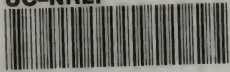


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Outlines and Documents

OF

ENGLISH CONSTITUTIONAL HISTORY

DURING THE MIDDLE AGES

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Edited by  
CHARLES L. WELLS, Ph. D.  
and  
FRANK M. ANDERSON, A. B.

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Published for  
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# Outlines and Documents

OF

## ENGLISH CONSTITUTIONAL HISTORY

DURING THE MIDDLE AGES

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### I. SOME IMPORTANT FACTS OF ENGLISH HISTORY

1. MATERIAL. The material for English history is greater in amount and variety than in the case of any other European country.

2. UNITY. The history of England is one of the best illustrations of the law of the unity of history. There is no break in the continuity of development; each period can be explained only by reference to the preceding. While more separate and distinct than any other nation, it is at all points intimately connected with the rest of European history.

3. GEOGRAPHY. The physical features of the land, insularity, soil, climate, etc., have in large measure influenced English history.

4. INSTITUTIONS. Our interest is chiefly institutional; the following general observations if firmly grasped will be helpful.

- a. The English unwritten constitution is a growth.
- b. The germs from which it grew are Teutonic.
- c. The order of growth has been from local to central.
- d. From the English political institutions all modern free political institutions have been derived.
  - 1) In America and the English colonies, by unconscious reproduction.
  - 2) Elsewhere, by conscious imitation.
- e. The most important of these institutions are representative legislative bodies, the jury system and constitutional monarchy.

5. RACE SPIRIT. This is hard to define but its most evident and influential characteristics are conservatism and respect for law.

### II. ORIGINS

#### A. BIBLIOGRAPHY.

##### 1. Roman.

##### 1. Original.

*Bede*: Ecclesiastical History.

*Gildas*: De Excedio Britanniae.

*Nennius*: Historia Britonum.

##### 2. Secondary.

*Arnold*: Roman Provincial Administration.

*Bright*: Early English Church History, Chap. I.



- Coote*: Romans of Britain.  
*Creasy*: History of England, Vol. I., Chap. II.  
*Elton*: Origins of English History, Chap. XI.  
*Gardiner* and *Mullinger*: English History for Students, Part II., Chap. I.  
*Guest*: Early English Settlements in South Britain.  
*Lingard*: History of England, Vol. I., Chap. I.  
*Mommsen*: Provinces of the Roman Empire, Vol. I., Chap. V.  
*Pearson*: History of England, Vol. I., Chaps. I-V.  
*Pike*: History of Crime in England, Vol. I., pp 8-35.  
*Scarth*: Roman Britain, Chaps. XIII., XIV., XVII. and XXI.  
*Traill*: Social England, Vol. I., Chap. I.  
*Wright*: Celt, Roman and Saxon, Chaps. XIII. and XV.

II. Teutonic.

1. Original.

- Cæsar*: Commentaries, Book VI., Chaps. 21-23.  
*Tacitus*: Germania, Chaps. 2-9, 11-16, 18-26.  
*Stubbs*: Select Charters, pp 52-59.

2. Secondary.

- Adams*: Civilization during the Middle Ages, Chap. V.  
*Andrews*: English Manor, Introduction.  
*Babbington*: Fallacy of Race Theories, Chap. IV.  
*Coulanges*: Origin of Property in Land, pp 1-72, 149-153.  
Institutions Politiques, Livre III., Chap. I.  
*Cunningham*: Growth of English Industry, Vol. I., Book I., Chap. II.  
*Gibbon*: Decline and Fall of the Roman Empire, Chap. IX.  
*Guizot*: Civilization in France, Vol. II., Lecture VII.  
*Gummere*: Germanic Origins, Chaps. I., II., V., VIII-X., XV.  
*Kemble*: Codex Diplomaticus, Introduction. Saxons in England, Vol. I., Chap. II.  
*Palgrave*: English Commonwealth.  
*Seebohm*: Village Communities, Book I., Chap. II.  
*Stubbs*: Constitutional History of England, Chaps. I.-III.  
*Taylor*: Origin and Growth of the English Constitution, Book I., Chap. I.-III.  
*Waitz*: Deutsche Verfassungsgeschichte.

B. THEORIES.

1. Roman and Teutonic, significance.
2. Roman theory.
  - a. Statement.
  - b. Roman occupation.
    - 1) The Conquest (55 B. C. to 85 A. D.).
      - a) Cæsar (55-54 B. C.); occasion and result.
      - b) Aulus Plautius (42 A. D.).
      - c) Suetonius (58-61 A. D.); Mona, Boadicea.

- d) Agricola (78-85 A. D.); conquest completed.
- 2) Civilization; extent and influence.
  - a) Government.
  - b) Religion: introduction of Christianity, traditions and established facts.
  - c) Language.
  - d) Cities, roads, walls, etc.
- 3) Result of occupation; conflicting views.
  - a) Permanent; evidence.
  - b) Temporary; evidence.
  - c) Conclusion; significance of occupation.
- 3. Teutonic theory.
  - a. Statement.
  - b. Stage of development; shown in
    - 1) Occupations.
    - 2) Customs and manners.
  - c. Political organization.
    - 1) Ranks and classes.
      - a) Nobles.
      - b) Freemen.
      - c) Freedmen.
      - d) Slaves.

*Tacitus*: Chap. 25. They use slaves, but not as we do, with duties assigned among the domestics. Each slave has his own dwelling and rules his own household. \* \* \* The freedmen are not much above the slaves; rarely are they of any consequence in the household and never in the state, except in those tribes which have a king, for there they even rise above the freemen and nobles. But among others the inferior condition of the freedman is an evidence of freedom.

- 2) Divisions and assemblies.
  - a) The tribe (*civitas*), tribal assembly.

*Tacitus*, Chaps. 11 and 12. In matters of inferior moment the chiefs decide; on more important questions all have a voice; and yet, though all have a voice, the proposals acted upon have been previously drawn up by the chiefs. They assemble, unless there is some unusual occasion, on fixed days. \* \* \* When the assembly is ready, they sit down armed. Silence is proclaimed by the priests who have authority to maintain it. Then the king or one of the chiefs whose age, noble birth, reputation in war or eloquence commands attention is heard, speaking with the weight of persuasion rather than with the power of command. If the proposal is displeasing the assembly reject it by a shout, if pleasing accept it by striking their spears together. The form of assent most highly prized is the applause of arms. At the tribal assembly, also, capital offenses are tried. The punishment varies with the crime. \* \* \* In these tribal

assemblies are chosen the chiefs who administer justice in the hundreds and villages.

- (1) Monarchical } cf. Tacitus, Chap. 7 and Cæsar VI.,
- (2) Republican } Chap. 23.

b) The Hundred; (*pagus*) judicial and military unit; assembly.

*Tacitus*: Chap. 12. A hundred colleagues from the people act with each chief, forming at once counsel and authority.

c) The Village (*vicus*); lowest unit; assembly?

*Tacitus*: Chap. 16. It is well known that none of the Germans live in cities; nor do they permit among them even contiguous dwellings but dwell scattered and apart where a spring, meadow or grove has taken their fancy. Nor do they arrange their villages like ours with connected and adjoining buildings. Each has a plot of ground around his dwelling, either as a precaution against fire, or from lack of skill in building.

d. Land tenure; theories.

- 1) The Mark.
- 2) The Manor.

*Tacitus*: Chap. 26. To lend out capital and to take usury is unknown. The fields are occupied alternately by the whole body of cultivators according to their number and these fields they then divide among themselves according to their estimation. The extent of open ground makes the division easy. They change the tilled area each year and there is land left over.

e. Military organization.

- 1) The Host, (cf. Tribal assembly).
- 2) The Comitatus.

*Tacitus*: Chap. 16. The Germans transact no public nor private business unless armed. No one bears arms until the tribe has approved his right to assume them. Then in the tribal assembly either some one of the chiefs, or the father or a kinsman, equips the youth with shield and spear. With them this is the toga, the first honor of youth; before this they form a part of the household, hereafter of the state. Illustrious nobility or the great merits of their fathers assign to them even while youths the esteem of some chief; they join others stronger and already tried. Nor is it a disgrace to be seen among the followers. The comitatus itself has grades of honor determined by the chief whom they follow. Thus there is great rivalry among the followers to hold the first place in the estimation of the chief; and among the chiefs who shall have the most and the bravest followers. In surrounding themselves with large bands of picked youths is their glory and their strength; in peace an honor, and in war a defense. Not only among his own tribe but also among the neighboring tribes is it a special glory for the chief to have a comitatus preëminent for numbers and valor; he is even sought out by embassies and laden with gifts, while often his renown alone terminates a war. In battle it is disgraceful for the chief to be excelled in valor by his followers, or for the comitatus not to equal the valor of the chief. He who leaves his chief upon the field of battle is accounted infamous for life. To defend him, to die for him, and even to ascribe to his glory



their own brave deeds is their sworn and sacred duty. The chief fights for victory, the followers for their chief. If the tribe to which they belong languishes in continual peace and quiet, many of the noble youths seek those tribes then engaged in war, because repose is displeasing and they gain renown more readily among dangers; nor can a comitatus be supported except by violence and war. They require from the liberality of their chief this warlike steed, that bloody and victorious spear. Well prepared banquets, though rude indeed, take the place of regular pay. \* \* \*

f. Law.

*Tacitus*: Chap. 19. Among them good customs are more effectual than good laws elsewhere.

1) Feud.

2) Wergild.

*Tacitus*: Chap. 21. It is necessary to take up the feuds as well as the friends of father or kinsman. But they do not continue irreconcilable, for even homicide can be atoned for by the payment of a fixed number of cattle; and thereby the whole family receives satisfaction, advantageously to the state because feuds are more dangerous among a free people.

### III. THE ANGLO-SAXON PERIOD (449-1066)

#### A. BIBLIOGRAPHY.

##### 1. Original.

ANGLO SAXON CHRONICLE.

ASSER: Life of Alfred.

BEDE: Ecclesiastical History.

FLORENCE OF WORCESTER: Chronicle.

STUBBS: Select Charters, pp. 60-78.

STUBBS and HADDEN: Church Councils.

THORPE: Ancient Laws and Institutes.

##### 2. Secondary.

*Adams et al.*: Essays in Anglo-Saxon Law.

*Allan*: Anglo-Saxon Britain.

*Allen*: Essays and Monographs.

*Bigelow*: History of Procedure, pp. 20-25.

*Bright*: Early English Church History, Chaps. II., VI.-IX.

*Church*: Beginning of the Middle Ages, Chaps. IV. and IX.

*Cox*: Antient Parliamentary Elections, Chaps. I.-III.

*Creasy*: History of England, Vol. I., Chaps. III.-VI.

English Constitution, Chaps. I.-III.

*Cunningham*: Growth of English Industry and Commerce, Chaps. III.-V.

*Cunningham & McArthur*: Outlines of English Industrial History, Chaps. II., III.

*Digby*: History of the Law of Real Property, Chap. I., Section I.

- Feilden*: Constitutional History of England, pp. 1-13, 68, 70-71, 92-94, 162-164, 203-208, 222-224, 260-261, 272-274.
- Forsyth*: History of Trial by Jury, Chap. IV.
- Freeman*: English People in their Three Homes. Lectures I.-IV.  
Growth of the English Constitution, Lecture I.  
Norman Conquest, Vol. I., Chaps. I.-III.  
Origin of the English Nation.
- Garnier*: History of English Landed Interest, Vol. I., Chaps. V.-VII.
- Gibbins*: Industrial History of England, Chap. I.
- Glasson*: Droit et Institutions, Tome I., Chaps. I., 3, II., III. and VI.
- Gneist*: History of the English Constitution, Vol. I., Chaps. I.-VII., esp. VI. and VII.
- Gomme*: Village Community, Chap. VI.
- Green*: Conquest of England, Chaps V.-IX.  
History of England, Vol. I.  
Making of England, Esp. Chap. IV.
- Hallam*: Middle Ages, Chap. VIII., Part I.
- Hunt*: English Church in the Middle Ages, Chaps. I.-V.
- Jusserand*: Literary History of the English People, Chaps. II., IV.
- Kemble*: Saxons in England, Vol. I., Chaps. II., III., VI., VII.; Vol. II., Chaps. I., VI.
- Lavaley*: Primitive Property, Chap. VII.
- Lea*: Superstition and Force.
- Milman*: Latin Christianity, Book IV., Chaps. III., IV.
- Palgrave*: History of the English Commonwealth.
- Pauli*: Life of Alfred.
- Pearson*: History of England, Vol. I., Chaps. VI.-XXI., esp. VI., XI., XVIII., XIX.
- Perry*: English Church History, Vol. I., Chaps. II.-V.
- Pike*: History of Crime in England, Vol. I., pp. 52-6.
- Pollock and Maitland*: History of the English Law, Vol. I., Chap. I.
- Ranke*: History of England, Vol. I., pp. 10-22.
- Reeves*: History of English Law, Introduction, pp. XI.-CXXVII., and Chap. I.
- Smith and Wace*: Dictionary of Christian Biography, articles on Bede, *et al.*
- Spence*: Equitable Jurisdiction.
- Stubbs*: Constitutional History of England, Vol. I., Chaps. IV.-VII. Select Charters, pp. 1-13.
- Todd*: Parliamentary Government in England, Vol. I., pp. 49-60, Vol. II., pp. 1-11.
- Traill*: Social England, Vol. I., Chap. II.
- Trench*: Mediæval Church History, Lecture III.
- Vinogradoff*: Villainage in England, Introduction.

B. NARRATIVE; Growth of Unity.

1. The Saxon conquest, 449-597.
  - a. The tribes; place of settlement.
  - b. Character of the conquest; cf. Frank conquest of Gaul.
  - c. Survival question; opinions.
  - d. Formation of the heptarchic kingdoms.
2. Consolidation, 597-827; brought about by
  - a. Christianity.
    - 1) Augustine and the Roman missionaries.
    - 2) The Irish Church.
      - a) Foundation—St. Patrick.
      - b) Work in Northumbria.
    - 3) The Council of Whitby, 664.
      - a) The questions at issue; nominal, ultimate.
      - b) The churches compared; organization, spirit.
      - c) The decision; reason and result.
    - 4) Théodóre of Tarsus and his work of organization.
      - a) Methods.
      - b) Results; ecclesiastical and political.
  - b. The struggle for supremacy.
    - 1) The three leading tribes; Northumbria, Mercia and Wessex.
    - 2) Final triumph of Wessex; character of its supremacy; *nominal unity*.
3. The first Danish invasions, 787-901.
  - a. Causes and periods.
  - b. First period—plunder, 787-855.
  - c. Second period—settlement, 855-878.
  - d. Third period—to death of Alfred, 878-901.
    - 1) Treaty of Wedmore, 878; terms.
      - a) Division into Wessex and the Danelaw.
      - b) Conversion of the Danes.
      - c) Headship of Wessex; result.
4. Reconquest of the Danelaw, 901-959.
  - a. Chief events and method.
  - b. Result; "Wessex has grown into England;" *approximate unity*; cf. 827.
5. Anglo-Saxon decadence, 959-1066.
  - a. Renewal of the Danish invasions.
    - 1) Method of resistance; Danegeld.
    - 2) Final period—conquest—Knut and his sons.
  - b. The English restoration, 1042-1066.
    - 1) Edward the Confessor.
      - a) Character and aspirations of the King.
      - b) Conflict between Saxons and Normans—Godwin and Harold.
    - 2) Harold.
      - a) Election.
      - b) The Norman conquest, 1066; *complete unity*; cf. 827, 959.

C. CONSTITUTIONAL DEVELOPMENT: from Personal to Territorial System.

1. The Kingship.
  - a. Development from temporary war chief.
  - b. Powers; growth, extent and nature.
2. The Witenagemot.
  - a. Development from tribal assembly.
  - b. Composition; theoretical and actual; opinions.
  - c. Powers; extent, relation to King.
  - d. Survival.
3. Ranks and classes.
  - a. Nobles; eorls, gesiths and thegns.
  - b. Freemen; ceorls.
  - c. Laeti; dependents.
  - d. Slaves.
4. The local system; origin in tribal organization.
  - a. Divisions and assemblies; duties.
    - 1) Shire; Shiremoot—duties—composition.
    - 2) Hundred; Hundred Court—duties—composition.
    - 3) Township; Tungemot?
  - b. Relation to later institutions.
5. Land tenure.
  - a. Manorial theory.
  - b. Mark theory.
  - c. Gradual feudalization.
6. Law.
  - a. Stage of development; shown in
    - 1) Family law.
    - 2) Blood feud.
    - 3) Wergild.
  - b. Methods of proof.
    - 1) Oath.
    - 2) Compurgation.
    - 3) Ordeal.
  - c. Procedure.
    - 1) Summons by plaintiff.
    - 2) Judgment by suitors.
    - 3) Presumption against defendant.
    - 4) No system of appeal.

D. COLLATERAL TOPICS; Learning and Literature.

1. Theodore of Tarsus and the schools at Canterbury and York; Alcuin.
2. Bede and his works.
3. Alfred's literary and educational work.
4. The Anglo-Saxon Chronicle.
5. Beowulf.



IV. NORMAN ENGLAND (1066-1154)

A. BIBLIOGRAPHY.

1. Original.

- Anglo-Saxon Chronicle.  
Domesday Book.  
EADMER: *Historia Novorum*.  
FLORENCE OF WORCESTER: Chronicle.  
Gesta Stephani.  
ODERICUS VITALIS: *Ecclesiastical History*.  
STUBBS: *Select Charters*, pp. 79-121.  
WILLIAM OF MALMESBURY: *Historia Novella*.

2. Secondary.

- ASHLEY: *Constitutional Essays, Feudalism*.  
ANSON: *Law and Custom of the Constitution, Part II*, pp. 6-12.  
BIGELOW: *History of Procedure in England, Chap. III*.  
BIRCH: *Domesday Book, Chaps. I., VIII., X.*  
BOUTMY: *The English Constitution*, pp. 3-20.  
CHURCH: *St. Anselm, Chaps. XI and XIII*.  
COX: *Antient Parliamentary Elections, Chap. IV*.  
CREASY: *History of England, Vol. I., Chaps. VII. and VIII.*  
*English Constitution, Chaps. VI.-VIII.*  
CUNNINGHAM: *Growth of English Industry and Commerce, Vol. I.,*  
*Book II., Chaps. I-III.*  
DICEY: *Privy Council*, pp. 1-10.  
DIGBY: *History of the Law of Real Property, Part I., Chap. I., Sec. II.*  
DOWELL: *History of Taxation, Vol. I., Book II., Chap. II.*  
FEILDEN: *Constitutional History of England*, pp. 14, 15, 68-73, 94,  
208-213, 274-77.  
FORSYTH: *History of Trial by Jury, Chap. V., Secs. I and II.*  
FREEMAN: *Growth of the English Constitution*, pp. 71-74.  
*Norman Conquest, Vol. III., Chap. XIII., Sec. 2; Vol. IV.,*  
*Chap. XVII., Sec. 1; Vol. V., Chaps. XXII. and XXIV.,*  
*esp. the last.*  
*William the Conqueror, Chaps. VII.-XI*  
*William Rufus.*  
GIBBIN: *Industrial History of England, Period II., Chap. I.*  
GLASSON: *Droit et Institutions, Tome II., Chaps. I. and III.*  
GREEN: *History of the English People, Vol. I., Book II., Chaps. I., II.*  
GARNIER: *History of the English Landed Interest, Vol. I., Chaps. XI.*  
*and XII.*  
GNEIST: *Constitutional History of England, Vol. I., Chaps. VIII.-XVI.*  
HOOK: *Lives of the Archbishops, Vol. II., Chaps. II.-III.*  
HUNT: *English Church in the Middle Ages, Chap. V.*  
HUNT: *Norman Britain, esp. Chaps. VII.-IX., XI.-XIII.*



- JOHNSTON: Normans in Europe, Chaps. XII.-XVII.  
LINGARD: History of England, Vol. I., Chaps. VIII. and IX., Vol. II., Chaps. I. and II.  
PEARSON: History of England, Vol. I., Chaps. XXII.-XXVIII., esp. XXIII. and XXVII.  
PERRY: English Church History, Vol. I., Chaps. XI.-XIV.  
PIKE: History of Crime in England, Vol. I., pp. 96-113.  
POLLOCK and MAITLAND: History of the English Law, Vol. I., Chaps. II. and III.  
RANKE: History of England, Vol. I., Book I., Chap. II.  
REEVE: History of the English Law, Vol. I., Chap. II.  
SMITH and WACE: Dictionary of Christian Biography, articles Lanfranc and Anselm.  
STUBBS: Constitutional History, Vol. I., Chap. IX.-XI, esp. sections 91, 93-97, 102-3, 117-129, 134.  
Early Plantagenets, Chaps. I. and II.  
Select Charters, pp. 13-21.  
TASWELL-LANGMEAD: Constitutional History of England, pp. 49-92, 154-161, 204-209.  
TAYLOR: Origin and Growth of the English Constitution, Book II., Chap. I., sections 1 and 5, Chap. II.  
TRAILL: Social England, Vol. I., Chap. III.

B. NARRATIVE.

1. The Normans.
  - a. Origin and characteristics.
  - b. Settlement and history in France.
2. The Conquest.
  - a. Claims of William.
  - b. Battle of Senlac; election and coronation of William.
  - c. Revolts and reconquest; the harrying of the North.
3. The Norman reigns.
  - a. William the Conqueror (1066-1087); *Consolidation*.
    - 1) Policy.

*Roger of Hovedon*, II., 218 (1070) (Select Charters, 81): King William, in the fourth year of his reign, by the advice of his barons, caused to be summoned in every county of England the English nobles and wisemen, and those learned in their laws and customs. Therefore twelve men, elected in each county of the entire country, upon oath declared that, without any deviation, they would set forth the customs of the laws and decrees, neither omitting nor adding nor falsifying anything.

- 2) The Domesday Book.
  - a) Occasion, purpose and character.
  - b) Method of the survey.
  - c) Historical value.

## TITLE OF THE DOMESDAY INQUEST FOR ELY

(STUBBS' SELECT CHARTERS, 86)

Here is enrolled the Inquest of the Lands as the king's barons made the inquiry, *i. e.*, by the oath of the sheriff of the shire, and of all the barons, and of the French, and in every hundred, of the priest, reeve and six villans from each township. Then, what the manor is called; who held it in the time of King Edward; who holds it now; how many hides (of land); how many carucates (of land) in the demesne land; how many men; how many villans; how many cottagers; how many slaves; how many freemen; how many socmen; how much forest; how much meadow: how much pasture; how many mills; how many fish ponds; how much it has increased or diminished; how much it was all worth then and how much now; how much each freeman or each socman had or has there. All of this in a three-fold form, *i. e.*, at the time of King Edward, then when King William gave it, and as it is now; and if it can yield more than it does now.

- 3) The Salisbury Gemot (1086).
- b. William Rufus (1087-1100); *Tyranny*.
  - 1) Election and promises.
  - 2) Quarrel with the barons.
    - a) Occasion—feudal exactions, Flambard.
    - b) Result—union of king and people against barons.
- b. Henry I. (1100-1135); *Organization*.
  - 1) Election.
    - a) Oath.

## CORONATION OATH OF HENRY I.

(STUBBS' SELECT CHARTERS, 99)

In the name of Christ, I promise these three things to the Christian people subject to me. In the first place, that I will require, and according to my strength, provide, that the church of God and the whole Christian people preserve a true peace, by our will, through all time; secondly, that I will forbid to men of every rank, violence and all injustice; thirdly, that in all judgments I will require justice and mercy, that a merciful and forgiving God may grant His mercy unto me and unto you.

- b) Charter.

## CHARTER OF HENRY I.

(STUBBS' SELECT CHARTERS, 100)

In the year of the Incarnation of our Lord, 1101, Henry, son of King William, after the death of his brother William, by the grace of God, King of the English, to all his faithful subjects, greeting:

1. Know ye, that by the mercy of God, and by the common counsel of the

barons of the whole kingdom of England, I have been crowned king of the same kingdom; and because the kingdom has been oppressed by unjust exactions, I, from regard to God, and from the love which I bear towards you, in the first place make the holy church of God free, so that I will neither sell nor place at ferm, nor, when an archbishop, or bishop, or abbot dies, will I take anything from the domain of the church, or from its vassals, until a successor is installed. And all the evil customs by which the realm of England is unjustly oppressed will I take away, which evil customs I set down here in part:

2. If any of my barons, earls, or others who hold of me, dies, his heir shall not relieve his land as he did in the time of my brother, but shall relieve it by a just and legitimate relief. Likewise also the vassals of my barons shall relieve their lands from their lords by a just and legitimate relief.

3. And if any of my barons, or other of my vassals, wishes to give his daughter in marriage, or his sister or niece or kinswoman, he must speak with me about it, but I will neither take anything from him for this permission, nor forbid him to give her in marriage, unless he should wish to join her to my enemy. And if at the death of one of my barons or other vassal of mine, a daughter survives as heiress, I will give her in marriage by the counsel of my barons, with her land. But if the wife survives, and is without children, she shall have her dowry and right of marriage, and I will not give her to a husband, unless according to her will.

4. And if a wife survives with children, she shall have her dowry and right of marriage, so long as she shall have kept her body chaste, and I will not give her in marriage, except according to her will. And the guardian of the land and children, shall be either the wife, or one of the kinsmen, as shall seem to be most just. And I command that my barons shall deal likewise with the sons or daughters or wives of their vassals.

5. The common mintage which has been taken in the cities and counties, and yet was not taken in the time of King Edward, I now altogether forbid henceforth to be taken. If anyone shall be seized, whether a moneyer or other, with false money, strict justice shall be done in the case.

6. All fines and all debts which were due to my brother, I remit, except my rightful farms, and except those payments which had been agreed upon for the inheritances of others, or for those things which most justly affected others. And if anyone for his own inheritance has stipulated anything, I remit this, and all reliefs which have been agreed upon for rightful inheritances.

7. And if any of my barons or vassals is ill, however he gives or arranges to give his personal property, I grant that it shall be so given. But if he, prevented by arms, or by illness, has not bestowed his personal property, or arranged to bestow it, his wife or children or parents, and his legitimate vassals, shall divide it for his soul, as shall seem best to them.

8. If any of my barons or vassals commits an offence he shall not give security to the extent of forfeiting his personal property, as he did in the time of my father, and of my brother, but according to the measure of the offence, so shall he pay, as he would have paid before the time of my father, in the time of my

other predecessors; so that if he be convicted of treachery or of crime, he shall pay what is just.

9. All murder fines moreover, before the day on which I was crowned king, I remit; and those which shall be due henceforth, shall be paid justly, according to the law of king Edward.

10. The forests, as my father held them, I have retained in my own hand, by the common consent of my barons.

11. To those knights who hold their land by knight service, I grant, of my own gift, the lands of their demesne ploughs, quit of all payments and of all labor, so that, as they have thus been favored by so great a favor, they may readily provide themselves with horses and arms for my service and for the defence of my kingdom.

12. A firm peace in my whole kingdom I establish, and require henceforth to be kept.

13. The law of king Edward, I give to you again, with those changes which my father made with the counsel of his barons.

14. If anyone has taken anything from my possessions, or from the possessions of another, since the death of king William, my brother, let the whole be immediately returned unchanged, and if anyone shall have retained anything thereof, he, upon whom it is found, will pay heavily to me.

Witness, Maurice, Bishop of London, and Gundulf, bishop, and William, bishop-elect, and Earl Henry, and Earl Simon, and Walter Giffard, and Robert de Montfort, and Roger Bigod, and Henry de Port, at London, on the day of my coronation.

#### SUMMARY.

##### 1. Importance.

###### a. Evidence of

1) Feudal abuses, cf. 1-4, 6-8, 11.

2) Continuity of Anglo-Saxon customs—the law of King Edward, cf. 9, 13.

###### b. First formal limitation of royal power.

###### c. Model for Magna Charta.

##### 2. Provisions; for all classes.

###### a. General character; ancient customs, but ill-defined.

b. The Church, "shall be free," cf. 1.

c. The Barons, feudal obligations of "just and legitimate" amount, cf. 2-4, 5-8, 11.

d. Commons, same rights from barons, cf. 2, 4.

e. Reservations for the King, Forests, etc., cf. 9, 10.

2) Marriage.

3) Normandy regained.

4) Policy.

a) The local courts maintained.

b) Organization of the Curia Regis—John of Salisbury.



c) Attempts to settle the succession.

c. Stephen 1135–1154. *Feudal anarchy*.

- 1) Election and charter.
- 2) Civil war; causes and result.
- 3) Wallingford 1153.

### C. RESULTS OF THE CONQUEST.

#### 1. General.

- a. No break in the continuity of constitutional development.
- b. No introduction of new institutions from Normandy, but
- c. Old institutions operated under *new* ideas.

#### 2. Central Government.

- a. The kingship; alteration in
  - 1) Conception.
  - 2) Limitation.
- b. The Witan becomes *Magnum Concilium*.

Anglo-Saxon Chronicle, 1087 (Select Charters, 81). Thrice he wore his crown every year, as often as he was in England; at Easter he wore it at Winchester; at Whitsuntide at Westminster; at Midwinter at Gloucester; and there were with him all the rich men over all England, archbishops and suffragan bishops, abbots and earls, thegns and knights.

- 1) Composition; theoretical and actual.
- 2) Powers; theoretical and actual.

#### c. The Curia Regis.

- 1) Development.
- 2) Composition.
- 3) Functions.
  - a) Financial—Exchequer.
  - b) Judicial.
- 4) Relation to *Magnum Concilium*.

#### d. Forest Courts.

#### 3. Local government; but little alteration.

- a. Shire and Hundred courts.
- b. Manorial courts.
- c. The Parish.

#### 4. Feudalism.

- a. Confiscation and regrant of the lands; all titles from the king.
- b. Feudalism as a system of land tenure.
- c. Feudalism as a system of government.
- d. William's policy, a system of land tenure, but not of government; checks.
  - 1) Scattered holdings.
  - 2) Retention of the local popular courts.
  - 3) Universal allegiance, Salisbury Gemot.

#### 5. The Church.

- a. Anglo-Saxon conception of Church and State.



- b. Norman conception of Church and State.
- c. The settlement; Lanfranc.
  - 1) Norman ecclesiastics.
  - 2) Closer union with Rome.
  - 3) Separation of ecclesiastical and secular government.
    - a) Convocations.
    - b) Separate ecclesiastical courts.
  - 4) Canons of Royal Supremacy.
- d. The struggle over investiture; Anselm.
  - 1) Relation to the continental struggle.
  - 2) The disputed points.
  - 3) Rufus and Anselm.
  - 4) Henry and Anselm; the compromise.
    - a) Terms.
    - b) Result.

D. COLLATERAL TOPICS.

- 1. The Bayeux Tapestry.
- 2. Effect of the Conquest on language and literature.

V. *THE ANGEVINS AND THE GREAT CHARTER (1154-1216)*

A. BIBLIOGRAPHY.

1. Original.

- ARCHER: Crusade of Richard I.
- BARNARD: Strongbow's Conquest of Ireland.
- STUBBS: Select Charters, Parts IV. and V.
- BENEDICT OF PETERBOROUGH: Gesta Henrici et Richardi I.
- GERVASE OF CANTERBURY: Chronica.
- RALPH OF DICETO: Ymagine Historiarum.
- ROGER OF HOVEDEN: Chyronica.
- ROGER OF WENDOVER: Flores Historiarum.
- WALTER OF COVENTRY: Memoriale.
- WILLIAM OF NEWBURY: Historia Rerum Anglicarum.

2. Secondary.

- BOUTMY: Studies in Constitutional Law, pp. 27-30.
- CREASY: English Constitution, Chaps. X. and XI.  
History of England, Chaps. IX-XI.
- DIGBY: History of the Law of Real Property, Part I., Chap. III., Section I.
- DOWELL: History of Taxation in England, Vol. I., Book II., Chaps. III., V.-VIII.
- FEILDEN: Constitutional History of England, pp. 15, 57-62, 83-87, 164, 175-189, 260-268, 277-279.
- FORSYTH: History of Trial by Jury, Chaps. I., V. and VI.
- FREEMAN: Norman Conquest, Vol. V., Chap. XXVII.

- Essays, First Series, St. Thomas of Canterbury and his Biographers.
- FROUDE: Short Studies, Vol. III., Life and Times of Thomas Becket.
- GIBBINS: Industrial History of England, Period II., Chap. II.
- GNEIST: Constitutional History of England, Vol. I., Chaps. XVII. and XVIII.
- GREEN: History of the English People, Vol. I., Book II., Chap. IV.; Book III., Chap. I.  
Henry II., esp. Chaps. IV.-VII.
- GROSS: The Gild Merchant.
- HUNT: English Church in the Middle Ages, pp. 112-145.
- LINGARD: History of England, Vol. II., Chaps. III.-V.
- LYTTELTON: Henry II.
- MILMAN: Latin Christianity, Book VIII., Chap. VIII.; Book IX., Chap. V.
- OMAN: Constitutional Essays, Anglo-Norman and Angevin Administrative System.
- PEARSON: History of England, Vol. I., Chaps. XXIX.-XXXIII.
- PERRY: English Church History, Vol. I., Chaps. XV., XVI., XVII., Secs. 1-7.
- PIKE: History of Crime in England, Vol. I, pp. 115-136.
- POLLOCK and MAITLAND: History of the English Law, Vol. I., Chap. V.
- RANKE: History of England, Vol. I., Book I., Chap. III.
- REEVE: History of the English Law, Vol. I., Chaps. III. and IV.
- STUBBS: Constitutional History of England, Vol. I., Chaps. XII. and XIII., esp. Sections 135-41, 147, 152-60, 163-5, 167.  
Benedictus, Gesta Henrici II. et Ricardi I., Preface.  
Select Charters, pp. 21-31.
- TASWELL-LANGMEAD: Constitutional History of England, pp. 93-153, 161-162, 164-182, 209-213.
- TAYLOR: Origin and Growth of the English Constitution, Book II., Chaps. III., IV., Sections 1-6.
- THOMSON: Essay on Magna Charta, pp. 1-48, 159-328.

#### B. NARRATIVE, HENRY II.

1. Early life and character; accession and charter.
2. Restoration of order; methods and measures.
3. Policy, to concentrate all power in the hands of the king.
  - a. Opponents, Church and Baronage.
    - 1) Quarrel with the Church.
      - a) Relation to the Investiture struggle.
      - b) Becket; previous life, character and relations with Henry.
      - c) Questions at issue.
      - d) Attempts at agreement.
      - e) The Constitutions of Clarendon.

## CONSTITUTION OF CLARENDON, 1164

(STUBBS' SELECT CHARTERS, 135-140)

In the year of our Lord's Incarnation, 1164, and in the fourth year of Pope Alexander, and in the tenth year of Henry II, the illustrious King of the English, in the presence of the said king, was made this recognition, or declaration, of a part of the customs and liberties and dignities of his ancestors viz. King Henry, his grandfather and others, which things ought to be observed and maintained in the realm. And on account of the discussions and discords which have arisen between the clergy, and the justices of the lord king, and the barons of the kingdom, concerning the customs and dignities, this declaration was made in the presence of the archbishops, and bishops, and clergy, and earls, and barons, and magnates, of the realm. And these customs, declared by the men of ability and age of the kingdom, have been acknowledged by Thomas, Archbishop of Canterbury, and Roger, Archbishop of York, and Gilbert, Bishop of London, and Henry, Bishop of Winchester, and Nigel, Bishop of Ely, and William, Bishop of Norwich, and Robert, Bishop of Lincoln, and Hilary, Bishop of Chichester, and Jocelyn, Bishop of Salisbury, and Richard, Bishop of Chester, and Bartholomew, Bishop of Exeter, and Robert, Bishop of Hereford, and David, Bishop of Man, and Roger, Bishop-elect of Worcester; and on the Word of Truth they did orally firmly promise, to the lord king and to his heirs, should be held and observed in good faith and without any evil intent; in the presence of the following: Robert, Earl of Leicester, Reginald, Earl of Cornwall, Conan, Earl of Brittany, John, Earl of Eu, Roger, Earl of Clare, Earl Geoffrey de Mandeville, Hugh, Earl of Chester, William, Earl of Arundel, Earl Patrick, William, Earl of Ferrars, Richard de Lucy, Reginald de St. Valery, Roger Bigod, Reginald de Warrene, Richer de Aquila, William de Braiose, Richard de Camville, Nigel de Mowbray, Simon de Beauchamp, Humphrey de Bohun, Matthew de Hereford, Walter de Medway, Manasses Biseth, steward, William Malet, William de Courcy, Robert de Dunstanville, Jocelyn de Balliol, William de Lanvale, William de Cheyney, Geoffrey de Vere, William de Hastings, Hugh de Moreville, Alan de Neville, Simon Fitz-Peter, William Malduit, chamberlain, John Malduit, John Marshall, Peter de Mare, and many others of the magnates and nobles of the realm, both clergy and laity.

A certain part of the acknowledged customs and dignities of the realm is contained in the present document; of this part the heads are as follows:

1. If any controversy arises concerning the advowson and presentation of churches, between laymen, or between laymen and clerks, or between clerks, it shall be tried and concluded in the court of the lord king.
2. Churches on the king's demesne cannot be granted in perpetuity, without his assent and grant.
3. Clerks charged and accused of anything, when summoned by the king's justiciar, shall come into his court to answer for what it shall seem to the court of the king should be answered there; and in the ecclesiastical court for what it shall seem should be answered there; so nevertheless, that the



justice of the king shall send into the court of Holy Church to see how the matter shall be tried there. And if a clerk shall be convicted, or shall confess, the church ought no longer to shield him.

4. Archbishops, bishops, and beneficed clerks may not leave the realm without the licence of the lord king. And if they go out, if it please the lord king, they shall give security, that neither in going, nor in making a stay, nor in returning, will they procure evil or loss to the king or kingdom.

5. Excommunicate persons ought not to give permanent security nor to take an oath, but only security and pledge to abide the judgment of the church, in order that they may be absolved.

6. Laymen ought not to be accused except by competent and legal accusers and witnesses, in the presence of the bishop, so nevertheless that the archdeacon shall not lose his right, nor anything which he ought to have therein. And if those accused are such that no one dares to appear against them, let the sheriff, when required by the bishop, cause twelve legal men of the neighborhood or of the township, to take an oath in the presence of the bishop, that they will show the truth about it, according to their conscience.

7. No one who holds of the king in chief, nor any of his demesne officers shall be excommunicated, nor shall the lands of any of them be put under interdict, unless the lord king agrees, if he is in the country, or his justiciar, if he is out of the country; and so that what pertains to the king's court shall be settled there, and what belongs to the ecclesiastical shall be sent there to be tried.

8. Appeals, if they shall occur, ought to proceed from the arch deacon to the bishop, from the bishop to the arch bishop. And if the arch bishop shall fail to show justice, it must come to the lord king finally, that by his command the controversy may be terminated in the court of the arch bishop, so that it may not proceed farther without the consent of the lord king.

9. And if an action arises between a clerk and a layman, concerning any holding which the clerk wishes to bring into charitable tenure, but the layman into a lay fief, it shall be settled in the view of the chief justiciar of the king, on the recognition of twelve legal men, whether the holding belongs to charitable tenure or to a lay fief, in the presence of that justiciar of the king. And if the recognition shall decide that it belongs to charitable tenure, the suit will be in the ecclesiastical court, but if to a lay fief, unless both are answerable to the same bishop or baron, the suit will be in the king's court. But if both are answerable for that fief to the same bishop or baron, the suit will be in his court, provided that the one formerly in possession shall not lose his possession on account of the recognition which has been made, until the suit is terminated.

10. And if anyone of a city or castle, or borough or demesne manor of the lord king, has been summoned by the archdeacon or the bishop for any offense for which he ought to answer to them, and is unwilling to answer their summons, it is fully lawful to put him under interdict, but he ought not to be excommunicated until the chief officer of the king for that place agrees, in order that he may compel him to make answer. And if the officer of the king is negligent in this matter, he shall be at the mercy of the lord king, and after-

wards the bishop shall be allowed to coerce the accused man by ecclesiastical law.

11. Archbishops, bishops, and beneficed clerks, who hold of the king, have their possessions from the lord king as a barony, and are responsible for them to the justices and officers of the king, and follow and perform all royal rights and customs; and, just as the rest of the barons, ought to be present at the judgments of the courts of the lord king with the barons, at least until the judgment reaches to loss of limb or to death.

12. When an archbishopric, or bishopric, or abbacy, or priory, on the demesne of the king becomes vacant, it ought to be in his hands, and he shall take thence all its revenues and profits, just as on his demesnes. And when counsel is taken for the church, the lord king ought to summon the more influential of the beneficed clergy; and the election ought to be held in the chapel of the lord king, with the assent of the lord king, and with the agreement of the beneficed clergy whom he has called for this purpose. And the one elected shall there do homage and fealty to the lord king as his liege lord, in his life and limbs and his earthly honor, saving his order, before he shall be consecrated.

13. If anyone of the magnates of the realm has prevented archbishop, bishop or archdeacon from exercising justice upon himself or his, the lord king ought to bring him to justice. And if by chance anyone has deprived the lord king of his right, the archbishops, and bishops, and archdeacons, ought to bring him to justice, in order that he may give satisfaction to the lord king.

14. The chattels of those who are in forfeiture to the king, no church nor church-yard ought to detain, against the justice of the king, because they are the king's, whether they have been found within the churches or without.

15. Suits about debts, whether owed through the medium of a bond or without a bond, should be in the jurisdiction of the king.

16. Sons of villans ought not to be ordained without the assent of the lord upon whose land they are known to have been born. The acknowledgment of the aforesaid royal customs and dignities has been made by the aforesaid archbishops, and bishops, and earls, and barons, and the men of nobility and age of the realm, at Clarendon, on the fourth day before the Purification of the Blessed Mary, Perpetual Virgin, Lord Henry, being present, with his father, the lord king. There are however, many other great and important customs and dignities of the Holy Mother Church, and of the lord king, and of the barons of the realm, which are not contained in the document. These are preserved to Holy Church, and to the lord king and his heirs, and to the barons of the realm, and shall be observed inviolably forever.

#### SUMMARY.

1. Constitutions purport to be customs of Henry I., but
  - a. Some are older, cf. 7 and 8.
  - b. Some are in whole or in part new, cf. 1 and 3.
2. Original question was the trial of criminous clerks, but Constitutions
  - a. Regulate the relations of the English Church and the Papacy, cf. 4 and 8;



- b. Define the relations between the ecclesiastical and royal courts, asserting supremacy of the royal courts, cf. 3, 6, 8, 9, and 13;
  - c. Assert the supremacy of King over the Church, cf. 5, 7, and 10.
  3. Becket objected to 1, 3, 4, 7, 8, 9, 12, 15.
  4. Constitutions repealed after death of Becket; partial victory for each.
    - a. King won principle asserted in 1, 9, and 15, *i. e.*, that suits about ecclesiastical property and civil pleas shall be tried in the royal courts.
    - b. Church won against principle asserted in 3, 4, and 8, *i. e.*, accused clerks shall be tried in ecclesiastical courts (benefit of clergy), and appeals to Rome are allowed.
  5. First mention of jury, shows common use.
    - f) Death of Becket; result.
    - 2) Struggle with the barons.
      - a) Military power diminished by Scutage and Assize of Arms.
      - b) Judicial power diminished by confining them to the terms of their franchises.
    - 3) Conquest of Ireland.
      - a) Bull of Hadrian IV.
      - b) Strongbow.
      - c) Extent of conquest and result.
    - 4) Domestic troubles; last years.
- C. CONSTITUTIONAL DEVELOPMENT, HENRY II.
1. The central government, cf. Normans.
    - a. The Great Council.
      - 1) Composition.
        - a) Theoretical and actual.
        - b) Practice of summons; first extant individual summons to a Great Council, 1205.

(Although this writ is of later date the practice of special summons was common in the time of Henry II.)

*Stubbs' Select Charters, 282-3:* The King to the Bishop of Salisbury. We summon you to be in our presence, at London, on the Sunday next before the Ascension of our Lord, requesting that you lay aside every occasion and pretext for delay, as you value us and our honor, to consider with us our great and arduous business and the common welfare of our realm, since it is expedient to have your counsel and that of other magnates of our land, whom we have caused to be summoned for that time and place, concerning those things which have been laid before us by the King of France, through his messengers and ours, from which we hope by the grace of God to attain success. Also do you cause to be cited, on our part and on yours, the abbots and priors of your entire diocese, to be present with us in the aforesaid council, as they value us and the common welfare of our realm.

- c) Possible traces of representation.
- 2) Powers.

*Benedict of Peterborough, I., 160 (Select Charters, 131), 1177:* Almost all of the earls, barons, and knights of the kingdom came to him there, equipped with horses and arms, to go where the king ordered. After discussing for a long time about the peace and stability of the kingdom, by the advice of his bishops, earls and barons, he removed the custodians of the castles of England, and restored them to the custody of knights who were of his own household.

b. Judicial development.

- 1) Curia Regis.
  - a) Exchequer; Dialogue of the Exchequer.
  - b) King's Bench.
  - c) Itinerant Justices.
- 2) Local courts connected with the central courts.
- 3) Assize of Clarendon.

THE ASSIZE OF CLARENDON, 1166

(STUBBS' SELECT CHARTERS, 140-146)

Here begins the Assize of Clarendon, made by King Henry II with the assent of the archbishops, bishops, abbots, earls and barons of all England.

1. In the first place, the aforesaid King Henry, with the consent of all his barons, for the preservation of the peace and the maintenance of justice, has enacted that inquiry should be made through each county and each hundred, by twelve of the more legal men of the hundred, and by four of the more legal men of each township, upon their oath that they will tell the truth, whether there is in their hundred or in their township anyone who has been accused or is publicly notorious as a robber, or murderer, or thief, or harbinger of robbers, murderers or thieves, since the lord king has been king. And let the justices make this inquiry by themselves, and the sheriffs by themselves.

2. And let anyone who has been found by the oath of the aforesaid, to have been accused or to be notorious as a robber, or murderer, or thief, or harbinger of them, since the lord king has been king, be arrested and go to the ordeal of water, and let him swear that he has not been a robber, or murderer, or thief, or harbinger of them, to the value of five shillings, so far as he knows, since the lord king has been king.

3. And if the lord of the man who has been arrested, or his steward, or his men shall have claimed him by a pledge within the third day after he has been seized, let him be given up and his chattels, until he himself make his law.

4. And when a robber, or murderer, or thief, or harbinger of them shall have been seized, through the above mentioned oath, if the justices are not to come very soon into that county where they have been arrested, let the sheriffs send word to the nearest justice by some intelligent man, that they have arrested such men, and the justices will send back word to the sheriffs where these are to be brought before them; and the sheriffs shall bring them before the justices; and along with these they shall bring from the hundred or township where they have been arrested, two legal men to carry the record of the county or of the hundred, as to why they were seized, and there before the justices let them make their law.

5. And in the case of those who have been arrested through the aforesaid oath of this assize, no one shall have court, or jurisdiction, or chattels, except the lord king in his court before his justices, and the lord king shall have all their chattels.

6. In the case of those, however, who have been arrested, otherwise than through this oath, let it be as has been customary and ought to be, and the sheriffs who have arrested them, shall bring them before the justice without any other summons from him. And when, robbers, or murderers, or thieves, or harborers of them, who have been arrested through the oath or otherwise, are handed over to the sheriffs, they also must receive them immediately and without delay.

7. And in the several counties where there are no jails, let such be made in a borough, or in some castle of the king, from the money of the king and from his forest, if one shall be near, or from some other neighboring forest, by the view of the officers of the king; so that in them the sheriffs may be able to detain those who have been seized by the officers who are accustomed to do this, or by their servants.

8. And the lord king, moreover, wills that all shall come to the county court to take this oath, so that no one shall refrain from coming to take the oath because of any franchise which he holds, or court, or jurisdiction which he had.

9. And no one within a castle, or even in the honor of Wallingford, may forbid the sheriffs to enter into his court or his land for the view of frank pledge and to see that all men are under pledge; and let them be sent before the sheriffs under frank pledge.

10. And in cities and boroughs, let no one have men or receive them in his house, or in his land, or in his soc, whom he does not undertake to produce before the justices if they shall be required, or else let them be under frank pledge.

11. And let there be none in a city or borough, or in a castle or without, or even in the honor of Wallingford, who shall forbid the sheriffs to enter into his land or his jurisdiction to arrest those who have been charged or are notorious as robbers or murderers or thieves or harborers of them, or outlaws or persons charged concerning the forest; but the king commands that they shall aid them in arresting such.

12. And if anyone is arrested who has in his possession the booty of robbery or theft, if he is of bad reputation and has an evil testimony from the public, and cannot vouch to warranty, let him not make his law. And if he shall not have been notorious, on account of the booty which he has, let him go to the water (ordeal).

13. And if anyone shall have acknowledged robbery or murder or theft or the harboring of such criminals, in the presence of legal men of the hundreds, and afterwards shall wish to deny it, he shall not make his law.

14. The lord king wills, moreover, that those who make their law, and shall be cleared by the law, if they are of very bad repute, and are publicly and disgracefully held as infamous by the testimony of many and legal men, they



shall abjure the lands of the king, so that within eight days they shall cross the sea, unless the wind detains them; and with the first wind which they shall have afterwards, they shall cross the sea; and they shall not come back again into England, except by the permission of the lord king; and there let them be outlawed, and if they return they shall be seized as outlaws.

15. And the lord king forbids any vagabond, that is a wandering or an unknown man, to be sheltered anywhere, except in a borough, and even there he shall be sheltered only one night, unless he or his horse shall be sick, so that he is able to show an evident excuse.

16. And if he shall have been there more than one night, let him be arrested and held until his lord shall come to give security for him, or until he himself shall have secured pledges; and let him who has sheltered him likewise be arrested.

17. And if any sheriff shall have sent word to any other sheriff that men have fled from his county, on account of robbery or murder, or theft, or the harboring of such criminals, or outlawry, or a charge concerning the forest of the king, let him arrest them. And also, if he knows, himself or by others, that such men have fled into his county, let him arrest them and hold them until he shall have secured pledges from them.

18. And let all sheriffs cause a list to be made of all fugitives who have fled from their counties; and let them do this in their county courts, and they shall carry the written names of these, before the justices as soon as they come to them, so that they may be sought through all England, and their chattles may be seized for the use of the king.

19. And the lord king wills, that as soon as the sheriffs have received the summons of the justices in eyre, to appear before them, with their county courts, they shall gather together their county courts, and make inquiry for all who have recently come into their counties, since the assize; and that they shall send them away under pledge to be before the justices, or else keep them in custody until the justices come to them, and then produce them before the justices.

20. The lord king, moreover, forbids monks, and canons, and all religious houses, from receiving any one of the common people, as a monk, or canon, or brother, until his reputation is known, unless he shall be sick unto death.

21. The lord king, moreover, forbids anyone in all England to receive in his land, or in his jurisdiction, or in a house under him, anyone of the sect of those renegades who have been excommunicated and branded at Oxford. And if anyone shall have received them, he shall be at the mercy of the lord king, and the house in which they have been, shall be carried outside of the village and burned. And each sheriff shall take an oath to maintain this, and shall cause all his officers to take this oath, and the stewards of the barons, and all knights and freeholders of the counties.

22. And the lord king wills that this assize shall be maintained so long as it shall please him.

4) The jury, presentment and trial.

a) Development to time of Henry II.

- b) Use by Henry II.
- c) Contrast with present form.
- d) Advantages of the system.

*Extracts from Glanvill, De Legibus Angliæ, Liber II., Chap. 7 (Select Charters, 160-164):* Moreover, there is the great assize, a kind of royal favor, given to the people by the clemency of the prince, with the advice of the nobles; by which such favorable arrangements are made for the lives of men and for the integrity of the state, that what one possesses lawfully in frechold he can retain while declining the doubtful outcome of the duel. And by this means he can escape the extreme penalty of a sudden and premature death, or the disgrace of the everlasting infamy of that outrageous and shameless word which sounds so basely in the mouth of the conquered. Moreover that legal institution has proceeded from the highest justice, for the sentence which, after many and long delays, is with difficulty declared by the duel, by the benefit of this institution, is set forth fitly and speedily. For the assize does not allow as many *essoins* (postponements) as the duel. Thus both labor and expense are spared. In proportion as there is greater confidence in the decision of several individual witnesses over only one, by so much does this institution display greater justice than the duel. For the duel proceeds upon the testimony of but one who makes oath, while this institution requires the oath of at least twelve legal men.

- c. Royal revenue.
  - 1) Review to this period.
  - 2) Scutage.
    - a) Origin.
    - b) Method of collection, constitutional importance.
  - 3) Assize of Arms.
    - a) Object.
    - b) Method of enforcement.

#### ASSIZE OF ARMS, 1181

(SELECT CHARTERS, 153-156)

1. Whoever has a knight's fee shall have a coat of mail and helmet, shield and lance; and every knight shall have as many coats of mail and helmets, shields and lances as he has knight's fees in his domain.

2. Each free layman having chattels or income to the value of sixteen marks (about £10) shall have a coat of mail and helmet, shield and lance; each free layman having chattels or income to the value of ten marks shall have a hauberk, head piece of iron and a lance.

3. Likewise all burghers (inhabitants of walled towns) and every member of a community of freemen shall have a doubklet of mail, head piece of iron and lance. \* \* \* \* \*

9. Likewise the Justices shall make inquiry upon oath of legal knights or other free and legal men from the hundreds and boroughs, as many as they deem necessary, to ascertain who have the value of chattels requiring a coat



of mail, helmet, lance and shield, as aforesaid; besides which they shall separately name to them all from their hundreds, vicinages and boroughs, who have sixteen marks in chattels or income; likewise, also, those who have ten marks.

10. Also, no one shall take oath as a legal and free man who has not sixteen or ten marks in chattels. \* \* \* The king also orders that no one shall be received to the oath of arms except free men.

4) Saladin's Tithe.

a) Object and importance.

b) Method of collection.

ORDINANCE OF THE SALADIN TITHE, 1188

(SELECT CHARTERS, 159-60)

1. Each shall give a tenth of his income and moveables this year, excepting arms, horses and clothing of knights; excepting, also, horses, books, clothing, vestments and every kind of ecclesiastical paraphernalia and precious stones belonging to the clergy and laity.

2. This money shall be collected in each parish. \* \* \* Excommunication shall be visited upon anyone who does not give the duly assessed tenth. And if anyone, in their judgment, shall have given less than he ought, let them select from the parish four or six lawful men, who, upon oath, shall declare that amount which he ought to have reported; and then there shall be added whatever is lacking.

D. NARRATIVE, RICHARD I. (1189-1199).

1. The third crusade.

2. The regency; John's attempts to gain power.

E. CONSTITUTIONAL DEVELOPMENT, RICHARD I.

1. Taxation.

a) Object.

b) Method of assessment.

*Roger of Hoveden, Chronicles, IV., 46 (Select Charters, 256-7):* That same year, Richard, King of England, took from every carucate or hide of land in all England, five shillings as an aid, for collecting which, the said king sent through each county of England, one clerk and one knight, who, with the sheriff of the county to which they were sent, and with legal knights who were elected for this purpose and had taken an oath to carry out faithfully the business of the king, caused to come into their presence the stewards of the barons of that county, and from every township either the lord or the bailiff of the township, and the reeve, with four legal men of the township, either free or villans; and two legal knights from the hundred; to swear that faithfully and without deceit they would declare how many carucates there were in each township, *i. e.*, how many in demesne, how many in villanage, how many in charitable tenure occupied by religious men. \* \* \*

2. The Iter of 1194.

## FORM OF PROCEDURE IN PLEAS OF THE CROWN

(SELECT CHARTERS, 258-263)

First, there are chosen four knights from the whole county, who, under oath, choose two legal knights from each hundred or wapentake; and these two choose, under oath, ten knights from each hundred, or, if knights are lacking, legal and free men, that these twelve men may respond together on all the articles in behalf of the whole hundred or wapentake.

### 3. Towns and gilds.

- a) Development to this time.
- b) Charters and organization.

## CHARTER OF RICHARD I. TO WINCHESTER, 1190

(SELECT CHARTERS, 265-6).

Richard, by the Grace of God, King of England, Duke of Normandy, etc., to the archbishops, bishops, abbots, earls, barons, justices, sheriffs, ministers, and all bailiffs, and his faithful subjects of his whole land, greeting. Know ye, that we have granted to our citizens of Winchester, of the gild merchant, that none of them shall be impleaded outside the walls of the city of Winchester in any plea, except pleas of outside tenures, moneyers and our ministers being excepted. We have granted also to them that none of them engage in the duel, and that for pleas pertaining to our crown they may proceed according to the ancient custom of the city. These things also we have granted to them, that the citizens of Winchester, of the gild merchant, be quit of duty, custom and bridge toll, in the market and outside, and through the sea ports of our whole land this side of the sea and beyond; and that no one be amerced save according to the ancient law of the city, as it prevailed in the time of our ancestors; and that they shall hold justly all their lands and tenures and pledges and dues. And, in the case of their lands and tenures, which are in another city, their rights shall be maintained according to the custom of the city; and for all dues adjustable at Winchester and for the pledges made there, they shall hold pleas at Winchester. And if anyone, in our whole land takes duty or custom from the men of Winchester, of the gild merchant, after he has failed of right, the sheriff of Southampton or the reeve of Winchester shall take a pledge for his appearance at Winchester. Moreover, for the benefit of the city, we have granted to them, that they shall be quit of exactions and levies, except a levy made by our sheriff or other officer.

These said customs we grant to them, and all other liberties and franchises which they had in the time of our ancestors; and if any unjust customs have been levied in war, they shall cease; and whoever seeks the city of Winchester with his merchandise, from whatever place, whether a foreigner or other, shall come, stay and return in our peace, rendering right customs, and no one shall disturb him, on account of this, our charter. Therefore, we wish and firmly decree that they and their heirs shall have by inheritance and hold all the aforesaid, of us and our heirs. Witness, Walter, Archbishop of Rouen; Roger of

Bath, Henry of Coventry, bishops; Bertram of Verdun, John Marshall, William Marshall. Given by the hand of John of Alencon, archdeacon of Lisieu, our vice-chancellor, at Nunancurte, on the fourteenth day of March, in the first year of our reign.

F. John and Magna Charta, 1199-1216.

1. Accession and character.
2. Quarrels.
  - a. France.
    - 1) Arthur of Brittany.
    - 2) Loss of Normandy.
  - b. Papacy.
    - 1) The disputed election; story and claims.
    - 2) Excommunication and interdict.
    - 3) Surrender; England a fief of Rome.
  - c. Barons and clergy.
    - 1) Exactions and abuses.
    - 2) Revolt; meetings and proposals.
3. The Charter.

MAGNA CHARTA

("The whole constitutional history of England is a commentary on this charter."—*Stubbs*.)

GRANTED BY KING JOHN, JUNE 15, 1215.

(*STUBBS' SELECT CHARTERS, 296-306*)

John, by the grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, Count of Anjou, to the archbishops, bishops, abbots, earls, barons, justiciars, foresters, sheriffs, reeves, servants, and all officers, and his faithful subjects, greeting: Know ye, that we, in the sight of God, and for the good of our soul, and those of all our ancestors and of our heirs, for the honor of God and the exaltation of Holy Church, and the benefit of our realm, by the advice of our venerable fathers Stephen, Archbishop of Canterbury, Primate of all England, Cardinal of the Holy Roman Church, Henry, Archbishop of Dublin, William of London, Peter of Winchester, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, and Benedict of Rochester, bishops; of Master Pandulf, sub-deacon and companion of the Lord Pope, of Brother Aymeric, Master of the Knights Templar in England; and of the noblemen William Marshall, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundel, Alan of Galloway, Constable of Scotland, Warren Fitz-Gerald, Peter Fitz-Herbert, Hubert de Burgh, Steward of Poitou, Hugh de Nevil, Matthew Fitz-Herbert, Thomas Bassett, Alan Bassett, Phillip d' Albani, Robert de Roppelay, John Fitz-Hugh and others of our liegemen.

1. In the first place we have granted to God, and by this our present charter confirmed, for us and our heirs forever that the Church of England shall be free, and shall hold its rights intact and its privileges inviolable; and we will



that it be thus observed as is apparent from this, that the freedom of elections, which is considered to be most important and especially necessary to the Church of England, we, of our mere free will, granted, and by our charter confirmed, before the contest between us and our barons had arisen; and obtained a confirmation of it by the Lord Pope Innocent III.; which we will observe, and which we desire, shall be observed in good faith by our heirs forever. We have granted, moreover, to all free men of our kingdom, for us, and our heirs forever, all liberties written below, to have and to hold for themselves and their heirs from us and our heirs forever:—

2. If any of our earls or barons, or others holding of us in chief, shall die and at the time of his death, the heir is of full age and owes a relief, he shall have his inheritance by the ancient relief; that is to say, the heirs of an earl, for the whole barony of an earl, a hundred pounds; the heir or heirs of a baron, for a whole barony, a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, a hundred shillings at most; and whoever owes less, let him give less, according to the ancient custom of fiefs.

3. But if the heir of any such shall be under age, and shall be in wardship, he shall have his inheritance without relief and without fine.

4. The guardian of the land of such a minor heir shall not take from the land of the heir any except reasonable profits, reasonable customary payments, and reasonable services, and this without destruction or waste of men or property; and if we shall have committed the custody of the land of any such to the sheriff, or to any other person who is responsible to us for its profits, and that man shall have made destruction or waste on the lands in wardship, we will recover damages from him, and the lands shall be committed to two legal and discreet men of that fief, who shall be responsible for the profits to us, or to him to whom we have assigned them; and if we shall have given or sold to anyone the wardship of any such land, and he shall have made destruction or waste thereon, he shall lose that wardship, and it shall be handed over to two legal and discreet men of that fief who shall be in like manner responsible to us as aforesaid.

5. But the guardian, so long as he shall have custody of the land, must keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the profits of the land itself; and he must return to the heir, when he shall have come to full age, all his land, furnished with ploughs and implements of husbandry, according as the time of tillage requires and the profits of the land can reasonably permit.

6. Heiresses shall be married without disparagement, and so that before the marriage is contracted, it shall be announced to those near of kin to the said heiress.

7. A widow, after the death of her husband, shall have her dowry and her inheritance at once and without hindrance, nor shall she give anything for her dowry or for her marriage portion, or for her inheritance which inheritance her husband and she held on the day of his death; and she may remain in the house of her husband for forty days after his death, within which time her dowry shall be assigned to her.



8. No widow shall be compelled to marry as long as she prefers to live without a husband, provided she gives security that she will not marry without our consent, if she holds of us, or without the consent of the lord of whom she holds, if she holds of another.

9. Neither we nor our officers will seize any land or rent for any debt, so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of a debtor be distrained so long as the principal debtor himself has enough to pay the debt; and if the principal debtor fails to pay the debt, not having wherewithal to pay it, the sureties are to answer for the debt; and if they desire, they shall have the lands and rents of the debtor until they shall have been satisfied for the debt which they paid for him, unless the principal debtor shall have shown himself to be quit thereof as regards those sureties.

10. If anyone has taken anything from the Jews, by way of a loan, more or less, and dies before that debt is paid, the debt shall not bear interest so long as the heir is under age, from whomsoever he holds; and if that debt falls into our hands, we will take nothing except the principal specified in the deed.

11. And if anyone dies indebted to the Jews, his wife shall have her dowry, and shall not pay any of that debt; and if there remain minor children of the deceased their necessary wants shall be provided for, corresponding to the holding of the deceased; and from the remainder the debt shall be paid, saving the service due to the lords. In the same way debts are to be treated which are owed to others than Jews.

12. No scutage or aid shall be imposed in our kingdom unless by the great council of our realm, save for the ransoming of our body, for knighting our eldest son, and for once marrying our eldest daughter, and for these purposes it shall be only a reasonable aid; and in the same way it shall be done concerning the aids of the city of London.

13. And the city of London shall have all its ancient liberties and free customs, as well by land as by water. Moreover, we will and grant that all other cities and boroughs and towns and ports shall have all their liberties and free customs.

14. And for holding the great council of our realm for the assessment of an aid other than the three cases mentioned above, or for the assessment of a scutage, we shall cause to be summoned the archbishops, bishops, abbots, earls, and greater barons by individual writ; and furthermore, we shall cause to be summoned collectively, by our sheriffs and officers, all those who hold from us in chief; for a certain day, that is, after an interval of at least forty days, and at a certain place; and in all the writs of that summons, we will express the purpose of that summons, and when the summons has thus been given the business shall proceed upon the appointed day, on the advice of those present, even though all of those summoned have not come.

15. We will not grant to anyone, in the future, the right to take an aid from his free men, except for ransoming his body, for knighting his eldest son, and for once marrying his eldest daughter, and for these purposes a reasonable aid only shall be taken.

16. No one shall be compelled to perform any greater service for a knight's fee, or any other freehold, than is due from it.

17. The common pleas shall not follow our court, but shall be held in some fixed place.

18. The assizes of *novel disseisin*, *mort d'ancestor* and *darrein presentment* shall be held only in their own counties and in this manner: we, or if we are out of the realm, our principal justiciar, will send two justiciars through each county four times a year, who with four knights of the county, elected by the county, shall hold in the county, and on the day and in the place of the county court, the aforesaid assizes.

19. And if the aforesaid assizes cannot be held within the day of the county court, a sufficient number of knights and freeholders, according as the business is more or less, shall remain, from those present at the county court on that day, to give the judgment.

20. A freeman shall not be fined for a small offense, but in proportion to the measure of the offense; and for a great offense, he shall be fined in proportion to the magnitude of the offense, saving his contenment; and a merchant in the same way, saving his merchandise; and the villan shall be fined in the same way, saving his wainage, if he shall be at our mercy; and none of the above fines shall be imposed except upon the oath of honest men of the neighborhood.

21. Earls and barons shall not be fined except by their peers, and only in proportion to their offense.

22. No clergyman shall be amerced for his lay holding except according to the method of the others aforesaid, and not according to the amount of his ecclesiastical benefice.

23. No town, nor man, shall be compelled to make bridges over the rivers except those which ought to do it of old and of right.

24. No sheriff, constable, coroner, or other officer of ours shall hold pleas of the crown.

25. All counties, hundreds, wapentakes, and tithings shall be at the ancient rates and without any increase, except our demesne manors.

26. If anyone holding a lay fief from us shall die, and our sheriff or officer shall show our letters-patent of summons for a debt which the deceased owed to us, it shall be lawful for our sheriff or officer to attach and levy on the chattels of the deceased found on his lay fief, to the amount of the debt, in the view of legal men, so that nothing be removed until our clear debt be paid; and the remainder shall be left to the executors to fulfill the will of the deceased; and if nothing is due to us from him, all the chattels shall go to carry out the will of the deceased, saving to his wife and children their reasonable shares.

27. If any freeman dies intestate, his chattels shall be distributed by the hands of his near kinsmen and friends, under the oversight of the church, saving to each one the debts which the deceased owed to him.

28. No constable, or other officer of ours, shall take anyone's grain or other chattels, without immediately paying for them in money, unless he is able to obtain a respite at the good will of the seller.

29. No constable shall compel any knight to give money for castle guard, if he himself will do it in person, or by another able man, in case he cannot do it through any reasonable cause. And if we have carried or sent him into the army, he shall be free from such guard for the time he shall be in the army by our command.

30. No sheriff, or officer of ours, or anyone else, shall take the horses or wagons of any freeman for carrying purposes, except by permission of said freeman.

31. Neither we, nor our officers, will take the wood of any man for castles, or for other uses, except by the permission of the owner of the wood.

32. We will not hold the lands of those convicted of felony for more than a year and a day, after which the land shall be returned to the lords of the fief.

33. All the fish-weirs in the Thames and Medway, and throughout all England shall be done away with, except those on the coast.

34. The writ which is called *Præcipe*, moreover, shall not be given to anyone concerning any tenement by which a freeman shall lose his court.

35. There shall be one measure of wine throughout our whole kingdom and one measure of ale, and one measure of grain, that is, the London quarter, and one width of dyed cloth and of russets and of halbergets, that is two ells within the selvages; of weights, moreover, it shall be as of measures.

36. Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

37. If anyone holds of us by fee ferm, or by socage, or by burgage, and of another he holds land by knight's service, we will not have the wardship of the heir or of his land which belongs to another, on account of that fee ferm, or socage, or burgage; nor will we have the wardship of that fee ferm, or socage, or burgage, unless that fee ferm itself owes knight's service. We will not have the wardship of the heir or of the land of anyone, which he holds of another by knight's service on account of any petty serjeanty which he holds from us by the service of paying to us knives or arrows, or things of that kind.

38. No officer for the future shall put anyone to his law on his own simple affirmation, without credible witnesses brought for this purpose.

39. No freeman shall be taken, or imprisoned, or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the lawful judgment of his peers, or by the law of the land.

40. To no one will we sell, to no one will we deny, or delay, right or justice.

41. All merchants shall be safe and secure to go oat from England, or to come into England, or to remain, or to go through England, by land or by water, for buying or selling, free from all evil tolls, by the ancient and rightful custom, except in time of war, or if they belong to a nation at war with us; and if such are found in our land at the beginning of the war, they shall be detained without injury to body or goods, until it shall be known from us or from our chief justiciar, how our merchants are treated in the land at war with us; and if ours are safe there, the others shall be safe in our land.

42. It shall be lawful thenceforth for anyone to go out from our kingdom,



and to return, safely and securely, by land or by water, saving allegiance to us, except in time of war, for some short time, for the common good of the realm, excepting prisoners and outlaws according to the law of the realm, and people of a land at war with us, and merchants, who shall be treated as above mentioned.

43. If anyone holds of any escheat, as of the honor of Wallingford, or Nottingham, or Boulogne, or Lancaster, or of other escheats which are in our hands, and are baronies, and he dies, his heir shall not pay any other relief, nor do to us any service, other than he would do to the barons, if that barony was in the hands of a baron; and we will hold it in the same way as the baron held it.

44. Men who dwell outside of the forest shall not henceforth come before our justiciars of the forest, on common summons, unless they are impleaded, or are sureties for any who are attached on account of the forests.

45. We will not appoint as justiciars, constables, sheriffs, or bailiffs, any except those who know the law of the realm and are well inclined to observe it.

46. All barons who have founded abbeys for which they have charters from the kings of England, or hold by ancient tenure, shall have their custody when these become vacant, as they ought to have.

47. All forests which have been afforested in our time, shall be disforested immediately; and so it shall be concerning river-banks which in our time have been fenced in.

48. All evil customs concerning forests, warrens, foresters, and warreners, sheriffs and their officers, river-banks and their guardians, shall be inquired into, immediately, in each county, by twelve sworn knights of the same county, elected by the honest men of the same county, and within forty days after the inquest has been made, they shall be irrevocably destroyed by them, provided that we are first informed of it, or our justiciar, if we are not in England.

49. We will immediately give up all hostages and charters, delivered to us by our English subjects, as securities for their keeping the peace and yielding us faithful service.

50. We will remove absolutely from their bailiwicks the relatives of Gerard de Athyes, so that for the future they shall have no bailiwick in England; Engelard de Cygony, Andrew, Peter, and Gyon de Chancelles, Gyon de Cygony, Geoffrey de Martin and his brothers, Philip Mark and his brothers, and Geoffrey, his nephew, and their whole retinue.

51. As soon as peace is restored, we will send out of the realm all foreign knights, cross-bowmen and mercenaries, who have come with horses and arms for the injury of the realm.

52. If anyone shall have been dispossessed or removed by us without the lawful judgment of his peers, from his lands, castles, franchises or right, we will restore them to him immediately; and if contention arises about this, then it shall be done according to the judgment of the twenty-five barons for the security of the peace, mentioned below. For all those things, however, of which anyone has been deprived or of which he has been dispossessed without lawful judgment of his peers, by King Henry our father, or by King Richard our



brother, which we have in our hands, or which others hold and it is our duty to guarantee, we shall have respite for the usual time of crusaders; excepting those things about which a suit had been begun, or the inquest made by our writ, before our assumption of the cross; when, however, we shall return from our journey, or if by chance we desist from the journey, we will immediately show full justice in regard to them.

53. We shall, moreover, have the same respite, and in the same manner, about showing justice in regard to the forests, which are to be disforested or to remain forests, which Henry our father or Richard our brother made into forests; and concerning the custody of lands which are in the fief of another, custody of which we have until now had, on account of a fief which anyone has held from us by knight's service; and concerning the abbeys which have been founded in fiefs of others than ourselves, in which the lord of the fief has reserved for himself a right; and when we return, or if we should desist from our journey, we will immediately show full justice to those complaining in regard to them.

54. No one shall be seized or imprisoned upon the appeal of a woman for the death of any other than her husband. ♦

55. All unjust and illegal fines, and all unjust and illegal amercements, shall be altogether given up, or else left to the judgment of the twenty-five barons hereafter mentioned for the preservation of the peace, or to the judgment of the majority of them along with the aforesaid Stephen, Archbishop of Canterbury, if he is able to be present, and others whom he may wish to invite. And if he shall not be able to be present, nevertheless the business shall go on without him, provided, that if one or more of the aforesaid twenty-five barons are interested in a similar suit they shall be removed in this particular case, and others who shall be chosen and put upon oath by the remainder of the twenty-five shall be substituted for them.

56. If we have dispossessed or removed any Welshmen from their lands, franchises, or other things, without lawful judgment of their peers, in England or Wales, they shall be immediately returned to them; and if a dispute arises over this, then it shall be settled in the March by judgment of their peers, concerning holdings in England according to the law of England, concerning holdings in Wales according to the law of Wales, and concerning holdings in the Marches according to the laws of the Marches. The Welsh shall do the same to us and to ours.

57. Concerning all these things, however, from which any one of the Welsh shall have been removed, or dispossessed, without lawful judgment of his peers, by King Henry our father, or King Richard our brother, which we hold in our hands, or which others hold and we are bound to warrant to them, we shall have respite for the usual period of crusaders, except concerning those about which a suit was begun, or inquisition made by our command, before our assumption of the cross. When, however, we shall return, or if by chance we shall desist from our journey, we will show full justice to them immediately, according to the law of the Welsh and the aforesaid parts.

58. We will give back the son of Llewelyn immediately, and all the hostages from Wales, and all the charters, which have been delivered to us as security for peace.

59. We will act toward Alexander, King of the Scots, concerning the return of his sisters and his hostages, and concerning his franchises and his right, according to the manner in which we shall act towards our other barons of England, unless it ought to be otherwise by the charters which we hold from William his father, formerly King of the Scots, and this shall be by the judgment of his peers in our court.

60. All the aforesaid franchises, which we have granted to be held in our kingdom, as far as pertains to us, in respect to our vassals, all men of our kingdom, as well clergy as laity, shall observe as far as pertains to them, in respect to their vassals.

61. And whereas, for the honor of God, and for the improvement of our realm, and for the better quieting of the hostility lately arisen between us and our barons, we have made all these concessions; we wish them to enjoy these in a complete and firm stability forever, we make and concede to them the security described below: that is to say, that they shall elect twenty-five barons of the kingdom, whom they will, who ought with all their power to observe, hold, and cause to be observed, the peace and liberties which we have granted to them, and by this our present charter confirmed to them; in this manner, that if we, or our justiciar, our officers, or anyone of our servants shall have done wrong in any way towards anyone, or shall have transgressed any of the articles of peace or security, and the wrong shall have been shown to four barons of the aforesaid twenty-five barons, let these four barons come to us, or to our justiciar, if we are out of the realm, laying before us the grievance and let them petition that it be corrected without delay. And if we shall not have corrected the grievance, or if we should chance to be out of the realm and it shall not be redressed by our justiciar within a period of forty days, counting from the time of notification to us or our justiciar, if we are out of the realm; the aforesaid four barons shall refer the matter to the remainder of the twenty-five barons, and let these twenty-five barons with the whole community of the country, distress and injure us in every way possible, that is to say, by the seizure of our castles, lands, possessions, and in any other way possible until the grievance is redressed according to their judgment, saving our person and the persons of our queen and children; and when the grievance is redressed they shall act towards us as before. And any person whatsoever in the kingdom may swear that he will obey the orders of the aforesaid twenty-five barons, and we publicly and freely give permission to each one who wishes this that they may injure us as far as possible. All those, moreover, in the country, who of themselves and of their own will, are unwilling to take an oath to join the twenty-five barons in distressing and injuring us, we will compel to take the oath at our command. And if anyone of the twenty-five barons dies, or departs from the realm, or shall in any other way be prevented from taking the above mentioned action, let the aforesaid twenty-five barons choose another in

his place, according to their judgment, who shall take an oath in the same way as the others. In all these matters which are committed to the twenty-five barons to carry out, if some disagreement arises among them about any matter when they are all present, or if any of them when summoned are unable to be present, let that matter be considered valid and firm which the majority of those present agree upon and enjoin, just as if the whole twenty-five had agreed to it, and let the twenty-five swear that they will observe faithfully all the things aforesaid, and with all their ability cause them to be observed, and we will procure nothing from anyone, either by ourselves, or by another, whereby any of these concessions and liberties may be revoked or diminished; and if any such shall have been obtained, it shall be null and void, and we will never use it ourselves or by another.

62. And all ill will, grudges, and rancors, which have arisen between us and our subjects, clergy and laity, from the time of the dissension, we have fully renounced and pardoned to all. Moreover, all transgressions committed on account of this dissension, from Easter, in the sixteenth year of our reign, till the restoration of peace, we have fully remitted to all, clergy and laity, and as far as in us lies, fully pardoned. Moreover, we have caused to be made for them the testimonial letters patent of Lord Stephen, Archbishop of Canterbury, Lord Henry, Archbishop of Dublin, and of the aforesaid bishops and of Master Pandulf for the security and the concessions named above.

63. Wherefore we will, and firmly enjoin, that the Church of England be free, and the men in our kingdom shall have and hold all the aforesaid liberties, rights and concessions, well and peaceably, freely and quietly, fully and completely, for themselves and their heirs, from us and our heirs, in all things and places, forever. It is also sworn, as well on our part as on the part of the aforesaid barons, that all these things aforesaid shall be observed in good faith and without evil intent. Witness, the above named and many others, given under our hand, in the meadow called Runnymede, between Windsor and Stains, on the fifteenth day of June, in the seventeenth year of our reign.

#### SUMMARY.

1. The Three Estates: cf. in each case with charter of Henry I.
  - a. The Clergy; 1 and 42; Freedom of elections, appeal to Rome, cf. charter of Henry I., 1.
  - b. The Barons; 2-8, 12, 14-16, 29, 32, 37, 43, 46; Feudal abuses redressed, amount and occasion fixed; cf. Charter of Henry I., 2-8, 11.
  - c. The Commons; 13, 23, 33, 35, 41, 42, 60; Same rights from barons, protection to commerce and popular interests, cf. Charter of Henry I., 2 and 4.
2. Administration of law and justice; 17-22, 24, 34, 36, 38-40, 45, 54; guarantees the system developed by Henry II; cf. Charter of Henry I., 8, 12, 13.
3. Great Council and Taxation; 12 and 14; shows composition and powers of Great Council, a complete feudal council, without whose assent no extraordinary feudal aid can be levied.



4. Representation, use in local courts; 18, 19, 48.
5. Protection of property; 9-11, 23, 25-28, 30, 31; no arbitrary seizure.
6. Forests; 44, 47, 48, 53; restricted to ancient extent and customs.
7. Temporary provisions; 49-53, 55-59.
8. Enforcement; 61-62; the duty of rebellion.

G. COLLATERAL TOPICS.

1. Learning and literature at the court of Henry II.
2. Glanvill; life and works.
3. The Forests; origin, extent, courts, charters, present status, etc.

VI. *THE STRUGGLE FOR THE GREAT CHARTER AND THE FORMATION OF PARLIAMENT (1216-1307).*

A. BIBLIOGRAPHY.

1. Original.

a. Law writers and collections.

BRACTON: *De Legibus Anglæ*.  
Note Book.

BRITTON: *Summa de Legibus*.

ELLIS: *Original Letters*, Third Series, Vol. I.

HALLIWELL: *Letters of the Kings of England*.

HORWOOD: *Year Books of Edward I*.

HUTTON: *Misrule of Henry III*.

*Simon de Montfort and His Cause*.

LOUARD: *Letters of Bishop Grosseteste*.

MAITLAND: *Pleas of the Crown for Gloucester, 1221*.

RYMER: *Fœdera*.

SHIRLEY: *Royal Letters of Henry III*.

STUBBS: *Select Charters*, Parts VI. and VII.

b. Public Records.

Charter Rolls.

Close Rolls.

*De Quo Warranto* Rolls.

Hundred Rolls.

*Modus Tenendi Parliamentum*.

Parliamentary Writs.

Pipe Rolls.

*Placitorum Abbreviatio*.

Rolls of Parliament.

Statutes of the Realm.

c. Chronicles.

*Annales Londoniensis*.

*Annales Monastici*.

MATTHEW PARIS: *Historia Major*.

MATTHEW OF WESTMINSTER: *Flores Historiarum*.

NICHOLAS TRIVET: *Annales*.

ROGER OF WENDOVER: *Flores Historiarum*.



WALTER OF COVENTRY: Memoriale.

WALTER OF HEMINGBURGH: Chronica.

WILLIAM RISHANGER: Chronica.

2. Secondary.

BLAAUW: The Barons War, Chap. XIII.

BOUTMY: The English Constitution, pp. 33-69.

BRODRICK: History of the University of Oxford.

COX: Antient Parliamentary Elections, Chap. V.

Institutions of the English Government, pp. 11-13.

CREASY: History of England, Vol. I., Chaps. XII. and XIII.

English Constitution, Chaps. XII. and XIII.

CREIGHTON: Simon de Monfort, Chaps. V.-XVIII.

CUNNINGHAM: Growth of English Industry and Commerce, Vol. I.,  
Book II., Chap. III., Sec. 65; Book III., Chap. I., Sec. 85.

DIGBY: History of the Law of Real Property, Part I., Chap. IV., Sec.  
2-4.

DOWELL: History of Taxation, Vol. I., Chaps. V.-IX.

FEILDEN: Constitutional History of England, pp. 15-19, 94-96, 121-  
123, 128-131, 186, 279-281.

FREEMAN: Growth of the English Constitution, pp. 56-96.

GARNIER: History of the English Landed Interest, Vol. I., Chap. XIII.

GLASSON: Droit et Institutions, Tome III., Chap. III., Sec. 97.

GNEIST: Constitutional, History of England, Vol. II. pp. 1-15.

History of the English Parliament.

GREEN: History of the English People, Vol. I., Book III., Chaps. II.-IV.

GROSS: The Coroner—Political Science Quarterly, 1892.

HALLAM: Middle Ages, Chap. VIII., Part III.

HEARN: The Government of England, Chaps. XV.-XVII.

HUNT: English Church in the Middle Ages, pp. 145-182.

JESSOP: The Coming of the Friars.

LINGARD: History of England, Vol. II., Chaps. VI. and VII.

MEDLEY: Constitutional Essays, Parliament.

MULLINGER: History of the University of Cambridge.

PAULI: Simon de Monfort, Introduction and Chaps. III.-V.

PEARSON: Vol. II., esp. Chaps. II., III., VII., XV. and XVI.

PERRY: English Church History, Vol. I.

PIKE: History of Crime in England, Vol. I., pp. 157-162, 184-192.

POLLOCK: The Land Laws, pp. 52-90.

POLLOCK and MAITLAND: History of the English Law, Vol. I., Chap. VI.

PROTHÉRO: Simon de Montfort: Introduction and chaps. III., V., VI.,  
IX. and X.

RANKE: History of England, Vol. I., Book I., Chap. IV.

REEVES: History of the English Law, Vol. I., chaps. V.-VIII.; Vol. II.,  
chaps. IX.-XI.

ROWLEY: Rise of the People, Books I. and III.

SCRUTTON: Influence of Roman Law, pp. 65-73, 119-121, 150-195.

- SEELEY: Greatest of All the Plantagenets (Edward I.).  
SKOTTOWE: Short History of Parliament, Chap. I.  
STUBBS: Constitutional History of England, Vol. II., chaps. XIV. and XV., esp. sections 168, 176-203, 214-237, 244.  
Early Plantagenets, chaps. VIII.-XI.  
Select Charters, pp. 31-51.  
TASWELL-LANGMEAD: Constitutional History of England, pp. 213-215, 236-272.  
TAYLOR: Origin and Growth of the English Constitution, Book II., Chap. IV., Secs. 7-10; Book III., Chap. I., Secs. 1-7.  
TOUT: Edward I., esp. Chaps. VII.-XI.  
TRAILL: Social England, Vol. I., Chap. IV.  
WALPOLE: Electorate and the Legislature, Chaps. I.-III.

## B. NARRATIVE.

1. Henry III., 1216-1272.
  - a. Minority.
    - 1) The regency; Pembroke, Hubert de Burgh.
    - 2) Confirmation of Magna Charta.
      - a) Omissions; cf. original.
      - b) Later confirmations.
  - b. Personal rule of Henry.
    - 1) Foreign favorites, extravagance and wars.
    - 2) Relations with the Papacy.
      - a) Early demands.
      - b) Kingdom of Sicily.
    - 3) Devices for raising money.
    - 4) Resistance of the barons.
  - c. Kingship in commission; Simon de Montfort.
    - 1) The Mad Parliament.
    - 2) The Provisions of Oxford.
    - 3) The Mise of Amiens.
    - 4) The Barons War.
      - a) Lewes.
      - b) Montfort in control.
      - c) The reaction; Evesham.
      - d) The Dictum of Kenilworth.
2. Edward I., 1272-1307.
  - a. Wars.
    - 1) Wales; final conquest and incorporation.
    - 2) Scotland.
      - a) Relation of the two kingdoms to this period.
      - b) The disputed succession; claims of Balliol, Bruce and Hastings, Edward's award.
      - c) The revolt; Wallace and Bruce.
    - 3) France.

4) Effect upon constitutional development.

b) Expulsion of the Jews; sketch of their history in England.

### C. CONSTITUTIONAL DEVELOPMENT.

#### 1. Parliament.

a. Great Council in 1216.

1) Composition and powers.

2) Tendency towards representation.

b. Development of representation.

1) Origin in the local courts.

a) Gradual development.

1. *Laws of Ethelred, 978-1016 (Select Charters, 72) Chap. III.:* \*

\* \* \* And that a gemot be held in every wapontake; and the XII. senior thegns go out, and the reeve with them, and swcar on the relic that is given them in hand, that they will accuse no innocent man, nor conceal any guilty one.

2. *Laws of Henry I., 1100-1135 (Select Charters, 104-107), VII., 7:* If any of the barons of the king, of others, shall be present at the county court, according to the law, he can acquit all the land which he holds there in his domain. 8. Likewise we have decreed for the hundred, concerning the presence of the lord and his steward, or of the priest, reeve and best men.

3. *Cf. Title of the Domesday Survey for Ely, 1086, Supra p. 11 (Select Charters, 86).*

4. *Cf. Constitution of Clarendon, 6 and 9, 1164, Supra pp. 17-19 (Select Charters, 135-40).*

5. *Cf. Assize of Clarendon, 1 and 4, 1166, Supra pp. 21-23 (Select Charters, 140-6).*

6. *Cf. Assize of Arms, 9, 1181, Supra pp. 24-25 (Select Charters, 153-6).*

7. *Cf. Ordinance of the Saladin Tithe, 2, 1188, Supra p. 25 (Select Charters, 159-60).*

8. *Cf. Magna Charta, 18, 19 and 48, 1215, Supra p. 27-34 (Select Charters, 296-306).*

b) Extent about 1216.

2) Application of the principle to the Great Council.

### REPRESENTATION OF THE COMMONS IN THE GREAT COUNCIL.

1213-1294.

1. 1213. Mathew Paris, p. 239 (*Select Charters, 276*): The king sent letters to all the sheriffs of the realm of England, commanding that from each township of his domains, they should cause to assemble four legal men with the reeve, at St. Albans, on the fourth of August that by them and others of his servants, he could ascertain the injury and loss sustained by each bishop, and what was due to each. \* \* \* There were present at the council at St. Albans, Walfrid Fitz Peter and the bishop of Winchester, with the archbishops, and bishops, and magnates of the realm; when the king's peace was

declared to all, and it was firmly decreed on the part of the king that the laws of Henry, his grandfather, should be observed by all in the realm and that all unjust laws should be annulled. It was furthermore declared to the sheriffs, foresters and other servants of the king, as they valued life and limb, that they should not extort anything by violence from anyone, nor presume to inflict injury upon any one, nor levy contributions anywhere in the realm, as they had been in the habit of doing.

2. 1213. (Select Charters, 286-7): The king to the sheriff of Oxford, greeting. We command you that all of the knights of your bailiwick, who were summoned to be at Oxford in our presence two weeks after All Saints Day, with their arms; likewise the body of barons without arms; and four discreet men from your county, you will cause to come to us for the same purpose, *i. e.*, to confer with us about the business of our kingdom. Witness, I myself, at Winchester, the seventh day of November.

3. 1254. (Select Charters, 375-7): The King to the sheriff of Bedford and Buckingham, greeting. \* \* \* We strictly order that besides all the aforesaid, you will cause to appear at our council, at Westminster, on the twenty-sixth of April, four legal and discreet knights, from the aforesaid counties, whom these same counties shall have elected for this purpose, *i. e.*, in place of all and each of the inhabitants of the counties, *viz.*, two from one county and two from the other, to make provision, together with the knights of the other counties, whom we have caused to be summoned for the same day, how great an aid they wish to grant to us in such an exigency.

4. 1261. (Select Charters, 405): The King to the sheriff of Norfolk and Suffolk, greeting. Since, on the part of the Bishop of Worcester, the earls of Leicester and Gloucester, and certain other nobles of our realm, three knights have been summoned from each of our counties, to be present with them at St. Albans, at the coming feast of St. Matthew, the Apostle, to consider with them about the common affairs of our realm, while we and our aforesaid nobles, on the same day, at Windsor, shall assemble to consider the peace between us and them, we order you that those knights of your bailiwick, who were summoned to them on that day, you will strictly enjoin on our part, that, putting aside every obstacle, they come to us on the aforesaid day at Windsor, \* \* \*

\* to have a conference with us on the matters proposed, in order that by the result of the work, they may see and know that we propose to attempt nothing, except what we know will conduce to the honor and common good of our kingdom. Witness, the King, at Windsor, on the 11th day of September.

5. 1264. (Select Charters, 411-412): And because at our coming Parliament we ought to consider of our business and that of our kingdom, with the prelates, magnates, and others of our faithful subjects, we command that you send to us four of the more legal and discreet knights of the said county, by the assent of the said county elected for this purpose in behalf of the entire county, that they may be present with us, at London, on the twenty-second day of



June, to consider with us the aforesaid business. \* \* \* Witness, the king, at St. Paul's, London, on the fourth day of June.

6. 1265. Simon de Montfort's Parliament (Select Charters, 415): Likewise it is ordered that each sheriff of England cause to come two knights from the more legal, tried and discreet of each county to the king at London. \* \*

Likewise in the above form a writ is sent the citizens of York, Lincoln, and other boroughs of England, ordering to send two from the more legal, tried and discreet men, both citizens and burgesses.

Likewise in the aforesaid form order was sent to the barons and to the tried men of the Cinque Ports.

6. 1267. Statute of Marlborough (Select Charters, 336): Moreover, in the fifty-second year of Lord Henry, the son of King John, on the octave of St. Martin, the lord king himself, acting for the advancement of his realm, and for the larger manifestation of justice, as far as required by the welfare of the kingly office, having summoned the more discreet of his realm, both the greater and the lesser, it was so provided, determined and harmoniously agreed upon.

7. 1269. Annals of Wykes (Select Charters, 337): On the thirtieth day of October, having assembled all the prelates and magnates of England, as well as the abler men of all the cities and boroughs of his realm \* \* \* (to translate the relics of Edward the Confessor). \* \* \* After having completed the solemn service of the translation, the nobles began, as was customary, to consider the affairs of the king and the realm, in a kind of Parliament.

8. 1273. Annals of Winchester (Select Charters, 429): In this year, after the feast of St. Hilary, an assembly being called of all the prelates and other magnates of the kingdom at Westminster, after the death of the illustrious King Henry, there assembled the archbishops, bishops, earls, barons, abbots, priors, and from each county four knights, and from each city four, who, all being in the presence of William, archbishop of York, Roger Mortimer and Robert Burnell, who were present in place of the Lord Edward, King of England, took the oath to Edward as prince of the land, and acknowledged the obligation to maintain the peace of the realm, firmly and faithfully, \* \* \* at which Lord Walter de Merton was made Chancellor \* \* \* and it was provided that there should be no Itinerant Justices until the arrival of the Prince, except upon the Bench.

9. 1275. Patent Roll, July 24, 1276 (Select Charters, 430): Since in our first general parliament after our coronation \* \* \* in the third year of our reign, of our own free will and by the advice of our councillors, and by the consent of the commonalty of our kingdom there assembled \* \* \* we decreed.

10. 1278. Statute of Gloucester, Preamble (Select Charters, 431): The king for the amelioration of his kingdom \* \* \* called the more discreet of his realm, as well the greater as the lesser, and it was established, and harmoniously agreed upon \* \* \*

11. 1282. Parliamentary Writ: The king to the sheriff of Norfolk and Suffolk greeting. \* \* \* You will cause to come to us \* \* \*

\* also four knights from each of the said counties, having full power in behalf of the commonalty of the said counties; and from each city, borough and market town, two men, also having power in behalf of their commonalties to hear and to act about these matters, which on our part we shall cause to be shown to them.

12. 1283. Parliamentary Writ to the City of London (Select Charters, 467-8): And because we wish to have a conference with our faithful subjects about what ought to be done with David (King of Wales) \* \* \* we command that you cause to be elected two citizens of the wiser and more competent of the said city, and send them to us, so that they shall be with us at Shrewsbury on September thirtieth to confer with us about this and other matters. Witness, the King, at Rothelan, on the twenty-eighth day of June.

In the aforesaid form it was commanded to each and every sheriff of England that in each county they cause two knights to be elected, of the more discreet and able of that county, to come to the king in behalf of the commonalty of the said county, so that they shall be present with the king on the thirtieth day of September, at Shrewsbury, to confer with the king about these and other matters.

13. 1285. Statutes of the Realm, I., 104 (Select Charters, 434): The prelates, regular clergy and other ecclesiastical persons, and also the earls, barons and other secular or lay persons, petitioned the lord king in his Parliament at Westminster \* \* \* that the lord king should confirm by his power the charters granted by his ancestors, the kings of England, or by others, to their predecessors or ancestors and confirm them by his favor; whence the lord king having considered this matter with his council, granted the confirmation of the charters.

14. 1290. Parliamentary Writ (Select Charters, 477-9): The King to the sheriff of Northumbria greeting: Since \* \* \* we wish to have a conference and meeting, we order you to have elected, without delay, from the said county two or three knights of the more discreet and capable, and cause them to come to us at Westminster \* \* \* with full power for themselves and for the whole commonalty of the said county, to consult and consent for themselves and for that commonalty in those matters which the said earls, barons, and nobles, shall have brought forward at that time to be agreed upon. Witness, the King at Westminster, on the fourteenth day of June.

15. 1294. Parliamentary Writ (Select Charters, 481-2): The King to the sheriff of Northumbria, greeting: Since we wish to have a conference and meeting with the earls, barons and other magnates of our realm, on the day following the feast of St. Martin, about certain arduous business touching us and our realm, we require that you cause to be elected two knights from the more discreet and more capable of the said county, and cause them to come to us at Westminster, and that they be there on the day set, with full power

for themselves and for the entire commonalty of the said county to consult and assent, for themselves and for that commonalty, in those matters which the earls, barons and principal men aforesaid amicably shall have decided in the premises; and so that the business shall not remain unfinished for lack of power of this kind.

The King to the sheriff of Northumbria, greeting: Since recently we required that you cause to come to us at Westminster, on the day next after the feast of St. Martin, with full power for themselves and for the entire commonalty of the said county, two knights of the more discreet and more capable of the said county, elected by the consent of the said county, to consult and assent for themselves and for that commonalty in those matters, which the earls, barons and principal men of our realm shall establish, we specially require that besides those two knights you will cause to be elected two other knights, legal and capable, and you will cause them to come with the said two knights to Westminster, so that on the said day they shall be there, to hear and to do what at that time and place we shall enjoin upon them more fully. \* \* \*

SUMMARY OF REPRESENTATION OF THE COMMONS, 1213-1294.

(Table includes only cases where the number is definitely known).

DATE.	PLACE.	COUNTIES.	BOROUGH.
1213.	*St. Albans .....		
1213.	Oxford .....	4	0
1254.	Westminster .....	2	0
1261.	St. Albans .....	3	0
1264.	Westminster .....	4	0
1265.	" .....	2	2
1273.	" .....	4	4
1275.	" .....	2	0
1282.	Northampton .....	4	2
	York .....	4	2
1283.	†Shrewsbury .....	2	2
1290.	Westminster .....	2	0
1294.	" .....	4	0

\*Reeve and four men from royal demesne. †Twenty-one towns.

c. The Model Parliament, 1295.

1) Composition; cf. Simon's Parliament, 1265.

*Summons of Archbishop of Canterbury to Parliament, 1295 (Select Charters, 484-5):*—The king to the venerable father in Christ, Robert, by the same grace Archbishop of Canterbury, primate of all England, greeting. As a most just law, established by the careful providence of sacred princes, exhorts and decrees that what affects all, should be approved by all, so also, very evidently should common danger be met by means provided in common. You know sufficiently well, and it is now, as we believe, known through all regions of the world, how the King of France fraudulently and craftily deprived us of our land of Gascony, by withholding it unjustly from us. Now, however, not satisfied with the aforesaid fraud and injustice, having gathered together for the conquest of our kingdom a very great fleet, and a very large force of warriors, with which he has made a hostile attack on our kingdom and the inhabitants



of the kingdom, he now proposes to stamp out the English language altogether from the earth, if his power should be equal to the detestable task of the proposed iniquity, which God forbid. Because, therefore, darts seen beforehand do less injury, and your interest especially, as that of other fellow citizens of the same realm, is concerned in this affair, we command, you strictly enjoining you in the fidelity and love in which you are bound to us, that on the Lord's day next after the feast of St. Martin, in the approaching winter, you be present in person at Westminster; citing beforehand the dean and chapter of your church, the archdeacons and all the clergy of your diocese, causing the same dean and archdeacons in their own persons, and the said chapter by one suitable proctor, and the said clergy by two, to be present along with you, having full and sufficient power of themselves from the chapter and clergy, for considering, ordaining and providing along with us and with the rest of the prelates and principal men and other inhabitants of our kingdom how the dangers and threatened evils of this kind are to be met. Witness, the king at Wengham, the thirtieth day of September.

*Like summons were sent to the Archbishop York, eighteen bishops, and, with the omission of the last paragraph, to seventy abbots.*

*Summons of the Earl of Cornwall to Parliament, 1295, (Select Charters): 485-6.*—The King to his beloved and faithful kinsman, Edmund, Earl of Cornwall, greeting. Because we wish to have a conference and meeting with you and with the rest of the principal men of our kingdom, to provide remedies for the dangers which in these days threaten our whole kingdom; we command you, strictly enjoining you by the fidelity and love in which you are bound to us, that on the Lord's day next after the feast of St. Martin, in the approaching winter, you be present in person at Westminster, for considering, ordaining and doing with us, and with the prelates, and the rest of the magnates and other inhabitants of our kingdom, as may be necessary to meet dangers of this kind.

Witness, the king at Canterbury, on the first day of October.

*Like summons were sent to seven earls and forty-one barons.*

*Summons of Representatives of Shires and Towns to Parliament, 1295, (Select Charters, 486):*—The King to the sheriff of Northamptonshire. Since we purpose to have a conference and meeting, with the earls, barons and other principal men of our kingdom to provide remedies for the dangers which in these days threaten the same kingdom; and on that account, have commanded them to be with us, on the Lord's Day next after the feast of St. Martin, in the approaching winter, at Westminster, to consider, ordain, and do, as may be necessary for the avoidance of these dangers; we strictly require you to cause two knights from the aforesaid county, two citizens from each city in the same county, and two burgesses from each borough, of the more discreet and capable, to be elected without delay, and to cause them to come to us, at the aforesaid time and place.

Moreover, the said knights are to have full and sufficient power, for them-



selves and for the commonalty of the aforesaid county, and the said citizens and burgesses for themselves and for the commonalty of the aforesaid cities and boroughs separately, then and there to do what shall be ordained by the common advice in the premises; so that the aforesaid business shall not remain unfinished in any way for defect of this power. And you shall have there the names of the knights, citizens and burgesses, and this writ.

Witness, the king at Canterbury, on the third day of October.

*Like summons were sent to the sheriffs of each county.*

- 2) Powers and procedure.
- d. The Confirmatio Chartarum, 1297.
  - 1) Occasion.
  - 2) Cf. Magna Charta.

### CONFIRMATIO CHARTARUM

(SELECT CHARTERS, 487-97).

I. Edward, by the grace of God, King of England, Lord of Ireland, and Duke of Guyan, to all those that these present letters shall hear or see, greeting. Know ye, that we, to the honour of God and of Holy Church, and to the profit of our realm, have granted for us and our heirs, that the Charter of Liberties and the Charter of the Forest, which were made by common assent of all the realm, in the time of King Henry our father, shall be kept in every point without breach. And we will that the same charters shall be sent under our seal as well to our justices of the forest as to others, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs in the which it shall be contained, that they cause the aforesaid charters to be published, and to declare to the people that we have confirmed them in all points, and that our justices, sheriffs, mayors, and other ministers which under us have the laws of our land to guide, shall allow the said charters in pleas before them, and in judgments in all their points; that is, to-wit, the Great Charter as the common law, and the Charter of the Forest according to the Assize of the Forest, for the wealth of our realm.

II. And we will that if any judgment be given from henceforth, contrary to the points of the charters aforesaid, by the justices or by any other our ministers that hold plea before them against the points of the charters, it shall be undone and holden for nought.

III. And we will that the same charters shall be sent under our seal to cathedral churches throughout our realm, there to remain, and shall be read before the people two times by the year.

IV. And that all archbishops and bishops shall pronounce the sentence of great excommunication against all those that by word, deed, or counsel, do contrary to the aforesaid charters, or that in any point break or undo them. And that the said curses be twice a year denounced and published by the prelates aforesaid. And if the same prelates or any of them be remiss in the denunciation of the said sentences, the Archbishops of Canterbury and York

for the time being, as is fitting, shall compel and distrein them to make that denunciation in form aforesaid.

V. And for so much as divers people of our realm are in fear that the aids and tasks which they have given to us beforetime, towards our wars and other business, of their own grant and goodwill, howsoever they were made, might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and so likewise the prises taken throughout the realm by our ministers: we have granted for us and our heirs, that we shall not draw such aids, tasks, nor prises into a custom for anything that hath been done heretofore or that may be found by roll or in any other manner.

VI. Moreover we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth will we take such manner of aids, tasks, nor prises, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.

VII. And for so much as the more part of the commonalty of the realm, find themselves sore grieved with the maletote of wools, that is, to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same; we, at their requests, have clearly released it, and have granted for us and our heirs that we shall not take such thing nor any other without their common assent and goodwill; saving to us and our heirs the custom of wools, skins, and leather granted before by the commonalty aforesaid. In witness of which things we have caused these our letters to be made patents. Witness, Edward our son, at London, the 10th day of October, the five and twentieth year of our reign.

And be it remembered that this same charter in the same terms, word for word, was sealed in Flanders under the king's great seal, that is to say, at Ghent, the 5th day of November, in the 25th year of the reign of our aforesaid lord the king, and sent into England.—(*Statutes of the Realm*, i. 124, 125).

## 2. Legislation and judicial changes.

### a. Statutes and enactments.

STATUTE OF MERTON, 1236—Laws of England not to be changed.

PROVISIONS OF OXFORD, 1258—Church reformed; royal officers to report; chancellor not to seal by sole will of the king; three parliaments annually.

PROVISIONS OF WESTMINSTER, 1259—Regulated feudal dues; anticipates Mortmain; omits death by misadventure from cases for Itinerant Justices.

DICTUM OF KENILWORTH, 1266—King's liberty of power; right of appointment; Provisions of Oxford repealed; act of resumption; amnesty.

STATUTE OF MARLBOROUGH, 1267—Provisions of Westminster in statute form.

STATUTE OF WESTMINSTER I., 1275—Regulated feudal incidents and judicial matters, checking abuses; felonious clergy in King's courts.

STATUTE OF GLOUCESTER, 1278—Forty-shilling debts; *De quo warranto*.

- STATUTE OF MORTMAIN, 1279—*De viris religiosis*; against appropriation of lands or holdings so that they come into mortmain.
- STATUTE OF WALES, 1284—Settled the administration of that country.
- STATUTE OF WESTMINSTER II., 1285—*De donis conditionalibus*; entails; circuit of assizes, two or three times a year.
- STATUTE OF WINCHESTER, 1285—Assize of arms; hue and cry; watch and ward; highways cleared; arms to be kept.
- STATUTE OF CIRCUMSPECTE AGATIS, 1285—Ecclesiastical courts to be regulated; only penances, tithes, mortuaries, perjury, and spiritual offenses.
- STATUTE OF WESTMINSTER, III., 1290—*Quia Emptores*; checked subinfeudation and allowed alienation.
- CONFIRMATIO CHARTARUM, 1297—Great Charter and Charter of the Forest re-published; Aids and Prises not a precedent; no more to be taken without common consent, except the ancient aids and due prises; Maletote on wool discontinued.
- ARTICULI SUPER CARTAS, 1300—Chancery and King's Bench to follow the king; Exchequer and Common Pleas at Westminster.
- STATUTE OF CARLISLE, 1307—Forbids payment of tallage on monastic property and other imposts, to send to Rome.

- b. Final division of the Curia Regis.
- c. Development of the chancellor's jurisdiction.

## VII. DEVELOPMENT OF PARLIAMENTARY POWERS, 1307-1461.

### A. BIBLIOGRAPHY.

#### 1. Original.

- a. Edward II., Edward III., and Richard II.
- ADAM OF USK: Chronicle.
- CHAUCER: Poems.
- DOMESDAY BOOK OF ST. PAUL'S: Edited by Hale.
- FASCICULI ZIZANIORUM: (Wiclif).
- FORTESCUE: The Governance of England.
- FROISSARD: Chronicles.
- HUTTON: Edward III. and his Wars.
- JEHAN LE BEL: Chroniques.
- KNYGHTON: Chronicle.
- LANGLAND: Complaint of Piers the Ploughman.  
Deposition of Richard II.
- MERIMUTH: Chronicle.
- POLITICAL SONGS FROM EDWARD III.: Edited by Wright.
- RALPH HIGDEN: Polychronicum.
- ROBERT OF AVESBURY: Historia de miraculis gestis Edwardi Tertii.
- THOMAS OF WALSHINGHAM: Historia Anglicana.
- b. The Fifteenth Century.
- ANNALES HENRICI QUARTI.

- ARRIVAL OF EDWARD IV.: Edited by Bruce.  
 HALL'S CHRONICLE.  
 JOHN CAPGRAVE: Chronicle of England.  
 LETTERS AND PAPERS OF RICHARD III.: Edited by Gairdner.  
 MONSTRELET: Chronicle.  
 MORE: Life of Edward V.  
 PASTON LETTERS.  
 POLYDORE VERGIL: *Historia Anglica*.  
 ROBERT FABYAN: Chronicle.  
 TITUS LIVIUS: *Gesta Henrici Quinti*.
2. Secondary.
- ASHLEY: *English Economic History*, Vol. I., Book I., Chap. I.  
 CREASY: *History of England*, Vol. II., esp. Chaps. III.-V. and X.  
     *English Constitution*, Chap. XIV.  
 CREIGHTON: *History of the Papacy*, Vol. I., pp. 101-115.  
 CUNNINGHAM: *Growth of English Industry and Commerce*. Vol. I.,  
     Book III., Chap. II., Sec. 92; Chap. III., Sec. 102. Book IV.,  
     Chap. I., and Chap. II., Sec. 118.  
 CUNNINGHAM AND McARTHUR: *Outlines of English Economic History*,  
     Period III.  
 FEILDEN: *Constitutional History of England*, pp. 19-23, 36-42, 57-64,  
     95-97, 99-101, 103-104, 106-107, 110-111, 113-117, 131-133,  
     134-137, 150-151, 165-169, 281-285.  
 FREEMAN: *Essays*, Series I., *Reign of Edward III.*  
     Series IV. *Nobility; The House of Lords.*  
     *Growth of the English Constitution*, pp. 96-101.  
 FORTESCUE: *Governance of England*, Introduction, pp. 1-37.  
 GAIRDNER: *Houses of Lancaster and York*, Chaps. IV., V. and VII.  
 GIBBIN: *Industrial History of England*, Chap. V.  
 GNEIST: *Constitutional History of England*, Vol. II., Chaps. XV.,  
     XVI. and XIX.  
     *The English Parliament*.  
 GREEN: *History of the English People*, Vol. I., Book IV.  
 HALLAM: *Middle Ages*, Chap. VIII., Part III.  
 HUNT: *English Church in the Middle Ages*, pp. 182-218.  
 JUSSERAND: *Literary History of the English People*, Book III., Chaps.  
     I.-V.  
 LINGARD: *History of England*, Vols. III., and IV., Chap. I.  
 MILMAN: *Latin Christianity*, Book XII., Chaps. VI., VII.  
 PERRY: *English Church History*, Vol. I., Chaps. XX.-XXII.  
 PIKE: *History of Crime in England*, Vol. I., pp. 309-353.  
 POOLE: *Wicliffe and Movements for Reform*, esp. Chaps. III.-VIII.  
 RAMSEY: *Lancaster and York*.  
 RANKE: *History of England*, Vol. I., Book I., Chap. V.  
 REEVES: *History of the English Law*, Vol. III., Chap. XXIV.



ROGERS: Work and Wages, Chaps. VII.-IX. and XIII.

ROWLEY: Rise of the People, Books III., IV. and V., Chaps. I. and II.

STUBBS: Constitutional History of England, Vol. II., Chaps. XVI. and XVII., esp. Secs. 245-251, 258-259, 262-277, 286-298; Vol. III., Chaps. XVIII.-XX., esp. Secs. 355-373, 423, 426-430, 433, 435-441, 451-453.

Early Plantagenets, Chap. XII.

TASWELL-LANGMEAD: Constitutional History of England, Chap. IX.

TAYLOR: Origin and Growth of the English Constitution, Book III., Chap. I., Secs. 9-14; Chap. II., Secs. 1-4, 6-7.

TRAILL: Social England, Vol. II., Chaps. VI. and VII.

TRENCH: Mediæval Church History. Lecture XXI.

WARBURTON: Edward III.

B. NARRATIVE.

1. Edward II., 1307-1327.
  - a. The favorites.
  - b. Loss of Scotland; Bannockburn.
  - c. The Ordinances and Ordainers.
  - d. Deposition.
2. Edward III., 1327-1377.
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    - 1) Edward's claim.
    - 2) Battles; Crecy, Calais, Poitiers.
    - 3) Treaty of Bretigny, 1360.
    - 4) Later course of the war; loss of almost all territory.
    - 5) Result of the war.
3. Richard II., 1377-1399.
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4. Henry IV., 1399-1413.
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  - b. Settlement of the succession.
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    - 3) Agincourt.
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6. Henry VI., 1422-1461.
  - a. Minority.
    - 1) Quarrels in the Council.
    - 2) Loss of France.
  - b. Character of the king.
  - c. Administrative failure; Cade's rebellion.

- d. The succession; War of the Roses.
  - 1) Claims of the two houses.
  - 2) Events of the war; York, Warwick.
  - 3) Deposition of Henry.
  - 4) Results.

### C. CONSTITUTIONAL DEVELOPMENT.

#### 1. Parliament.

- a. Evolution of the two houses.
  - 1) Divisions; a national council and an assembly of estates.
    - a) The three estates; Clergy, Lords and Commons; sub-divisions.
    - b) Summons; personal, general.
  - 2) Steps in the evolution.
    - a) Withdrawal of the lower clergy.
    - b) Refusal of barons and clergy to admit knights.
    - c) Change in the system of taxation.
    - d) Occasional union of knights and burgesses in petition.
    - e) Permanent union and organization.
  - 3) Advantages of two houses.
    - a) To England.
    - b) In general.
- b. Powers; development, extent and division between the two houses.
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      - 1) Immemorial right of national assembly.
      - (2) Magna Charta, 1215; extraordinary feudal dues.
      - (3) Confirmatio, 1297; all taxes but those reserved by salvo, i. e., tallage and imposts.
      - (4) Tallage; assent required 1333-40.
      - (5) Imposts; assent required 1353.
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      - (2) 1408 exclusive right recognized.
    - c) Appropriation for specific purpose.
      - (1) Assertions and practice to 1390.
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      - (2) Form of assent always maintained.
    - b) Share of Commons in legislation.
      - (1) Model Parliament, petition only.
      - (2) Development from petition to bill; steps and causes.

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