

old Roman world. The Russian peasant, with a drop of Tartar blood in his veins, is by nature a nomad. Tied to the soil by the Czar Boris Godunoff, in 1601, he has been manumitted, and in a great measure made lord of the soil by the Emperor Alexander II., yet he does not take kindly to the soil. The land, indeed, requires intelligence and capital, and the peasants, in increasing numbers, migrate to the cities, where they can get a fair day's wage for a fair day's work. According to Keith Johnston agricultural and pastoral industries employ about 76 per cent., manufactures only about 15 per cent. of the population. But of those who are land-labourers, a certain proportion leave the country for the town during the winter season; and, away from their wives and children, work in mills and factories. The peasant, with a Tartar fondness for moving about, has also a feeling that in town-work he stands a chance of "bettering himself;" and, as a matter of fact, not a few of the emancipated serfs have become wealthy traders. The protective policy of the Empire at least secures an extensive market for Russian goods. In every branch of industrial enterprise Russia has achieved a singular success. The exhibition recently opened in Moscow is purely national; and the Imperial tariffs, as we have said, insure sufficiently both manufacturing and trading prosperity. But there is no capital to give the Russian soil a chance. According to Mr. Gallenga, American corn merchants are likely to prove more than a match for those of Russia. No doubt, in proportion as the railway system is extended, the resources of the Empire, which are immense, will be made more available, and the condition both of the rural and the urban labourer may, in many respects, improve. What is most of all needed, after a constitutional government, is a middle-class. For the Nihilists, and the *Tchin* system, we may refer to our own columns (CHURCHMAN, January, 1880).



#### ART. V.—THE CLAIMS OF THE CONVOCATIONS OF THE CLERGY AS TO THE PRAYER BOOK.

THE Preamble to the present Act of Uniformity, passed in 1662, tells us that the Book of Common Prayer of the day, which was, in fact, that of Queen Elizabeth, had been submitted by the King to the body of divines who are now known as the Savoy Commission, or "the Savoy Conference," in order that they might "review" the book, and "prepare such alterations and additions as they thought fit to offer;" and the same

Preamble, without telling us what was the result of that proceeding, then says that His Majesty had been pleased to "authorize and require" the Convocations of both the Provinces of Canterbury and York to "review" the Book of Common Prayer, and also the Book of Consecration and Ordination, which was, in fact, a part of Queen Elizabeth's Prayer Book, and to "make such alterations and additions in the said book respectively as to them should seem meet and convenient," and to "*exhibit and present the same to his Majesty in writing, for his further allowance or confirmation;*" and then that they, "the Presidents, Bishops, and Clergy, of both Provinces, have, accordingly, reviewed the said books, and have made some alterations," and some additional prayers "to be used upon proper and emergent occasions, *and have exhibited and presented the same unto His Majesty in writing, in one book, intituled,*" &c. &c., "*all which His Majesty having duly considered, hath fully approved and allowed the same, and recommended to this present Parliament,* that the said books, with the alterations and additions, which have been so made and presented to His Majesty, be the book which shall be appointed to be used by all that officiate," &c., "under such sanctions and penalties as the Houses of Parliament shall think fit."

The Act of Uniformity afterwards directs that "all and singular Ministers in any Cathedral, Collegiate, or Parish Church or Chapel *or other place of public worship*" [to which College Chapels are subsequently expressly added] shall "say and use "The Morning Prayer, Evening Prayer," &c. &c., "in such order and form as is mentioned in the said Book annexed and joined to this present Act, and intituled," &c. Then follow the same words of title as had before been said to form the title of the book presented to the King by the two Convocations; a title which had some verbal differences from the title to the Prayer Book of Elizabeth.

In this way, the Act of Uniformity incorporated a book, bearing the title before mentioned; and the book annexed to the Act must be treated as part of the Act itself. Professor Swainson, in his "Parliamentary History of the Act of Uniformity" (ed. of 1875), seems to think it sufficiently clear that the book which was, in fact, annexed to the Act, was the book which had been presented to the King by the two Convocations, and by him recommended to Parliament, and sent to the House of Lords (p. 17); but that some alterations or additions were made to the book, by Parliament, between its being so transmitted by the King, and its becoming law by the passing of the Act to which it was annexed (*see Swainson, p. 70 to 75.*)

*The preface to the book, thus annexed to the Act of Uniformity, gives a different account of the revision.* It speaks in the name

of those who made it; and it is clear that, whoever they were, they were not the Convocations, or either of them; and, on the contrary, the only allusion that the preface makes to the Convocations, is in the concluding sentence, in which the Revisers say that "What is here presented hath been, by the Convocations of both Provinces, with great diligence, examined and approved"—an expression which shows that the revision was not made by the Convocations themselves, or either of them; because not only do the Revisers say that they themselves made it, but they say that the concern which the Convocations had in it was that of examination and approval; and it is obvious that there can be neither an examination nor an approval of any work before the work itself is done. The Revisers do not say, in their preface, who they were; but the circumstances of the case, to be hereafter stated, clearly show that they were some bishops; and that this must have been well known to both Houses of Parliament at the time.

The mention which the Revisers make of the two Convocations is not at all such as to imply that the approval of those bodies was a necessary condition precedent to the adoption of the revised Prayer Book by the nation; for they say that they *hope* that the approval of the Convocations, as well as the other reasons given for the efficient execution of the work, will make it acceptable "to all sober, peaceable, and truly conscientious sons of the Church of England."

It is upon the statements thus appearing, in the Act of Uniformity, and in the preface to the book which it incorporates, that the modern theory is founded, that the revision of the Prayer Book, in 1661 and 1662, was the work of what is called in the singular number, "Convocation;" and this theory is enlarged into another, which is, that no revision or alteration of the Prayer Book *could* lawfully have been made by any other body or persons than "Convocation," and that no revision or alteration could have even been made binding by Parliament itself, unless it had been made by "Convocation;" and the advocates of this theory, in its thus enlarged form, have now extended it even still farther, by insisting that no Act of Parliament which in any way purports to affect the clergy in their clerical character, *can have any validity as regards them*, unless it shall have been made with the concurrence of "Convocation"—a delusion which seems incredible to constitutional lawyers of the old school.

The question whether, in fact, Parliament did make any alterations in the revised book, between the transmission of it, by the King, to the House of Lords, and the passing of the Act which incorporated it, seems to have been thought of much practical importance, and, accordingly, to have been investigated

with great minuteness. It is probable, from the details given to us by Professor Swainson, that some such alterations were, in fact, made; but his work upon the History of the Act of Uniformity seems to show that there are not wanting grounds for saying that, even if this were so, it was the House of Lords that made them, and that the bishops who sat in the House of Lords at that time, and who necessarily formed the Upper Houses of the two Convocations, took care to obtain, in some way or other, whether regularly or not, the concurrence of the Convocations, or of one of them, in the propriety of those alterations, and, consequently, that the alterations could not be demonstrated to have been made upon parliamentary judgment only, without some convocational acquiescence.

Any proof of such acquiescence would be unnecessary in principle, because the circumstances under which Queen Elizabeth's Act of Uniformity was passed are conclusive evidence that Parliament, not only without the concurrence of the Convocations, but in opposition to both of them, can impose upon the bishops and clergy of the Convocations, and upon those whom they represent, the obligation of using any Prayer Book which Parliament, as representing the nation, may think fit: not parts of a book only, but the *whole* of a book; and if the whole, then, necessarily, any parts, and all parts.

The present book, with all its Rubrics, was to form, and does form, part of the Act of Parliament in which it was incorporated; and it cannot possibly be said, with truth, that the Houses of Parliament may not discuss and decide upon any part of an Act of Parliament which they pass.

If this reason were not conclusive, which it surely is, there is another, which is also final—namely, that neither House of Parliament was obliged to adopt any revised book at all; and the Houses, or either of them, might have rejected any and every revised book proposed to them, as repeatedly as they chose, until some book which they wholly approved should have been offered; and the rejection of any such book, or of any number of such books, would not, necessarily, have been unreasonable, because there was already in force a complete Book of Common Prayer, with all necessary services, including those of Ordination and Consecration.

When Charles II. had been restored, the Constitution of England, as regards the absolute power of Parliament, was the same as it had been at the accession of Elizabeth, and as it is now.

There is always a *moral limit* to the otherwise absolute power of Parliament; and the sense of the nation as to that moral limit in any particular matter, can, in these days, at all events, be easily made to influence the Members of both Houses

of Parliament. Absolute power *must reside somewhere*, even in the least arbitrary form of Government. In England it resides in the Parliament for the time being, as the embodiment of the national will.

The revision of the Prayer Book in 1661 and 1662, so far from being evidence of "Convocation's" exclusive right to revise, or to veto a revision, is not even a Parliamentary precedent for either of these things. It was a march stolen upon the Presbyterians by the bishops and Lord Clarendon, at a time when both Houses of Parliament were eager to pass an Act of Uniformity which should oblige existing Presbyterian incumbents to vacate their benefices. Incidentally, some variations were made, of an unobjectionable character, due partly to the natural desire of some Revisers to conceal their practical purpose, and partly to the wish of other Revisers to make permanent improvements.

It will presently be shown that the King's reference of the book to the two Convocations was *a mere incident in the course of this episcopal revision, and was adopted for the purpose of gaining delay*, until it should have been accomplished; a delay necessary to moderate the impatience of the House of Commons, who had already sent up to the House of Lords a Bill of Uniformity, intended to make additional provisions for enforcing immediate adoption of the existing unrevised book by the Presbyterian incumbents.

It is both inaccurate and misleading to use the word "Convocation," in the singular, to denote the Convocations of Canterbury and York, which are two separate, distinct, and independent representative bodies of the clergy, neither of which has any authority beyond the province by the name of which it is called. It is, therefore, intended that, in these observations, the Convocation of each Province shall be spoken of separately.

Queen Elizabeth's Liturgy was the book to be revised, and it was still in full force. The establishment of that liturgy was the declaration of the great constitutional principle, that the nation has a right to prescribe for itself whatever system of public worship it shall think fit, and whatever forms of prayer and ceremonies of devotion, it shall think proper to use, by whomsoever composed; and that that right may be so exercised by the nation, without the assistance of either of the two provincial convocations of the clergy, or of any other clerical co-operation whatever, and even in direct *opposition* to all the bishops of the realm for the time being, and, therefore, necessarily, in *opposition* to the convocations of which they form essential component parts, without whom the convocations themselves could not be constituted. The nation, in this

proceeding, offered ecclesiastical service to all who chose to undertake it upon the conditions thus laid down; which conditions it was free to all candidates for such service to accept or reject, and which, if they did accept, they must continue to perform, so long as they continued in the service. They might reject the service at first; they might discontinue it afterwards; but, so long as they continued it, the conditions were the essential part of the service. This has ever since been, and is now, the only accurate definition of that which is popularly, but inaccurately, called "Church and State," inaccurately called so, because the so calling it implies that "Church" and "State" are two bodies, capable of concord or discord; whereas they are one and the same body, the nation; of which identity the evidences, in our constitutional records, are innumerable, and the constant recollection of which identity is essential to all accurate reasoning upon questions which affect the nation's system of public worship and religious instruction.

The book which the nation, at Elizabeth's accession, established as their code of devotion, included, besides large parts of the Holy Scriptures, a great many prayers and hymns, composed in a great many different ages, *and which had become, at many different times, the public property of all Christians.* They had often been collected before, by different persons, or bodies of persons, in different books, some of which had contained only a part of them, and others of which had contained them all. They had been varied, more or less, at different times, and by different generations of men. Some of them were slightly varied for the purpose of the Elizabethan book itself.

The same observations are applicable to the very numerous directions, for the conduct of Public Worship, and the Administration of the Sacraments, and other rites of the Christian Religion, which the book of Elizabeth contained; including, as it did, the forms and directions for the Ordination of Priests and Deacons, and the Consecration of Bishops; and the book made those forms of ordination and consecration conditions precedent to the admission or consecration, from thenceforth, of all its future ecclesiastical servants who were not already in such holy orders as were recognized by the general law of the land. A slight doubt, started in 1565 or 1566, as to whether the forms of ordination and consecration were really in operation, because they were not expressly mentioned in Queen Elizabeth's *Act of Uniformity*, although they were included in her Prayer Book, and in general terms, in the title of that book, which describes itself as containing not only the Prayers and the Sacrament-Services, but also the "*other Rites and Ceremonies of the Church of England,*" was removed by an affirmative

declaration, in an Act of Parliament of the eighth year of the Queen.<sup>1</sup>

It is immaterial, in principle, whether the contents of the Elizabethan Prayer Book were new or old, whether they had been before collected or not, whether they had been used before or not. It is also immaterial, in principle, who the authors of the prayers or the hymns had been. In many cases, the authorship could not possibly be ascertained with certainty; in other cases, it was probably known to be that of men who had been living in Edward VI.'s reign. The nation, through its advisers in Parliament, was quite capable of satisfying itself, by proper inquiry and information, about the reasonableness of every part of the forms of the book, and of the directions which it contained, and of the direction, which, in some minor matters, the new Act of Uniformity empowered the Queen to make, upon receiving certain advice (sec. 25). All that is material, in principle, is, that the nation now, through its Parliament, adopted, for itself, a volume of services and directions for public worship and for private use, with proper provisions for securing "a due supply of fit persons to serve in the Sacred Ministry" of that part of the church universal which consisted of the "Particular or National Church," which was composed of the people of England. This book became, henceforth, the inheritance of all the people of England; and it became the birthright of all future generations of Englishmen to have public worship conducted in conformity with it, in their own parish churches, and in every other church or house of prayer, belonging to the nation, which their convenience might at any time induce them to attend.

*This inestimable inheritance has continued to be ours, from the first year of Elizabeth until now, except in the particulars in which the nation was persuaded, through Parliament, to vary or add to it in the year 1662, and except in the revision of the Tables of Scripture Lessons which Parliament also made about ten years ago.*

The mere statement of the circumstances under which Queen Elizabeth's Prayer Book became the Prayer Book of the nation, is conclusive to show that neither both nor either of the Convocations could possibly have any right, *at the time of the next revision*, which was that of 1661 and 1662, to control the nation, whose property the book was, in revising or otherwise dealing with it. A right which could not possibly exist could not possibly be evidenced.

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<sup>1</sup> See Swainson, 43-4; see also 2 Rapin 75, notes; and see Preface to the Parker Society's Edition of the Liturgical Services of Queen Elizabeth, xxi., and the Act itself, 8 Eliz. c. i.

It is one of our strongest constitutional principles that Parliament is *uncontrollable*; <sup>1</sup> but it would not be uncontrollable, if the Convocations could control it.

These reasons are conclusive against the existence of any right of revision in the two Convocations of Canterbury and York, in the years 1661 and 1662.

But, notwithstanding this conclusive reasoning, popular opinion will ask, "What, then, were the proper functions of the Convocations, when this reference was made to them?" The answer may be given thus:—

Until the passing of the Act of the Submission of the Clergy, 25 Henry VIII., c. 19, in 1533, there were, or might be, two separate Convocations of the clergy in each province. One of these may be said to have been the Archbishop's Provincial Synod, convenable when he pleased, but probably with the leave or acquiescence of the King, and the other to have been the King's Taxing Convocation, regulated by a scheme of representation laid down by King Edward I., in 1295, and resembling very closely the scheme of representation already in practice with regard to the Archbishop's Provincial Synod. The Taxing Convocation was, in fact, Parliamentary only, and summoned for Parliamentary taxation, and was required by the King's writs, to be in attendance at the places prescribed by him, either in the province of Canterbury or in the province of York, as the case might be, or, more usually, in both provinces. The Lower House of each Taxing Convocation was re-elected at the commencement of every new Parliament, and continued during that Parliament's continuance, and no longer; but with occasional renewals of individual members, whenever death or resignation might require.

*This Taxing Convocation* still continues to be summoned, although taxation by it has long ceased. The mode of summons and election prescribed by King Edward I. still continues in respect to it. It is now the only kind of Convocation that meets.

Before the Act of Submission, the Archbishop's Provincial Synod made laws and constitutions which were allowed to affect the clergy, and some of which were acquiesced in by the laity also, so far as they were not repugnant to the King's prerogative or to the laws of the land—that is, to the common law or to the statute law; and, by the Act of Submission, that part of the then existing law made by the Provincial Synods, or adopted by them, which was not repugnant to the prerogative or to the common law, or to the statute law, was *temporarily* continued, until a certain body of thirty-two Commissioners

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<sup>1</sup> See 1 Blackstone's "Commentaries," from 160 to 162.



should have reviewed the ecclesiastical law generally, which *temporary* continuance was revived by the very first Act of Parliament of Queen Elizabeth, the Royal Supremacy Act, 1 Eliz. c. 1; and, upon the footing of this *temporary continuance*, the old ecclesiastical law of the time before 25 Henry VIII., 1533, still stands, except so far as it may have been validly altered or added to by the canons of 1603-4, which will be presently mentioned, or by Acts of Parliament made from time to time, whose authority is supreme over all canons and all other ecclesiastical law.

The Act of Submission (25 Henry VIII., c. 19, 1533), precluded the Archbishop from summoning his Provincial Synod, without the authority of the Sovereign; and it also precluded the making of any canons, in *any* Convocation of the clergy, without the Sovereign's previous permission and subsequent ratification. It is very clear, from the results of the investigations of Professor Stubbs, in his "Constitutional History," and from the forms given in that work, and in his other work, called "Stubbs's Charters," that the only Convocation summoned since the Act of Submission has been the King's Taxing Convocation,<sup>1</sup> and that that Convocation which we have called, in distinction, the Archbishop's Synod, has never since met; but, inasmuch as the system of election prescribed for the King's Taxing Convocation was substantially the same as that already in practice for the election of the Archbishop's Synod, it became as effectual to give licence for making canons to the King's Taxing Convocation, and to make a subsequent ratification of them, as if the same licence and ratification had been given in the case of canons made in the Archbishop's Synod. The Act of Submission prohibited making any canons, even with licence and ratification, which were repugnant to the King's prerogative, or the common, or the statute law; repeating the qualification already mentioned as that of the temporarily continued ecclesiastical law. The Act of Submission has, in practice, been considered as amounting to a reservation of a power of making canons *not so repugnant* as just mentioned, provided they shall have been previously licensed, and subsequently confirmed. Accordingly, the royal permission has been occasionally given to the Taxing Convocations to make canons, or to do some other particular business. Some canons seem to have been so made in Queen Elizabeth's time; but, whatever they were, they were incorporated in the canons of 1603-4, which is a large body of ecclesiastical law, and contains the latest set of canons which have any validity. A set of canons was irregularly attempted to be made in 1640, partly during the sitting, and partly after

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<sup>1</sup> See 2 Stubbs, 195 to 200; 3 Stubbs 319, Edition of 1878.

the sitting, of the "Short Parliament" of 1640, but, by an early Act of Charles II. (13 Car. II. c. 12), it was expressly provided, in double terms, that no canons should be put in force that were not in force in 1639, and that nothing in that Act should be taken to confirm the canons of 1640.

The canons of 1603-4, therefore, are not only the latest body, but the only body, of canons, now in force, *as such*. They embody a great part of the then existing ecclesiastical law, although not quite the whole of that law.

It has been conclusively settled by the highest tribunal, the House of Lords, in addition to the authority of other courts, that the canons of 1603-4 do not, in any way, affect the laity, or the rights of the laity, because the laity have never been represented in the Convocations by which they were made, except so far as they were embodiments of the then law of the land, affecting clergy and laity alike. This is what is meant by saying that the canons do not, *proprio vigore*, bind the laity. If it is, at any time, asserted, that a proposition of law to be found in one of the canons, by which a right of the laity would be affected, was part of the law of the land in 1603-4, *that* question is examinable; and it may be determined that it was *not* then part of the law of the land, and consequently cannot affect the rights of the laity. This was what was done in the great case of the Bishop of Exeter *v.* Marshall, in the House of Lords, in the years 1867 and 1868, in which the House, with the assistance of the common law judges, determined that the Bishop of Exeter had no right to refuse the presentation of a patron, on the ground that the presentee did not bring with him a particular kind of testimonial, even if it had been clear that the canons prescribed it. Upon similar principles, it had been before decided that a prescription by a canon, of a particular limit of distance for pluralities of benefices, was void, because no such limit had been prescribed to the patron and incumbent by the law of the land: and there have been other decisions, at different times, to the same effect—namely, that the Convocations of the clergy cannot in any way affect the rights of the laity. But if the clergy, in their Convocations, could require the laity to alter the Divine Service of the nation in any particulars, or could impose upon the laity, in their character of the nation, a *veto* upon any alteration which the nation might wish to make, they *would* affect the rights of the laity, that is, the *λαός*, the nation, whose ecclesiastical servants they are, and of whom, in their personal character, as distinguished from their ecclesiastical character, they themselves form a part.<sup>1</sup>

<sup>1</sup> Sir William Blackstone, more than a hundred years ago, concluded his

In presumption of law, as the law existed in 1661, the Convocation of each province was always in attendance, during the sittings of Parliament, and in readiness to consider the question of granting a supply to the Sovereign, whenever informed that his necessities, or those of the country, required it. *In practice*, the members of each Convocation probably attended at intervals only, or upon special notice. When taxing duty was not required of them, they exercised themselves in making, or attempting to make, canons, if authorized to do so; and, at other times, in the discussion of some of those many questions in which so large a body of men as the clergy were sure to be, from time to time, interested. Such discussions were, in effect, mere conversations and interchanges of conflicting opinion, and were sure to be often as barren of result as similar discussions in any other profession would be, although the want of an opportunity for them would have been felt as a grievance. Very probably the discussions were fomented and prolonged by some members who would gladly see the restoration of that system of spiritual despotism called "discipline," which had been exercised by Provincial Synods, over laity, as well as clergy, before the Act of Submission.

These employments would be sufficient to keep the two Convocations in a state of accessibility, to be made use of by the Crown, if necessary, either for money or for advice.

The Convocation of one province might, if it thought fit, follow the example of the Convocation of the other province, in doing or recommending anything within its own powers, as, practically, was often (but not always) the case, when the Convocation of York followed the example of the Convocation of Canterbury, in making a grant to the King, subject, in each case, to the confirmation of Parliament, which alone could enforce it; and it will be seen that, in the Acts of Parliament for confirming such grants, it was the practice to provide for the enforcement of an expected grant from York by the Act which enforced a grant from Canterbury. These Confirmation Acts are not always found at length in the printed collections of statutes, because they were of temporary duration only; but they may be read in the Record Commissioners' edition.<sup>1</sup>

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statement about the *invalidity* of the canons, as regards the *laity*, with the words "whatever regard the clergy may think proper to pay them" (1 Blackst. Com. 83). The authorized report of the Bishop of Exeter's case is in "The Law Reports, Appellate Series, House of Lords English and Irish Appeals and Claims of Peerage," vol. iii. The final decision was on March 30, 1868.

<sup>1</sup> An instance of a prospective confirmation of a grant from York will be found in the Record Commissioners' edition of the Statute 1 Car. I. c. 5 (1625) in these words:—"And be it further enacted, by the authority aforesaid, that all and every grant and grants of all and every sum and

Professor Christian, in his Notes to Blackstone's Commentaries, has mentioned, as a proof of the independence of the Convocations of the two provinces, that Canterbury and York did not always grant subsidies of the same amount on the same occasions.<sup>1</sup>

In 1661, when the King summoned his first Parliament after the dissolution of the Convention Parliament, he also, *necessarily*, summoned the two Convocations of the clergy; because the effect of the Restoration had been to restore the then existing privilege of the clergy to be taxed, for the purposes of the King or the State, only through such recommendations to Parliament as should be made by the Convocations of their respective provinces; and the only proper time for summoning the Taxing Convocations, and for making the necessary elections of Proctors in Convocation, was the time at which the new Parliament was summoned and elected. It must, of course, have been expected that, sooner or later, during the existence of the new Parliament, it would be necessary to ask for a supply of money from the clergy, as well as from the laity. It was intended, no doubt, to postpone that necessity as long as possible; and, accordingly, in the meantime, an Act passed, on the 8th of July, 1661, for permitting His Majesty to accept a "Benevolence" from his subjects, if they should think fit to give it; a permission which Parliament alone could grant, because, otherwise, the Benevolence was forbidden by the Petition of Right (3 Car. I., 1628). In the year 1663, however, taxation, of the ordinary compulsory kind, became inevitable; and, accordingly, it will be seen, in referring to the Public General Statutes of the year 1663, 15 Car. II., that Chapter IX. is "an Act for *confirming* of four subsidies granted by the clergy," following next after Chapter VIII., which is "an Act for granting four entire subsidies to His Majesty by the temporalty."

It was not till after the year 1663 that that arrangement was made, between Archbishop Sheldon and the civil Government, by which it came to be understood that the clergy should thenceforth submit to be taxed together with, and as part of, the general subjects of the Crown, upon the terms of their

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sums of money granted, or which hereafter shall be granted, to the King's Majesty, by the clergy of the province of York, shall be of the same strength, force, and effect, in all things, as the said grant made by the said province of Canterbury, and shall be taxed, certified, collected, levied, gathered, and paid, according to the tenor, form, and effect of this present Act of Parliament, to all intents, constructions, and purposes, in such manner and form as though it were specially, plainly, and particularly expressed and rehearsed in this present Act, by express words, terms, and sentences, in their several natures and kinds."

<sup>1</sup> See 1 Bl. Com. 280, Notes to 14th edition, 1803.

being allowed to vote in the election of Members of Parliament, in respect of their benefices; an understanding which has now been acted upon, for more than two hundred years, and has, in that way, acquired the force of law.<sup>1</sup>

No doubt, the Convocation of Canterbury, which met at the same time as the Parliament of May, 1661, made itself very useful to the Crown, when, in accordance with the Act of Parliament permitting the Benevolence, it determined, on the 27th of July, 1661, two days after the expiration of the Savoy Commission, to present a Benevolence accordingly (see Swainson, 14). This was setting a good example to His Majesty's lay subjects, very desirable just then; as we know from Pepys's Diary, under date of the 31st of August, 1661.

The Canterbury Convocation of May, 1661, while waiting for the employment of their pecuniary services, had been kept in good humour by the Crown, by means of giving them some congenial work to do; for we find, by the Records of Convocation, quoted by Professor Swainson (p. 14), that "on June 7, a licence under the Great Seal, to amend the canons, was sent to Convocation;" and that, "for some reason or other, this licence was suspended; for, on June 19, another or second licence was produced to amend the canons."<sup>2</sup>

Whenever it was likely that Parliament would make any alteration of the law, *which would affect the duties or the interests of the clergy*, it would be reasonable that they should, like any other profession, have an opportunity of expressing their opinions about it, *unless they were known to be absolutely hostile to any alteration at all—as at Queen Elizabeth's accession was notorious.*

It will thus appear that it could *not* have been part of the constitutional duty of the two Convocations of the Clergy, at any time after the Uniformity Act of Queen Elizabeth, to prescribe the system of the nation's public worship, or to alter or amend it.

It will be equally clear, upon a moderately careful attention to the terms in which the Preamble to the present Act of Uniformity speaks of the reference made by the King to the two Convocations, that the utmost meaning of those terms is, that

<sup>1</sup> See Burnet's "Own Time," vol. iv. p. 508. Oxford ed., 1823. (*Speaker Onslow's note.*)

<sup>2</sup> He refers, for the terms of this license, to Cardwell's *Synodalia*, and he adds that "nothing was to be done, except in the presence of either Juxon, Sheldon, Pierce, or Wren," and then that, on July 17, some canons were produced, discussed, and recommitted, as also on July 19 and 22. Then comes the statement that the "Benevolence" was agreed to on July 27, and that the Upper House "met for the last time before the Vacation, on July 30."

the reference was made for his own guidance only, in the prospect of a recommendation to Parliament, about to be made by him, just as he might have consulted any individual person, or any body of persons, upon that subject, or any other, and with a view to exercising his own judgment upon the advice he might receive; and that Parliament could be no more limited in its power of acting upon or rejecting the King's recommendation, by the circumstance of his having consulted the two Convocations, than if he had had any other adviser or advisers.

The proof that this was the case, at the very utmost, which the Preamble to the Act affords, ought to be conclusively sufficient: because the language of the Preamble is the language of Parliament, consisting of King, Lords, and Commons.

There is no precedent, in the Constitution of this country, for saying that the consent of the Convocations, or either of them, has ever been essential to the validity of any Act of Parliament, at any time since the Reformation, even if before, which is not probable; except that, in practice, the *taxation of the clergy* by Act of Parliament may be said to have obtained a prescriptive right to the previous assent of the Convocations, in those days in which the clergy were taxed by this double process: a right which, as has just been shown, was abandoned more than two hundred years ago, and is not now insisted upon. It would have been strange, indeed, if the accident of King Charles II.'s having consulted the Convocations of 1661, should have subverted, in this respect, the Constitution of England. *It was not in the king's power* to make any such alteration. It is evident that he never thought he was making it; and it is also evident, from the language of the records of Parliament, that both Houses considered the revised book as *the King's book*. The King had never been empowered by Parliament to submit the book to the Convocations—nor had Parliament ever so submitted it. The King, of his own head, had chosen to consult the Convocations; and his telling Parliament that he had used the Convocations as his advisers, was merely intended to be an additional argument with them for adopting it. In complete consistency with this view, is the language which both Houses of Parliament constantly employed, when, in referring to the revised book, they spoke of it as being the King's book, or as recommended to them by the King. It is quite unimportant, *in principle*, to speculate upon the probability or improbability of the King's having given that careful personal consideration to the actual particulars of the revision, which he first said he *would* give, and which he afterwards said he *had* given. He probably, in fact, gave as much attention to this matter, as he did to any other serious matters of business, and, indeed, rather more: for there are frequent evidences of the struggle, in his

own mind, between his sense of the promises he had made, and his conviction that he was breaking them.

It will, probably, be asked: Did the two Convocations, or either of them, in 1661, bring forward a claim of right to revise the Prayer Book, if any revision of it was to be made, or to approve of the revision, as a condition precedent to its being submitted to Parliament?

There is no evidence of any such claim having been made by either. The evidence is all the other way.

*Thirteen bishops accepted seats at the Savoy Conference, including one who sat on the Presbyterian side, Bishop Reynolds, of Norwich, who had been, until lately, himself a Presbyterian.*<sup>1</sup>

The Savoy Conference was a Royal Commission for the revision of the Prayer Book by Episcopalians and Presbyterians jointly, without any intention of a subsequent revision.

On the Episcopalian side of the Conference were twelve bishops, of whom eight belonged to the Province of Canterbury, and four to the Province of York, *being, in fact, the whole of the Upper House of York*, for that Province had then four bishops only, including the archbishop [besides Sodor and Man, which must have been then vacant. Compare Le Neve's "Fasti" with Sir H. Nicolas]. These twelve bishops were assisted by nine Episcopalian clergymen, who were also members of the Savoy Commission itself, making twenty-one Commissioners on the Episcopalian side. On the Presbyterian side there was the like number of twenty-one Commissioners, of whom twelve were more important than the other nine; and one of the twelve was Bishop Reynolds, who had been a Presbyterian. We see, by the *Preamble to the Act of Uniformity*, already quoted, that the powers of the Savoy Conference were practically the same as those afterwards given to the two Convocations, and that, in each case, they amounted to no more than powers to "offer" or "present" suggestions to the King. It was not competent for the King to give them larger powers: for nothing but Parliament could alter or add to the nation's Prayer Book.

If the bishops who sat on the Savoy Conference had been of opinion that a revision of the Prayer Book, for the purpose of being submitted to Parliament, if approved by the King, must necessarily be made by the Convocations of the Clergy, it was their duty to refuse to act under a Commission, the express terms of which assumed the contrary; and therefore, it cannot be supposed, without doing dishonour to the memory of those bishops, that they would have acted under it.

It is true that after the Savoy Conference had proved to be

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<sup>1</sup> See the lists in Neal's "History of the Puritans," vol. iv. p. 337. Edition of 1796.

ineffectual, and while the Prayer Book was in the course of revision by the bishops, without formal authority, the book was submitted by the King to the two Convocations, in the same terms, in effect, as the terms of the Savoy Commission, and that Lord Clarendon has told us, in his "Own Life," that "it" (meaning the *revised* book) "was necessarily to be presented to the Convocation [singular], which is the national synod of the Church;"<sup>1</sup> but the circumstances of the case, to be presently stated, will clearly show that this presentation was a mere after-thought, to gain time to finish the episcopal revision then in progress, and that Lord Clarendon's notion of the necessity of the presentation was an after-thought also, which occurred to his mind when he was writing his "Own Life," at a later period.

R. D. CRAIG.

(To be continued.)

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## Short Notices.

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*Thirty-seventh Report of the Thames Church Mission Society.*  
31, New Bridge Street, E.C.

WE gladly invite attention to this pamphlet, just issued—the thirty-seventh report of an excellent society. It contains an account of the proceedings at the Annual Public Meeting at Exeter Hall, April 26, 1882, the statement of the Committee, selections from the Journals of the chaplains and missionaries, a summary of the work done since 1866, with other interesting information. The "selections" are readable and instructive. Among the speakers at the Annual Meeting were the Marquis of Cholmondeley, in the chair, the Earl of Northbrook, and Henry Green, Esq. The noble Marquis said:—"The Report speaks of the loss of "friends. Two dear friends whom the Society has lost, Admiral Baillie Hamilton and Mr. Woolloton, spoke, as some of you may remember, "at our Meeting last year. There is another to whom I would allude "for a moment—Mr. Charles Bevan. That dear friend of mine was "one of the earliest supporters of the Society, and always helped to "sustain it in times of difficulty. He was most anxious for the success "of the work, and he was always coming forward, not only with a warm "heart, but with a liberal hand, to render assistance. From what I knew "of him in private, I may say that no man could be more anxious than "he was to promote the glory of that dear Saviour whom he loved. "The loss of such a man to this Society is a very great one, but we "hope that the Lord will be pleased to raise up some one to fill his place." Mention was also made, in the Report, of Admiral Sir James Hope, K.C.B., a true and valued friend of the Society. We observe that the Committee tender their grateful thanks to the following clergymen:—

To the Rev. Richard Allen, M.A., Vicar of Christ Church, Gipsy Hill; the Rev. Lewis Borrett White, M.A., Rector of St. Mary Aldermary; the Rev.

<sup>1</sup> Vol. ii. p. 118, edition of 1827.