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**POPULAR
GOVERNMENT**

PRINTED BY
SPOTTISWOODE AND CO., NEW-STREET SQUARE
LONDON

POPULAR GOVERNMENT

FOUR ESSAYS

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THIRD EDITION

LONDON

JOHN MURRAY, ALBEMARLE STREET

1886

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PREFACE.

THE four Essays 'which follow are connected with studies to which, during much of my life, I have devoted such leisure as I have been able to command. Many years ago I made the attempt, in a work on "Ancient Law," to apply the so-called Historical Method of inquiry to the private laws and institutions of Mankind. But, at the outset of this undertaking, I found the path obstructed by a number of *à priori* theories which, in all minds but a few, satisfied curiosity as to the Past and paralysed speculation as to the Future. They had for their basis the hypothesis of a Law and State of Nature antecedent to all positive institutions, and a hypothetical system of Rights and Duties appropriate to the natural condition. The gradual recovery of the natural condition was assumed to be the same thing as the progressive improvement of human institutions. Upon the examination, which was indispensable, of the true

origin and real history of these theories, I found them to rest upon a very slender philosophical foundation, but at the same time they might be shown to have been extremely powerful both for good and for evil. One of the characteristics most definitely associated with Nature and her Law was simplicity, and thus the theories of which I am speaking brought about (though less in England than in other countries) many valuable reforms of private law, by simplifying it and clearing it from barbarous technicalities. They had, further, a large share in the parentage of International Law, and they thus helped to mitigate in some small degree the sanguinary quarrelsomeness which has accompanied the human race through the whole course of its history. But, on the other hand, they in my judgment unnerved the human intellect, and thus made it capable of the extravagances into which it fell at the close of the eighteenth century. And they certainly gave a false bias to all historical inquiry into the growth of society and the development of law.

It had always been my desire and hope to apply the Historical Method to the political institutions of men. But, here again, the inquiry into the history of these institutions, and the attempt to estimate their true value by the results of such an inquiry, are seriously

embarrassed by a mass of ideas and beliefs which have grown up in our day on the subject of one particular form of government, that extreme form of popular government which is called Democracy. A portion of the notions which prevail in Europe concerning Popular Government are derived (and these are worthy of all respect) from observation of its practical working; a larger portion merely reproduce technical rules of the British or American Constitutions in an altered or disguised form; but a multitude of ideas on this subject, ideas which are steadily absorbing or displacing all others, appear to me, like the theories of jurisprudence of which I have spoken, to have been conceived *à priori*. They are, in fact, another set of deductions from the assumption of a State of Nature. Their true source has never been forgotten on the Continent of Europe, where they are well known to have sprung from the teaching of Jean-Jacques Rousseau, who believed that men emerged from the primitive natural condition by a process which made every form of government, except Democracy, illegitimate. In this country they are not often explicitly, or even consciously, referred to their real origin, which is, nevertheless, constantly betrayed by the language in which they are expressed. Democracy is commonly described as having an inherent

superiority over every other form of government. It is supposed to advance with an irresistible and pre-ordained movement. It is thought to be full of the promise of blessings to mankind; yet if it fails to bring with it these blessings, or even proves to be prolific of the heaviest calamities, it is not held to deserve condemnation. These are the familiar marks of a theory which claims to be independent of experience and observation on the plea that it bears the credentials of a golden age, non-historical and unverifiable.

During the half-century in which an *à priori* political theory has been making way among all the civilised societies of the West, a set of political facts have disclosed themselves by its side which appear to me to deserve much more consideration than they have received. Sixty or seventy years ago, it was inevitable that an inquirer into political science should mainly employ the deductive method of investigation. Jeremy Bentham, who was careless of remote history, had little before him beyond the phenomena of the British Constitution, which he saw in the special light of his own philosophy and from the point of view of a reformer of private law. Besides these he had a few facts supplied by the short American Constitutional experience, and he had the brief and most

unsuccessful experiments of the French in democratic government. But since 1815, and especially since 1830, Popular Government has been introduced into nearly all Continental Europe and into all Spanish America, North, Central, and South ; and the working of these new institutions has furnished us with a number of facts of the highest interest. Meantime, the ancient British Constitution has been modifying itself with a rapidity which could not be foreseen in Bentham's day. I suspect that there were few observant Englishmen who, in presence of the agitation which filled the summer and autumn of 1884, were not astonished to discover the extent to which the Constitution of their country had altered, under cover of old language and old forms. And, all the while, the great strength of some of the securities which the American Federal Constitution has provided against the infirmities of popular government has been proving itself in a most remarkable way. Thus, in nearly all the civilised world, a large body of new facts has been formed by which I endeavour, in these Essays, to test the value of the opinions which are gaining currency in our day concerning Popular Government as it verges on Democracy.

It would argue ignorance or bad faith to deny the benefits for which, amid some calamities, mankind is

indebted to ~~Popular Government~~. Nevertheless, if there be even an approximation to truth in the conclusions which I have reached in the three papers first printed in this volume, some assumptions commonly made on the subject must be discarded. In the Essay on the "Prospects of Popular Government" I have shown that, as a matter of fact, Popular Government, since its reintroduction into the world, ~~has proved itself to be extremely fragile~~. In the Essay on the "Nature of Democracy" I have given some reasons for thinking that, in the extreme form to which it tends, it is, of all kinds of government, by far the most difficult. In the "Age of Progress" I have argued that the perpetual change which, as understood in modern times, it appears to demand, is not in harmony with the normal forces ruling human nature, ~~and is apt therefore to lead to cruel disappointment or serious disaster~~. If I am in any degree right, Popular Government, especially as it approaches the democratic form, will tax to the utmost all the political sagacity and statesmanship of the world to keep it from misfortune. Happily, if there are some facts which augur ill for its duration and success, there are others which suggest that it is not beyond the powers of human reason to discover remedies for its infirmities. For the purpose of bringing out a

certain number of these latter facts, and at the same time of indicating the quarter in which the political student (once set free from *à priori* assumptions) may seek materials for a reconstruction of his science, I have examined and analysed the Constitution of the United States, a topic on which much misconception seems to be abroad. There are some who appear to suppose that it sprang at once from the brain like the Goddess of Wisdom, an idea very much in harmony with modern Continental fancies respecting the origin of Democracy. I have tried to show that its birth was in reality natural, from ordinary historical antecedents; and that its connection with wisdom lay in the skill with which sagacious men, conscious that certain weaknesses which it had inherited would be aggravated by the new circumstances in which it would be placed, provided it with appliances calculated to minimise them or to neutralise them altogether. Its success, and the success of such American institutions as have succeeded, appears to me to have arisen rather from skilfully applying the curb to popular impulses than from giving them the rein. While the British Constitution has been insensibly transforming itself into a popular government surrounded on all sides by difficulties, the American Federal Constitution has proved that, nearly a

century ago, several expedients were discovered by which some of these difficulties may be greatly mitigated and some altogether overcome.

The publication of the substance of these Essays in the "Quarterly Review," besides giving me a larger audience than could be expected for a dissertation on abstract and general Politics which had little direct bearing on the eager controversies of Party, has gained for me the further advantage of a number of criticisms which reached me before this volume took its final shape. At the head of these I must place a series of observations with which Lord Acton has favoured me. I have freely availed myself of these results of his great learning and profound thought.

H. S. MAINE.

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