

**POPULAR GOVERNMENT;
FOUR ESSAYS.
[LONDON-1885]**

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Popular Government; Four Essays. [London-1885] by Sir Henry Sumner Maine

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POPULAR
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POPULAR GOVERNMENT

FOUR ESSAYS

BY

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LONDON

JOHN MURRAY, ALBEMARLE STREET

1885

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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