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Scottish and Irish Municipalities: Local Boards and Counties

Scottish Burghs before Reform

The history of municipal corporations in Scotland resembles that of England, in its leading characteristics. The royal burghs, being the property of the crown, were the first to receive corporate privileges. The earlier burgesses were tenants of the crown, with whom were afterwards associated the trades or crafts of the place, which comprised the main body of inhabitants. In the fourteenth century, the constitution of these municipalities appears to have become popular; and the growing influence and [288] activity of the commonalty excited the jealousy of more powerful interests. The latter, without waiting for the tedious expedient of usurpation, obtained an Act of the Scottish Parliament in 1469, which deprived the burgesses of their electoral rights, and established a close principle of self-election. The old council of every burgh was to choose the new council for the year, and the two councils together, with one person representing each craft, were to elect the burgh officers.(1)

Municipal privileges were also granted to other burghs, under the patronage of territorial nobles, or the church. The rights of burgesses varied in different places: but they were generally dependent upon their patrons.

Neither of these two classes of municipalities had enjoyed for centuries the least pretence of a popular constitution. Their property and revenues, their rights of local taxation, their patronage, their judicature, and the election of representatives in Parliament, were all vested in small self-elected bodies. The administration of these important trusts was characterised by the same abuses as those of English corporations. The property was corruptly alienated and despoiled: sold to nobles and other favoured persons,—sometimes even to the provost himself,—at inadequate prices: leased at nominal rents to members of the council; and improvidently charged with debts. The revenues were wasted by extravagant salaries,—jobbing [289] contracts, public works executed at an exorbitant cost,—and civic entertainments. By such maladministration several burghs were reduced to insolvency. Charitable funds were wasted and misapplied: the patronage, distributed among the ruling families, was grossly abused. Incompetent persons, and even boys, were appointed to offices of trust. At Forfar, an idiot performed for twenty years the responsible duties of town clerk. Lucrative offices were sold by the councils. Judicature was exercised without fitness or responsibility. The representation formed part of the narrow parliamentary organisation by which Scotland, like her sister kingdoms, was then governed.

The Burghs Reformed

Many of these abuses were notorious at an early period; and the Scottish Parliament frequently interposed to restrain them.(2) They continued, however, to flourish; and were exposed by parliamentary inquiries in 1793, and again in 1819, and the two following years. The latter were followed by an Act in 1822, regulating the accounts and administration of the royal burghs, checking the expenditure, and restraining abuses in the sale and leasing of property, and the contracting of debts.(3) But it was reserved for the first reformed Parliament to deal with the greatest evil,[290] and the first cause of all other abuses—the close constitution of these burghs. The Scotch Reform Act had already swept away the electoral monopoly which

had placed the entire representation of the country in the hands of the government and a few individuals; and in the following year, the ten pound franchise was introduced as the basis of new municipal constitutions. The system of self-election was overthrown, and popular government restored. The people of Scotland were impatient for this remedial measure; and, the abuses of the old corporate bodies being notorious, Parliament did not even wait for the reports of commissioners appointed to inquire into them: but proceeded at once to provide a remedy. The old fabric of municipal administration fell without resistance, and almost in silence: its only defence being found in the protest of a solitary peer.(4)

Irish Boroughs

In the corporations of Ireland, popular rights had been recognised, at least in form,—though the peculiar condition of that country had never been favourable to their exercise. Even the charters of James I., designed to narrow the foundations of corporate authority, usually incorporated the inhabitants, or commonalty of boroughs. The ruling bodies, however, having the power of admitting freemen, whether resident or not, readily appropriated all the power and patronage of local administration. In the greater number of boroughs, the council, or other ruling body, was practically [291] self-elected. The freemen either had no rights, or were debarred, by usurpation, from asserting them. In other boroughs, where the rights of freemen were acknowledged, the council were able to overrule the inhabitants by the voices of non-resident freemen,—their own nominees and creatures. Close self-election, and irresponsible power, were the basis of nearly all the corporations of Ireland. In many boroughs, patrons filled the council with their own dependents, and exercised uncontrolled authority over the property, revenues, and government of the municipality.

It were tedious to recount the more vulgar abuses of this system. Corporate estates appropriated, or irregularly acquired by patrons, and others in authority: leases corruptly granted: debts recklessly contracted: excessive tolls levied, to the injury of trade and the oppression of the poor: exclusive trading privileges enjoyed by freemen, to the detriment of other inhabitants: the monopoly of patronage by a few families: the sacrifice of the general welfare of the community to the particular interests of individuals: such were the natural results of close government in Ireland, as elsewhere. The proper duties of local government were neglected or abused; and the inhabitants of the principal towns were obliged to seek more efficient powers for paving, lighting, and police, under separate boards constituted by local Acts, or by a general measure of 1828, enacted for that [292] purpose.(5) But there were constitutional evils greater than these. Corporate towns returned members to Parliament; and the patrons, usurping the franchises of the people, reduced them to nomination boroughs. But, above all, Catholics were everywhere excluded from the privileges of municipal government. The remedial law of 1793, which restored their rights,(6) was illusory. Not only were they still denied a voice in the council: but even admission to the freedom of their own birthplaces. A narrow and exclusive interest prevailed,—in politics, in local administration, and in trade,—over Catholic communities, however numerous and important. Catholics could have no confidence either in the management of municipal trusts, or in the administration of justice. Among their own townsmen, their faith had made them outlaws.

Reform of the Irish Boroughs

The Reform Act established a new elective franchise on a wider basis; and the legislature soon afterwards addressed itself to the consideration of the evils of municipal misgovernment. But the Irish corporations were not destined to fall, like the Scotch burghs, without a struggle.

In 1835, Lord Melbourne's government introduced a bill for the reconstitution of the Irish corporations, upon the same principles as those already applied to other parts of the United Kingdom. It was passed by the Commons without much discussion: but was not proceeded [293] with in the Lords, on account of the late period of the session. In the following year it

was renewed, with some modifications: when it encountered new obstacles. The Protestant party in Ireland were suffering under grave discouragements. Catholic emancipation and Parliamentary reform had overthrown their dominion: their church was impoverished by the refusal of tithes, and threatened with an appropriation of her revenues; and now their ancient citadels, the corporations, were invested. Here they determined to take their stand. Their leaders, however, unable openly to raise this issue, combated the measure on other grounds. Adverting to the peculiar condition of Ireland, they claimed an exceptional form of local government. Hitherto, it was said, all local jurisdiction had been exercised by one exclusive party. Popular election would place it in the hands of another party, no less dominant. If the former system had caused distrust in local government and in the administration of justice, the proposed system would cause equal jealousy on the other side. Catholic ascendency would now be the rule of municipal government. Nor was there a middle class in Ireland equal to the functions proposed to be intrusted to them. The wealth and intelligence of Protestants would be overborne and outnumbered by an inferior class of Catholic townsmen. It was denied that boroughs had ever enjoyed a popular franchise. The corporations prior to James I. had [294] been founded as outworks of English authority, among a hostile people; and after that period, as citadels of Protestant ascendency. It was further urged that few of the Irish boroughs required a municipal organisation. On these grounds Sir Robert Peel and the opposition proposed a fundamental change in the ministerial scheme. They consented to the abolition of the old corporations: but declined to establish new municipal bodies in their place. They proposed to provide for the local administration of justice by sheriffs and magistrates appointed by the crown: to vest all corporate property in royal commissioners, for distribution for municipal purposes; and to intrust the police and local government of towns to boards elected under the General Lighting and Watching Act of 1828.

The Commons would not listen to proposals for denying municipal government to Ireland, and vesting local authority in officers appointed by the crown: but the Lords eagerly accepted them; and the bill was lost.

In the following year, a similar measure was again passed by the Commons, but miscarried in the other House by reason of delays, and the king's death. In 1838, the situation of parties and the determined resistance of the Lords to the Irish policy of the government, brought about concessions and compromise. Ministers, by abandoning the principle of appropriation, [295] in regard to the Irish Church revenues, at length attained a settlement of the tithe question; and it was understood that the Lords would accept a corporation bill. Yet in this and the following years the two Houses disagreed upon the municipal franchise and other provisions; and again the ministerial measures were abandoned. In 1840, a sixth bill was introduced, in which large concessions were made to the Lords. Further amendments, however, were introduced by their lordships, which ministers and the Commons were constrained to accept. The tedious controversy of six years was at length closed: but the measure virtually amounted to a scheme of municipal disfranchisement.

Ten corporations only were reconstituted by the bill, with a ten pound franchise. Fifty-eight were abolished:(7) but any borough with a population exceeding 3,000 might obtain a charter of incorporation. The local affairs and property of boroughs, deprived of corporations, were to be under the management of commissioners elected according to the provisions of the General Lighting and Watching Act, or of the poor-law guardians.(8) The measure was a compromise; and, however imperfect as a general scheme of local government, it at least corrected the evils of the old system, and closed an irritating contest between two powerful parties.

Local Boards

The reconstitution of municipal corporations, [296] upon a popular basis, has widely extended the principle of local self-government. The same principle has been applied, without reserve, to the management of other local affairs. Most of the principal towns of the United Kingdom

have obtained Local Acts, at different times, for improvements,—for lighting, paving, and police,—for waterworks,—for docks and harbours; and in these measures, the principle of elected and responsible boards has been accepted as the rule of local administration. The functions exercised under these Acts are of vast importance, not only to the localities immediately concerned, but to the general welfare of the community. The local administration of Liverpool resembles that of a maritime state. In the order and wise government of large populations, by local authority, rests the general security of the realm. And this authority is everywhere based upon representation and responsibility. In other words, the people who dwell in towns have been permitted to govern themselves.

Extensive powers of administration have also been intrusted to local boards constituted under general statutes for the sanitary regulation, improvement, and police of towns and populous districts.(9) Again, the same principle was adopted in the election of boards of guardians for the administration of the new poor [297] laws, throughout the United Kingdom. And lastly, in 1855, the local affairs of the metropolis were intrusted to the Metropolitan Board of Works,—a free municipal assembly,—elected by a popular constituency, and exercising extended powers of taxation and local management.(10)

The Counties Remain Unreformed

The sole local administration, indeed, which has still been left without representation, is that of counties; where rates are levied and expenditure sanctioned by magistrates appointed by the crown. Selected from the nobles and gentry of the county for their position, influence, and character, the magistracy undoubtedly afford a virtual representation of its interests. The foremost men assemble and discuss the affairs in which they have themselves the greatest concern: but the principles of election and responsibility are wanting. This peculiarity was noticed in 1836 by the commission on county rates;(11) and efforts have since been made, first by Mr. Hume,(12) and afterwards by Mr. Milner Gibson,(13) to introduce responsibility into county administration. It was proposed to establish financial boards, constituted of members elected by boards of guardians, and of magistrates chosen by themselves. To the representative principle itself few objections were offered; but no scheme for [298] carrying it into effect has yet found favour with the legislature.

Counties represent the aristocratic, towns the democratic, principles of our constitution. In counties, territorial power, ancestral honours, family connexions, and local traditions have dominion. The lords of the soil still enjoy influence and respect, little less than feudal. Whatever forms of administration may be established, their ascendency is secure. Their power is founded upon the broad basis of English society: not upon laws or local institutions. In towns, power is founded upon numbers and association. The middle classes,—descendants and representatives of the stout burghers of olden times,—have sway. The wealth, abilities, and public virtues of eminent citizens may clothe them with influence: but they derive authority from the free suffrages of their fellow-citizens, among whom they dwell. The social differences of counties and towns have naturally affected the conditions of their local administration and political tendencies: but both have contributed, in different ways, to the good government of the state.

Footnotes.

1. Scots Acts, 1469, c. 5.
2. Scots Acts, 1491, c.19; 1503, c.36, 37; 1535 c.35; 1593, c. 39; 1693, c. 45.
3. 3 Geo. IV c. 91.
4. 3 and 4 Will. IV. c. 76, 77.
5. 9 Geo. IV c. 82; Rep. of Commrs., p. 21.
6. 33 Geo III. c.21 (Irish). Supra, p. 111.
7. Schedules B and C of Act.

8. 3 and 4 Vict. c. 108.
9. Public Health Act, 1848; Local Government Act, 1858; Toulmin Smith's Local Government Act, 1858; Glen's Law of Public Health and Local Government; Police (Scotland) Acts, 1850; Towns' Improvement (Scotland) Act, 1860; Police and Improvement (Scot. land) Act, 1862, consolidating previous Acts.
10. Metropolis Local Management Acts, 1855, 1862. Toulmin Smith's Metropolis Local Management Act.
11. The Commissioners said: 'No other tax of such magnitude is laid upon the subject, except by his representatives.' ... 'The administration of this fund is the exercise of an irresponsible power intrusted to a fluctuating body.'
12. In 1837 and 1839.—Hans. Deb., 3rd Ser., cvi. 125.
13. In 1840, and subsequently.—Ibid., cviii. 738.

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