

CHAPTER IV

THE RULE OF LAW: ITS NATURE AND GENERAL APPLICATIONS¹

Two features have at all times since the Norman Conquest characterised the political institutions of England.

Chapter
IV.
The Rule
of Law.

The first of these features is the omnipotence or undisputed supremacy throughout the whole country of the central government. This authority of the state or the nation was during the earlier periods of our history represented by the power of the Crown. The King was the source of law and the maintainer of order. The maxim of the courts, *tout fuit in luy et vient de lui al commencement*,² was originally the expression of an actual and undoubted fact. This royal supremacy has now passed into that sovereignty of Parliament which has formed the main subject of the foregoing chapters.³

¹ Sir Ivor Jennings has been a most formidable critic of Dicey and in particular of this Part. See especially *The Law and the Constitution* (4th ed., 1952), ch. i, ii, vi, and App. ii, and the article, *In Praise of Dicey*, in *Public Administration*, vol. xi, No. 2 (April, 1935).—ED.

² Year Books, xxiv Edward III, cited Gneist, *Englische Verwaltungsrecht* (1867), vol. i, p. 454.

³ See Part i, *ante*.

Part II.

The second of these features, which is closely connected with the first, is the rule or supremacy of law. This peculiarity of our polity is well expressed in the old saw of the courts, "*La ley est le plus haute inheritance, que le roy ad ; car par la ley il même et toutes ses sujets sont rulés, et si la ley ne fuit, nul roi, et nul inheritance sera.*"¹

This supremacy of the law, or the security given under the English constitution to the rights of individuals looked at from various points of view, forms the subject of this part of this treatise.

The rule of law in England noticed by foreign observers.

Foreign observers of English manners, such for example as Voltaire, De Lolme, de Tocqueville, or Gneist, have been far more struck than have Englishmen themselves with the fact that England is a country governed, as is scarcely any other part of Europe, under the rule of law ; and admiration or astonishment at the legality of English habits and feeling is nowhere better expressed than in a curious passage from de Tocqueville's writings, which compares the Switzerland and the England of 1836 in respect of the spirit which pervades their laws and manners.

de Tocqueville on the want of respect for law in Switzerland and contrast with England.

"I am not about," he writes, "to compare Switzerland² with the United States, but with Great Britain. When you examine the two countries, or even if you only pass through them, you perceive, in my judgment, the most astonishing differences between them. Take it all in all, England seems to be much more republican than the Helvetic Republic.

¹ Year Books, xix. Henry VI, cited Gneist, *op. cit.*, vol. i, p. 455.

² Many of de Tocqueville's remarks were not applicable to the Switzerland of 1908 ; they refer to a period before the creation in 1848 of the Swiss Federal Constitution.—ED.