that it might increase the aggregate wealth of society. Not only was the work of legislatures simplified by the passage of "general incorporation" laws for special classes of corporations, but justice between individuals in different occupations seemed to demand that the laws should comprehend successive classes of enterprises lower in the scale between public and private; the climax was reached in some states when general acts were passed permitting the incorporation of associates "for any lawful purpose." Thus the innumerable "private corporations" came into existence. The period of expansion has been followed by one of organization. The vine has been stimulated to attain its full growth; now it is found in need of training and pruning. In periods of expansion society develops irregularly and unevenly; when they are at an end, the incongruous new social structure in which the expansion has taken place is reduced to a greater or less degree of conformity with the rest of the structure (political and other) of society, usually with accompanying modifications in the latter. The second process is always disquieting in its effects, involving always the readjustment of the relations of individuals, and not infrequently the disturbance of "vested interests."

3. *The Reactions of Economic Development on Society*. — The most manifest

reactionary effect of industrial development on society is what might be called a form of materialism, with some limitations on the common use of the term. Under the domestic system the tool was an adjunct of the man. The workman's skill was part of him. The element of skill has been largely transferred to the machine. The workman has become an adjunct of the machine, which he controls by wheels and levers. Since the sixteenth century, when capital in the modern sense became a factor in industry, the relation of the capitalist to industry had been of the same nature as that of the workman under machine industry. Capital is merely the accumulated products of past labor devoted to the production of new wealth. The capitalist does not produce directly; he merely controls the production of others through the ownership of capital. Under the gild system masters (from whom capitalists afterwards developed) were little different from journeymen or workmen; both engaged directly in production side by side. In both classes the general relation to industry has changed from the actual performance of the work to the control of its performance by machinery. The evolution in the broad field of industry has been parallel with that in the evolution of corporations themselves. Corporations are instruments of control, of social organization, just as machines are instruments of men's control over the forces of nature; corporations are social machines to which the individual has become almost as completely an adjunct in his relations to men as he has become a mere adjunct of the machine in his relations to nature. Nor is it at all remarkable that the highest developed form of corporation has become the social structure of capital. For is not social control the essential feature of the capitalist class? Does property in physical things confer any benefit on their owner (beyond the advantages of consumption) except as they be made the basis of controlling others in the production of new things? The historical growth of corporations has been in complete harmony with such a conception of capital. The mediaeval gilds, originally the organizations of classes of persons engaged in industry or trade, became quite generally restricted, by the sixteenth century (the date of the appearance of a distinct class of capitalists), to the class of employers within them. The great foreign companies of the succeeding centuries carried the development forward from the point it had reached in the gilds, purified of all but capitalistic elements; they were purposely and consciously restricted to the social class to which the gilds had become restricted after four centuries of history. Both in the relations of men to nature under

machine industry and in the relations of men to each other under the system of capitalistic production, the corporation appears from its historical development to be a fit and appropriate social organization.

Through the extension of the use of machinery and the development of transportation the individual has been removed to a greater distance in both time and space from the forces of nature on which he depends. His contact with nature is more effective, but it is less direct. He has become far more dependent on the artificial physical element (machines, factories, railways) and the human element (organized society) than on nature itself. The category of public industries is accordingly extending itself so as to cover industries formerly viewed as private in character. The early stage-coach was hardly more than a private industry; the modern railway is one of the most familiar examples of a public industry. As an industry becomes more public in character, it is elevated in popular estimation above the owners of it and in a sense separated from them, — it is idealized or personified. It appears to have rights and duties in itself, distinct from those of its owners. Is not that the same movement that resulted (in a somewhat different field) in the development of the legal conception of the "ideal personality" of municipalities? The law regards the capital invested in it as "clothed with a public trust," by virtue of which its owners have only a limited control of it; its patrons are regarded as entitled by law to the benefit of its services in return for a reasonable compensation. It is the increased dependence of men on physical things, grouped in great units such as systems of railway, telegraph and water works, that has contributed in a large measure to the growth of corporations.

A very conspicuous result of the industrial development of the nineteenth century has been the enlargement of the physical unit of greatest industrial efficiency beyond the capacity of the individual. Under the gild system the unit was the tools of the man with his strength applied to them; human capacity, capital and market were all limited. Under the domestic system the unit was increased to the co-operating family of the master with the few workmen added to it and made virtually a part of the household; human capacity and capital were increased, while the market remained substantially unchanged. Under machine industry the machine with its operator was the unit, increased to a factory full of machines and operators when the market was so widened through improved transportation as to permit localization of industries.

In transportation the unit has grown from the single vessel or stage-coach to the fleet of vessels and system of railways covering thousands of miles. The individual capitalist was undoubtedly incapable of engaging alone in industries organized in such large units; association of capitalists was the necessary result. As far as association enabled capitalists to attain the unit of greatest efficiency the movement was undoubtedly beneficial to society. But the movement has divided in two directions with generally unfortunate results. The individual has been increasing in capacity so rapidly during the past few decades that most corporations find themselves in the control of small interior bodies of stockholders with large holdings of stock, the remaining stockholders being relegated to the status of mere creditors of the corporations, with no effective voice in the management of their affairs; in some railway companies stock is issued with the reservation of the recipient's proxy, his voting capacity. The other direction in which the movement of association has been diverted from the line of greatest benefit to society is in that of exceeding the unit of greatest efficiency. A factory of a certain size or a railway of a certain length is proportionally more efficient than one either larger or smaller than the former or longer or shorter than the latter. Where association exceeds such a unit, it is arbitrary and results in what are now generally known as "trusts." Association is not peculiar to corporations, however, but differs from association in other forms because of the peculiar conditions under which it takes place and is maintained. Corporate association has reference rather to the corporate property or industry than to the persons associated. The physical element is exaggerated, the human element is depressed. The purchaser of stock considers that he is acquiring an interest in an enterprise, not so much that he is assuming common relations with the numerous other stockholders; for the most part, he does not know them and does not take the pains to learn who they are; if he "knows the property" and by what directors it is administered, he is satisfied. It is the social separation of men, the disintegration of society in its personal phases, and the consequent participation of men in society through the medium of institutions, clubs, societies and the like, that raises corporate association into something extra-personal, unsympathetic, apparently the product of necessity; it is the same characteristic that is found in the association of citizenship in which the personal relations are depressed in the presence of a state embodying grand political and ethical aims. The subject is more appreciatively a citizen of his

state than a fellow-citizen of his neighbor; so the stockholder looks upon himself rather as a participant in the corporate enterprise than as an associate of his fellow stockholders.

After a so confessedly imperfect review of the causes of the unprecedented growth of corporations in the nineteenth century, a brief consideration of the most prominent present tendencies in their development may not be out of place. The most remarkable change in public sentiment is in relation to the functions of the state. It cannot be denied that a strong reaction against the destructive, "dispersive" philosophy of the eighteenth century is in progress. The effects of the change are more marked in England than in the United States because its political organization is more fully adapted to reflect and respond to such a change in public sentiment. The "scattering" of sovereignty, the limitation of governmental powers, was too fully translated into political institutions in America to permit a rapid expansion of the activity of the state. In the United States the end of the Civil War (1865) may fairly be taken as the date of the beginning of the reaction. To what extent the extraordinary activity of the state demanded by the exigencies of the war, certainly extended in many cases beyond the limits imposed by constitutions, may have laid a basis for the enforcement of the change in public sentiment may well be questioned. Undoubtedly the people became accustomed during the four years of war to a greater latitude of state action than had ever before been sanctioned by public opinion! but the extension of it to comprehend the field occupied by corporations was due to other causes not so closely connected with the Civil War. The internal development of the country had been greatly restrained by the unsettled political relations of the opposing sections. When the restraint was removed by the termination of the war, the course of development was resumed with extraordinary vigor, and chiefly through the instrumentality of corporations. During the decade succeeding the war and even before the war was ended, the United States and the several States, as well as counties, cities and towns, were scandalously prodigal of concessions to corporations. Unfortunately the development has recently come to a somewhat abrupt end with the virtual exhaustion of its geographical area, and the field of corporate enterprise has been transferred from unsettled or growing communities to places in which the stage of settlement and growth has been passed; the society in. which corporations now have to act is one in which social progress is rather intensive than extensive,

consisting more in the regulation of old relations than the establishment of new ones; public thought, for example, is concerned more with the government of established cities than with the foundation of new ones. The change in the character of social progress has suddenly revealed to the people the immense volume of public powers that have been reposed in corporations, and the dangerous extent to which corporate structure has shown itself capable of expansion beyond the activity legitimately organized within it. Trusts and industrial combinations are more or less justly identified with corporations, because the same social structure has in experience proved so readily adaptable to their purposes. Under such conditions the extension of governmental powers, to which the people became accustomed during the war and the period of corruption that followed it, presents a ready remedy for the evils of government by corporations and finds the people taught by experience not to fear its use. State ownership of railways, telegraphs and other industries confessedly public in nature is openly advocated now, though even a decade ago such advocacy would have met with only modified approval. The masses of the people have heretofore opposed the extension of the activity of the state because it might encroach on their own; confusing corporations with themselves as individuals, grants of public powers to them have seemed to accord with their opposition to encroachment by the state on the liberty of the individual. But now the same classes are clamoring for the extension of the activity of the state to protect the individual against the corporation. It is beginning to be recognized that more government is necessary under the developed conditions now attained by society than under the comparatively simple conditions prevalent a century ago, — and that such increased government has actually been provided, not by the state but by corporations. The plain tendency in corporate life at present, in its relations to the state, is in the direction of subjection and submission to close supervision. In history the state has never been satisfied with the mere supervision of corporations by commissions or otherwise; it would be against the teachings of history to expect that now the state will stop short of the complete absorption of the governmental features of corporations. The work of absorption has already progressed far in the fields of political, eleemosynary and educational corporations; the economic corporations have been disturbed but little. The scientific and social-fraternal associations have hardly passed beyond the "permissive" stage, in which they are merely recognized as of public importance and

permitted to own property and otherwise act as organized groups; there are some slight indications that a few of them are entering the stage in which they are encouraged by the state to exist, and in which the state eventually depends upon them for the supplementing of its organization of its citizens.

In their relations to each other corporations exhibit the tendency to combination that in earlier centuries resulted in the domination of the medieval Church by the monastic orders, that gave the class of burgesses a predominant influence in the English House of Commons, that makes metropolitan London even to-day hardly more (politically) that a federation of livery companies, as other English cities and towns have only recently ceased to be. If corporations have been afforded free development, they have never failed to evolve a higher organization, which they have sometimes succeeded in substituting for the organs of the state themselves. In the light of the history of corporations there is nothing astonishing in the growth of Charity Organization Societies, associations of college presidents,[614] the National Society of Christian Endeavor, Amalgamated Trades Unions, the grand lodges of fraternal organizations, joint traffic associations, pools, trusts, clearing houses and trike, — they are the parliaments and congresses of corporations, phenomena perfectly familiar to the student of the history of corporations. Such consolidation has never proved to be permanently independent; it has either served as a medium of absorption by the state, or has had to be destroyed with such exhausting efforts of the superior organization of society as was involved in the dissolution of the Society of Jesus.

Within the corporations the process described in earlier chapters as "corporate shrinkage" is found to be accomplishing itself. In the political, eleemosynary, educational and religious corporations, the process is almost complete; what is regarded as the corporation, both in law and in popular estimation, is the governing body, the council, board of trustees or board of managers. Even in scientific associations, an interior body called in some of them the council or senate, and in a greater or less degree independent of common members, is the repository of the actual powers of the associations; the membership is largely indeterminate, many of the members being such only for the purpose of securing publications or bulletins of information issued by the associations. In the social-fraternal organizations membership has a more definite meaning, though even in those of an industrial

nature membership has come, during the past few years, to confer rather a license to follow a trade than a right to participate in the social life of the group. The somewhat independent status of "walking delegates " is one of the evidences of the change. It is beyond denial that trades unions have shown a tendency to become closer bodies controlling some of the conditions of branches of industry instead of organized associations of the men engaged in the industries; in that respect they have more nearly approached the status of true corporations. In economic corporations attention need hardly be called to the virtual exclusion of the small stockholder from participation in the corporate activity; one could not consider him responsible for corporate misdoings. The frequent resort to the issuance of bonds has had the same effect, to relegate the mass of persons (both bondholders and stockholders) interested in corporate enterprises to the status of creditors of the smaller and closer bodies that are the real corporations. The retention of proxies by rings has also had a restrictive influence. The result of all the influences has been the virtual shrinkage of most economic corporations to small interior bodies, in some cases members of a single family or of a group of allied families. In one sense the movement is in the direction of an exaggerated individualism; under the "new feudalism" the baronage will consist of the small bodies to which corporations have shrunk, exercising as "private rights" the public powers of corporations that have so shrunk.

All that may be said of the relations of corporations to individual members of society is implied in what has already been said of them. The present tendency is for them to become less organizations for the self-government of industries than organizations for the imposition of the conditions under which industries shall be prosecuted — essentially governmental bodies. The tendency of corporations to expand into monopolies, if not originally created such, elevates them above the level of the individual, whose normal industrial condition is one of competition with his fellows; though their interests were identical a few years ago, they are at variance now. Yet the corporate or semi-corporate organizations of society are so numerous and so pervasive of all kinds of social activity that the individual citizen, trying to attain the ideal of personal independence venerated in the theory of the political institutions of his country, finds every avenue under the control of some kind of an association in which he must acquire membership or to whose regulations he must submit. If he is suspected of failure to support his children a Society for the

Prevention of Cruelty to Children takes them from him and places them in an "institution" in contempt of his right to be heard in his own defence and to be held innocent until he is proved guilty. If he fails to pay for a license to keep a dog, a Society for the Prevention of Cruelty to Animals, entitled to receive the license-fee, takes away his animal summarily and deprives him of the benefit and protection of the courts that he is taxed to support. He is not permitted to dispense charity indiscriminately and according to his own judgment; even if he embodies his charity in an institution, its management must be submitted to the supervision of a Charity Organization Society, or suffer the penalty of adverse criticism. His self-education is almost out of the question; as far as his education is not regulated by the state, it is regulated, in quantity and quality, by the religious denominations and corporations in control of the universities and colleges. As a scientist he cannot make himself an efficient factor in society except through the medium of associations. As an artist, his work must receive the commendation or approval of some academy or similar body. As a lawyer or physician he is subject to the rules of bar associations or medical societies. In social intercourse with his fellows he finds societies, clubs, circles, lodges and churches indispensable. The conditions of the town in which he lives are possibly the effects of the policy pursued by the improvement company that is "booming" it, regulating the architecture of the dwellings in it and imposing upon the inhabitants many other restrictions. The success of his business may be absolutely dependent on the treatment accorded him by transportation companies. He may be wealthy and honest and yet fall into bankruptcy through the refusal of banks to supply him with "credit." His loss by fire and the loss suffered by his family by his death entitle him and them to nothing but sympathy from others; relief should have been provided for through insurance companies. His range of investments outside of those reached through trust and investment companies is comparatively small. If he aspires to a public office, he finds a successful opponent in a fellow-citizen having more extended membership in fraternal organizations, trades unions and church societies. He discovers, in fine, that citizenship in his country has been largely metamorphosed into membership in corporations and patriotism into fidelity to them.

John P. Davis, *Corporations*, 410

Notes.

1. “When Alexander Hamilton wrote his celebrated report on the establishment of the First United States Bank in 1790, there existed only three banking corporations in the United States.” — Richard T. Ely, “The Growth of Corporations,” *Harper’s Magazine*, vol. lxxv, p. 71 (June, 1885).

2. “The rapid growth of private corporations is one of the striking features of the present industrial development. More prominent perhaps in the United States than elsewhere, it is nevertheless to be observed in all countries which have felt the spur of recent industrial progress.” — “Statistics of Private Corporations,” by Roland P. Falkner, in *Publications of American Statistical Association* (June, 1890), p. 50.

3. “Before 1850, [in Michigan] we had about forty-five mining corporations, seven or more railroad corporations, a few banking corporations several plank-road corporations, and a few of a miscellaneous character all, of course, under special charters [with the exception of religious corporations].

“General laws to the number of one hundred and fifty-six have been passed from time to time since 1850 for incorporating almost every kind of lawful business and association, and the result has been that we now have [in Michigan] about eight thousand corporations which are organized under those general laws, divided as follows: manufacturing and mercantile, twenty-five hundred; mining, thirteen hundred and twenty-eight; railroad, seventy-nine; street railway, one hundred and thirty-two; transportation, one hundred and twenty-three; state banking, one hundred and fifty-nine; charitable, two hundred and forty-eight; improvement, seventy-seven; miscellaneous, twenty-eight hundred and eighty-two.

“To this great number of domestic corporations must be added one hundred national banking corporations, and a large and not ascertainable number of foreign corporations,... which do business in this state by its express permission.” — Address of President (Alfred Russell) at Jackson, Michigan, March, 1894, on “Corporations in Michigan,” *Publications of Michigan Political Science Association*, No. 2, p. 97.

4. “It is within the bounds of moderation to estimate the wealth of corporations as one-fourth of the total value of all property in the United States. The most significant fact, however, is the rapidly increasing proportion of all the resources of the country which belongs to corporations.” Richard T. Ely, op. cit., p. 73,

“Not far from one-quarter of the wealth of the United States is held by trading corporations. It is not improbable that half the permanent business investment of the country is owned in this way.” — Arthur T. Hadley in *Railroad Transportation* (1885), pp. 42, 43.

5. “The facility with which corporations can now be formed has also increased [the Supreme Court’s] business far beyond what it was in the early part of the century. Nearly all enterprises requiring for their successful prosecution large investments of capital are conducted by corporations. They, in fact, embrace every branch of industry and the wealth that they hold in the United States equals in value four-fifths of the entire property of the country. They carry on business with the citizens of every state as well as with foreign nations, and the litigation arising out of their transactions is enormous, giving

rise to every possible question to which the jurisdiction of the federal courts extends." — Address of Justice Field at the Centennial Celebration of the Organization of the Federal Judiciary, at New York, February 4, 1890, 134, U. S. R., 742.

6. *The Law and Jurisprudence of England and America* (pp. 376–377), John F. Dillon.

7. "There can be no question that corporate organization has been of great advantage to the country — to the poor as well as the rich. By greater economy in production, rendered possible by concentration of capital, the poor have profited in the reduced price of most of the necessaries and comforts of life... The comfort and convenience of all dwellers in this country have been greatly promoted by corporate contrail of business. Take for instance our facilities for traveling. Again, the regularity and cheapness of communication by mail, telegraph, and telephone have only been made possible by the cooperation of hundreds of corporations all working together in intelligent harmony. Again, what could we do without banks, and without insurance companies? We owe it to the corporation that we can protect our property against loss by fire and our families from want in the case of the death of their breadwinner; and to the savings-banks that eve can safely keep our surplus earnings, and receive them back again, safe and intact with reasonable interest. And so we may sum it all up in one word and say that the conditions of modern life would be impossible there it not fm the corporations, Whether sleeping or evoking, engaged in business or pleasure, eating, drinking, dressing, or traveling, or whatever we may be about, we must thank them to a great extent for the means and opportunity of doing so." — William Jay, "The Corporation in Commerce," chapter viii. in *One Hundred Years of American Commerce*, vol. ii., pp. 47. 48.

8. "Organized wealth and power have not yet grown wise enough to scent danger before it is upon them, The Eastern section of our country is already in danger, and I have an impression that it does not see this. In its concentration of the wealth of the country and in its ostentatious display of its wealth, in the gradual cultivation of caste, in the tendency to hug its vast riches and in finding means to keep its millions at home, let it behold a danger it will do well to consider in the light of both ancient and modern history.

"If it has any real statesmen, they cannot put their genius and resources to better uses than to formulate some policy which will bring the conflicting elements [of the eastern and western United States] together.

"In 1800 we were a few millions of people and we loved liberty. In 1900 we are nearly a hundred millions of people and we love money Moreover, individually and collectively, we have a great deal of money. Most of this money is invested in what are called corporations. From a handful of individuals we have become a nation of institutions. The individual counts for less and less, organizations for more and more. It is the idiosyncrasy of the age we live in." — Interview of Henry Watterson, in *New York Journal*, November 29, 1896.

9. "How great have been the advantages to our commerce and our country's development from corporate organization no one can say. Have these advantages been to some extent counterbalanced by certain evils? The concentration of wealth in the hands of corporations has had the effect of driving the individual producer out of business. In the early days of our country's existence many industries were carried on in the towns and villages by skilled workmen who were their own masters, and who were in business for themselves. Tailors, shoemakers, weavers, blacksmiths, tinsmiths, saddlers, and many other manufacturers on a small scale carried on their business for their own account, and were a useful, self-reliant, and manly element in our population. These industries are now to a great extent monopolized by large corporations, and the men who were formerly independent in their business are now represented by salaried workmen. The gradual extinction of this class of men of moderate means who carried on their business for their own account seems to be a distinct loss to the community." — William Jay, "The Corporation in Commerce," chapter viii. in *One Hundred Years of American*

Commerce, vol. ii., p. 48.

"[As one of the evil effects of corporate organization] we shall have, in place of the independent business men of to-day, each gaining his livelihood by his success in a wide range of thought and action, a body of clerk-like functionaries, each of whom will do a certain limited kind of work at the command of his superiors." — Charles Francis Adams, "The Place of Corporate Action in Our Civilization," chapter iv. of Shaler's *The United States of America*, vol. ii., p. 197.

10. Cf. Arthur T. Hadley, *Railroad Transportation*, p 43.

11. No little confusion is caused by the failure to separate the "corporation question" from questions allied to it; it must be borne in mind that it is primarily a question of social form and only secondarily one of social function. Mankind or human energy is the content, the corporation is one of the forms through or within which the human energy becomes human activity. E. g., the corporation question is often carelessly confused with that of the consolidated control of capital or "trusts," — but the latter comes within the scope of the former only through an enquiry to what extent the corporation by virtue of providing a fit or usual form for the activity of trusts, affects such activity by restricting, expanding or otherwise influencing it.

12. Dr. Roland P. Falkner, of the University of Pennsylvania, deserves much credit for his efforts to collect and tabulate some of the statistics of modern private corporations. Some of the results of his work are found in a very instructive paper on the "Statistics of Private Corporations" in the *Publications of the American Statistical Association*, June, 1890, p. 50.

13. "American lawyers have written more voluminously, not to say more diffusely, on corporation law than those of any other country; but they have usually elected to treat the subject from a strictly legal standpoint. Their works have been planned merely to serve busy attorneys." — A. G. Warner, *Annals of American Academy of Political and Social Science*, vol. ii., p. 551 (January, 1892), Review of W W. Cook's *The Corporation Problem*.

14. When sleeping-cars first came into extensive use, the first efforts of the courts were to construe the liabilities of the companies operating them as those of either common carriers or inn-keepers, but it was found later that the legal rules relating to those two classes of persons were inapplicable to sleeping-car companies; now "according to the weight of authority, the liability of the sleeping-car company is neither that of a common carrier nor of an inn-keeper." — *American and English Encyclopedia of Law*, *sub verbo* "Sleeping-cars."

It is believed that the chief difficulty in legislative and judicial control of corporations at present is due to the effort to apply to them legal principles elaborated in a system of law founded on individual social units instead of modifying the existing system so as to make its principles applicable to aggregate social units; the theory of "artificial personality," though harmless when applied with due limitations, has been the source of much confusion in legislation and legal decisions on questions relating to corporations.

15. "The demand for the use of corporate powers in combining the capital and energy required to conduct,.. large operations, is so imperative, that by the tendency of the courts to meet the requirements of public necessities, the law of corporations has been so modified, liberalized, and enlarged, as to constitute a branch of jurisprudence, with a code of its own, due mainly to very recent times. To attempt, therefore, to define a corporation or limit its powers by the rules which prevailed when they were rarely created for any other than municipal purposes, and generally by royal charter, is impossible in this country and at this time." — Justice Miller, in Liverpool & London Life and Fire Insurance Company vs. Commonwealth of Massachusetts, 10 Wallace, 566.

16. Morawetz on Private Corporations, §1 (2d edition), Taylor on Private Corporations, §22. W. NV. Cook, in his work on Stock and Stockholders (§1), seems to adhere to the conception with modifications, as does also J. L. Lowell in his work on Transfers of Stock. See article on "The Legal

Idea of a Corporation," in *American Law Review*, vol. xix, pp. 114-116.

17. "Up to the present century, the fiction [of an artificial person] was adequate for the regulation of corporate affairs." — Taylor, *Law of Private Corporations*, §22. See preceding note.

18. Even Stubbs, in his monumental *Constitutional History of England*, views the English municipalities at the end of the Middle Ages almost solely as a part of the central administration machinery of the state. Mrs. J. R. Green, in *Town Life in the Fifteenth Century*, has given an adequate treatment of one phase of corporate life. Gross's *Gild Merchant* is the only complete study of any one class of corporations.

19. This particular characteristic has been appreciated by Franklin H. Giddings in his *Principles of Sociology*, in which he has very appropriately assigned a discussion of corporations to the chapter on "The Social Constitution" (Book II., chapter iv.).

20. The use of corporations for associated social activity has been more generally recognized than any other feature of them; unfortunately most writers have not succeeded in discovering, or at least have failed to consider, any other feature. E.g., Professor Giddings, in his *Principles of Sociology* (p. 187), recognizes corporations as forms of association, but discusses no other quality of them.

21. "The idea of a corporation sole has been claimed as peculiar to English law, but the novelty consists only in the name; and it has been justly remarked that, 'as so little of the lay, of corporations in general applies to corporations sole, it might have been better to have given them some other denomination.'" — Dr. Wooddeson, *Vinerian Lectures*, vol. i., pp. 471, 472.

" There are very few points of corporation law applicable to a corporation sole." — Kent, Commentaries, vol. ii., p. 273.

22. "The number of corporations sole in the United States must be very small indeed. It is possible that the statutes of some states vesting the property of the Roman Catholic church in the bishop and his successors may have the effect to make him a corporation sole; and some public of beers have corporate powers for the purposes of holding property and of suing and being sued." — Blackstone, *Commentaries*, Book I., p. 468, note of editor (Cooley).

23. This idea is elaborated fully in Pollock and Maitland's *History of English Law*, vol. i., pp. 469–495.

24. "The law has wisely ordained that the parson, *quaternes* parson, shall never die, any more than the King; by making him and his successors a corporation By this means all the original rights of the parsonage are preserved entire to the successor; for the present incumbent, and his predecessor who lived seven centuries ago, are in law one and the same person; and what was given to the one was given to the other also." — Blackstone, *Commentaries*, Book I., cap. 18. This is verbal jugglery,

"It is true the Common Lawyers of England have been used to speak of Parsons, Vicars and even Wardens of Parish Churches. as Corporate-bodies. Sir Thomas Littleton speaketh after that manner. But I do apprehend, that the reason thereof is, because Parsons, Vicars, or Church-wardens, have a Perpetual succession, like as Politick bodies have; and therefore,

that this way of speaking of them as of corporate-bodies is founded rather upon Resemblance than Reality." — Madox, *Firma Burgi*, p. 47. See also reference to the case of Overseers vs. Sears.

"One genera. figurative notion of incorporeity bath produced many fictions." — paradox, as quoted by Gross, *Gild Merchant*, vol. i., p. 104, note. The reference there given is "Addit. MS.,

Brit. Mus., 4531, fol. 122.

25. Of course, whether given legal relations are regular or exceptional depends on the nature of the system of law under which the relations are recognized or created and enforced; some systems, such as that of early Rome, have been based on a composite unit, as the family or some other group; others, such as the Imperial Roman law and the (English and American) law since the destruction of

feudalism, have been based on the simple unit, the individual The members of a corporation act not as units but as parts of a composite unit, and their social relations are to that extent exceptional as compared with the regular social relations of individuals regarded as social units. It is sometimes prophesied with a considerable degree of assurance that society is to attain in the near future a stage of development in which the social unit will be aggregate or composite instead of individual, as at present, and that the corporation is the institution through which socialism, in a more or less modified form is to be made effective. Unfortunately for such views, the historical development of corporations has not as yet afforded them much support. If the corporate form were always used as one might expect from a consideration of its adaptability, it might serve as a stepping-stone to socialism, but as a form of social activity it has been perverted to highly individualistic uses, and has actually produced more exaggerated individualism. The use of corporations has tended to result, not in co-operative commonwealths, but in trusts. There is much more reason to expect that if socialism comes at all it will derive its organization from above, not from below — from the subdivisions of the state and not from corporations — in other words, it is more likely to be state socialism than co-operative socialism.

26. Blackstone, *Commentaries*, Bk. I., pp. 473–474.

27. This is a broad statement of the fact as to railways. The exercise of the right of eminent domain is delegated to corporations alone. Some exceptional circumstances might enable individuals to construct and operate railways, but, speaking in general terms, the function is restricted to corporations. When railroads are sold at forced sale under decrees of foreclosure or on executions, it is held that an individual may purchase and operate the property, but that he may not succeed to the corporate franchise. Opinions in some cases seem to contemplate only a temporary operation of the property by the individual purchaser. At all events, individual ownership and operation of railways are regarded as justifiable only under extraordinary circumstances and when absolutely necessary to the attainment of justice.

28. Beach on Public Corporations. i., 92, and cases cited. Dillon on Municipal Corporations, i., § 91. Sedgwick on Construction of Statutory and Constitutional Law, 338. *American and English Encyclopaedia of Law*, *sub verbo* "Corporation."

29. It may be objected that the consent of the citizens of a municipality is not necessary to its incorporation, and that acceptance by them of a municipal charter is not necessary to make its provisions operative. Though that is now the well-settled rule with relation to public corporations, it is so generally regarded as repulsive to the spirit of English and American political institutions that some preliminary act in the nature of consent or acceptance on the part of the prospective citizens of the municipality is required before the lay of incorporation is permitted to take effect. It is true, in general, that municipalities have exhibited a strong and increasing tendency to cease to be corporations and to become more truly sub-governmental administrative bodies. This tendency has been expressed in the enactment of general incorporation laws, the more particular classification of municipalities, the increased interference by legislatures in the government of municipalities, and the modification of the doctrine of consent to be incorporated. Municipal self-government is being rapidly transformed into a mere determination within narrower limits of the means of executing laws imposed by state governments. The decadence of city government in England in the seventeenth and eighteenth centuries was evidenced by the multiplication of local commissions acting under the supervision of the central government. American cities seem to be passing at present through a Similar phase of development, — which indicates, as far as the present study is concerned, a decadence of corporate municipal life and a corresponding expansion of state government.

30. It is not necessary to assume that the state has made a contract with a corporation, the terms of which are expressed in the charter granted, in order to insure autonomy or stability of corporate life.

It is entirely a question of public sentiment. In no other country could corporate powers and duties be as easily modified or destroyed by law as in England, for Parliament is supreme, but the social sentiment in favor of "vested interests" is so strong that English corporations have always enjoyed an exceptional degree of independence, Rarely have corporations been deprived by Parliament of their powers, even after long-continued misuse or abuse of them, without being provided a liberal pecuniary compensation for them; yet no contract relations between England and the corporation could be considered to have existed.

31. See Mrs J. R. Green's *Town Life in the Fifteenth Century*, vol. ii. Pp. 437–448, for the part played in the movement by medieval towns in England. See also *The Genesis of a Written Constitution*, by Wm. C. Morey, in the *Annals of the American Academy of Political and Social Science*, April, 1891, vol. i., p 529 et seq., for the connection between the organic structure of the English trading and colonial companies and the constitutions of the United States and several States.

32. Herbert, *History of the Twelve Great Livery Companies of London*, vol. i, p. 218.

33. In The Overseers of the Poor of the City of Boston vs. David Sears et Ux. (22 Pickering, 122) it was contended by counsel that "the corporation [Overseers etc.] thus created is more analogous to a sole than to an aggregate corporation, The two kinds run into each other and the demandents [Overseers etc.] are to be regarded as a sole corporation, or a quasi sole corporation, with some of the incidents of an aggregate corporation. It is a necessary and inseparable incident of an aggregate corporation that it have the power of perpetuating itself by choice of members. Here the corporators have no such power, but they are chosen by the inhabitants of Boston; and they have a civil death annually, as the sole corporation dies a natural death."

34. Beach on Public Corporations, i., 93, and cases cited. Dillon on Municipal Corporations, i., §87, and cases cited. Field on Private Corporations, 66, 67. Taylor on Private Corporations, 121.

35. Angell and Amso on Corporations, pages 1–20.

36. Kyd on Corporations, page 13.

37. Taylor on Private Corporations, §51.

38. "The distinctive feature of the modern trading corporation is the limited liability of its members." — A. T. Hadley, *Railroad Transportation*, p. 43.

39. The sentiment is fairly expressed in the following words: "It is a well-known fact that many of the enterprises which have greatly developed the resources of the country, and which have been of great benefit to society, would never have been undertaken without corporate organizations. No new enterprise is a cinch, it is more or less uncertain and speculative, and where it involves large expenditures of capital, unless the men who undertake it can know the limit of their liability, it will remain undeveloped. — "Suggestions for Amendment of the Laws Governing Corporations in the State of Michigan," by Jay P. Lee, in *Publications of the Michigan Political Science Association*, No. 3, pp 74, 75.

40. "The purpose in making all corporations is the accomplishment of some public good. Hence, the division into public and private has a tendency to confuse and lead to error in investigation, for unless the public are to be benefited, it is no more lawful to confer exclusive rights and privileges upon an artificial body than upon a private citizen," — Mills vs. Williams, II Iredell's (N. C.) 558.

41. "The corporation is the ally, the agent, the representative of plutocracy.... Plutocracy has appeared in a new guise, — a new coat of mail, — the corporation. The struggle of democracy against plutocracy... will be between democracy and the corporation. The people are beginning to recognize their old plutocratic foe in its new corporate form." (W. W. Cook, *The Corporation Problem*, p. 249.) " Plutocracy in the form of the individual is largely beyond the reach of legislatures and the law. But plutocracy in the form of the corporation is open to attack. It can be regulated, restricted, and

annihilated. Plutocracy acting through corporations is obliged to be cautious and conservative.... The plutocrat gives bonds to keep the peace when he acts through the corporation." (Ibid., pp. 252, 253.) "It is better to have the large corporation than to have the trust." — Ibid, p. 243.

42. Cf. A T. Hadley, "Railroad Transportation," p 48. Cf. also R. T. Ely, "The Future of Corporations," *Harper's Magazine*, vol. lxxv. pp. 260, 261, (July, 1887).

43. See Pollock & Maitland's *History of English Law*, vol. i., pp. 483.

44. "The modern form of corporation prevailed because it was found to be the best form of ownership for the large permanent investments uncle concentrated management which are required in modern industry." — A. T. Hadley, *Railroad Transportation*, p. 46.

"As John Stuart Mill says, [the union of capitalists and laborers] must be brought about by a development of the partnership principle. No one can tell exactly what form this will take, but some things seem already clear. Corporations will play an important part in this development, as they gradually become more democratic in their tendencies. Corporations and co-operative enterprises will become more and more nearly assimilated until they can scarcely be distinguished." — Richard T. Ely, "The Future of Corporations," *Harper's Magazine*, vol. lxxv, p. 260 (July, 1887).

45. "To render such an establishment [of a joint-stock company] perfectly reasonable, (a) with the circumstances of being reducible to strict rule and method, two other circumstances ought to concur. First, (b) it ought to appear, with the clearest evidence, that the undertaking is of greater and more general utility than the greater part of common trades; and secondly, (c) that it requires a greater capital than can easily be collected into a private co-partnery, If a moderate capital were sufficient, the great utility of the undertaking would not be a sufficient reason for establishing a joint stock company; because, in this case, the demand for what it was to produce, would readily and easily be supplied by private adventurers. In the four trades [of (a) banking, (b) fire, marine and capture insurance, (c) canals, and (d) city water-supply] both these circumstances concur." — Adam Smith, *Wealth of Nations*, Book V., cap. I.

46. In later centuries, the metropolitans of Constantinople and Jerusalem were also accorded the rank of patriarch, but it has no bearing on the matter under consideration.

47. "We know with certainty, by the narrative of the Acts of the Apostles, that the first Christians lived as the monks have lived since." — Montalembert, *Monks of the West*, vol. i., p. 294.

48. Mark x., 21; Matthew xix., 21; and Luke xviii., 22.

49. *Monks of the West*, vol. i., p. 294.

50. In Palestine the so-called *laura* was especially common, though it had also existed in Egypt. It was a collection of hermits' cells, not at first organically connected, but simply grouped about some holy place or preeminent hermit; it usually became later a monastery or group of monasteries, especially when the centre of attraction was a man rather than a place.

51. The Mendicant Orders and Jesuits, as well as some of the orders of the Congregational Period, though not properly included in the strictly monastic orders, were nevertheless their legitimate successors, and are accordingly classified with them.

52. In accordance with the plan of this work, the Modern Period will not receive consideration in this volume.

53. Before the sixth century, it had been held lawful for monks to return to the world, but it had been regarded as blameworthy and to be expiated by penance; now, however, the monastic vows were regarded as binding and strictly enforceable. The monasteries thus became more essentially corporations through the fixity and stability of the social relations assumed by the monks. The requiring the novitiate was correlated to the enforcement of the monastic vows.

Ample provisions were made by St. Benedict for the "offering" of children (hence called oblates) to

the monasteries as novices, though of course their novitiate would have to be longer than two years.

54. Originally the choice of the more discreet monks was held to prevail over that of the less discreet, even if the latter were in the majority, the bishop of the diocese, or pope, or temporal ruler being the judge of the relative weight of discretion.

55. As a matter of fact, this part of the rule was not frequently applied in Benedictine monasteries They usually remained separate and distinct and not "affiliated." The "congregational" feature was developed in a later class of monasteries.

56. Scholastica, sister of St. Benedict, is said to have founded nunneries on the basis of the Benedictine rule.

57. "No monk shall live anywhere, nor establish a monastery or an oratory contrary to the will of the bishop of the city; and the monks in every city and district shall be subject to the bishop, and embrace a quiet course of life and give themselves only to fasting and prayer, remaining permanently in the places where they have been settled; and they shall meddle neither in ecclesiastical nor in secular affairs, nor leave their own monasteries to take part in such; unless, indeed, they should at any time through urgent necessity be appointed thereto by the bishop of the city... But the bishop of the city must make the needed provision for the monasteries." — Canon IV.

"Monasteries, which have once been consecrated with the consent of the bishop, shall remain monasteries forever, and the property belonging to them shall be preserved; and they shall never again become secular dwellings." — Canon XXIV.

58. "Never completely incorporated with the ecclesiastical organization, nor ever wholly absorbed by the civil organization, the monastery occupied a peculiar intermediate social position." — Schaff-Herzog, *Encyclopaedia of Religious Knowledge, sub verbo* "Monastery."

59. In some of the separate monasteries, the rule of St. Basil was enforced; in others, where the Benedictine rule had been formerly In force, it had been so amended and relaxed as to be virtually a new rule. The order of Grammont, organized in France in 1073, affected to use no rule but that of the Gospel.

60. Cardinal Richelieu aimed to reform the degenerate Clugniac monasteries by uniting them with the Maurinians, and Cardinal Mazarin tried a similar plan, but both failed.

61. Likewise older unconnected monasteries were united in congregations. E.g., in Spain, Southern Italy and Sicily, there had long been many monasteries following the rule of St. Basil, some of them antedating the monasteries founded on the Benedictine rule; when an application was made to confirm them in a separate congregation, it was refused with the suggestion that they join some other congregation already organized. Later, however, in 1573, the application was granted.

62. This was acknowledged by Benedict XII in a constitution for monasteries prepared by him, and providing that each monastery should maintain a number of its members at a university to study theology and canon law.

63. The rule of St. Francis became eventually the rule of all the mendicant orders. The Dominicans had originally use¢l the rule of St. Augustine, slightly modified, but adopted the Franciscan rule in 1220 and became mendicant friars. The Carmelites had their origin in Palestine during the crusades, and lived there under a rule imposed by the Patriarch of Jerusalem; afterwards, when they removed to Europe, during the thirteenth century, they also became mendicant friars by the necessary modification of their rule.

64. *Baliarum Romanarum*, Edition Tauricumusis, vol. iii, p. 394.

65. Among the Carmelites the general was elected for terms of six years.

66. When Loyola died, in 1556, the order had 12 provinces, 100 houses, and more than 1000 members. In 1580, it had 15 provinces, 110 houses, and 5750 members. At the time of its suppression,

in 1773, it had 37 houses of *professi*, 669 colleges, 61 houses for novices, 196 seminaries, 335 residences, 223 missions and 22,782 members; it had included in its membership 24 cardinals, 6 electors of the Empire, 19 princes, 221 archbishops, and 121 titular bishops, and had produced 11 martyrs and 9 saints.

67. See Edwin Hatch's *Growth of Church Institutions*, p. 161. In writing this head and the next one (on Collegiate Chapters) much reliance has been placed on the volume of Mr. Hatch referred to. In fact, nearly all that is attempted here is to bring the subjects as there treated into orderly relation with the general subject of corporations.

68. See Edwin Hatch's *Growth of Church Institutions*, pp. 163–164.

69. Edwin Hatch, *Growth of Church Institutions*, pp. 164–165.

70. Quoted by Edwin Hatch, in *Growth of Church Institutions*, p. 166.

71. Hatch, p. 167.

72. T. B. Macaulay, "Review of Ranke's History of the Popes," *Edinburgh Review*, October, 1840.

73. Kemble, *Saxons in England*, vol., ii, pp. 264–285.

74. A somewhat too highly colored view of the Anglo-Saxon town is the following: "The rights of such a corporation [a borough electing its own reeve] were in truth royal. They had their own alliances and feuds; their own jurisdiction; courts of justice, and power of execution; their own markets and tolls; their own power of internal taxation; their personal freedom with all its dignity and privileges. And to secure these great blessings they had their own towers and walls and fortified houses, bell and banner, watch and ward, and their own armed militia." — Kemble, *Saxons in England*, vol. ii., p, 312.

75. Madox, *History of the Exchequer*, vol. i., pp. 326–330.

76. When later some of the towns had obtained the privilege of accounting directly to the Exchequer, without the intervention of sheriff or bailiff, the sums due from them were not included in the general ferm of the county, but placed separately under the head of *Terrae datae*. See Madox, *Firma Burgi*, p 233, and items from the Great Rolls there cited in notes.

77. Pollock and Maitland, *History of English Law*, vol. i., p. 641.

78. Thus, for example, in the sixth year of the reign of Richard I, Ipswich fined to the King in sixty marks, Norwich in two hundred marks, and Oxford in sixty marks, to secure the privilege mentioned, among others.

79. In his *Firma Burgi*, p. 251.

80. The necessity of dealing with the Crown through sheriffs and bailiffs was a real hardship. If the ferm of the town should not be promptly paid or not accounted for by the sheriff, bailiff or other officer whose duty it was to receive it, "the King's officers of his exchequer might seize the liberty of the city or town into the King's hands, And that was the most usual method and most commonly practiced." See Madox, *Firma Burgi*, pp. 161–164 and examples and documents there cited.

81. In the fifth year of his reign, Henry III remitted to the citizens of Winchester a part of their fermi in the forty-ninth year, in compassion for their poverty, he conceded that they should render yearly for twenty-one years one hundred marks on the same terms on which they had been wont to render eighty pounds yearly for the ferm of their city; when the term of twenty-one years expired, they asked of Edward I that he concede the same terms or appoint a *custos* for the city; the King acquiesced and ordered the barons of the Exchequer to receive the reduced ferm. See Madox, *History of the Exchequer*, vol. i., pp 336–337, and foot-notes.

82. See Madox, *Firma Burgi*, and entry from Great Roll in foot note. On the general subject of the *firma burgi*, see Pollock and Maitland's *History of English Law*, vol. i., pp. 635–641.

83. See Essay on "Feudalism" (p. 48), by W. J. Ashley, in volume of *Essays on English Constitutional History*.

84. W. J. Ashley, *English Economic History*, vol. i., cap. i, "The Manor and Village Community."

85. Such seems to be the assumption underlying Herbert Spencer's well-known distinction of the militant and industrial types of society. See "Synthetic Philosophy," *Political Institutions*, chapters xvii. and xviii.

86. For a description of socage and burgage tenures and their relations to each other, see Pollock and Maitland's *History of English Law*, vol. i., pp. 271–277.

87. See Pollock and Maitland's *History of English Law*, vol. i., pp. 328–329.

88. *Ibid*., vol i., pp. 275–276.

89. The burgher became the guardian of his own children and might betroth them at his own pleasure; the right of widows to remarry was secured against any interference from without. Land was allowed to pass to the next heir without reverting to the lord. See Green's *Town Life in the Fifteenth Century*, vol. i., p, 199.

90. Charters of London, Stubbs's *Select Charters*, p. 83.

91. Some of the English towns of the middle ages were singularly lacking in homogeneity, One of the best examples was the ancient city of Winchester; for a description of the several groups of tenants and conflicting jurisdictions in that city, see Green's *Town Life in the Fifteenth Century*, vol i., pp. 321–325.

92. On the general subject of tenurial privileges, see Pollock and Maitland's *History of English Law*, vol. i., pp. 629–634.

93. See Henry Ellis' *General Introduction to Domesday Book*, vol. i., pp. 256–257.

94. As an example, the comprehensive exemption found in a charter granted to Carlisle may be quoted: "Et quod ipsi et eorum haeredes et successores, cives civitatis praedictae, quieti sint de theolonis, pontagis, passagis, lastagis, kaiagis, cariagis, muragis et stallagis, de rebus et mercimoniis suds, per totum regnum regis...." The charter is found quoted in Madox's *Firma Burgi*, p. 243, note (9).

95. Charles Gross, *The Gild Merchant*, vol. i., p. 98, and authorities cited in note (2). On the general subject of mercantile privileges, see Pollock and Maitland's *History of English Law*, vol. i., pp. 634–635.

96. Pollock and Maitland, *History of English Law*, vol. i., p. 652.

97. Green, *Town Life in the Fifteenth Century*, vol. i., pp. 296–298.

98. See, on the general subject of municipal courts, Pollock and Maitland's *History of English Law*, vol. i., pp. 627–629, under the head of "Jurisdictional Privileges."

99. The *communa* was recognized in London by a national council in 1191, and the mayor is mentioned at the same time. In 1215, John granted or confirmed the right to elect a mayor annually In the rolls of the reign of John, Bristol, York, Ipswich, London, Lynn, Northampton, Norwich, Oxford and Winchester are mentioned as having mayors. "The development... of the idea of municipal completeness as represented by a mayor and aldermen may be placed at the very beginning of the thirteenth century." — Stubbs, *Constitutional History of England*, vol. iii., p. 580.

100. In Norwich the town government was long presided over by four bailiffs, until, in 1403, a mayor was set over them.

101. In the thirteenth century, London was governed by a mayor, two sheriffs and twenty-five aldermen of overdo. The mayor was elected by the aldermen, or by the aldermen and magnates of the city, and then approved by the Crown. The aldermen were chosen by the citizens or commons of the

wards. The sheriffs were probably elected by the mayor and court of aldermen with four or six *probi homines* of each ward, and were approved by the Crown. The mayors were at first elected for terms of one year, though they served for more than one term until 1329, when annual changes began. In 1229, it was provided that sheriffs should serve for no more than two years together. After 1285 the aldermen were assisted by elected councillors, (Stubbs, *Constitutional History of England*, vol. iii., pp. 587–588.) Short terms revere characteristic of the mayor's office in most towns. London was one of the cities in which the wards were survivals of older units and difficult to amalgamate into a city. In cities such as London, where the wards were so distinct in their interests, the aldermen were not usually a body close to the mayor in his administration; they were closer to their wards; accordingly a small number of sheriffs, bailiffs or comburgesses are sometimes found between the mayor and aldermen. In fact, the court of aldermen vacillated between a mayor's cabinet and a body of representatives of federated wards. There were many ways of choosing mayors and sheriffs; sometimes they were nominated by their predecessors and elected by the aldermen or council (or by a specially chosen body that had not hardened into a permanent council); sometimes the choice of the official bodies was submitted for ratification to a popular body in folkmoot; sometimes the mayor was virtually one of the aldermen, and performed his duties as such in one of the wards. When the council became a fixed institution, past-mayors became members of the body by virtue of having served in the mayoral office.

The shifting relations of the aldermen are shown in the history of Leicester where in 1464 there were twenty-four "comburgesses or mayor's brethren," and a court of common council, empowered to elect the mayor. In 1484, the twenty-four coruburgesses or mayor's brethren took the name of aldermen and the town was divided into twelve wards. Five years afterwards the mayor, twenty-four aldermen and forty-eight councillors formed a corporation. — Stubbs, *Constitutional History of England*, vol. iii, p. 601. This movement was thus the reverse of that in London.

102. "The growth of the borough corporations is from the very first intimately connected with the establishment of a definitely aristocratic or definitely elective form of government. Had the one organ of the borough been a folk-moot, the corporate, the ideal, borough would have come to light but slowly or never." — Pollock and Maitland, *History of English Law*, vol. i., pp. 668–669.

103. "Finally... there is a common tendency towards the general type of an elective chief magistrate, with a permanent staff of assistant magistrates, and a wider body of representative councillors — in other words, to the system of mayor, aldermen and common council, which with many variations in detail was the common type to which the charter of incorporation gave the full legal status." — Stubbs, *Constitutional History of England*, vol iii, p. 604.

104. Green, *Town Life in the Fifteenth Century*, vol. ii., pp. 280–281.

105. For the general subject of the Town Council, see Green's *Town Life in the Fifteenth Century*, vol. ii, chapters xi to xvi.

106. Brady, *Treatise of English Boroughs*.

107. See Green's *Town Life in the Fifteenth Century*, vol. ii., chapter ix on "The Town Democracy," and chapter x. on "The Town Oligarchy." See also an article by Charles W. Colby in the English Historical Review, vol. v, pp. 633–653.

108. See Pollock and Maitland's *History of English Law*, vol. i., pp. 641–644, under the head of "Election of Officers and Constitution of the Borough."

109. The word *by* in *by-laws* is said to be the Danish word *by*, meaning *town*.

110. See paragraphs on "By-Laws and Self-Government," in Pollock and Maitland's *History of English Law*, vol. i., pp. 644–646.

111. See paragraphs on "Self-Taxing Powers," in Pollock and Maitland's *History of English Law*, vol. i., pp. 646–648.

112. For a detailed tracing of the comparative growth of liberty in the several classes of English towns, see Green's *Town Life in the Fifteenth Century*, vol. i: "Towns on Royal Demesne," pp. 226–249, "Towns on Feudal Estates," pp. 250–276; "Towns on Church Estates," pp. 277–308.

113. Many charters were granted *ad amendationem civitatis* or *pro melioratione civitatis*, as those to London by Henry II, to Winchester and Lincoln by Richard I, to London and Yarmouth by John, and others. See Madox, *Firma Burgi*, p. 243. The language used in the charter granted by Edward II to Carlisle in the ninth year of his reign is as follows: "Pro melioratione ejusdem civitatis, et ut cives ejusdem civitatis in eadem civitate suis negotiationibus sub majori tranquillitate et quiete intendere valiant imposterum, et ad civitatem illam muniendam et defendum eo amplius animentur si ipsa civitas ipsorum custodi e specialitur committeretur....." The charter is found as an appendix in Brady's *English Boroughs*.

114. In the charter given by John to the burgesses of Yarmouth in the ninth year of his reign, the language is as follows: "Concessimus etiam eis gildam mercatoriam, et quod tenas, et tenuras, vadia sua, et debita sua, omnia juste habeant quicunque eis debeat, et de terris suis et tenuris quae infra burgum praedictum sunt rectum eis teneatur, secundum legem et consuetudinem burgi Oxon...." The charter is found as an appendix (page 9) in Brady's *Historical Treatise of Cities and Boroughs*. In another charter of John, that given by him to Hartlepool in the second year of his reign, the language is more general: "Sciatis nos concessisse et hac presentii carte nostra confirmasse hominibus de Hertlepole quod sint liberi burgenses, et quod habeant easdem libertates et leges in villa sua de Hertlepole quas burgenses nostri de Novo Castello Super Tinam habent in villa sua de Nova Castello." This charter is also found as an appendix in Brady
op. cit. (p. 16).

115. As the charter of Richard I to Winchester was closely copied in the charter given to Gloucester in 1199.

116. There seems to have been some friction between Rhuddlan and Hereford on this question. "The men of Dousselane (Rhuddlan), in North Wales, presented a petition to Henry II, who, in compliance with their request, sent a royal mandate to his chief bailiff at Hereford, commanding
him to search into the laws of the town and frame them into a regular code, so that when required, some body of precedents might be produced without delay. Accordingly, a council was convened, composed of the principal citizens, and from this meeting originated the ancient custom-book, containing the laws by which the city of Hereford was governed for many centuries." — Charles W. Colby, in article on "The Growth of Oligarchy in English Towns," *English Historical Review*, vol. v., p. 638.

117. See "Affiliation of Mediaeval Boroughs," by Charles Gross, published as Appendix E in vol. i. of his *Gild Merchants*.

118. Cunningham, *Growth of English Trade and Industry*, vol. i., p, 282.

119. In the charter of John to Lynn in the fifth year of his reign, the granter says: "Noveritis nos ad instantium et petitionem venerabilis patris nostri Johannis Norwicensis episcopi secundi, concessisse et hac praesenti carte nostra confirmasse quod villa de Lenna *sit liber burgus* in perpetuum, et habeat omnes libertates et liberaa consuetudines quas liberi burgi habent, omnibus salvis ipsi episcopo et successoribus suis et Willielmo Consiti Arundell et haeridibus suis libertatibus et consuetudinibus quas ipsi in predicta villa antiquitus habuerunt." The charter is found in Brady's *Historical Treatise of Cities and Boroughs*, Appendix, p. 16.
Thus also Edward III granted to Quinborowe, in the forty-second year of his reign, "that the town should be a perpetual and free borough and the men of it be burgesses, and have all the liberties and

free customs belonging to a free borough." — See *Report of Commissioners on Municipal Corporations in England and Wales* (1835), p. 823.
See also Stubbs's *Constitutional History of England,* vol iii., p, 597.

120. Cunningham, *Growth of English Industry and Commerce,* pp. 371–372; Stubbs, *Constitutional History of England,* vol. iii., p. 578.

121. "A towne... is called a burgh, because it sendeth burgesses to Parliament." — Coke on Littleton, 1086.

122. *Report of Municipal Corporations Commission* (1835), p. 17.

123. *Report of Municipal Corporations Commission* (1835), p. 34.

124. Ibid.. p. 17.

125. Not all of the boroughs were "incorporated," but the distinction between corporated and uncorporated boroughs was purely technical.

126. In some cases, the right was limited to children born in the borough, but in others extended to children wherever born; again, it was often confined to the children (or first child) born after the admission of the parent to the franchise; and there were many other such provisions.

127. In some cases, the freedom might be given or sold only to residents, but most frequently to non-residents as well.

128. See *Report of Commissioners on Municipal Corporations in England and Wales,* 1835.

129. 5 and 6 William IV., cap. 76.

130. May, *Constitutional History of England,* vol. ii., p 468.
The exceptional and privileged character of town corporations was virtually abolished by the following provision: "And whereas sundry towns and boroughs of England and Wales are not towns corporate, and it is expedient that several of them should be incorporated; be it enacted that if the inhabitant householders of any town or borough in England or Wales shall petition His Majesty to grant to them a charter of incorporation, it shall be lawful for His Majesty, by any such charter, if he shall see fit, by advice of his Privy Council, to grant the same, to extend to the inhabitants of any such town or borough within the district to be set forth in such charter the powers and provisions in this act contained: provided, nevertheless, that notice of any such petition, and of the time when it shall please His Majesty to order that the same be taken into consideration by his Privy Council, shall be published by royal proclamation in the London *Gazette* one month at least before such petition shall be so considered." — 5 and 6 William IV, cap. 76, section 141.

131. Of course, the city of London was not affected by the movement, and, as a matter of fact, the schedules in the Municipal Corporations Act failed to include a few unimportant corporations that the commission had overlooked in their investigation; as to other corporations the act was comprehensive.

132. Thorpe's *Ancient Laws and Institutes of England*, "Laws of King Ive (16), vol. i, p. 113.

133. Thorpe's *Ancient Laws and Institutes of England*, "Laws of King Ive" (21), vol. i., p. 117.

134. "Anglo-Saxon Gilds," Appendix B of the *Gild Merchant,* pp. 177, 178,

135. *Ancient Laws and Institutes of England,* vol. i., p, 113, note (a).

136. The several interpretations given the word are briefly set forth in Seligman's valuable *Two Chapters on the Mediaeval Guilds of England,* p. 6 note (b).

137. Ibid., "Laws of King Alfred" (27), vol. i, p, 79.

138. Ibid., "Laws of King Alfred" (28), vol. i., p. 81.

139. Thorpe's *Ancient Laws arid Institutes of England,* "Leges Regis Henrici Primi" (lxxv, 10, § 10), vol. i., p. 580.

140. Thorpe, *Diplomatarium Arglicum,* preface, p. xvii.

141. “This is the ordinance which the bishops and reeves belonging to London have ordained, and with ‘weds’ confirmed, among our ‘ frith-gegeldas,’ as well ‘eorlish’ as ‘coerlish,’ in addition to the dooms which were fixed at ‘Grataulia’ and at Exeter and at ‘Thunresfeld.”’ — Thorpe, *Ancient Laws and Institutes of England*, “Laws of King Æthelstan” (vi, I), vol. i, p, 229.

142. Ibid., p. 229.

143. Ibid, p. 231.

144. Thorpe’s *Ancient Laws and Institutes of England*, p. 237.

145. Ibid., p. 235. The dooms seem to end abruptly with the ninth head; the tenth, eleventh and twelfth heads are of a general nature, and refer to dooms fixed elsewhere by the King, — as if the dooms of London had been submitted to the King and sanctioned by him with amendments, — Ibid, pp 239–243.

146. E. R. A. Seligman, *Two Chapters on the Mediaeval Guilds of England.*

147. Charles Gross, *The Gild Merchant*, Appendix B (“Anglo-Saxon Gilds”), p. 175.

148. Toulmin Smith, *English Gilds*, Introduction by Lucy Toulmin Smith, p, xxvi.

149. John Mitchell Kemble, *Saxons in England*, vol. i., Appendix D.

150. John Mitchell Kemble, *Saxons in England*, vol. i., Appendix D.

151. This is controverted by Gross, who believes the Anglo-Saxon text refers to murderers and not to thieves. See *Gild Merchant*, Appendix B (“Angio-Saxon Gilds”), vol. i., p. 182.

152. Kemble, *Saxons in England*, vol. i, Appendix D.

153. Gross, *The Gild Merchant*, vol. i., pp. 186, 187.

154. “Cnichitan on Cantuareberig of cepmanne-gild “ (Cnichts of Canterbury of the Chapmen’s-Gild). — Ibidem, vol. ii, p. 37, citing Somner, *Canterbury*, vol. i., p. 179.

155. Thorpe, *Ancient Laws and Institutes of England*, Canons enacted under King Edgar (9), vol. ii., p. 247.

156. Toulmin Smith, *English Gilds*, p, 288.

157. The following was one of the ordinances of the Gild of the Holy Trinity, at Cambridge, in 1389: “If any ecclesiastic, especially one in holy orders, comes into the gild, he shall not be put into any office of the gild; nor shall any of its goods be put under his charge; nor shall he be let meddle in any way with such things; but lay brothers of the gild shall undertake them who are best able to deal with such things, and to bear the burthen of such offices. For it is neither becoming nor lawful that a parson should in any way mix himself up with secular business; nor does it befit the good flame or come within the calling of such men that they take on themselves offices and things of this sort.” — Ibid., pp. 264, 265.

158. Thorpe, *Diplomatarium Anglicum*, pp. 608, 609.

159. Thorpe, *Diplomatarium Anglicum*, pp. 615, 616.

160. The Gild of Corpus Christi, of York, founded in 1408, had an elaborate procession each year. Six priests revere annually chosen masters and were to offer prayers for the dead and living members of the fraternity every day and accept new members. Lay members had to make offerings, but took no part in the councils or government of the gild, At the end of each year the six outgoing masters made a report to their six successors. The constitution and ordinances were much modified later, however, and the craft-gilds participated in the pageants and processions, — Toulmin Smith, *Ordinances of English Gilds*, pp. 141–143.

161. The writ issued to the sheriffs of London is printed in Toulmin Smith’s *Ordinances of English Gilds*, p. 127. This order did not extend to merchant or Craft gilds.

162. Including those of Craft gilds, more than five hundred reports or "returns" were made. Fully two thirds must have been those of strictly Social-Religious gilds.

163. "In the worship of God almighte oure creator, and hys moder seinte marie, and al halwes, and seint James apostle, a fraternite is bygonne of good men, in the chirche of seint James atte Garlikbitle in London," is a fair example of the introductory part of the reports of the gilds.

164. Parsons, bakers and the wives of non-members were ineligible to membership in the Gild of the Annunciation in Cambridge. Class distinctions were closely drawn in some gilds. "Whereas this gild [Gild of St. Michael's on the Hill, of Lincoln] was founded by folks of common and middling rank, it is ordained that no one of the rank of mayor or bailiff shall become a brother of the wild, unless he is found to be of humble, good and honest conversation, and is admitted by the choice and common assent of the brethren and sisters of the gild. And none such shall meddle in any matter, unless especially summoned; nor.. , take on himself any office in the gild,... And no one shall have any claim to office in this gild on account of the honor and dignity of his personal rank." — Smith, *Ordinances of English Gilds*, p. 179.

165. Sometimes sureties severe presented for the payment of dues. The entrance fee for a married couple was the same as for a single person; no additional fee was required for the admission of a second wife.

166. Almost the only property of the Gild of the Lord's Prayer, of York, was its play-properties and a chest to keep them in.

167. One feature of the annual meeting of the Gild of St. Martin at Stamford novas a bull-hunt with dogs. The finding of the holy cross was often represented in street processions, In that of the Gild of St. Elene, of Beverly founded in 1378, "a fair youth, the fairest they can find," was clad as a queen, and was followed by two old men, one with a cross and the other with a shovel; then came the sisters two by two and the brothers likewise When the procession reached the Church of the Friars Minors of Beverly mass was celebrated and offerings made. A meeting of the brethren followed next, at which "they eat bread and cheese and drink as much ale as is good for them," and elected their officers for the ensuing year. — Toulmin Smith, *Ordinances of English Gilds*, pp. 148, 149.

168. Gild of the Palmers, at Ludlow; see Smith's *Ordinances of English Gilds*, p. 194.

169. At Stratford-on-Avon, any poor person (whether townsman or stranger) dying in the town was buried by the Gild of the Holy Cross at its own expense.

170. To avoid too numerous references, authorities have not been given for each detailed feature of gild-life. With few exceptions they have been taken from the documents published in Toulmin Smith's *Ordinances of English Gilds*.

171. 37 Henry VIII., c. 4.

172. Gross, *The Gild Merchant*, vol. i., p. 5.

173. Gross gives a list of more than one hundred towns in England in which the merchant gild flourished. — Ibidem, pp. 9–16. He adds, with relation to the same matter. "It may safely be stated that at least one-third — and probably a much greater proportion — of the boroughs of England were endowed with this gild in the thirteenth century; that, in fact, it was not an adventitious institution. but one of the most prevalent and characteristic features of English municipalities." — Ibidem, p. 23.

174. "Sciatis me concessisse hominibus de Andewra ut habeant gildam mercatorum in Andewra..." — Charter of Henry II to Andover, quoted by Gross in *Gild Merchant*, vol. i., p. 9, note (1). "Concessimus [burgensibus nostris de Gippeswics] quod habeant gildam mercatoriam et hausam suam." — Charter of John to Ipswich in 1200, ibidem, vol. ii., p. 115.

175. Pollock and Maitland, *History of English Law*, vol. i., p. 648; see also pages 648–652 for a general consideration of the "Gild Merchant."

176. Gross, *Gild Merchant*, vol. i., pp. 24–26. At King's Lynn, the skevins of the gild traded in mill-stones for the benefit of the community. — Ibidem, p. 79.

177. Gross, *Gild Merchant*, vol. i., pp. 26–29.

178. Ibidem, p. 29.

179. The participation by non-residents in the life of the merchant gild was constitutionally recognized in the Charter of Henry II to Lincoln: "Sciatis me eoncessisse civibus meis Lincolnie omnes libertates et consuetudines et leges suas quas habuerunt tempore Edwardi et Willelmi et Henrici regum Anglae. et gildam suam mercatorium de hominibus civitatis et de aliis mercatoribus comitatus sicut illam habuerunt tempore predictorum antecessorum nostrum regum Anglie melius et liberius." — Stubbs, *Select Charters*, p. 158.

180. "In 1236 the abbot and monks of Buckfastleigh were admitted into the Gild of Totues, so that they might make their purchases freely, paying yearly to the fraternity twenty-two pence for all tollages." — Gross, *Gild Merchant*, vol. i., p. 68.

181. Ibidem, p, 31.

182. Sometimes the entrance-oath contemplated the assumption of such a relation to the town, as in Pevensey: "I will lot and scot with my goods and chattels to the community, in the quantity that I shall be assessed, according to my power." — Ibidem, p. 56.

183. The gild merchant of Coventry in the fourteenth century maintained a lodging-house with thirteen beds to lodge poor people travailing through the land "on pilgrimages or other works of charity," with a governor, and a woman to wash the pilgrims' feet. — Toulrnin Smith, *Ordinances of English Gilds*, p. 231.

184. Cunningham, *Growth of English Industry and Commerce*, vol. i., p. 206.

185. Possibly the context ought to be quoted: "The words 'so that no one who is not of the Gild may trade in the said town, except with the consent of the burgesses'... express the essence of this institution. It was clearly a concession of the exclusive right of trading within the borough. The gild was the department of town administration whose duty divas to maintain and regulate the trade monopoly. This was the *raison d'être* of the Gild Merchant of the twelfth and thirteenth centuries; but the privilege was often construed to irately broader functions — the general regulation of trade and industry." — Gross, *The Gild Merchant*, vol. i., p. 43. For other expressions of the same view, see pages 63, 89 and 105.

186. Ibidem, p. 75.

187. Ibidem pp. 158, 159.

188. Ibidem, p. 158,

189. Brady, *Treatise of English Boroughs*, pp 20, 21.

190. Brentano, Introduction to Toulmin Smith's *English Gilds*, pp. lxxvi., xcvi., xcix and cv.

191. Coke's *Reports*, Part X, 30 a, Sutton's Hospital Case. "It was well observed that in old time the inhabitants or burgesses of a town or borough were incorporated when the lying granted to them to have gildam mercatorium." The statement was made in support of the proposition that the word "'ircorporo,' or any derivative thereof, is not in law requisite to create an incorporation."

192. In writing of the gild of Smiths of Chesterfield, Toulmin Smith affirms: "Among the records of at least sit; hundred early English gilds [not all of them craft gilds] that have come under my careful review, I have very rarely found this absence [of a patron saint, as ill the gild of Smiths] save in some of the Gilds Merchant," — *Ordinances of English Gilds*, p. 168, note.

193. "Whereas for some time the reputable men of the trade of fishmongers of London had a certain form, whereby they were bound to buy and sell their fish in certain places and within certain

boundaries, according to certain points and certain articles, which are found in the remembrances of the City: the which points used to be read in the two Log halmotes which the reputable men held in the presence of the sheriffs each year.... ' (Statutes of Fishmongers, *Liber Albus*, pp 323–334). "The Bakers of London were required to have four hall-motes each year, thereat to receive the new sheriffs, remember the statutes pertaining to them, and receive the assize of bread." (Ibid.) A few other gilds were in the habit of having read at their annual meetings their own statutes and those of the municipalities and King to which they had to conform. Compare the practice of monastic bodies, and of social-religious gilds.

194. *Liber Albus*, p. 327.

195. Ordinance of the Gild of Joiners and Carpenters of Worcester; Smith, *English Gilds*, pp. 208–210.

196. The overseers of the trade of Cutlers, "for their trouble and diligence in searching for and presenting defaults found in the same, shall have the third part of the fines levied for the defaults so by them presented." — *Memorials of London*, p. 441.

197. The bailiff of the mistery of Fishmongers received two marks per annum. — *Liber Albus*, p. 323.

198. The oath administered to the masters and wardens of the mysteries of London in the reign of Henry IV was as follows: "You shall swear that well and truly you shall overlook the act or mystery of N., of which you are masters, or wardens, for the year elected. And the good rules and ordinances of the same mystery, approved here by the Court, you shall keep and shall cause to be kept. And all the defaults that you shall find therein, done contrary thereto, you shall present unto the Chamberlain of the City from time to time, sparing no one for favor, and aggrieving no one for hate. Extortion or wrong unto no one, by color of your office, you shall do; nor unto anything that shall be against the estate and peace of the King or of the City, you shall consent. But for the time that you shall be in office, in all things pertaining unto the said mistery, according to the good laws and franchises of the said city, well and lawfully you shall behave yourself.... So God you help, and the Saints." — *Liber Albus* p. 451.

199. By the ordinances of the Whit-tawyers, "if the overseers shall be found lax and negligent about their duty, or partial to any person, for gift or for friendship, maintaining him or voluntarily permitting him [to continue] in his default, and shall not present him to the Mayor and Aldermen, or if by their neglect the annual assembly of the craft should fail to be held they were punishable by fine." — *Memorials of London*, pp. 232–234.

200. The provisions that the freedom might be "bought" is frequently found, though it can be hardly conceded that the acquisition of the freedom would be entirely regardless of the fitness of the applicant. "No strange man shall be admitted to work in the trade, if he will not be an apprentice in the trade, or buy his freedom." — Articles of the Girdlers (1344), *Memorials of London*, p. 217.

201. Ordinances of the Lorimers, *Liber Custumarum*, pp. 78, 79.

202. Articles of the Girdlers, *Memorials of London*, p. 217.

203. Toulmin Smith, *Ordinances of English Gilds*, pp. 182–184.

204. Ordinances of the Gild of Joiners and Carpenters of Worcester; Smith *English Gilds*, pp. 308, 210.

205. Articles of Joiners and Saddlers, *Liber Custumarum*, p. 81.

206. The Gild of Fullers of Bristol, in their application to the authorities of the city for the enrolment of proposed "points," prayed: "Whereas the said craft has, of old time, had diverse ordinances enrolled before you of record in the Gihald of Bristol, in order to put out and do away with all kinds of bad work and deceits which divers people, not knowing the craft, from time to time do... by which defects the town and craft are fallen in bad repute in many places where the said cloths are put to sale,

to the great reproach and hindrance of the said croft... may it please you to grant to the said suppliants the new additions and points to the profit and amendment of the said craft and to the honor of the said town." — Smith, *English Gilds*, pp. 283–286.

In the first year of Edward III it was ordained "that all the mysteries of the city of London shall be lawfully regulated and governed, each according to its nature in due manner, that so no knavery, false workmanship, or deceit shall be found in any manner in the said mysteries; both for the honor of the good folks of the said mysteries, and for the common profit of the people." — *Liber Albus*, p. 424.

207. *Memorials of London*, pp. 258, 259.

208. Articles of the Girdlers (1344), *Memorials of London*, p. 217.

209. *Liber Custumarum*, pp. 125, 126. Compare Ordinances of Tapicers, *Memorials of London*, pp. 178, 179.

210. Ibid.

211. *Liber Custumarum*, p. 78.

212. Ibid., p. 83.

213. Articles of the Cordwainers or Sawyers, *Memorials of London*, p. 391.

214. Ordinances of the Pastelers or Pie-bakers, *Memorials of London*, p. 438.

215. *Memorials of London*, p. 155.

216. Articles of Cappers, of London. All the reasons for which working by night was prohibited appear in the following extracts from ordinances:

"Many pieces of work, touching the... trade, which have been made by night, have not been convenient or profitable to the common people, as they should be, seeing that they have not been assayed by the wardens of the... trade, as they ought to be." — Articles of the Cutlers, *Memorials of London*, pp. 217–219.

"No one... shall work [at night], by reason that no man can work so neatly by night as by day. And many persons of the trade, who compass how to practice deception in their work, desire to work by night rather than by day: and then they introduce false iron, and iron that has been cracked, for tin, and also, they put gilt on false copper, and cracked. And further... manly of the... trade are wandering about all day, without working at all at their trade; and then, when

they have become drunk and frantic, they take to their work, to the annoyance of the sick and of all their neighborhood, as well as by reason of the broils that arise between them and strange folks who are dwelling among them. And then they blow up their fires so vigorously, that their forges begin all at once to blaze; to the great peril of themselves and of all the neighborhood around. And then, too, all the neighbors are much in dread of the sparks, which so vigorously issue forth in all directions from the mouths of the chimneys in their forges. By reason whereof, it seems that working by night [should be put an end to] in order such false work and such perils to avoid." — Articles of the Spurriers, *Memorials of London*, pp. 226–228.

217. Ordinances of Lorimers, *Liber Custumarum*, p 78. Articles of Joiners and Saddlers, ibid., p. 81.

218. *Memorials of London*, pp. 120, 121.

219. Ordinances of the Pelterers (1365), *Memorials of London*, pp. 238, 239.

220. Ordinances of the Plumbers (1365), *Memorials of London*, p. 320.

221. Statutes of Poulterers, *Liber Custumarum*, p. 82.

222. Articles of the Hatters, *Memorials of London*, p, 240.

223. "Dubbing," or a similar deceit, seems to have been quite universally anticipated. It was also provided in the ordinances of the Waxchandlers that candles should be made of as good wax within as without. — *Memorials of London*, pp. 300–302.

224. *Liber Albus*, pp. 323–334.

225. *Liber Custumarum*, pp. 116, 117.

226. *Memorials of London*, pp. 178, 180.

227. *Memorials of London*, pp. 173, 179.

228. Ordinances of the Furriers (1364), *Memorials of London*, p. 294.

229. "No person of this Ffraternity from henceforth shall discover or disclose any of the lawfull secrets concerning the feats of merchandising in their own occupation or any secret counsel! of the said Fraternity which ought of reason and conscience to be secretly kept without any utterance thereof to any other person of another mystery and out of the same ffraternitie to the hurt and prejudice of this mysterie upon the penalty and fforfeiture of ffyve pounds, to be paid without any pardon as often as and when such case shall happen." — *Memorials of Merchant Taylor's Company* (Clode), Ordinances of 1613, p. 215.

230. Gild of Fullers of Bristol; Smith, *English Gilds*, pp. 283–286.

231. According to the ordinances of the Glovers, their wardens had the power to search even the houses of persons not of the trade for the purpose of discovering whether such persons had enticed servants of craftsmen to make gloves for them secretly in their houses. — *Memorials of London*, pp. 245–247.

232. "It is ordained that all the freemen of the said trade shall dwell in Walbrok, Cornhulle, and Bogerowe, and not in other foreign streets in the city; that so, the overseers of the trade may be able to oversee them. For if they do not dwell together in the said streets, the overseers cannot duly do their duty, or visit them; and then those dwelling elswhere in foreign streets may make deceits in the said trade, against the ordinances [of the trade] and without any punishment for the same." — Ordinances of the Pelterers (Skinners) (1365), *Memorials of London*, p. 330.

233. For that reason it was provided in the articles of the Blacksmiths (in 1372) that all who wanted to send their work out of their shops for sale should send it to "Graschirche," or one of two other places, there to be kept for sale in open view and not to be carried about the city. — *Memorials of London*, p. 361.

234. Bread forfeited by bakers for deficiency ill weight was usually given to the prisoners in Newgate. *Memorials of London*, p. 121.

235. *Memorials of London*, p. 235.

236. Articles of the Heaumers. ibid., pp. 237, 238.

237. *Liber Custumarum*, p. 123.

238. Ibid., p. 126.

239. Ordinances of the Furriers, *Memorials of London*, p. 293. Articles of the Bowyers and Fletchers, ibid., p. 350.

240. For example, it was one of the ordinances enacted by the Cutlers in 1380 that "no man shall be enfranchised by redemption in the said trade, except on the testimony as to his ability of six reputable men of the trade; that is to say, the four wardens, and other two reputable men of the trade." (*Memorials of London*, p. 441.) In 1366, it had enacted in the Articles of the Flemish Weavers in London that their bailiffs should not "make any congregation of the people of the trade, nor any collection of gold or silver in the said trade, alms only excepted, without the assent and ordinance of twenty-four of the best men of the said trade," to be chosen at the direction of the mayor and aldermen for the time being. — Ibid., pp. 331, 332.

By the ordinances of the "Whit-tawyers," if a master had received a servant who had not made a fine to his first master, the second master should make it at the discretion of the overseers or of four "reputable men" of the trade. — Ibid., pp. 232–234.

241. Gild of Tailors of Exeter; Smith, *English Gilds.* Leuche's Trust [Smith calls this a gild].
In 1525–6 (March 11) William Leuche, living in Birmingham made a deed of feoffment to certain persons, but requiring them to pay the profits and revenue to his wife during her life, after her death, to distribute them in "Warkis of Charyte for the heylthe of the forseid wylliam leuche sowlle and Agnes his wyffe. "Two of the feoffers with consent of the others, or the major part of them, to receive yearly rents and profits and account for them at an annual meeting. To distribute them "For the repairing the ruinous waies and bridges in and about the same Towne of Birmingham, where it shall want; and for default of such uses, should bestowe the rents and prohitts of the premisses to the poor liveing within the Towne aforesaid, where there shall be most need, according to the appointment and disposicioun of the said ffeoffers for the time being, or the major part of them; or to other pious uses, according to the discrecioun and appointment of them, the ffeoffers, or the major part of them. When seven have died, the remaining seven to enfeoff certain other 'honest men,' who should re-infeoff the said seven + seven other honest men of Birmingham 'see, that is to say, that the said ffeoffment shall be renewed for ever in the same manner as is above menciouned.'" — Toulmin Smith, *English Gilds*, 251–258.

242. Ashley, *English Economic History*, vol. i., part ii., p. 132. Possibly the court of assistants ought to be considered, as by Ashley, the constitutional successors of the liverymen: "But although the liverymen had great dignity and many privileges, even they did not retain the government of the country in their own hands. It passed from them to a still more select body, the Court of Assistants; which, beginning as a sort of informal committee composed of the wealthier brethren in the livery, especially such as had served the higher offices in the company, became a limited cooptative council, wellnigh absolute in the affairs of the society." — Ibid., pp. 131, 132.

243. Herbert, *Livery Companies*, vol. i, pp. 53–55. Nicholl, *History of Ironmongers Company*, p. 323.

244. Ashley, *English Economic History*, vol. i., part ii., p. 126.

245. Herbert, *Livery Companies of London,* vol. i., pp. 58–66.

246. Smith, *English Gilds.*

247. Ashley, vol. i., part ii., p. 132.

248. Cf. Ashley, *Economic History*, vol. i., part ii., p. 130.

249. Ashley, *English Economic History*, vol. i., part ii., p. 84.

250. In the ordinances of the Leathersellers (of London), made in 1398, it was provided "That from henceforth no one shall set any man, child, or woman, to work in the... trade, if such person be not first bound apprentice, and enrolled, in the trade; their wives and children only excepted, according as the custom and ordinance of the city [of London] do will and demand." — *Memorials of London*, p. 547.

251. Ashley, *English Economic History*, vol. i., part ii., pp. 85, 86.

252. 12 Ric. II., c. 5, St, II., 57.

253. Act of 1406, 7 Henry IV., c. 17; statutes, II., 157.

254. In 1387, "for avoiding disgrace and scandal unto the city of London, it was, by [the] Mayor and the Aldermen, with the assent of the common Council of the said city ordained — that from henceforth no foreigner shall be enrolled as an apprentice, or be received into the freedom of the said city by way of apprenticeship, unless he shall first make oath that he is a freeman and not a bondman or [villain] And whoever shall hereafter be received unto the freedom of the said city, by purchase or in any other way than by apprenticeship, shall make the same oath, and shall also find six reputable citizens of the said city, who shall give security for him, as such from of old bath been wont to be done. And if it shall so happen that any such bondman is admitted unto the freedom of the said city upon a false suggestion, the chamberlain being ignorant thereof, immediately after it shall have

become notorious unto the Mayor and Aldermen that such person is a bondman, he shall lose the freedom of the city, and shall pay a fine for his deceit...." — *Liber Albus*, p. 388.
For an example of a previous loss of the freedom of the city on the basis of bondage, see *Memorials of London*, pp 58, 59.

255. See Act of 1531, 22 Henry VIII., c, 4; Statutes, III., 321.

256. 5 Elizabeth, c. 4.

257. Ashley, *English Economic History*, vol. i., part ii., p. 92.

258. The reasons assigned by various writers for the increase of the class of laborers after the Tidally of the fourteenth century are collected by Professor Ashley: "An increase of population leading to a superfluity of labor; a widening market and consequently a greater importance of capital, now that master artisans began to buy their own materials, and manufacture for the anticipated demand of the general public; an influx of labor from the country districts, following upon the gradual relaxation of the bonds of villenage; or, finally, the sheer selfishness of the masters in limiting their own members." — *English Economic History*, vol. i., part ii., p. 102.

259. See Statute of 1536, 25 Henry VIII, c. 5; Statutes, III, 654. Oxford had enacted ordinances for the same purpose in 1531.

260. That the interests of masters and journeymen were at variance and that the latter appreciated their identity of interests as a class appear plain from an ordinance of the Shearmen of London in 1350: "Whereas heretofore, if there was any dispute between a master in the said trade and his man, such man has been Wont to go to all the men within the city of the same trade; and then, by covin and conspiracy between them made, they would order that no one among them should work, or serve his own master until the said master and his servant, or man, had come to an agreement; by reason whereof the masters in the said trade have been in great trouble, and the people left unserved; — it is ordained that from henceforth, if there be any dispute moved between any master and his man in the said trade, such dispute shall be settled by the wardens of the trade. And if the man who shall have offended, or shall have badly behaved himself towards his master, will not submit to be tried before the said wardens, then such man shall be arrested by a sergeant of the Chamber, at the suit of the said wardens, and brought before the Mayor and Aldermen; and before them let him be punished, at their discretion." — *Memorials of London*, pp. 247, 248. The same preamble and ordinance appear in the "Regulations of the Trade of the Alien Weavers in London" (1362), ibid., p. 307 Almost a half-century earlier, in 1303, the Cordwainers had found it advisable to forbid by ordinance that their journeymen should meet to make provisions to the prejudice of the craft or the damage of the common people, on pain of imprisonment. — *Liber Custumarum*, p. 84. For an account of the disputes between the Saddlers and their "Yomen," see *Memorials of London*, pp. 542–544; for similar disputes in the London Gild of Taylors, see Clode's *Merchant Taylors' Company*, pp. 609–612. The increasing number of rules for the regulation of the classes in their intercourse is evidence of the want of harmony between them. Graduated fees for the several classes were at once the cause and effect of the crystallization of differences between them.

261. In *English Economic History*, vol. i., part ii, pp.106–124.

262. Clode, *Early History of the Merchant Taylors' Company*, chapter on ''Bachelor or Yeomen Company of Taylors," vol. i., pp. 60–74.

263. Ashley.

264. *Memorials of London*, p. 570. Cunningham, *Growth of English Industry and Commerce*.

265. *Growth of English Industry and Commerce*, vol. i, p. 339.

266. E.g., The Gild of Fullers and Gild of Tylers, of Lincoln; the Carpenters' Gild, the Saddlers' and Spurriers' Gild, the Brotherhood of Barbers, the Gild of Peltyers, and the Tailors' Gild, of Norwich;

the Shipmen's Gild of Lynn, and the Gild of Smiths of Chesterfield. "No tyler nor 'poyntowr' shall stay in the city [of Lincoln], unless he enters the gild," while the Gild of Fullers was founded by "all the brethren and sisteren of the fullers in Lincoln."

267. The Gild of Tylers mentioned in the preceding note ordained that " if any brother does anything underhanded am with ill-will, by which another will be wronged in working his craft, he shall pay to the gild a pound of wax, without any room for grace," an ordinance on the border-line between religious fraternity and industrial organization. Among the many ordinances of the Gild of Fullers, also mentioned in the preceding note, were a few of an industrial nature: "None of the craft shall work on the trough [i.e., full cloth by treading it with the feet] and none shall work at the wooden bar with a woman, unless with the wife of a master or her handmaid"; working on Saturdays after noon or on feast-days of the Church was forbidden; strangers were admitted to work among the brethren and sisters and enrolled on the payment of a penny to the wax; "if any one wishes to learn the craft, no one shall teach it to him until he has given two pence to the wax." — Smith, *English Gilds.*

268. "In honor of God, of Our Lady, and of all Saints, and for the nurture of tranquillity and peace among the good folks the Megucers, called 'Whittawyers' [they have] ordained the points:... That they will find a wax candle, to burn before Our Lady in the Church of All Hallows.... That each person of the said trade shall put in the box such sum as he shall think fit, in aid of maintaining the said candle,... If by chance any one of the said trade shall fall into poverty, whether through old age, or because he cannot labor or work, and have nothing with which to help himself; he shall have every week from the said box seven pence for his support, if he be a man of good repute; and after his decease, if he have a wife, a woman of good repute, she shall have weekly for her support seven pence from the said box, as long as she shall behave herself well and keep single. If any one of the said trade shall have work in his house that he cannot complete, or if for want of assistance such work shall be in danger of being lost, those of the said trade shall aid him, that so the said work be not lost.... And if any of the said trade shall depart this life, and have not wherewithal to be buried, he shall be buried at the expense of their common-box; and when any one of the said trade shall die, all those of the said trade shall go to the vigil, and make offering on the morrow that no one of the said trade shall behave himself the more thoughtlessly, in the way of speaking or acting amiss,... and if any one shall do to the contrary thereof, he shall not follows the said trade until he shall have reasonably made amends" — *Memorials of London*, pp. 232–234.

269. See *English Economic History*, vol. i., part i., pp. 91, 92.

270. Thus, analogously, the Gild Merchant of Coventry, founded in 1340, made a return in response to the demands of Richard II. in 1389, but though it introduced its return with a statement that the gild had been formed by merchants of the city, "troubled about their merchandise, through being far from the sea," no ordinances of an economic nature were reported, the return being confined to social-religious ordinances, such as the king had demanded. — Smith, *English Gilds*, p 226.

271. Ashley, *English Economic History*, vol. ii., pp. 134–158.

272. Madox, *History of the Exchequer*, vol. i., pp. 337–341, with notes referring to Pipe Rolls.

273. "Sciatis me concessisse Telariis Londoniarum Gildam suam, in Londoniis habendam, cum omnibus libertalibus et consuetudinibus quas habuerunt tempore Regis Henrici, avi mei; et ita quod nullus nisi per illas se intromittat infra civitatum de eo ministerio, et nisi sit in eorum Gilda, neque in Sudwerke, neque in aliis locis Londoniis pertinentibus, aliter quam solebat fieri tempore Regis Henrici, avi mei.... Ita quod singulis annio inde reddant mihi duas marcas auri.... Et prohibeo nequis eis super hoc aliquam injuriam vel contumeliam faciat, supra decem libras foris facturae...." — *Liber custumarum*, p. 33.

274. Madox, *History of the Exchequer*, vol. i., pp. 562, 563.

275. *Liber Custumarum*, p. 48.

276. Madox, *History of the Exchequer*, vol. i., p. 414.

277. In the reign of Edward I, when, in compassion for their poverty, he reduced the ferm of the weavers of Oxford from a mark of gold to forty-two shillings yearly, it was to be rendered "per manus majorum et Ballivorum suarum Oxoniae qui pro tempore fuerint," instead of directly to the officers of the exchequer. See the order from the King to the barons of the exchequer, in Madox's *History of the Exchequer*, vol. i, pp. 33q. 340, note (z).

278. As an example, the language used in the ordinances of the Tapicers may be quoted: "These are the Ordinances of the Trade of Tapicers, made by the good folks of the said trade: the which Ordinances were approved and accepted before John de Pulteneye, Mayor, the Aldermen and the Commonalty, in the Court of Common Pleas holden [in 1331]." — *Memorials of London*, p. 178.

279. "Saving always unto the Mayor and Aldermen, for the time being, power to amend and change, to curtail and adjust, the articles aforesaid at any time that unto them it may seem requisite, for the common profit, for them so to do; and also, to make due and rightful correction in behalf of those who shall complain that under color of any of the said Articles they have been wrongfully aggrieved." — Ordinances of the Cutlers, *Memorials of London*, p. 441.

So, too, in Bristol, in affirming, ratifying and confirming ordinances proposed by the fullers, the mayor, sheriff and burgesses say: "That if any ordinance, point, or addition, touching the said craft, may be profitable, as well to the town as to the craft, then, by the advice of us and the masters of said craft, amendment thereof shall be made, these ordinances not-withstanding." — Smith, *English Gilds*, pp. 283–285.

The ordinances of the butchers, as an exception to the general rule, appear to have been enacted by the mayor and aldermen, and then consented to by the craft. — *Memorials of London*, pp. 179, 180.

The regulations of the armourers are said to have been made with their assent, in the presence of the mayor, aldermen and sheriffs. — Ibid., pp. 145, 146.

280. See New Articles of the Pouchmakers, 43 Edward III. (137l): "To the honorable the Mayor and Aldermen of the City of London, pray the good folks, Pouchmakers of the same city, that whereas they have some Articles of that trade which are very profitable, to the common profit of the people, and not as yet enrolled; it will please you to accept these Articles to be enrolled, for the common profit of the people;... " — Riley, *Memorials of London*, p. 360.

281. "But through frequent removal of the Sheriffs and Bailiffs, Land] through too great sufferance on the part of some of the bailiffs, the... articles [of the mistery] are not duly observed and are abused; by reason whereof it is proper to apply a remedy thereto...." — Statutes of Fishmongers, *Liber Albus*, pp. 323–334.

In Bristol the Fullers prayed: "Whereas the said craft has, of old time, had divers ordinances enrolled... of record in the Gihald of Bristol wherefore may it please... to grant to the said applicants that all their good ordinances of old time entered of record, and not repealed, be firmly held and kept and duly put in execution... and to grant to the said suppliants... new additions and points [proposed]." — Smith, *English Gilds*, pp. 283–286.

282. *Memorials of London*, pp. 400–402.

283. See *Memorials of London*, pp. 107, 108, 116, 117, 135, 171, 172, 212, 214, 215, 249, 250, 529, 530, 596, 597, and in many other places.

284. The powers of the Masters of the Founders were quite exceptional in this regard. "All work in the said trade that can be found falsely wrought, and made of false metals, shall be broken by the masters of the said trade." — Ordinances of the Founders, *Memorials of London*, p. 515.

285. “If any one of the... Trade [of Cordwainers] shall be found offending, touching the trade, or rebellious against the wardens thereof, such person shall not make any complaint to any one of another trade by reason of the discord or dissension that may have arisen between them; but he shall be ruled by the good folks of his own trade. And if he differ from them, as acting against right, then let the offense be adjudged upon before the Mayor and Aldermen; and if he be found rebellious let him pay a fine to the chamber.” — Articles of the Cordwainers or Tawyers, *Memorials of London*, pp. 391, 392.

286. “As to all those of the... trade who do not wish to be judged by the wardens of the trade for the time being, upon matters touching the trade, the names of such shall be presented to the Mayor and to the Aldermen, and by them they shall be judged as to the wrong or falsity which they have committed.” — Articles of the Cutlers, *Memorials of London*, pp. 217–219.

287. *Liber Custumarum*, p. 123. See also Statutes of Fishmongers, *Liber Albus*, pp. 323–334.

288. *Memorials of London*, p. 21.

289. Ibid., pp. 344, 345.

290. Herbert, *History of the Twelve Great Livery Companies of London*, vol. i., pp. 56, 57.

291. See the ordinances of the fullers and weavers at (a) Beverly and (b) Oxford and of the weavers at (c) Winchester and (d) Marlborough. (a) (c) In Beverly and Winchester the craftsmen could not follow their craft outside the city: if they wished to leave their mistery, they had to appeal to the municipal corporation to be received into the franchise and dispose of their tools. (b) In Oxford, the consent of the “good men” of the city was necessary to the following of the crafts; the widow of a craftsman had to leave the craft on her marriage to a second husband not of the craft. (d) In Marlborough the craftsmen could work only for the good men of the city; if they lavished to acquire the franchise, two probationary years had to be passed and in the third the craft had to be forsworn; they might not engage in trade without disposing of their tools. In all four places the craftsmen were wanting in capacity to accuse or bear witness against freemen. — *Liber Custumarum*, pp. 130, 131.

292. The double relation appears in an article of the Cordwainers or Tawyers (1375) “that no one of said trade shall keep house within the franchise, if he be not free of the said city, and one knowing his trade: and that no one shall be admitted to the freedom without the presence of the wardens of the said trade, bearing witness to his standing.” *Memorials of London*, p. 391. See an ordinance of the Barbers, of the same year, of the same import, ibid., pp. 393, 394. Likewise it was provided that no one should “ keep shop of the... craft [of Scriveners] in the city [of London] or in the suburbs thereof if he be not free of the city, made free in the same craft and that, by men of the craft.” — Ibid., p. 372. More formally it was required by an ordinance of the Braelers (Brace-makers) of London that a foreigner should be brought by the wardens before the mayor and aldermen and in their presence examined by the former “ as to whether he is proper and skilled in such trade, for the common profit; and whether he is of good standing for dwelling in the said city.“ — Ibid, pp. 277–279. The ordinances of the Glovers plainly contemplated the use of the craft without admission to its freedom. “No foreigner in this trade shall keep shop, or shall follow this trade, or sell or buy, if he be not a freeman of the city, without the assent of the wardens of the same trade, or the greater part thereof.” — Ibid, pp. 245–247. By the articles of the Spurriers, “no alien of another country or foreigner of this country, shall follow or use the said trade, unless he is enfranchised before the Mayor, Aldermen and Chamberlain and that, by witness and surety of the good folks of the said trade, who will undertake for trim as to his loyalty and his good behavior.” — Ibid pp. 226–247. The ordinances of the Lorimers required strangers to enter into frankpledge — *Liber Custumarum*, p. 79. Even as late as the seventeenth century there was a custom in Chester “that no man can uses or exercise any trade unles — besides his freedome of the Cittie — he be alsoe admitted, sworne, and made free of the same Company whereof he desires to trade.” — Gross, *The Gild Merchant*, vol. i, p. 118, note (2), quoting

from Harley MS. 2054, fol. 71.

293. According to its charter of 1602, the Council of Durham was to consist of a mayor, twelve aldermen (serving for life) and the "twenty-four," the latter consisting of two members of each of twelve crafts, elected annually by the mayor and board of aldermen. — Gross, *The Gild Merchant*, vol. i, p, iii, note (2).

294. The chapter on "National England," in vol. ii.

295. Two early examples of the widening of the area of gild activity are evidenced by the two charters granted by Edward I in 1327 to the Girdlers and the Pellipers (or Skinners) of London. By the first the material and workmanship of girdles were prescribed and extended to all the cities and boroughs of England, in each of which the regulations were to be enforced by the men of the local craft and by the local mayors or other head officers, the searchers of the London gild, however, were given power to search for false goods in other places. — *Memorials of London*, p p. 154–156. Certain ordinances made by the Pellipers were accepted and approved by the King and provisions made by them for the regulation of prices were to be in force not only in London but at fairs in all parts of the Kingdom, — Ibid., pp. 153, 154.

296. See Statutes, vol. ii., p. 90; 19 Henry VII, c. 7 (1503), "For Making of Statutes by Bodies Incorporate": "No masters, wardens and fellowships of crafts or mysteries, nor any of them, nor any rulers of gilds or fraternities [shall] take upon them to make any acts or ordinances or to execute any acts or ordinances by them heretofore made, in disheritance or diminution of the prerogative of the King, nor of other, nor against the common profit of the people, but that the same acts or ordinances be examined and approved by the Chancellor, Treasurer of England, or Chief Justices of either Benches, or three of them, or before both the justices of assize in their circuit or progress in the shire where such acts or ordinances be made;.. none of the same bodies corporate [shall] take upon them to make any acts or ordinances to restrain any person or persons to sue to the King's highness, or to any of his courts, for due remedy to be had in their causes, or put or execute any penalty or punishment upon any of them for any such suit to be made." The statute was in confirmation of an earlier one of 15 Henry VI., requiring that ordinances be submitted to justices of the peace or the chief governors of cities and be entered by them of record.

297. "It is ordained [in the first year of Edward III] that all the mysteries of the City of London shall be lawfully regulated and governed, each according to its nature in due manner, that so no knavery, Wise workmanship or deceit, shall be found in any manner in the said mysteries, for the honor of the good folks of the said mysteries, and for the common profit of the people. And in each mystery there shall be chosen and sworn four or six, or more or less, according as the mystery shall need; which persons so chosen and sworn, shall have full power from the mayor well and lawfully to do and to perform the same, And if any person of the said mysteries shall be rebellious, contradictory, or fractious, that so such persons may not duly perform their duties, and shall thereof be attainted, he shall be imprisoned and fined]." — *Liber Albus*, pp. 424, 425.

298. "No foreigner [shall] sell his wares... by retail, any more than other foreigners do in other trades in the city... Butchers must dwell within the city, and hold the franchise equally with the other citizens, or else wholly do the same as foreigners do." — Ordinances of the Butchers (1331), *Memorials at London*, pp. 179, 180.

299. Thus, in the 28th year of Edward I the burillers of London made complaint that the weavers had substituted new statutes for old ones. Thereupon a body of new ordinances was drawn up by four aldermen, six burillers and seven weavers, to be enforced by four wardens, and to regulate not only the relations of weavers and hurillers to each other but also those to the outside world. — *Liber Custumarum*, pp. 122–124. Two years earlier two successive royal writs had been issued for the investigation of the practice of sending cloth outside of London to be fulled. On the confession of the

practice by the fullers of London, the "textores, burellarie, tinctures et cissores" were called together "ad ordinandum et providendum dictum officium fullorum, qualiter in posterum se debent habere et gerene, ad emendationem dicti officii fullorum," and a code of rules composed for the control of all the allied crafts. — Ibid., pp. 127–129. There was a similar disagreement between the joiners and saddlers of London and the same method of adjusting it was resorted to. — Ibid., p. 80.

The two hallmotes held each year by the fishmongers were attended by "all the fishmongers who belong to the hallmote of the one fishmongery and the other" — the dealers in salt-fish and stock-fish as well as those in fresh fish — but their statutes were enforced by fifteen wardens of the whole trade. — Statutes of Fishmongers, *Liber Albus,* pp. 323–334.

300. The curriers and pelterers united in a statute or ordinance regulating fees, prices, etc., but they were to be enforced by one of the former and three of the latter. — *Liber Custumarum,* p. 94.

301. Some of the peculiarities of the relations of trades under the "gild system" come into view in the dispute of the cordwainers and cobblers in London in 1395. Complaint had been made to Richard II by the alien "cobelers" dwelling in London "that they could not gain their living as they had gained it theretofore, by reason of their disturbance by the wardens of the trade of 'cordwainers.'" Thereupon the mayor, upon the order of the King that "the cobelers should gain their living as they had done from of old, and according as the custom" of London demanded, held an inquisition by twenty-four sworn men, twelve of each trade, and charged them "loyally to present and declare that which was due, and would belong in right and reason to either side." The outcome of the inquisition was an agreement by the two trades: "No person who meddles with old shoes, shall meddle with new shoes to sell; and... every manner of work that may be made of new leather belongs to the new workers [cordwainers] without their meddling with any old work to sell. And in the same manner, the old workers [cobblers] shall not work upon anything but old leather for sale, on pain of forfeiting such work; except in mending old boots and shoes, that is to say, in 'quereling' before and behind, clouting and pecyng, ryvetting and lyning; in doing the which, they may take new leather, or old, whichever shall be best for the common profit. And also, — that all persons following the said trade, in new work and in old, as well masters as serving men, shall be under the rule and governance of the wardens of the said trade of 'cordwainers' in overseeing and searching whether they keep the ordinances and do their work, on both sides, well and lawfully, for the common profit." — See indenture of agreement between the cordwainers and the cobblers, *Memorials of London,* pp. 339–349. For additional rules see pp. 571–574.

302. Sometimes a degree of separation was due to other than purely economic causes. In 1370, the Flemish weavers and the weavers of Brabant there ordered to hold distinct meetings in separate churchyards, on account of the fights, brawls and tumults that had been incidental to common meetings; later it was held that the degree of separation was not such as to prevent the serving men of the trade from serving indifferently the masters of either one or the other of the two bodies. — *Memorials of London,* pp. 345, 346.

303. Ordinances of the Braziers (1406), *Memorials of London,* pp. 624–627. A step in advance of the relations of the classes in the craft of braziers is exhibited in the relations of the lawyers and pelterers. "These are the Ordinances provided and made [in 1365] by the serving-men called 'Tawyers' in the city [of London], as to how they shall serve the Pelterers, and how much they shall take for their labor"; that they should work for no one but pelterers, freemen of London; that their work should be judged "by award and discretion of the rules of the trade of Pelterers"; that they should not make old "budge" into new leather (by stripping off the fur); that they should not act as brokers between dealer and dealer, etc. — *Memorials of London,* pp. 330, 331. In the latter case one gild was plainly subject to another.

304. See Table of Charters in Herbert's *History of the Twelve Great Livery Companies of London,* vol. i., p. 224.

305. The following were the new companies incorporated by James I: Curriers, plumbers, founders. fruiterers, scriveners, brown-bakers, woolmongers, turners, apothecaries, silk-throwers, felt-makers, ship-rights, bowyers and tobacco-pipe-makers.

306. When Sir John Frederick was elected mayor in 1661, he had to qualify himself for the office by securing admission to the court of the Grocers' Company; he had formerly been a member of the Barber Chirurgeons Company.

307. At the end of the reign of Edward III thirteen of the companies seem to have been predominant over the others. — Herbert, *History of the Twelve Great Livery Companies of London*, vol. i, pp. 33–35.

308. The chief privileges of the great livery companies were the following: (1) The wardens of them alone might attend the lord mayor as chief butler at coronations; (2) they alone (except the armorers) might enroll the sovereign as a member and entertain foreign princes and ambassadors; (3) they were accorded precedence in civic pageants; (4) they alone contributed to repair the city walls; (5) they were most heavily assessed in all levies for the state or city; (6) freedom of them was a necessary qualification for the office of president of the Irish Society. — Herbert, *History of the Twelve Great Livery Companies of London*, p. 37.

309. The process of selection or differentiation into great and lesser companies had begun before the end of the fourteenth century. The great livery companies, in their order of precedence, were the following: mercers, grocers, drapers, fishmongers, goldsmiths, skinners, merchant taylors, haberdashers, salters, ironmongers, vintners and clothworkers.

310. The amounts were resolved into rent charges payable to the crown and then redeemed at twenty years' purchase.

311. Perhaps a survival of the earlier more democratic constitution appeared in the announcement, at the annual "election dinner" of the livery, of the choice of officers already made by the court of assistants at a "private election" or "secret election."

312. In some of the lesser companies the livery numbered no more than ten members.

313. The Ironmongers' Company and Joiners' Company were exceptional in the respect that their liveries and courts of assistants were identical; in other words, the whole livery was the governing body.

314. Nine of the twelve great livery companies obtained new charters from James.

315. It is impossible to ascertain definitely whether the freedom might be acquired by marriage to a "free brother" or "free sister" as in the early gilds, but the fact seems to be that it could not be so acquired.

316. Quoted in *Report of London Livery Companies Commission*, p. 21.

317. "The freemen of the Vintners' Company who have become such by patrimony or apprenticeship, and the widows of such freemen, enjoy by custom the right of selling foreign wines without a license throughout England," — *London Livery Companies Commission, Report*, (1884), p. 19.

318. 40 and 41 Victoria, c. 42.

319. Statutes 5 and 6 William IV, c. 63, and 41 and 42 Victoria, c. 49.

320. 31 and 32 Victoria, c. 113.

321. London Livery Companies Commission, Report, pp. 19, 20. "The Vintners' and Dyers' Companies are by ancient custom associated with the crown as joint protectors of the swans of the Thames." — Ibid.

322. The Stationers' Company appears to be an exception to the general rule. This company "consists exclusively of craftsmen land] carriers on in its corporate capacity the trade of a publisher, its principal publications being Almanacs." — *London Livery Companies Commission, Report* (1884), pp. 19, 20.

323. *London Livery Companies Commission,* Report, p. 15.

324. *London Livery Companies Commission.* Report, part iii., p. 1.

325. Statutes 15 and 16 Henry VIII, c. 11.

326. Herbert, vol. ii., p. 289 (Charters of the Goldsmiths Company).

327. According to Herbert, op. cit., the "touch" and the "trial of the pyx" had been conferred on the Goldsmiths' Company before the twenty-eighth year of the reign of Edward I.

328. *London Livery Companies Commission, Report*. pp. 19, 20.

329. Probably the best exemplification of the use of a gild or the company developed from it for the exercise of national functions is found in the history of the "Master, Wardens and Assistants of the Gild, Fraternity or Brotherhood of the most glorious and undivided Trinity, and of St. Clement in the Parish of Deptford Strand in the County of Kent." The company is assumed to have been a medieval gild of pilots, mariners and seamen, but first appears positively from historical evidence in the early part of the sixteenth century, when it was incorporated by Henry VIII. At that time it was governed by a master, four wardens and eight assistants, and provided pilots for vessels, attended to the burial of deceased brethren and sisters, gave charitable aid to seamen and mariners in distress, relieved the widows and orphans of brethren and cared for the wives and children of such as were sick or in captivity. When Admiralty and Navy Boards were estate fished by Henry VIII in 1520, the company was placed in charge of the shipbuilding yard at Deptford. By act of Parliament in the eighth year of the reign of Elizabeth, they were given authority to erect new sea-marks and preserve old ones, and to grant licenses to mariners to row in the Thames; a fine of £100 might be imposed by them for the destruction of a sea-mark, one half for their own use and one half for the use of the crown later in the same reign they acquired the entire rights of ballastage, beaconage and buoyage. In 1620 their duties are said to have been to lay buoys and erect beacons, to have charge of the naval stores and oversight of shipbuilding at Deptford, to present designs for ships and examine foreign ships offered for sale, to inspect provisions, cordage, ordnance and ammunition as well for private as for royal vessels, to give certificates to pilots and to masters recommended for royal vessels, and even to impress masters and seamen for the royal navy, to appoint some foreign consuls, as at Leghorn and Genoa, to serve as hydrographers of the navy, to participate in the adjudication of causes in the admiralty court in the capacity of assessors, to survey the number, armament and equipment of fleets, to grant licenses for the construction of wharves on the Thames below London Bridge, to aid in the suppression of piracy by contribution of money and otherwise, to investigate losses at sea, to redeem captives or secure their redemption and to exercise charity. Their income was in the form of fees, tolls and fines levied on the owners of vessels. In the reign of Elizabeth their exclusive control of pilotage had been interfered with by the grant of a monopoly of the pilotage of foreign vessels to William Hursh. Likewise private lighthouses were licensed in the seventeenth century and continued in existence until the corporation of Trinity House was empowered by act of Parliament in 1836 to purchase them. By a charter of James I in 1604 the membership of the company was divided into Younger Brethren, indefinite in number, and thirty-one Elder Brethren, of whom eighteen were mere Elder Brethren and the others constituted the master, four wardens and eight assistants; the master was elected annually by both the Elder and Younger Brethren; the assistants served for life and were elected by the Elder Brethren. — C. R. Barrett, *The Trinity House of Deptford Strand*, pp. 16, 37, 53, 54, 111 et passim The charters and by-laws of the company, and acts of Parliament relating to it, are published in a separate volume, but the name of the compiler is not given; the copy used by the writer is in the library of Columbia

University.

330. 2 William IV, c. 45.

331. “From this period [1558] the extracting of money from the trading corporations became a regular source of supply to government, and was prosecuted during Elizabeth’s and the succeeding reigns with a greediness and injustice that scarcely left those societies time to breathe.” — Herbert, vol. i., p. 119. Undoubtedly the extent and effect of the use of the companies as a source of supply of public funds are exaggerated. The system, viewed broadly as a part of the machinery of taxation, was not entirely unjust. Among the assessments mentioned by Herbert are one in 1566 for “setting at worke of the worke-folkes in Brydwell,” one in 1565 for erecting the Royal Exchange and one in 1569 for cleaning the city ditch, It hardly need be added that the system did not originate in 1558; assessments either of absolute contributions or of ostensible loans had been made earlier, though with less regularity and frequency. For example, in 1544, the twelve great livery companies had loaned to Henry VIII £21,263.6s.8d., secured by a mortgage of crown lands, for use in the war with Scotland.

332. Noorthouck, *History of London*, p. 222.

333. Hazlett, *The Livery Companies of the City of London*, pp. 28–30, Herbert, vol. i., pp. 222–224.

334. Herbert, *History of the Twelve Great Livery Companies of London*, vol. i, p. 214.

335. Statute 2 William and Mary, Session I, c. 8, s, 14.

336. *Report of City of London Livery Companies Commission*, Report of Commissions, Session of 1884, vol. xxxix.

337. *London Livery Companies Commission Report* (1884), p. 19. The period there stated is the past two centuries, but that is certainly too long.

338. Hastings Rashdall, *Universities in Europe in the Middle Ages*, vol. i., p. 42.

339. For one example of many that might be mentioned, — in 1246, whether or not the enforcement of the rule that no master might teach without a license had been relaxed, Bishop Grosstête was directed in a bull of Innocent IV not to permit any master to teach in any faculty at Oxford unless, *according to the custom of Paris*, he had been examined and approved by the bishop or his representative.

“Ut nullum ibi docere in aliqua facultate permittas nisi qui secundum morem Parisiensem a te, vel his quibus in hac parte tuas vices commiseris examinatus fuerit, et etiam approbatus.” — Quoted by Hastings Rashdall in *Universities in Europe in the Middle Ages*, vol. ii., p. 354, note (2).

340. Rashdall, vol. ii.; p. 367.

341. Hastings Rashdall, *Universities in Europe in the Middle Ages*, vol. ii., p. 411.

342. The doctors of civil law and canon law sometimes acted separately.

343. Corpus Christi College in Cambridge was founded jointly by two gilds of the town of Cambridge — those of Corpus Christi and of the Blessed Virgin.

344. An oath against the heresies of Wycliffe was exacted from all fellows of Lincoln on their admission; and any fellow who afterwards embraced them was required “to be cast out, like a diseased sheep, from the fold of the college.”

345. John Balliol’s benefaction was part of a penance imposed on him by the Bishop of Durham for having “gotten himself drunk with beer, quite contrary to the fair esteem beseeming his rank, and [for having] done other evil disrespectful to the Church... He suffered scourging at the hands of the Bishop, and assigned a sum of fixed maintenance to be continued forever to scholars studying at Oxford.”

346. The rector of Lincoln, however, was permitted to hold a benefice in addition to his office in the college.

347. The number of fellows was not definitely fixed in the early codes of college statutes, but was expected to vary with the income, increasing or diminishing with it; it depending also on the amount of the individual fellow's stipend, which varied according to the cheapness or dearness of products.

348. Oriel College was unique in having its fellowships open to competition, though they were in its later history supplemented by a few "close" ones.

349. At Queens College, however, illegitimate fellows were allowed a longer time for entering into holy orders, probably to enable them to obtain a dispensation.

350. In Lincoln College undergraduates might be elected fellows but did not thereby acquire the right to participate in the government of the college until they should have taken their degrees.

351. Though the scholars were usually entitled to a fixed allowance from the college revenues, the provision is often found that a small number of poor scholars be maintained from the remnants of the tables in the common-hall.

352. New College was unique in its connection with Winchester College, to whose scholars its membership was restricted.

353. In Magdalen College the scholars were known as Demics (demi-socii, half fellows), as receiving half the commons of a fellow.

354. All Souls College was peculiar in having no scholars or "non-foundationers," — its members were all fellows.

355. Just as citizenship in the United States is dependent, in many respects, on citizenship in the several States.

356. G. C. Brodrick, *History of the University of Oxford*, page 174.

357. Quoted by G. C. Brodrick, *History of the University of Oxford*, pp. 123, 124.

358. A similar course seems to have been pursued towards the two Universities of Oxford and Cambridge; the policy applied in one was likely to be applied in the other at the same time, E. A., two commissioners were appointed by Edward VI. in 1549, one for Oxford and one for Cambridge, to bring them into harmony with the changes wrought by the Reformation. The statutes for both were made substantially the same "in order that each eye of the nation might be set in motion by similar muscles."

359. J. Bass Mullinger, *History of the University of Cambridge*, p. 140.

360. G. C. Brodrick, *History of the University of Oxford*, p. 202.

361. More specifically, the senate was to be composed of the warden, the professors of divinity, Greek and mathematics, the two proctors and three members of convocation, one nominated by the dean and chapter, one by the convocation and one by the fellows with the approval of convocation.

362. Degrees were to be conferred by the warden in convocation after the allowance of grace by the dean and chapter.

363. The charter was found to have technically lapsed by the death of William IV; an identical charter was accordingly granted by Victoria in 1837; a third charter was granted in 1858; for the purpose at hand, the provisions of the several charters may be considered together without doing injustice to the subject.

364. It appears that the list of approved colleges for all degrees might later be enlarged, altered, varied or amended with the consent of one of the secretaries of state.

365. The king and queen were to be governors *ex officio*; if vacancies should not be filled within two months, the crown was to fill them by appointment.

366. "The desire, confidence and trust of the said Lawrence Sheriffe is, that [the two trustees] will, of the rent, revenues, and sums of money in all respects substantially, truly and effectually accomplish

the same, in such ways as by the laws of this realm may most assuredly be devised, and convey and assure the lands, tenements, hereditaments, and other the premises to that only intent and purpose." — See "Intent" of Lawrence Sheriff, published in Appendix Q of the *Report of the Public Schools Commissioners* (1861).

367. *Report of Schools Inquiry Commission* (1867–1868), vol. i, cap. vii., pp. 571–651.

368. *De Laudibus Legum Angliae*, cap. xlix. The writer adds that in his time, the middle of the fifteenth century, more students were in the inns of court and inns of chancery than in any of the French schools of law, with the exception of the school of the University of Paris. Each of the inns of chancery had at least one hundred students, and some of them had a larger number; in the least frequented inn of court were at least two hundred inmates.

369. The date of the origin of the inns of court partakes of the indefiniteness of its cause; Dugdale was unable to discover positive historical evidence of their existence before the reign of Edward III (*Origines Juridiciales*, cap. lv, p. 141); the most definite statement that can be based on extant evidence is that they probably arose at the end of the thirteenth or beginning of the fourteenth century (*Encyclopacdia Britannica*, *sub verbis* Inns of Court).

370. "Communia placita non sequantur Curiam nostram sed teneantur in aliqus loco certo." Great Charter, §17 (§1: in the charter of Henry III). — Stubbs, *Select Charters*, p. 299.

371. Dugdale, *Origines Juridiciales*, p. 141.

372. It is possible that the inns of chancery received their name from their serving as *hospicia* for the clerks of the chancery. — Dugdale, *Origines Juridicales*, cap. lvi., p 143.

373. In the reign of Henry VIII payment of dues was enforced by the following rule " If any of the fellowship be indebted to the house [either] for his diet, [or] for any other duty of the house, he shall be openly in the house proclaimed; and whoever will pay it for him, shall enjoy and have his lodging and chamber that is so indebted." — Report of commissioners of inquiry appointed by Henry VIII, published in W. Herbert's *Antiquities of the Inns of Court*, p. 221.

374. In an order of 1577 it was directed that all the sons of Sir Nicholas Bacon should "be of the Grand Company [of Gray's Inn] and not be bound to any vacations." — *Gray's Inn*, by William Ralph Douthwaite, p. 207.

375. In the thirty-eighth year of the reign of Henry VIII it was ordered by the bench of the Inner Temple that the gentlemen of the company should reform themselves in their apparel, and should not wear long beards, and that the treasurer of the society should confer with the treasurers of the other inns of court, in order to secure a uniformity of reformation, and should to the same end learn the opinions of the justices of the superior courts. When the justices had expressed themselves, orders were made by each house to enforce their recommendations.

376. Fortescue, *De Laudibus Legum Angliae*, cap. xlix, p 112.

377. For the particulars of the extended celebration of Christmas in 1562, see Dugdale's *Origines Juridiciales*, cap. lvii, pp. 149–157. Special codes of regulations were made by the several benches for the occasion.

378. Dugdale's *Origines Juridiciales*, cap. lvii., pp. 147, 148.

379. The "readings being attended with costly entertainments, their original object was forgotten in the splendor of the tables, and it became the duty of the reader rather to feast the nobility and gentry thin to give instruction in the principles of the lava From this cause they were eventually suspended," — William Holden Spilsbury, *Lincoln's Inn*, p. 21.

380. William Holden Spilsbury, *Lincoln's Inn*, p. 18.

381. In 1833, lectureships here revised in the Inner Temple, but here discontinued after two years; a similar movement took place in the Middle Temple and Gray's Inn in 1847, but lasted only four

years. — Spilsbury, *Lincoln's Inn*, pp. 22–24.

382. Such an organization as "The Legal Education Association," formed in 1870 " for the purpose of obtaining a better organized system of legal education" in England, and of securing " the establishment of a central school of law, open to students for both branches of the profession and to the public, and governed by a public and responsible board." — Spilsbury, *Lincoln's Inn*, pp. 22–24.

383. 43 Elizabeth, c. iv. (1601).

384. The 58th George III, c. 91, provided for the appointment of commissioners to inquire concerning charities in England for the education of the poor; the sgth George III, c. 81, was in amendment of the former statute, and extended the powers of the commissioners to other charities in England and Wales.

385. 16 and 17 Victoria, 137.

386. Hastings Rashdall, in his recent work on *Universities in Europe in the Middle Ages*, suggests two types of the medieval university, according as the community of masters or that of scholars divas the predominant element in the organization; the University of Paris is taken as the type of the former, and the University of Bologna as that of the latter.

387. "It was indeed foreign trade which did more than any other force to break down the medieval social order." — Ashley, *English Economic History*, vol. ii, p, 392.

388. *Infra*, Chapters iv. and v.

389. More properly, the London Hanse was the organization as far as England was concerned. The Hanseatic League was virtually a league of continental cities under the control of commercial oligarchies; their merchants trading in foreign countries took the name of the foreign city in which their establishment was located. Accordingly, the merchants of cities in the Hanseatic League trading in England were organized as the London Hanse. For a description of their organization, see Ashley, *English Economic History*, part i., p 111.

390. Schanz, *Englische Handelspolitick*, vol. i, p. 329, citing as authority Malynes, *The Centre of the Circle of Commerce* (1623), p. 93.

391. Rymer, *Faedera*, vol. iii., p. 386.

392. Patent Rolls, 6 Edward II, No. 5.

393. Macpherson, *Annals of Commerce*, vol. i., p. 478.

394. Rymer, *Foedera*, vol. iv, p. 273, "De Stapula apud Bruges in Flandria tenenda."

395. Gross, *The Gild Merchant*, vol. i, pp. 141–143.

396. 27 Edward III, Statutes, i, 268–276.

397. "The mayor and constables of home staples were... originally distinct from the municipal authorities, although in course of time it became customary in some towns for the mayor ot the borough to act *ex officio* as mayor of the staple." — Gross, *Gild Merchant*, vol. i, p. 145.

398. Statute 4, Edward IV, cap. 2 (1464), Statutes, vol. x, p, 93.

399. The quotation is found in Anderson's *Origin of Commerce*, vol. ii., p. 117, the reference being to Malynes's *Centre of the Circle of Commerce*, p. 93.

400. *Gild Merchant*, vol. i, p. 146.

401. Rhymer, *Faedera*, vol. v, p. 273.

402. The Mercers' Company and Company of Merchant Adventurers used the same boor; for recording the minutes of their meetings until 1526 (Gross, *Gild Merchant*, vol. i, p. 149). The hall of the Mercers' Company in London was also used by the Company of Merchant Adventurers until it was destroyed in the great fire of 1666 (Herbert, *History of London Livery Companies*, vol. i., p. 232). Compare the similar use of identical books of record by the Grocers' Company, the Levant Company

and the East India Company.

403. Rymer, *Faedera*, vol. viii., p. 464.

404. Statute 12, Henry VII., cap. vi.

405. See inspeximus of decree of star chamber by Henry VII, printed in vol ii, pp. 547, 548, of Schanz's *Englische Handelspolitik.*

406. See Letter of Henry VII to the Merchant Adventurers, printed in Schanz's *Englische Handelspolitik*, vol. ii., pp. 548, 549.

407. Schanz, *Englische Handelspolitik*, vol. ii. pp. 549–553.

408. Quoted by Gross in *Gild Merchant* (vol. i., pp. 149–151), from John Wheeler, *Treatise of Commerce* (19, 24).

409. See Gross, *Gild Merchant*, vol. i, p. 151.

410. Rymer, *Faedera*, vol. xx, p, 547.

411. Macpherson, *Annals of Commerce*, vol. ii., p, 140.

412. This rule was probably involved in the usual provision in charters that members should be "mere merchants."

413. Cunningham, *Growth of English Trade and Industry*, p. 372.

414. John Wheeler, *Treatise of Commerce* (25), quoted by Gross, *Gild Merchant*, vol. i., p. 153.

415. Ordinance of 1643, Rymer, *Faedera*, vol. xx., p. 547.

416. Malynes, *Maintenance of Free Trade* (50, 51), quoted by Gross in *Gild Merchant*, vol. i., p. 151.

417. Statute 2, William and Mary, cap. 4.

418. 4 James I, 9.

419. Rymer, *Faedera*, vol. xii. pp. 170, 171. Neither Lorenzo Stozzi nor his two successors appear to have been elected by the merchants themselves the existence of the office apparently implied no extended organization of the trade.

420. *Infra*, Chapter xi.

421. *Infra*, Chapters iv, v, and vi.

422. Anderson, *Origin of Commerce*, vol. ii, pp. 152, 153.

423. Anderson, *Origin of Commerce*, vol. ii, pp. 152, 153.

424. Ibid, vol. ii., pp. 181, 182. A peculiar provision of the charter, showing the use of the company by tint; crown as a means of bringing pressure to bear on a foreign state, was as follows: "And whereas the state of Venice has of late increased the duties on English merchandise carried thither, and on Venetian merchandise exported from thence in English ships; for redress thereof, the Queen forbids the subjects of Venice, and all others but of this company.. to import into England any manner of small fruits called currants, being the raisins of Corinth, or wines of Candia, unless by this company's license... upon pain of forfeiture of ships and goods, half to the Queen and half to the company, and also of imprisonment; provided, always, that if the Venetian state shall take off the said two new imposts, then this restraint touching currants and wines of Candia shall be void." — Ibid.

425. Ibid., vol. ii, p. 225 The provisions of the charter of James I are also recited in the preamble of the act of 26 George II., cap. 18.

426. Possibly some significance is given to the last provision by the fact that in the same year the Company of Merchant Adventurers advanced £30,000 to the government, presumably for the concession by Parliament of similar powers.

427. Anderson, *Origin of Commerce*, vol. ii, pp. 399, 400.

428. Anderson, vol. ii, p 461. The provisions of the charter of Charles II are also recited in the preamble of the act 26 George II, cap. 18.

429. "An Act for Enlarging and Regulating the Trade into the Levant Seas," 26 George II, cap. 18.

430. 6 George IV, cap. 33.

431. The name (or description) is at least so recited in the statute 10 and 11 William III, cap 6. It was fortunately shortened in 1566 to the "Fellowship of English Merchants for Discovery of New Trades."

432. Anderson, *Origin of Commerce*, vol. ii., pp. 98, 99.

433. It is not published in the statutes but is compiled by Anderson (*Origin of Commerce*, vol. ii) on the authority of Haklayt.

434. 10 and 11 William III, cap. 6.

435. J. R. McCulloch, *Dictionary of Commerce* (edition of 1854), *sub verbis* Russia Company, In the edition of 1382, no mention is made of duties or customs payable to the company.

436. Ibid. (edition of 1882), *sub verbis* Russia Company.

437. Calendar of State Papers, Domestic Series, 1605.

438. 43 James I, cap. vi.

439. *Commons Journals*, October 29, 1666; vol. viii, p. 643.

440. *Commons Journals*, November 6, 1667; vol. ix, p. 16.

441. Macpherson, *Annals of Commerce*, vol. ii., p. 174.

442. Rymer, *Faedera*, vol. xvi., p. 660.

443. Anderson, *Origin of Commerce*, vol. ii., p. 271.

444. Rymer, *Faedera*, vol. xx., p. 16.

445. 4 and 5 William and Mary, cap. 17.

446. It was provided by the Act of 3 and 4 William IV, cap 85, that the last organization should in future be known as the "East India Company."

447. See preface of Court Records of East India Company (printed from the original by Henry Stevens). "The letters printed on pages 265 to 283, are probably draft letters of the 'Company of Levant Merchants,' and they commence at the opposite end of the manuscript volume to the minutes of the East India Company. From the first letter being dated March, 1599, while the first entry of the East India Company is September, 1599, it would appear that the book originally belonged to the Levant Company, but was afterwards used by both companies in common. This tends to show that the East India Company was partially an outgrowth of the Levant Company, as several persons mentioned appear to have been prominent members of both companies, notably Sir Thomas Smith, who held the office of Governor of each." The two companies appear also to have been jointly interested in the Spitzbergen fisheries from 1600 to 1613 (Hewing, *English Trade and Finance*, p. 37). The East India Company and Russia Company were also jointly interested in the Spitzbergen fisheries in 1618 (Anderson, *Origin of Commerce*, vol. ii, p. 271).

448. For the oath administered to freemen of the company under the charter of 1609, see Bruce's *Annals of The East India Company*, vol. i., p. 157, note.

449. Volume of Letters Patent granted to the East India Company, pp. 3–26.

450. Bruce, *Annals*, vol. i., p. 160. Anderson, *History of Commerce*, vol. ii, p. 241.

451. Bruce, *Annals*, vol. i, p. 193.

452. James Mill, *History of British India*, vol. i, p.27.

453. Bruce, *Annals*, vol. i, pp. 362–365.

454. For the conditions of the subscriptions of the "Fourth Joint Stock," see Bruce, *Annals*, vol. i, p. 364.

455. James Mill, *History of British India*, vol. i, pp. 49, 50. The writer raises in the connection a question as interesting as it is impossible to answer. "Upon this occasion a difficult question might have presented itself. It might have been disputed to whom the immovable property of the company, in houses and in lands both in England and in India, acquired by parts indiscriminately of all the joint stocks, belonged." As a partial answer it is suggested, "It would..... appear that the proprietors of the third joint stock, and by the same rule the proprietors of all preceding stocks, were, without any scruple, to be deprived of their share in what is technically called the 'dead stock' of the company, though it had been wholly purchased with their money." — ibid., pp. 49, 50.

456. Rymer, *Faedera*, vol. xvi, p. 582. Bruce *Annals*, vol. i, pp. 153, 154. Anderson, *History of Commerce*, vol. ii., p, 223.

457. Anderson, *History of Commerce*, vol. ii, p. 372.

458. Bruce, *Annals*, vol. i., p. 329 et seq. Anderson, *History of Commerce*, vol. ii., pp. 372, 373 Rymer, *Faedera*, vol. xx, p. 146 et seq.

459. Bruce, *Annals*, vol. i, pp. 435, 436.

460. Mill, *History of British India*, vol. i., p. 57.

461. Bruce, *Annals*; vol i, pp. 512–517. Mill, *History of British India*, vol. i., p. 61.

462. No new charter appears to have been actually granted by the Protector; if there was, it is remarkable that no trace of it has been found. The company and others interested proceeded on the theory that the privileges granted by James I had been confirmed in a new charter granted by Cromwell. — Bruce, *Annals*, vol. i, p. 529.

463. Letters Patent granted to the East India Company, pp. 54–79.

464. Letters Patent granted to the East India Company, pp. 80–95.

465. Ibid., pp. 96–107.

466. Letters Patent granted to the East India Company, pp. 108–115. The phraseology of the charter granted by James II in 1686 was somewhat more precise: "To coin... any species of money usually coined by the princes of those countries only.... so as the monies... be agreeable to the standards of the same princes' mints both in weight and fineness, and... they do not make or coin any European money or coin whatever;... all money or coins, so to be coined shall be current in any city, town, port or place within the limits" of the company's trade. — Ibid., pp. 125–140.

467. Ibid., pp. 116–124.

468. See also a similar provision in the charter of William and Mary (1693), which was granted on condition of the payment of £9300 in satisfaction of the last of four quarterly payments of a tax levied by Parliament on joint stocks, and for the non-payment of which the opponents of the company declared that they had rendered themselves liable to forfeiture of their charters.

469. Mill, *History of British India*, vol. i., pp. 64, 65.

470. The language of the charter granted by Charles II in 1683 shows plainly the view of the trade to the East Indies entertained at that time. "Considering of what import it is to the honor and welfare of the nation, and of our good subjects thereof, to endeavor the utmost improving of the said trade; and being satisfied that the same can by no means be maintained, and carried on with such advantage as by a joint stock, and that a loose and general trade will be the ruin of the whole; to the end, therefore, that all due encouragement may be given to an undertaking which is so conducing to the general good, and that the undertakers may have all lawful assistance from us to promote the same,... we grant" more ample powers for the suppression of traders acting without the company's license. — Ibid., pp. 116–124.

471. Bruce, *Annals*, vol. ii, pp. 351, 434.

472. Ibid., vol. ii, pp. 475, 476.

473. Ibid., vol. ii, p. 551.

474. Bruce *Annals*, vol. ii., p, 530.

475. Ibid, vol. iii, pp. 81, 82.

476. Letters Patent granted to the East India Company, pp. 141–151.

477. By the charter granted in 1698, the qualifications of proprietors to vote in general court were amended so that holders of less than £500 should have no vote; of £500, one vote; of £1000, two votes; of £2000, three votes; of £3000, four votes; of £4000 or more, five votes. — Letters Patent granted to the East India Company, pp. 183–187. The charter very significantly contains several provisions limiting the powers of the company's officers and servants, and providing the stock-holders with protection against abuse of power by them; which indicates that the participation of new holders of stock in the company's business had probably been interfered with by the original members of the company.

478. Ibid., pp. 152–163.

479. Letters Patent granted to the East India Company.

480. Note that the annual interest on the two amounts was the same, £160,000. The annuities based on the loan remained unchanged in amount.

481. The subscriptions to the government loan had amounted to £2,000,000 of which £1,662,000 had been subscribed by those who afterwards formed the English Company, and £315,000 by the London Company, leaving £23,000 in the hands of private subscribers, who of course had the privilege of carrying on a "private trade" with India.

482. 6 Anne, cap. 17.

483. It was provided by act of Parliament in 1773 (13 George III, cap. 63) that only one fourth of the directors should in future retire each year; the earlier term of the office had been one year.

484. In a letter of the Court to the President of Madras (quoted by Bruce in *Annals*, vol. ii, pp. 591, 592), the Governor and Deputy Governor are reported to have been called before the cabinet council in 1687 in connection with the contemplated incorporation of Madras, and to have expressed themselves in favor of its incorporation by the company rather than by the king, "In conclusion, his Majesty did so apprehend it, as to think it best, that the charter should go under our own seal, because the corporation must be always, in some measure, subject to the control of our President and Council; and so, at length, it was agreed, and the charter is now engrossing." The corporation, it is added by Bruce (ibid., p, 593); was to consist of a mayor and ten aldermen, three servants of the, company and seven natives, who were to be justices of the peace; the town clerk and recorder and all other subordinate officers were to be elected by the mayor and aldermen, subject to the approval of the company's president; a record of their proceedings was to be kept and regularly transmitted to the court of directors. The "Mayor and Aldermen" of Madras, Bombay and Calcutta were incorporated by George I in 1726 (Letters Patent granted to the East India Company, pp. 368–399), but almost entirely for the sake of their judicial services, The nine aldermen in each city constituted a close body serving for life and filling their own vacancies; the mayors served for terms of one year, and became aldermen on the expiration of their terms; they were justifies of the peace from whom an appeal lay to the President or Governor and Council; the aldermen were subject to removal from office on complaint made to the President or Governor and Council.

485. McCulloch, *Commercial Dictionary*, *sub verbis* East India Company.

486. Mill, *History of British India*, vol. iii, p, 60.

487. 24 George III, cap. 25, "An Act for the better Regulation and Management of the Affairs of the East India Company and of the British Possessions in India; and for Establishing a Court of Judicature for the more speedy and effectual Trial of Persons accused of Offences committed in the East Indies."

488. 53 George II, cap. 155.

489. 4 George IV, cap. 80.

490. 3 and 4 William IV, cap. 85.

491. A term of service of ten years has since been substituted for the life service.

492. "An Act for the better Government of India," 21 and 22 Victoria, cap, 106.

493. State Papers, vol. lix, p. 505.

494. 36 and 37 Victoria, cap. 17.

495. 39 and 40 Victoria, cap. 10.

496. This group of companies, including the East India Company, call to mind the Bank of England, or, more technically, "The Governor and Company of the Bank of England," incorporated in 1694. Important though it was and still is, it is not considered here because it differed vitally from the others in one respect, — it had to do rather with the development of the infra-national relations of the English people than with their extra-national expansion. It was the earliest prominent institution in which the structure of the great commercial and colonial companies was utilized in the relations of Englishmen to one another instead of to foreigners. If such a vied of it is correct, it belongs properly to the class of organizations that have been distinctively called Modern Corporations.

497. Macpherson, *Annals of Commerce*, vol. ii, p, 189.

498. Rymer, *Feadera*, vol. xix, p. 370.

499. 9 and 10 William and Mary, cap. 26.

500. Statute 23 George II, cap. 31.

501. Statute 25 George II, cap. 40.

502. Statute 5 George III, cap. 44.

503. Statute 23 George III, cap. 65.

504. 1 and 2 George IV, cap. 28.

505. The original charter is printed as Appendix II of the Report of the Select Committee of the House of Commons "to consider the state of those British Possessions in North America which are under the Administration of the Hudson's Bay Company, or over which they possess a license to trade." — *Reports from Committees*, 1857, Session 2, vol. ii. The charter is found on pages 408–414.

506. Rupert's Land Act, 31 and 32 Victoria, cap. 105.

507. Winsor's *Narrative and Critical History of America*, vol. viii, chapter 1, "Hudson Bay Company," by George E. Ellis; see particularly page 64.

508. 9 Anne, cap. 21.

509. Statute 10 Anne, cap. 30.

510. See article 12 of Treaty of 1713 in Macpherson's *Annals of Commerce*, vol. iii, pp. 32, 33. See also Postlethwayt's *Dictionary of Trade and Commerce, sub verbis* "Assients Contract."

511. There is some confusion in the dates of the assients contract. Macpherson assumes (*Annals of Commerce*) that it was to run for forty years, but that statement lacks proof. The following may be an adequate explanation: By its terms the contract was to be in force for thirty years from 1713, but it was interrupted by the outbreak of war in 1739, leaving four years of its term. By the treaty of Aix-la-Chapelle it was provided that the contract should be revived for the remaining four years, but that, "at a proper time and place," negotiations should be entered into to determine what equivalent Spain should render for a cancellation of it. Two years later it was agreed by the Treaty of Madrid that

Spain should pay £100,000; the contract was accordingly terminated at that time.

512. Statute 47 George III, cap. 23: "An act for repealing so much of an act made in the ninth year of the reign of Her late Majesty Queen Anne as vests in the South Sea Company... the sole and exclusive privilege of carrying on Trade and Traffic to and from any part whatsoever of South America, or in the South Seas, which now are or may... hereafter be in the Possession of his Majesty...."

513. Statute 55 George III, cap. 57.

514. In the strict language of the charters of 1606 and 1609 the companies themselves appear to have been called the "First Colony' and "Second Colony," but in some places the terms were applied to the settlements or groups of settlements established by them, no violence is done by the use of the terms as in the text.

515. It is said that fourteen members were actually appointed, and that the number was later increased to twenty-five.

516. Poore, *Federal arid State Constitutions*, vol. ii, pp 1888–1893.

517. Poore, vol. ii, pp. 1893–1902.

518. This provision was important chiefly because it brought the Bermudas, or Somers Islands, within the company's limit.

519. Poore, vol. ii, pp. 1902–1908.

520. Quoted in Smith, *History of Virginia*.

521. *Nova Britannia*, Force's Tracts, vol. i.

522. *Virginia Colonial Records, London Company*, vols. i and ii. "Orders and Constitutions collected out of his Majesty's Letters Patents, and partly ordained upon mature deliberation, by the Treasurer, Council and Company of Virginia, for the better governing of the Actions and Affairs of the said company here in England residing " (1619 and 1620). — Force's Tracts, vol. iii, No. 6.

523. Cooke's *History of Virginia*, p. 119. A copy of "An Ordinance and Constitution of the Treasurer, Council, and Company in England. for a Council of State and General Assembly," dated July 24, 1621, is addled to Smith's *History of Virginia* as Appendix IV. It is peculiar that the assembly was at first regarded as merely an additional council. It was provided that there should be two "supreme councils," one the "council of state," to assist the governor, and the other the "general assembly," consisting of the council of state and two burgesses from each "town, hundred and plantation" in annual meeting.

524. The London Company had experienced trouble with a similar class of colonists, and had been given power in its charter of 1612 to deal with them by the same means conceded to the Plymouth Company in 1620.

525. Poore, vol. i, pp. 921–931.

526. Poore, vol. i, pp. 932–942.

527. Only twenty-six councillors seem to be accounted for by the charter as printed in Poore's collection, but none are assigned to Acadia; whether the remaining two councillors were for that province has not been determined; it is, however, of no importance in the connection. The governor and deputy governor were usually considered a part of the council, though they hardly appear to have been so in the present case.

528. Poore, vol. i, pp. 942–954.

529. Ibid., vol. i, pp. 954–956.

530. Moore, vol. i., pp. 252–257.

531. Ibid., vol. ii, pp. 1594, 1595.

532. Poore, vol. ii, pp. 1504–1603.

533. Poore, vol. i, pp 257, 258.

534. Poore, vol. i, pp. 369–377.

535. The persistence of the commercial as distinguished from the political view of the American colonies entertained by the English government is strikingly shown by the nature of the administrative bodies intended for their supervision. In 1660, two councils were created by Charles II, a "Council of Trade" and a "Council of Plantations." In 1672, they were united as a "Council for Trade and Plantations," which continued only until 1675, but was revived by William III, in 1695. Not until 1768 was the political side of the colonies distinctly recognized by the creation of a Secretary of State for the "Colonial" or "American Department," and then the Board of Trade and Plantations was allowed to exist concurrently. In 1782 both were abolished, and in the year following the "Plantation Office" was made a subordinate department of the Home Office. — H. D. Traill, *Central Government*, pp. 84–86.

The general purpose of the well-known Navigation Laws was to make the American colonies commercial feeders for English merchants and the English exchequer, without regard to political considerations.

536. Nearly the same language is found in the Virginia charter of 1609: "Because the principal effort which we can desire or expect of this action is the conversion and reduction of the people in those parts unto the true worship of God and Christian religion."

537. Charter to William Penn, 1681; Poore, vol. ii., pp. 1509–1515.

538. Poore, vol. ii, pp. 1379–1382.

539. Montesquieu, *L'Esprit Des Lois*, bk. xxi,, cap. 17.

540. This view is evidently in conflict with the view presented by Herbert L. Osgood in an article on "The Colonial Corporation" in the Political Science Quarterly for June, 1896, the article being the first of a series of articles on the subject. Blackstone's classification of colonial governments as (1) provincial governments, (2) proprietary governments and (3) charter governments, is there criticised as follows: "(1) The term charter government, which he has employed, is loose and inexact, and the use which he has made of it increases rather than relieves the confusion. (2) Instead of three forms of colonial government there are only two, the corporation and the province." "In support of the second objection to Blackstone's classification, I shall attempt to show in this and in subsequent papers that there are but two distinct forms of colonial government in the English system, the corporation and the province. Under the corporation I include those colonies which themselves became corporations. There were three such, and only three — Massachusetts, Connecticut and Rhode Island.... Under the term province I include all the other colonies — those which were founded and controlled by trading companies resident in England, as well as those settled by proprietors and those which were governed directly by the king. In drawing this line of distinction, imperial control as such has been left out of sight. So far as possible attention has been strictly confined to the internal organization of the colony. In the case of the corporations this can easily be done, for they were by nature essentially independent and self-sufficing. The proprietor, and the company considered as a proprietor, were in a certain sense distinct from the colony, though constituting a most important part of it, and transforming it into the province. They existed prior to the colony, and derived their authority from a source outside of it" (pp. 261, 262). It may fairly be inferred from the statements quoted that the term "colonial corporation" is intended to be restricted to corporations identical with colonies. Such a restriction would hardly be justifiable; corporations created for the founding of colonies, even if they do not develop into identity with them, ought not to be excluded; the London Company and Plymouth Company, notwithstanding express terms of incorporation were not used in the charter of 1606, were certainly corporations. On the other hand, Massachusetts, Rhode Island and

Connecticut were hardly corporations, though the first was evolved from one, and the second and third were expressly called corporations in their charters. A corporation is a group of persons within a greater body of persons politically organized in the state or a subordinate part of it, and endowed with a particular social form of structure; the structure is capable of use for other than strictly corporate purposes; when it comes to be used, by expansion of membership or otherwise, as the political constitution of a state or of an entire subordinate part of it, its content is no longer a corporate group, The members of a corporation, moreover, enjoy exceptional rights and are burdened with exceptional duties in the society of which they are a part; such was not the case in Massachusetts, Rhode Island and Connecticut, for all (and not merely a part) of the colonists (subject only to the qualifications for the franchise) enjoyed the rights and duties described in the charters. They may best be viewed as self-governing provinces.

541. As the constitution of the United States "is itself primarily a body of written law, so it is based upon successive strata of written constitutional law... The general frame of government established by the [federal] constitution and the general guarantee of rights contained in it, are themselves the result of historical growth through a series of written constitutions,... The worship of a written constitution, which has sometimes been satirized as a sentiment peculiar to the American people, has its explanation in the fact that the genesis and growth of political liberty in this country, whether considered in the early colonial period... or in the later national period, have taken place in great measure within what may be called the sphere of written law." — William C. Morey, in "The Genesis of a Written Constitution," *Annals of American Academy of Political arid Social Science*, April, 1891.

542. As an illustration of the effect of the "corporation idea" on views of political institutions, the language used by Professor Franklin H. Giddings in his *Principles of Sociology* (p. 177) may be quoted "In the constitution of the state the most important subordinate bodies are the public corporations. The state first incorporates itself, defining its territory and its membership, describing its organization and laying upon itself the rules of procedure by which it will systematically conduct its Stairs. It next in like manner incorporates the local subdivisions of society, such as counties, townships and cities, and assigns to each certain rights, duties and powers." The expression by which the state is described as incorporating itself is plainly not used figuratively; but the performance of such an act by the state is contrary to any sound conception of the nature of corporations or of the process by which they are created.

543. Coke's *Reports*, book x.

544. Chapter xviii., pp. 466–485 (Christian's edition).

545. Coke's observation on the creation of great companies for foreign commerce is of passing interest: "Here, by the way, it is to be observed, that three new things which have fair presences are most commonly hurtful to the commonwealth, viz.... 3. New corporations trading into foreign parts, and at home, which under the fair presence of order and government, in conclusion tend to the hindrance of trade and traffique, and in the end produce monopolies," — *ad Institute*, 540.

546. 10 Coke's Reports, 26b.

547. Coke subdivided corporations aggregate into two classes, (1) "either of all persons capable, or (2) of one person capable, and the rest incapable or dead in law" (On Littleton, i., 2a). The subdivision had been made necessary in order to comprehend in the classification such bodies as abbots and convents, but was of no significance after the dissolution of monasteries in the Reformation.

548. Corporations sole, in their corporate capacity, might not own goods and chattels, though they might so hold lands and tenements, and corporations aggregate might not be devisees of land by will, and could purchase land only after having been granted a license in exemption from the provisions of the statutes of mortmain — but those limitations did not flow from the essential nature of corporations. They served, however, to intensify the distinction between natural persons and

corporations.

549. Many of the expressions found in the older law of corporations justify the query whether the lawyers would not have been more consistent if they had called a corporation an “artificial family” (in the sense of a series of generations) instead of an “artificial person”; it would at least have done less violence to the imagination. The analogy in legal contemplation, between a family and a corporation seems to have been discovered by Sir Henry Sumner Maine. “In the older theory of Roman law the individual bore to the family precisely the same relation which in the rationale of English jurisprudence a corporation sole bears to a corporation aggregate. The derivation and association of ideas are precisely the same. In fact, if we say to ourselves that for purposes of Roman testamentary jurisprudence each individual citizen was a corporation sole, we shall not only realize the full conception of an inheritance, but have constantly at command the clue to the assumption in which it originated.” — *Ancient Law*, p, 182. See also Markby, *Elements of Law*, §550.

550. “Et ideo castella, et burgi, et civitates site sunt, et fundate, et edificate, seilicet, ad tuicionem gencium et populorum regni, et ad defensionem regni, et idcirco observari debent cum omni libertate, et integritate, et racione.” — *Laws of King William the Conqueror*, Thorpe, vol. i, p. 493.

551. Ibid., vol. i, p. 494.

552. Also found in the forms “commonalty,” the French form “commune “ and the Latin forms “communitas” and “commune.”

553. Pollock and Maitland, *History of English Law*, vol. i, p. 478.

554. Gross, *Gild Merchant*, vol. ii, p, 34.

555. Ibid., vol. i, p. 93, note (3).

556. *History of English Boroughs*, pp. 860–869.

557. E.g., Archbishop Thurstan, in his charter to Beverley, acknowledges “dedisse et concessisse... hominibus Beverlaco omnes libertates iisdem legibus quibus illi de Eboraco habent in sua civitate.” — Stubbs, *Select Charters*, pp. 109, 110.

558. *Historical Charters and Constitutional Documents of the City of London*, p. 16.

559. Gross, *Gild Merchant*, vol. i., p. 94, note (3).

560. *Digest*, iii., 4, 7, §1.

561. *Encyclopaedia Britannica, sub verbo* “Corporation.”

562. The view is somewhat modified in Pollock and Maitland’s *History of English Law*, vol. i, p. 469. “Every system of law that has attained a certain stage in its development seems compelled by the ever-increasing complexity of human affairs to add to the number of persons provided for it by the natural world, to create persons who are not men. Or, rather, to speak with less generality and more historical accuracy, a time came when every system of law in western Europe adopted and turned to its own use an idea of non-human persons, ideal subjects of rights and duties, which was gradually discovered in the Roman law-books.”

563. This view is expressed with some degree of hesitancy because the weight of authority is clearly opposed to it. See Sohm, *Institutes of Roman Law* (Ledlie’s translation), p. 101; Sheldon Amos, *History and Principles of the Civil Law of Rome*, p. 118. H. O. Taylor (Private Corporations, chapter on Corporations in the Roman Law) is apparently the only authority that supports the position taken in the text.

564. *Digest*, iii., 4, 1.

565. *Digest*, iii, 4, 1.

566. “Sodales sunt, qui ejusdem collegii sunt... His autem potestatem facit lex, pactionem, quam velint, silo ferre, dum ne quid ex publica lege corrumpant....” — *Digest*, xlviii., I. 22, 4.

567. *Digest* iii, 4, 1; xlviii., I, 22, 1; xlviii, I, 22, 3, §1.

568. *Digest*, xlviii, 1, 22, 3.

569. *Digest*, xlviii., 22, 3, §2.

570. *Digest*, xlviii., I, 22, 2, §1.

571. *Digest*, 1, 16, 85.

572. "In Decurionibus vel allis universitatibus nihil refers, utrum omnes iidem maneant, an pars maneat, vel omnes immutati sunt. Sed si universitas ad unum redit, magis admittitur, posse eum convenire et conveniri, quum jus omninm in unum recederie, et stet nomen universitatis." — *Digest*, iii, 4, 7, § 2; 1, 16, 85.

573. "Quod major pars curiae effecit, pro eo habitur, ac si omnes egerint." — *Digest*, 1., 1, 19.

574. *Digest*, iii., 4, 3.

575. *Digest*, iii, 4, 7, §1.

576. *Digest*, i, 8, 6, §2.

577. *Digest*, i., 8, 6, §1.

578. "Quibus autem permissum est corpus habere collegii, societatis, sive cujusque alterius eorum nomine, proprium est *ad exemplum Reipublicae* habere res communes, arcam communem, et actorem sive syndicum, per quem *tanquam in Republica*, quad communiter agi fierique oporteat, agatur, fiat." — *Digest*, iii., 4, 1, §1.

579. "Servum municipum posse in caput civium torqueri, saepissime rescriptum est. quia not sit illorum servus, sed reipublicae. Idemque in ceteris servis corporum dicendum est. nec enim plurium servus videtur, sed corporis." — *Digest*, xlviii., 18, 1, §7.

580. The view of corporations even appears, from some parts of the civil law, to have reached the opposite extreme of a denial of corporate personality. "Hae autem res, qua humani juris sunt, aut publicae sunt, aut privatae; quae publicae sunt, nullius in bonis esse creduntur; ipsius enim universitatis esse creduntur." — *Digest*, i., 8, 1.

581. *Digest*, xlvi., 1, 22.

582. Selden, *Fleta*, cap viii., sec. 1 (p. 187 of Kelham's translation).

583. "Nullus clericus nisi causidicus" is the frequently quoted comment of William of Malmsbury, *De Gestis Regum Anglorum*, lib. iv, p. 369 (Rolls Series).

584. Green, *History of the English People*, vol. i, p. 252.

585. English law as a sysferm is somewhat indefinitely said to have originated between the reign of Henry II and that of Edward I. — Heron, *History of Jurisprudence*, p. 237.

586. Maine, *Ancient Law*, p. 79.

587. Selden, *Fleta*, cap. viii., sec. 2 (p. 200 of Kelham's translation).

588. Coke, 2d *Institute*, Preface.

589. Statute of Merton, c. 9, 20 Henry III. A century later "the nobility declared 'that the realm of England hath never been, unto this hour, neither by the consent of our lord the King and the lords of parliament shall it ever be ruled or governed by the Civil Law.'" — Heron, *History of Jurisprudence*, p. 241.

590. Blackstone, *Commentaries*, Introduction, vol. i., p. 20. See also letter of Innocent IV to scholars in 1254 with relation to legal studies, Matthew Paris, *Chronica Majora*, vol. v, pp. 427, 428 (Rolls Series).

591. Scrutton, *Influence of the Roman Law on the Law of England*, p. 77.

592. Vol. vi., p. 247 (edition of Sir Travis Twiss).

593. Vol. i., p. 109.

594. Vol. i,, p. 59.

595. Vol. iii.. pp. 369–371.

596. "That an English writer of the time of Henry III should have been able to put off on his countrymen as a compendium of pure English law a treatise of which the entire form and a third of the contents were directly borrowed from the *Corpus Juris*, and that he should have ventured on this experiment in a country where the systematic study of the Roman law was formally proscribed, will always be among the most hopeless enigmas in the history of jurisprudence." — Maine, *Ancient Law*, p. 79.

597. Selden, *Fleta*, cap. iii., sec. 5, p. 49 (Kelham's translation).

598. See an account of the attitude of a lawyer named Skipwith in 1347, given by Selden (*Fleta*, cap. viii., sec. 5).

599. Broom, *Legal Maxims*, preface, p. vii.

600. Compare the statement in the article in the *Encyclopoedia Britannica* (*sub verbo* "Corporation") to which reference has already been made. The position there taken is not at all peculiar; on the contrary, it is fairly representative of the body of literature dealing with the history of the law of corporations, or of corporations on their technical legal side, and is here referred to for that reason. The "Roman conception of a corporation was Kept alive by ecclesiastical bodies. When English lawyers came to deal with such societies, the corporation law of Rome admitted of easy application,. Accordingly, in no department of our law have we borrowed so copiously and so directly from the Civil law... The introduction of corporations into cities and towns does not appear to date farther back than the reign of Henry VI, although they had long possessed what may be called a quasi-corporate character. By that time the corporate character of ecclesiastical and educational societies, and even of gilds, had been recognized, and the great convenience of corporate powers was, no doubt, the reason why they were demanded by the commonalties of towns."

601. Selden was of the opinion that even in the universities the Civil law prevailed largely because some scholars were foreigners, — "because the study of that law had flourished among them; [and] that it might appear that equal justice was distributed to foreigners who studied in those universities, as well as to our own countrymen, when any differences arose among them." — *Fleta*, cap. viii., sec. 4, p. 221 (Kelham's translation). Blackstone, following Fortescue, believed that the use of Latin in the universities was accountable for their adherence to the Civil law (!).

602. Selden, *Fleta*, cap. vi, sec. 5, pp. 137, 138. Sheldon Amos, *History and Principles of the Civil Law of Rome*, pp. 433, 434.

603. Selden, *Fleta*, cap. vii., sec. 1, p. 141. Blackstone, *Commentaries*, Introduction, vol. i, p. 18 (Christian's edition).

604. Sheldon Amos, *History and Principles of the Roman Civil Law*, p. 431.

605. Blackstone, *Commentaries*, vol. i., p. 18.

606. Sir Matthew Hale, *History of the Common Law*, p. 92.

607. Blackstone, *Commentaries*, book i., p. 469.

608. 1 Corinthians xii., 12–27; Romans xii, 4, 5; Ephesians iv., 4, 16.

609. Pollock and Maitland, *History of English Law*, vol. i., p. 477.

610. Sheldon Amos evidently encountered the difficulty. "Corporations [whether instituted for municipal, ecclesiastical, educational or eleemosynary purposes] might appear rather to be claimed by the chapter dealing with laws directly relating to the constitution and administration of the state, if not by that dealing with laws of contract. The corporate bodies, however, here under contemplation,

differ at once from purely governmental institutions and from industrial or mercantile associations. They Combine, in a manner peculiar to themselves, a public and a private character. They may have originated in special historical circumstances, or even in the more or less eccentric exercise of individual wills. But, starting from these beginnings, they have progressively allied themselves with the general objects of national policy." — *A Systematic View of the Science of Jurisprudence*, p. 281.

611. The great majority of modern writers (except recent writers on sociology) begin their treatment of corporations from the standpoint of the individual. though it is not always remembered that, as a matter of social organization, the corporation has derived its form, historically, from groups which were regarded from the opposite standpoint. As an illustration, the words of Sheldon Amos may be quoted: "As society progresses, it is recognized that it is not sufficient to accord rights to, and impose duties upon, determinate and individual human beings. The necessity of cooperation and combination for purposes of industry, trade, the public service, and social intercourse, as well as the importance of preserving a continuity of right and duty, which shall be independent of the accidents of human life, lead to the enlarged conception of legal persons, which expresses itself in such artificial unities as gilds, colleges, universities, corporations, and the like." — *History and Principles of the Civil Law of Rome*, p. 118.

612. It must be suggested that the classification to be given will be largely tentative, hardly more than provisional; more extended study would probably justify some alterations.

613. The term "economic," as used in the text, is confessedly unfortunate. For want of a better term, its use for the purpose of describing corporations organized and maintained for the acquisition of pecuniary gain may not be unpardonable.

614. Many of the scientific associations are so thoroughly dominated by university influences that they may almost be considered as organizations of federated universities rather than associations of individuals.