STUDIES IN THE CONSTITUTION OF MEDIAEVAL ENGLAND

SECTION X.

THE RECORDING OF THE LAW AND THE PRIVY SEAL

Official records started to be kept at the end of the XIIth century, and to give a more exact date, systematic recording began in 1199. At first all documents were done in duplicate on parchment membranes, and then sewn end to end and rolled up. The duplicates were done on three separate rolls, i. e. charter, letters patent and letter close. The Charter Roll began in 1199, at which time the Chancery was becoming increasingly formal and important, and therefore less convenient with regard to the private affairs of the king.

It was still part of the king's household in theory at the end of the XIIth century, but was becoming more and more departmentalised and was dealing only with the most important public business. Early in the XIIIth century there started the procedure of «going out-of-court», in other words a public department was introduced, and this led to a new development in the official use of seals. In administrative business a different seal was used for different purposes, as one seal was not enough in large countries. There were three methods of differentiation:

i) Pure duplicates,
ii) Different seals in different parts of the kingdom,
iii) Different seals for different departments.

Of these i) and iii) began under Henry III and these had two duplicates, one of which was kept by the Chancellor and the other by the Treasury. The latter was kept by the Chancellor's clerk in order to avoid delay in transactions of business. The clerk had a special staff of his own, and an independent writing staff. The Chancellor's clerk was purely an official of the Exchequer, who later became Chancellor of the Exchequer.

Later the king began to keep a seal for his own private use - the Privy Seal(1). Richard I took the great seal with him on the third cru-

1 For detailed accounts of the origin and use of the Privy Seal, see: J. E. A. Jolliffe, *op. cit,* pp. 385-388, 390-395; F. W. Maitland, *The Constitutional History of England,* pp. 202-203; A. L. Poole, *From* Domesday Book to Magna Carta (Oxford, 1951) p. 10; and for further detail, see F. M. Powicke, *King Henry III and Lord Edward* (Oxford 1947) Vol. I, p. 89.

sade, and left another smaller seal with W. Longchamp(2). John began the custom of using not only mere duplicates, but two different and separate seals. Henry I's Privy Seal was kept by a Chamberlain, usually an official of the Wardrobe, and there was frequent use of the Privy Seal. Later, in 1200 at Tewkesbury the Chancellor and the Great Seal no longer remained with the king, and this argues in favour of the idea that a substitute was used. But in the same year John ordered one of his agents to distrain on goods belonging to the Abbot of St. Mary's, York(1), for debt. The agent had to pay such money into the King's Chamber, not the Exchequer. If the King had wanted it put into the Exchequer he would have used the Great Seal. From then onwards the Privy Seal became a private department, and finally the third use mentioned above developed. John often used the Great Seal to authenticate orders to the Chancellor himself, and he would do this with a letter under Privy Seal.

The departmental use of the Privy Seal has a curious development in XIIIth century. It became an important public department of State and grew more and more independent of the king, there being a definite tendency towards this in the reigns of Henry III and Edward I. During the XIIIth century the Wardrobe came to be the most important branch of royal administration, both Henry and Edward using it to keep the direction of the affairs of the State under their control(2). Actually in the reign of Edward I, for quite some years a larger part of the King's revenue was put into the Wardrobe than into the Exchequer. Later constitutional troubles in the reign of Edward II prevented it from also becoming an important department of state.

By the end of the Middle Ages the Privy Seal had become too cumbersome a thing for the king to use, so another royal seal came into being - «the signet» - which played the same part at the end of the Middle Ages as did the Privy Seal at the end of the XIIIth century. It was kept by a private secretary who later became an important official, and when the New Monarchs came into power the king's secretary became a very important minister of the Crown.

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2 For further information about this important person see: A. L. Poole op. cit, pp. 352-359, 368-9.

1 Interesting information is given about the state of the Abbey of St. Mary's, York, by C. R. Cheney in *Engl. Historical Review* xlvi (1931).

2 For the functions of the Wardrobe in the reign of Henry III and Edward see F. M. Powicke *King Henry III and the Lord Edward* 2 vols.

SECTION XI.

THE WORK OF HENRY II AND THE EVENTS LEADING UP TO MAGNA CARTA

Henry II was triumphant in law, government and administration, but he made one mistake, viz. he brought the church under royal jurisdiction, and he also failed as regards his external dominions and in giving political unity to the Angevin Empire, though he applied the same principles as those which he used in England. He left England quite transformed from the state in which he found it. There was no state in Europe with a better system of government and none with such an efficient governing machinery or skilful «state mechanics». The king's law was paramount and the administration was shaking itself free of feudalism though born of it. This was essential for the ultimate welfare of England, though very hard at the beginning. In 1189 when Henry died England was very prosperous and the majority of the people had not been so happy and so well off since the Conquest. The wealth of the country made it more easy to sustain the financial exactions of Richard I, who was the most vagrant of absentee kings and who required every possible penny for his third crusade, his ransom, and his wars in France. This was a state of affairs which not only tested the machinery of government but also the administration. There was no supervising eye. Both the government and the administration stood the test fairly well.

During Richard's reign the supervision of English government was in the hands of a succession of justiciars: William Longchamp until 1191; Walter of Cou, once abbot of Rouen, from 1191 - 1195; then Hubert Walter, nephew of Glanville and finally Archbishop of Canterbury, from 1194 - 1198; and then Geoffrey Fitz Peter from 1198 until John came to the throne.

The governmental machinery was apt to be hard and oppressive and in Richard's reign these tendencies began to show themselves. Thus in 1199 whem John became king power was at the disposel of a man who was clever, spasmodically energetic, unscrupulous and greedy beyond measure. During 1204-5 Normandy and most of the Angevin dominions were lost. These events had important consequences and repercussions in England. Of these the most important was that firstly the king himself was now purely an English king, and this brought him into closer contact with the English barons who were consequently becoming

more strictly national during the XIIIth century. They now started to play a regular national political role. The loss of Normandy defeudalised them and presented them with a new part in English political life and new ambitions. Their ambition however was not to destroy the government but to obtain control of it. Another important event was the quarrel with the great Pope Innocent III. Hubert Walter had died in July 1205 and his death raised the question of the succession to the See of Canterbury. The Pope's nominee was Stephen Langton, who was consecrated by him at Viterbo on the 17th July, 1207. John would not accept him, and having siezed all the estates of the Church he refused even to negotiate. In 1208, after a threat, the Pope put the country under an interdict(1). In 1209 John was excommunicated. In 1211 the Pope declared John deposed from the throne, absolved his subjects from allegiance and entrusted execution of sentence to Philip II of France. However for political reasons the Pope later absolved John and gave him active support in his struggle with the barons.

It is here necessary to give o brief outline of the causes of discontent among the English barons. This discontent was almost continuous throughout John's reign. Generally speaking, the chief cause, up till the time when Church property was confiscated, was the constant financial extortion, practically entirely arbitrary. He had also annoyed the barons by his demands for personal service in the French wars, and when he failed to obtain their assistance he applied heavy scutages. Until the year 1205, (the year in which Hubert Walter died), the financial discontent was limited to the barons only. After John's quarrel with the Church John was satisfied with the financial income from his tenure of Church property and after this we hear less of the heavy levy on the country at large. The barons did not bother very much about what was happening to the Church. But discontent did not die because of these new developments; for John's character was suspicious and he did quite a number of other things to annoy the barons. One of the regular points of his policy was to employ foreign mercenaries to support his rule. John advanced some of his mercenary low-born captains to high offices and married them to great heiresses.

When John was threatened with a definite attack from France he realised his dependence on the English barons, and by a reversal of policy in the summer of 1213 he made an abject submission to the Pope,

1 See A. L. Poole, *op. cit.* pp. 445-456.

received Langton, surrendered his crown to Innocent III and received it back as fief. Two other incidents also took place at this time. The first was the Council of St. Albans, in the autumn of 1213. Naturally one of the conditions of John's submission was full restitution to the Church. The Council was held to make a definite assessment of damage, and to it were summoned the reeves and four men from all the villes on royal domains in order to give information on damage done to Church property(1). They were not summoned as members of the Council, but to give evidence. This incident is important and interesting as an example of representatives of other classes than the Tenant-in-chiefs being brought to a Council meeting for any purpose whatsoever. This occurred when Fitz Peter was the Justiciar. The second incident took place when John wanted to show his intention to bring representative members into the body of Council itself. The result was the Council at Oxford (November 1213). Writs were sent to the sheriffs and they were told to summon four discreet knights from each shire, who were to come to Oxford to discuss with the King the affairs of the realm(2). It looked as though the knights were to be actuel members of Council themselves and fully representative. Except for the writ nothing is known of this Council. There are no records of what occurred at the meeting, or as to whether it ever took place at all, and no knowledge of whether four knights were ever selected and sent.

In 1214 King John's last serious attempt to recover his lost French dominions brought the baronial discontent in England to its height, and it reached o point when it was ready for open insurréction. John had planned a great enterprise against Philip Augustus. He arranged a diplomatic coalition by which Philip was to be attacked simultaneously by John from Acquitaine and his allies Emperor Otto IV and the Count of Flanders. John expected both military service and an unprecedented amount of aid. The discontent was at its highest amongst the Northern barons, and not only did they refuse to go and fight in France, but they proceded to organise resistance at home while the king was fighting abroad. In addition, the justiciar Geoffrey Fitz Peter had died on the 14th of October, 1213, and the King had appointed in his place, just before he sailed for France, Peter des Roches. Peter des Roches was very ruthless, but at the same time a very able man. The appointment

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1 See F. M. Powicke *Stephen Langton* pp. 113-116.

2 See interesting note on this Council in A. L. Poole, *op. cit.* p. 463.

was by no means liked by the barons, who did not trust him. «As justiciar he was responsible for the government of the country in the King's absence, and he undoubtedly increased the baronial discontent by his ruthless efficiency»(1). John's campaign was a complete failure. Philip gained a crushing victory at Bouvines over John and his allies. When John returned in October the discontented barons were in almost open rebellion. Their unofficial leader was Langton and they had the support, on the whole, of the Church. In November the barons held a council at Bury St. Edmunds, where they adopted Henry I's Charter as a definite programme and took a solemn oath to renounce allegiance to the King unless he conceded to all their demands. Most of the barons were men coming from families which had risen to wealth and importance through the administrative service of Henry I and Henry II. In the early partof April 1215 the rebels assembled in arms at Stamford - the Army of God and the Holy Church. Robert Fitz Walter was made the leader. On John's refusal to cede to the terms they marched on London and the City opened its gates to them. Finally, on June the 19th at Runnymede John sealed the Great Charter with the great seal, but did not sign it.

SECTION XII.

HISTORICAL ATTITUDES TO MAGNA CARTA

The general opinion concerning Magna Carta has gone through three stages(2).

I. In the XVIIth century it was taken as the prime foundation of the English constitution. It was treated with such veneration as to make critical study impossible. Almost it was considered as «holy writ». The opinions on it were unhistorical, but the mere fact of this made it the more potent in political history. Points were appealed to. Its clauses were supposed to have established: (i) Parliament and parliamentary government, (ii) Trial by jury, (iii) No taxation without repressenta-

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1 A. L. Poole *op. cit.* p. 465.

2 I have found W. Mc Kechnie's *Magna Carta, a Commentary* 2 ed. (Glasgow 1914) a most useful work in this connection.

tion, (iv) No arbitary imprisonment, (v) Freedom of justice. These were supposed to have been assured by the Great Charter.

II. The XIXth century view is more critical. Scholars really attempted to appraise the Charter's significance when first drawn up, as well as its subsequent influence and importance. The XIXth century scholars recognised that all the consequences which actually followed were not necessarily forseen or intended by the drafters. This induced the necessity of historical students studying the Charter in the light of the conditions of 1215, and historians attempted to discover, not only what its clauses did procure in the long run, but also what the barons of that time had intended to procure. (The outstanding exponents of these views are W. Stubbs and F. W. Maitland).

III. With the XXth century a reaction set in against the absured adulation of the Charter. Historians started to express the view that the Magna Carta was simply a reactionary feudal document, constructed solely in the interests of the barons, and mainly inspired by equally selfish class reasons. (The exponents of this view are C. Petit-Dutaillis, G. B. Adams, and, more recently, J. E. A. Jolliffe).

W. Stubbs represents the school of enthusiastic admirers of Magna Carta, but he tempers his admiration by the knowledge of necessary critical treatment. In his view it is the most important of all constitutional documents. It is the work of people of three estates collected and combined in one national purpose, and securing in one bond both their own rights and those of all men. Stubbs emphasises the way in which the Charter safeguarded the ordinary freeman's rights and those of the merchant classes, claiming that this shows the barons had a national purpose and were not bent only on purely selfish ends, and he declares finally that the Charter was the first great public act of the nation after it had realised its own identity.

Stubbs was a man of his century and time. Maitland was more critical and more legal minded. According him, on the whole the Charter contains little that is absolutely new: it is more a restoration of former rights, and is even retrogressive. Yet with all its faults the document becomes, and rightly becomes, a sacred text - the nearest approach to an irrepealable, fundamental statute that England has ever had, for in brief it means that the King is and shall be below the law.

SECTION XIII.

THE FORM AND CONTENT OF MAGNA CARTA.

Firstly, Magna Carta is, as its name implies, a charter or deed of gift. The King, on behalf of himself and his heirs, gives and concedes to the English people and their descendants certain rights, privileges and liberties. Secondly, it is also a treaty of peace between the insurgent barons and the King and his supporters. Thirdly, it is a declaration of rights, which, although they appear to be concessions by the King, the barons assert as belonging to them already. Fourthly, it is a long, miscellaneous code of laws. Moreover, as a whole, it has certain other characteristics. It is severely practical and containt next to nothing of theorising. It is not a declaration in general terms of the rights of the English people. It also contains practical remedies for actual abuses. This shows the great danger of drawing conclusions from supposed abstract principles and then asserting that Magna Carta intended to secure them. Lastly, it is a very definite document, plain and precise in expression except in one or two significant places. Generally speaking, anyone can understand it. A number of uneducated men of 1215 could understand it when read and translated. It means precisely what it says.

The significance of Magna Carta in 1215 was very great. The King was beaten by baronial opposition and admitted it, though it is true he had no intention of keeping his promise. Secondly it marked a change in the political situation in England. Up till 1215 political rivalry had rested between the Crown on one side, supported by the Church, and the commonalty and baronage on the other. Now the Crown was opposed by the barons, the Church and the people as a whole, (i. e. London). Thirdly the Charter marks the final abandonment by the English barons of the monarchial ideas of feudalism. The English baronage has now taken up its new political role; henceforth the ambitious noble, instead of aiming at local independence and throwing off all political authority, with other great men to control the Crown. Ithus became the role of the baronage for the rest of the Middle Ages to carry on the efficient working of Henry's political machine, and for good and evil it was their ambition not to break it but to control it.

In all modern printed versions of Magna Carta it is divided into clauses. There are sixty-three of these clauses in all. This division did not exist in the originals. The clauses introduced by subsequent editions are a logical division in subject-matter, but when the division is made

we find little systematic arrangement in order. Often the association is only verbal and the Charter frequently returns to a subject already dealt with.

If we sum up briefly the contents of Magna Carta it runs as follows: -

Clause 1: Is a general clause dealing with the rights of the Church.

Clauses 2 - 11: Are a series of clauses dealing with feudal rights and liberties and promising on the King's behalf not to repeat former abuses which had been the cause of grievance to the barons. These clauses are purely feudal.

Clauses 12 - 14: These are the most famous clauses, dealing with the payment of scutages and aids, and stating that these should no long be imposed arbitrarily, with the exception of three instances, and then again only by the common consent of the realm. The thirteenth clause deals with the rights of the City of London, and the fourteenth defines how the various rights set forth in the twelfth and thirteenth clauses are to be obtained.

Clause 15: Secures for all sub-tenants of great lords the same rights in respect of their lords as a tenant-in-chief has from the Crown.

Clause 16: This is another purely feudal clause.

Clauses 17 - 22: These are a series of feudal clauses dealing winh legal procedure and method. In general Clause seventeen deals with the Common pleas not following the King, eighteen and nineteen deal with the possessory assizes, and twenty to twenty-two deal with the method of imposing fines.

Clause 23: A clause dealing with bridge making.

Clause 24: Again concerns law, and states that no sheriff is to hold pleas.

Clause 25: Deals with legal questions and the arbitary raising of money.

Clause 26: Deals with the King's debts.

Clauses 27 - 31: Deals with feudal services, chiefly purveyance, a royal right.

Clause 33: Concerns fish weirs. There were none except on the coast.

Clause 34: Deals with legal procedure curtailing certain privileges of the Crown.

Clause 35: Deals with weights and measures.

Clause 36: Legal procedure.

Clause 37: Prerogative of wardship.
Clauses 38 - 40: Deal with law.
Clauses 41 - 42: The rights of merchants.
Clause 43: Wardship.
Clause 44: Deals with forest law.
Clause 45: Deals with the appointment of judges and sheriffs.
Clause 46: The rights of patronage to religious foundations.
Clauses 47 - 48: Concern forest law.
Clause 49: Deals with contemporary herbages.
Clause 50: Deals with the question of mercenaries.

The rest of the clauses, with one exception, deal with the contemporary conditions and events of 1215. Clause 54 restricts the rights of women by forbidding them to appeal for any reason, except on the death of their husbands. Clause 60 secures for all sub-tenants, in respect of their lands, the same privileges which the Charter secured from the King for the barons. Clause 61 establishes elaborate provisions for carrying out the terms of the Charter if the King should fail in his promises. In effect it means that a committee of twenty-five barons are specifically empowered to make war on the King if he breaks any of his engagements.

SECTION XIV.

CLASSIFICATION AND ANALYSIS OF SOME OF THE CLAUSES OF MAGNA CARTA

The first difficulty in studying Magna Carta is the classifying of the sixty-three clauses in order to make the Charter comprehensible. McKechnie says that this can be done under the following headings: (a) The Royal powers affected, (b) its contents, progressive, reactionary or declaratory, (c) the classes in the realm who specially benefit by them. However there are also three prime points contained in the Charter:

i) The Charter supplies a careful catalogue of the ways in which a mediaeval king could misgovern his realm.

ii) The Charter throws a most instructive light on the nature of English history in that what we now consider to be the most important clauses seemed comparatively unimportant to contemporaries.

iii) Only in the Charter can we discover the answer to the question of what were the motives of the discontented English barons, and whether they were selfish reactionaries or patriotic men with an extraordinary grasp and realisation of the unity of the realm. The answer is that the barons were neither solely one nor the other. They had only a dim comprehension of the essential unity of the realm as a community, but this comprehension did, up to a point exist. On the whole they were ordinary men and tolerably honest.

Clauses 12 and 14 of the Magna Carta are of national importance and require separate consideration. These two clauses appeared only in the original Charter of 1215 and not in the reissues frequently made in the XIIIth century. John made no attempt to keep his promises and within a few weeks of the sealing of the Charter civil war had already broken out. The barons called in French aid and transferred the English crown to the son of the King of France - later Louis VIII. John died the following year and the loyal barons, under William the Marshal, the Earl of Pembroke, proclaimed and crowned John's son as Henry III. Although fighting still continued for another year, by 1217 the insurgent barons had submitted, Louis returned to France and Henry III's sovereignty was acknowledged everywhere. The first reissue of the Charter was made by William the Marshal[1] on behalf of the King. This Charter was issued in November 1216, and is a royalist version of the original Charter. It omits clauses 12 and 14 amongst others, obviously because the King's Council considered that they placed too great a restriction of the financial powers of the crown. When peace was proclaimed a second re-issue of the Charter was made. This was more of a compromise, also omitting clauses 12 and 14. Through the rest of the XIIIth century the Great Charter became the rallying point for any discontented baronial feeling in the country. The confirmation of Magna Carta continued. It was frequently reissued under Henry III and Edward I up till 1297. The reissues were always of the Charter of 1225. But clauses 12 and 14 remained effectively in operation, despite their apparent disappearance. The Charter did control the form of the feudal council and caused a frequent assembly of that council during the reign of Henry III, because of a definite principle of the English government, which

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1 For further information concerning William the Marshal (1199-1219) and the events of this year see Chapter I of F. M. Powicke *King Henry III and the Lord Edward*, Vol. I. (ed. Cit).

was early recognised by the Crown that the consent of the Great Council must be gained before any general tax was laid on the nation But it is important to note that clause 12 says nothing about customs duties and other forms of taxation, consequently the levying of customs duties, which the increasing prosperity of the realm made most fruitful, remained within the power of the Crown. This control was only limited for the first time in 1297. Furthermore, not for a long time after the sealing of Magna Carta did taxation become in the full sense national. During this time it remained sectional, i. e. separate taxes for different classes, orders, etc. Subsequent kings of England did not consider they were infringing Magna Carta when they dealt separately with different orders of the community. For example, not till the middle of the reign of Edward III did the Crown cease to raisetallages from a town without consulting Parliament. The fact remains that clause 12, despite its subsequent influence, was really intended in 1215 to control the King's power of putting inquisitions on the baronial landowning classes, and even when the draftsmen of the Charter mentioned Common Council of the realm and proceeded to define how it was to be obtained they provided not for a national assembly but for a purely feudal one. Clause 14 is a general one concerning the King's tenants-in-chief - a feudal court in the ordinary sense of the word. One might assume that the barons were less broadminded than John himself, for John and his advisers elected representatives to the council two years before. In fact however, whatever the barons had in mind, or whatever were their intentions, one phrase in clause 14 was sufficiently elastic to cover their admission into the Great Council, and consequently in the next eighty years, owing to a variety of causes, the feudal assembly did become a national and representative one, whose form was actually influanced and controlled by the terminology of the clause. Indeed it was clause 14 that gave Parliament - when it came into existence - its special and peculiar organisation, due to the method of summons here proscribed.

The scutage and aids effected the barons themselves, but tallage was not included, although it had been specifically mentioned in a corresponding draft of the original charter. Tallage, in 1215, meant to all intents and purposes taxation paid by the towns, but when the King took a tallage from towns of his ancient domain, by custom any lord could take tallage likewise from his own villein or towns. The barons seem to thave dropped out a phrase relating to London and this section is comparatively vague.

One comes to the final conclusion that clause 12 represents chiefly the barons' concern about themselves, rather than any impartial desire to safeguard others. And when coming to a final analysis it must be admitted that clause 12, as it actually stood in 1215, did not prohibit arbitrary taxation, but only prohibited certain forms which affected particular classes in the realm. The barons were not thinking of the King as a national King and of taxation as a national burden, but of feudal law and the King's feudal claims on them. Clause 14 illustrates the same tendency. All that the barons seem to have intended to provide, by a Common Council of the realm, was a feudal assembly. In other words it was giving formal expression to the old customary method of summoning Magnum Concilium. The draftsmen of clause 14 had no idea of representation, nor did they make any provision for the attendance of representatives from orders other than the Tenants-in-chief. Even more significant, they have no idea of the first indispensible rule for the working of a great national meeting or assembly. The decision of the majority was binding, even if there were only a minority of the assembly present.This is shown by the last phrase in the clause, «business shall proceed if all not present», which was obviously put in so that anyone who did not attend should be prevented from saying they were not bound by decisions taken because they had not been present. The stipulation that absence should not invalidate proceedings was based on the assumption that some people would stay away deliberately and refuse to pay grants voted because their own consent had not been given, and in this the barons were right. Despite all these facts, which show, on a really careful examination of the two clauses, that the barons were not trying to establish the principle of «No taxation without representation», nothing is detracted from their historical importance. The remarkable thing about them is that such extraordinary and far reaching results did follow, which could not possibly have been forseen by the men who drew up the Great Charter. Judging from these results in subsequent history the really important thing was not what the barons actually intended, but what succeeding generations thought that they intended, for there is no doubt that clause 12 did in effect, throughout the XIIIth century, produce a tacit admission by the Crown that a council's permission must be obtained before any financial burden could be laid on the country and that clause 14 did produce a national representative effective and influential than any other in Europe. Clause 14 laid down a special method of summons, an individual one for great men and

a general one for the sheriffs and lesser men. During the century it became regular custom to call to councils by this general summons (a) knights elected in county courts, (b) burgesses sent by corporate towns. By the time this assembly became tolerably representative of the estates of the realm, and when it was eventually formally organised, it alone in Europe took the form of two houses, all others following internal organisations and being influenced by social differences.

The two houses were made up according to the method of summons of their members. Those called by individual summons formed one house - the Lords - while those called by group summons formed the other - the Commons, which therefore contained not only members of the two estates but the majority of the members were in effect the lesser members of the aristocracy. The House of Commons was politically far more efficient, influential and important.

Clauses 12 and 14 were in many ways, according to the belief of subsequent generations, the foundations on which the English parliamentary system was gradually built up during the ensuing century and a half. Modern research has shown that while they were not the exclusive factors which gave rise to a parliament, for there were other factors working alongside them, they were in fact the most important and effective.

Clause 15 is one of the feudal clauses in the sense that by it the barons bound themselves by the same restrictions which were placed on the Crown, and in the ensuing legal clauses, from 17 to 22, the Great Charter in effect recognises and approves the elaborate system of law introduced by John's predecessors. It is of practical importance to notice that in clauses 18 and 19 the possessory assizes receive the Charter's approval and authorisation. Two judges were to be sent throughout the country four times a year to hold these assizes. The clause illustrates how popular and how frequent this method of legal procedure had become.

Clause 34 is a reactionary clause[1]. In this clause «curia» can mean jurisdiction, or right of jurisdiction. It is the most reactionary clause in the Charter. Writ Praecipe was one commonly used to introduce suits of law in which the possession of land was under dispute. In particular it was a regular part of the Grand Assize. The clause is inserted in the

[1] Breve quod vocatur Praecipe de cetero non fiat alicine de abquo tenemento und liber homo amittere possit curam suam:

Charter as an attempt to prevent the future use of this writ, with its customary result of removing the case from under the private juriscition of the lord of the land in question, to the King's Courts. The clause is also intenced to prevent the growth of common law at the expense of courts of private jurisdiction with regard to one kind of case. Royal justice had been developing at the expense of particular and local jurisdiction. So that this is in reality a reactionary clause and out of keeping with progress, as well as being contrary to the spirit which had animated the growth of national administration for a hunderd years. Probably the barons were not deliberately reactionary, but were simply desirons of defending their own property rights. Had their action been effective it would have hampered the development of national legal administration.

Praecipe functioned chiefly at the Grand Assize. English law distinguished between two different types of land disputes: (i) those about the title to land, involving right, (ii) disputes about possession involving fact of occupation. Of these (i) was settled by the Grand Assize and (ii) was settled by the Possessory Assizes. The barons had no objection to petty assizes, but did object to losing jurisdiction over cases in which tenants were disputing about their rights to landed property. This was probably not only because such cases were more lucrative, but because their own rights might be involved. Writ Praecipe was the writ which introduced all such cases in King's Courts addressed to the sheriff.

Usually at the same time as the Writ Praecipe was issued Chancery would send another writ to the lord of the land under dispute, forbidding the case to be held in his court, because the baron had put himself on the King's Assize. Action would then proceed normally. One characteristic feature of the Great Charter in this respect was that it was well kept. Nevertheless, although subsequent kings did not deliberately defy it, it was never actually operative. In cases like this of technical law there were other ways of avoiding them than by open infringement. Thus although the later kings did not openly break the clause they got round it ingeniously by other means. Barons could not use juries in private courts and thus the great advantage of Henry's innovation was lost. As a result it was generally unpopular, but lawyers circumvented it by having no more Writs Praecipe issued by Chancery. Instead a new series of writs were invented, which were similar in nature. By some ingenious legal fiction the cases to which the writs referred were made to appear ostensibly not as cases of right but of possession. They could

then be decided by petty assizes. The new «writs of entry» resembled Writ Praecipe in form, but instead of merely stating that B has complained of being unlawfully dispossessed by A, writs of entry always specified some unlawful method by which A had taken the land. After the clause alleging deforcement another clause was introduced giving a brief account of how A had entered into possession, Thus cases could be removed from thebaronial court to Royal Courts, and almost always were, for the supremacy of Royal law was not in any way impaired by clause 34. By this method the Chancery clerks introduced a form of praecipe without infringing the Great Charter.

Clause 39 was for long taken by the English legal authorities to be the foundation of the cherished English liberty of the subject and of his right to trial by jury, since «Judgement of his Peers» was taken as the foundation of trial by jury. Whatever its meaning is it cannot mean this. Trial by jury means that twelve impartial men and women decide, on evidence put forward, the guilt or innocence of the accused. The jury system was still in its infancy in 1215, and was not used then nor for a long time afterwards to decide on guilt or innocence.

In any case «judicium» does not mean verdict, but judgement or sentence, hence the phrase means sentence by his equals — «Such judgements as pass on a man shall only be given by people who are not his inferiors». Other customs show the meaning of the word «pares»: (a) Jews were judged by Jews, (b) French merchants in England had a right to a jury composed mainly of their own race, (c) in the West marches the Welsh were entitled to the same privilege. So that the word «pares» in the clause obviously can be translated as «equals» in the wide and general sense. Commentators have always found in the clause words of doubtful significance, when taken either literally or technically.

The word «vel» in the last phrase is also important. By use of the «vel» an attempt was made to set up judgement by peers as an alternative to the law of the land. The question arises, did men of 1215 consider judgement by peers not to be part of the law of the land, or has «lex terrae» a technical meaning? Some critics attempt to avoid this difficulty by explaining that «lex» was used in a special and technically legal sense. «Lex», in mediaval legal Latin, meant ordeal. The phrase «facere legam» in the clause means to make law, and is regularly used in XIIth and XIIIth century legal documents. So some writers allege that in clause 39 «legem terrae» means not only ordeal but a particular form of ordeal, viz. trial by combat, and would read it as meaning that

no man shall by punished until he has been condemned by a body of his equals, or else has failed to perform successfully the ordeal set by the court. There are two weak points in this view: (a) «lex may mean ordeal», but not when associated with «terrae», or if so this is the only instance of its having such a meaning. (b) Even if this was the meaning of «lex terrae» it would already have been implicit in the phrase «judicium parium», since this did not mean in a special technical sense so much the sentence of the court as the judgement of the court as to what ordeal should be set.

The second theory concerning these points was the old, constitutional, lawyer's theory. They maintained that «lex terrae» is given its ordinary meaning, i. e. in a general sense the law of the land. Coke claimed that it meant firstly the due process of the law, and particularly inditement or presentment by lawful men, and so the orthodox XVIIth century explanation was that «judicium parium» meant trial by jury and «lex terrae» meant regular legal procedure, i. e. inditement, court trial, and the final sentence of court. This is quite an intelligent explanation, but there are two objections against it, one of them fatal: (a) «Judicium parium» cannot mean trial by petty jury, (b) even admitting this explanation this would still make «judicium parium» tortologous, since the same meanning is already present in «lex terrae».

The third theory is the reactionary one. This is held mainly by those commentators who tend to represent the barons of 1215 simply as selfish feudal magnates, and their explanation of clause 39 is that it means nothing but a selfish assertion of baronial privilege. They explain «liber home» as really only meaning «liber teneus'» that is the Tenant-in-chief. This explanation has one advantage for the critic, in that it gives a precise meaning to the phrase «judicium parium», for if «liber homo» refers to a member of the baronage, then «judicium parium» means «by his own equals», that is by the other barons in full feudal assembly. The purpose of clause 39 is then obviously the exemption of the powerful barons from the jurisdicition of the new royal judges, who were servants of the Crown. By this clause the barons made clear their objection to all great judicial developments of the previous one and a half centuries, including the Grand Assize, itinerant justices, and the central Court at Westminster where low born professional judges decided cases in which the barons' interests were involved. The theory goes still further and gives the explanation that «lex terrae» not only means ordeal but trial by battle.

This theory is untenable for the following reasons: (a) there is no sufficient evidence that the barons did regard the royal judges as low born professionals and not their equal, (b) on the contrary there is evidence to show that royal judges were not low born but were as well born as the barons themselves, (c) it can only be defended by translating «liber homo» as tenant-in-chief, a translation without parallel anywhere else in the Magna Carta, and (d) this explanation of the Barons' point of view makes it almost irreconcilable with other clauses in the Charter, on which the barons set the seal of their approval of the legal developments of the previous fifty years.

The modern view on this question is one based on common sense. By clause 39 the barons were trying to establish the principle that a regular legal process of some kind should be an indispensable preliminary to any punishment. A study of individual cases throws light on the attitude of the period. The first case took place ten years before, in 1205. John had an insane suspicion with regard to the fidelity of William Longchamps. Deeply stung, the Marshal offered to prove his loyalty by doing battle against any accuser. The King held court, but the barons refused to pass any judgement. John wanted a legalum judicium parem sum but this they refused to give. It would appear as though the barons did not regard «judicium parium» as a special privilege. The second case took place in 1234, when a baron of the name of Nicholas de Stuteville died, leaving two co-heiresses, and his nephew Eustace took possession of his manors and estates. Thereupon the King disseized him without seeking the judgement of any court and placed the two heiresses in possession. Eustace offered a large sum for a formal judgement and the case was heard. The King was present at the hearing and admitted that he had disseized him without formal judgement, whereupon the Court gave judgement that Eustace should be replaced in possession pending an Assize of Morte D'ancestor and a writ of right, on the grounds that the King's action was illegal. In this the judge was applying clause 39. Form the nature of the case it was not default of the judgement of peers that was in question, but default of legal procedure. It was an arbitary action of the King's. A third case occurred in 1234. Following his political downfall Hubert de Burgh, the Justiciar, was declared an outlaw, together with Gilbert, without the judgement of any court. The case was brought before a court of peers, which reversed the outlawry and gave its reasons, which were, not that there has been no judgement pas-

sed by a court of equals, but (i) that the act which had provoked the King, Gilbert's rescue of Hubert from sanctuary, had been performed during wartime(1), and (ii) that the proceeding by which they had been outlawed in court had been irregular and void because no inditement had been laid against them.

Thus from these three cases it is clear that in practice the barons, as a class, did not claim the exclusive privilege of trial by other barons, but merely insisted that the Crown should not be free to make arbitrary judgements, but should proceed according to law. So this returns us to the old view concerning the last part of clause 39 and it is to be translated quite accurately as «no man is to suffer damage without a judgement of his peers or some other process of law» — the introduction of «some other» making the use of «vel» quite reasonable.

The clauses of Magna Carta not primarily pertaining to the barony are: — (1) clause 15, which definitely secures to all subtenants and vassals of great lords the same rights secured to the barons by clause 12, (2) clause 60, which secures to all free men all those rights which the King had promised to the baronial order, (3) some clauses which specifically secure to other orders than that of the barons certain special rights and liberties, for example clause 20. Henceforward no free man was to be fined except in proportion to his offence, and then not to the extent of endangering his livelihood, similar rights being secured to merchants and villeins, and (4) various clauses which affect the common people of the realm rather than the landed barons, e. g. clause 44 on forest law, etc.. and vlause 48 which forbids extortion by forest officials. The very nature of the clauses must superficially appear to be chiefly concerned with the liberties and privileges of the landowning classes. In actual fact it is not really the barons who drew up the Charter. On these points Stubbs for once seems to be too sweeping, and very probably Maitland was right.

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1 Various accounts of the work and downfall of the great Justiciar Hubert de Burgh of course exist. But for a lucid and careful estimate of his position the reader can be referred to T. F. Tout: *The Political History of England* (1216-1377), Longmans, 1905 (vol. III in the series) Chapter II, and for the case here mentioned to F. M. Powicke: *op. cit*, vol. I, pp. 140-1. Sri F. M. Powicke's learned volumes on this period give the most exhaustive assessment of Hubert de Burgh's work.

SECTION XV.

THE EFFECTS OF MAGNA CARTA.

After John's death Henry III ascended the throne, but he was too young to reign and his long minority was a fortunate political accident, having very important constitutional results. The most important of these was that the barons' capacity to control the government was strengthened. If a grown man had succeeded he might have easily acquired John's possible power. Even a weak king the baronial class would have been inclined to defy rather than to try to control. Owing to the King's minority, however, the system of regulated government deriving from Magna Carta received its first real trial. The first thing to be done was to re-establish the administration and set the government machinery running smoothly. For this the assent and assistance of the chief barons was necessary. So that two other specific consequences follow from Henry's minority: (a) the growth of a kind of administrative council, composed of a body of royal ministers, like the later Privy Council. The Council in this sense first becomes noticable in English political history. (b) The beginning of the growth of that other council which had been proscribed in clause 14. The curious fact is that despite the omissions of clauses 12 and 14 in the later issues of Magna Carta they were actually carried out in practice from the beginning of Henry III's reign. By the time of the King's majority it was already customary to have regular meetings of the **Charter Council,** usually for grants of money. Special grants were made thirteen times in the first twenty years of Henry III's reign(1).

The growth of the Charter Council is of special importance. The old view concerning its growth is presented mainly by Stubbs. The King was constantly in need of money grants, for which he had to summon council, and he found its grants more generous when he caused to be added to the assembly members of other orders and classes besides the barons. The Crown made it a regular practice first to summon knights from different county courts and afterwards citizens from the principal towns and burghs at the same time as magnates. The motive was financial. This theory was historically correct, but there were other factors.

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1 Briefly these were for the property tax in 1217, scutages in 1218, 1220, 1223, 1224, 1225, 1229, 1230, and 1231; property taxes in 1232, 1233, 1235, and 1237.

Recent research shows that it only accounts for part of the parliamentary growth, though it was the most important in the long run. Moreover it only takes account of what was in the XIIIth century a single aspect of the business done by Parliament. Consequently the old orthodox view over simplified the points at issue and rather exaggerates the financial factors while minimising the legal ones.

Throughout Henry III's reign the Charter Council met fairly regularly and gradually became a regular part of political routine. The fact that it was excerising a different kind of influence from that of the Magnum Concilium in the previous century was due to the change which was taking place in the character of the English baronage. In Henry II's reign it had been both more feudal and more cosmopolitan. In Henry III's time there was a rapid development of a strong national feeling. The old type of baronial opposition to the Crown started to take a new form. It now became an opposition to the King's method of government, not a revolt against his authority. The King's character had something to do with this, for he was weak and irresolute, a spendthrift with nothing to show for it, and was notable chiefly for his mismanagement. He was a devout Churchman, a pietist, and he had a great love of art. All through his reign he made alliances with successive Popes, and England paid heavily for these. Hence the course of English politics ran in much the same channel throughout this time and the barons and the council were occupied in keeping a check on the King's mismanagment and in trying to keep him to his promises of reform. There were also meetings of the Charter Council for the purpose of granting money, and all this was good constitutional practice for the English barons. Great resentment was felt againt the King's foreign favourites. The barons began to attempt control of the machinery of government as early as 1237. Henry promised in all his management of state affairs to abide by the advice of three baronial nominees. Eventually discontent came to a head in 1258, and by the Provisions of Oxford(2) an attempt was made to hand over the governance of the realm to a small baronial council, the standing committee of which consisted of 15 members. This proved ineffective and more baronial troubles ensued. It was at this time that the great experiment of Simon de Monfort took place, but the reign of Henry III ended with the breakdown of the Montfort experiment. The

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2 For further details concerning the *Provisions of Oxford* see: F. M. Powicke, *op. cit.* vol. II, Chapter X.

King was now relieved to a certain degree from baronial control. Consequently on his death Edward I came to the throne with all the authority that his father had ever had, as well as some useful knowledge derived from the political experiments which had been tried. From 1220 to 1272 changes took place in the Charter Council, which acquired a new name, and its meetings were often called «Parliaments».

SECTION XVI.

THE GROWTH OF THE ENGLISH PARLIAMENT

The meaning of the word «parliamentum», in its early sense, was nothing like that which we now give to it. Moreover in the XIIIth century the use of the word was not confined to England, but was also used in French and Italian politics, and in the former it became the name of an institutional body as it did in England. Its primary meaning is «conference», interchangeable with «collogium». In 1244 it appears for the first time in a state document. At that time Henry was to hold a conference with Alexander II, and a safe conduct was issued to him in order that they might meet in Northumberland. The King and the Council were to be present and the safe conduct was to hold good as long as the Parliamentum should last. Subsequently, after the meeting, a writ was issued to the Sheriff of Northumberland, ordering him to pay for all damage done in parliamentum. Matthew Paris first uses the word in 1246, and by the end of Henry IIIs' reign it was already frequently used by chroniclers to describe the meetings of theCharter Council. In general the word was only used to describe a Charter Council which also included other, additional elements. How these additions to the Council took place and how far they were representative is an important problem. The growth in numbers of the parliament was not entirely due to additions to the feudal council. It was not an absorbtion into council of other essential elements, but rather a grouping of these elements round council. Even after the Parliament became fully developed it was a long time before these new elements were considered sufficiently important to be necessary to its existance. Even in the XIVth century some parliaments consisted only of the House of Lords, yet they were considered as parliaments. As late as 1640 the King could summon the Lords only — though in this case the term «Great Council» was used.

The idea of representation goes back to the pre-parliamentary pe-

riod. In the County Courts, theoretically, all free men were present. In practice the membership was reduced to smaller numbers, but it was significant that those people who were present were there as the representatives of others. For example the steward of a manor was practically always present, and the common condition of land tenure suit was made to the county Court instead of the lord's. In addition to the full members there were others present in the court who were not full members but were representative, consisting of the local jury, who took part in legal business, reeves, and four other men.

The development of legal business under Henry II familirised men with the idea. The original jury was just a body of representative men (e. g. the jury in the Petty Assizes). They represented the verdict of the neighbourhood. «The jury, to which it was possible to have recourse to avoid the duel, was a group of neighbours called together by a public officer to answer some question on oath and state the truth concerning it. It was an institution of Frankish origin; the Frankish kings employed the jury to discover criminals and false officials; William the Conqueror introduced the jury to England and used it in the compilation of the Domesday Booy, but before the reign of Henry II it had been more frequently used for administrative purposes than judicial(1).

In the XIIIth century two lines of development took place: (a) actual changes which took place in the body which was to become Parliament, (b) the adaptation of the idea for the special purpose of bringing central and local government into closer contact. The original connecting link was the sheriff, but from Henry II onwards a second system grew up, which was more important; this was used chiefly in connection with legal business. The County Courts were constantly in touch with the new Royal Courts at Westminster. Two knights were chosen from the County courts to go to Westminster to report on what was done in a certain case. Often the central courts would send to the County Courts for information, and again knights were chosen to take back the answer. The main points here are i) the County Court was becoming regularly habituated with the process of choosing two knights to go

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1 Ch. Petit-Dutaillis, *op. cit.* p. 139; for further details on these questions see H. Brunner *Die Entistehung der Schwurgerichte,* Berlin, 1872; A. F. Pollock and Maitland *The History of Englais Law before the Time of Edward I,* Cambridge 1898; J. B. Thayer *A. Preliminary Treatise on Evidence at the Common Law,* Part I *Development of Trial by Jury,* Boston, 1896, chapter II.

from the County Court to the central government, ii) The idea of election in the County Court was becoming familiar; and this was so not only in business concerned with legal matters, but also financial matters. Election in County Courts is of supreme importance, for it meant the election of men to carry out some public business, and in the first half of the XIIIth century in the ordinary routine of English public life men were becoming familiarised with the practice of choosing knights from County Courts to discharge a public duty, with the idea of the elected men going to Westminster to carry information and report to central goverment, with the result that this particular class, becoming practised in the management of public affairs, grew accustomed to take a practical part in administration.

The effect of this development on the Charter Council is also important. During the course of the XIIIth century there were occasional additions to, or present at the meetings of, the Charter Council of knights elected in County Courts. The first example took place in 1213 at the Council of Oxford; again in 1220 two knights were chosen to assess and collect a carucage, and in 1225 four knights for each hunderd to collect a 1/15 wool tax. A fourth example occurred in 1226 when four knights were summoned from each of eight different counties to report to Council on the behaviour of Sheriffs of their counties, disputes having arisen as to the interpretation of certain clauses of Magna Carta, and in the following year, 1227, a similar summons was issued to twenty-seven counties for the same purpose. Between 1227 and 1254 there is no evidence of the custom being repeated. In 1254 however, when the King was in Gascony and in need of money it was proposed to raise a special grant from Crown tenants who were not serving, and it became necessary to test the feelings of the country gentry concerning this proposed grant. So the County Courts had to be consulted with regard to the probable reaction. Writs were sent to the sheriffs of England telling them to cause to be elected in County Courts two legal and discreet knights for the purpose of providing such aid as they might wish to grant. The sheriffs were also advised to expound diligently to County Counts how great the King's needs were and to obtain for him as big a grant as possible. Then the knights were to report to Council on what had been done. (i) The knights were not representatives so far as the Charter Council was concerned, they were merely reporters come to state a decision already given by the County Councils. (ii) Whatever discussion took place about the granting of money would take place in separate County Coun-

cils. During the rest of Henry III's reign the chief development in the from of the Charter Council took place as a result of the political troubles of 1258.

In 1258 the success of the baronial opposition led to the Provisions of Oxford which (i) provided for government being carried on by a small baronial committee, (ii) also provided for the creation of another smaller committee which undertook the ordinary business of the Charter Council. In fact if the barons had been entirely successful there would have been no Parliament at all. In 1264-1265 the extreme wing directed national affairs, and then in Simon de Montfort's Parliaments another innovation was made which was to be important in the reign of Edward I, which was that not only knights from the shires but also burgesses from the chief English towns were called. This Parliament, regarded as such, foreshadowed form which Parliament subsequently took. Though it was called a Parliament it was really more of a mass meeting of Simon de Montfort's own supporters. Actually only a handful of magnates and barons were summoned to it. Shortly after Evesham and the last seven years of Henry III's reign saw the complete suppression of baronial opposition. During the next reign the preeminent growth of the Parliamentary Institutions begins.

SECTION XVII

THE RISE OF PARLIAMENTARY INSTITUTIONS DURING THE REIGN OF EDWARD I.

The word «Parliament» came into common use during Edward's reign. It met regularly, usually twice a year. Knights and burgesses were summoned for certain periods of time. For this period there are more official records throwing light on the composition and work of Parliament. Historians have rather arbitrarily regarded assembly as the final fruit of Edward's experimenting. The Model Parliament of 1295 is one example. When Henry III died Edward was not in England. His succession was very quietly acknowledged and the first Parliament took place in January 1273, when a general oath of fealty was sworn. The regents, Walter de Merton and the Archbishop of York, held a convocation of the whole realm to swear fealty and summoned to it all magnates as well as four knights from each shire and four citizens from many burghs. Edward returned the following year. In 1275 he held two Parliaments, to both of

which knights and probably burgesses were summoned. The first of these passed what almost amounted to a code of law(1), the preamble to which says that it was passed with the sanction of the community of the realm. In 1276 there were other Parliaments, in 1277 an assembly was held to prepare for the Welsh Wars, and in 1278 another Parliament passed the Statute of Gloucester. Edward seems to have been engaged in regular experimentation, and he desired to obtain money grants from the Church for the Wels wars. In 1279 the laity granted him a scutage of 40/- per knight's fee. Edward demanded from the clergy grants of 1/15. This was seemingly not made through Parliament — at all events the Church held two separate convocations in 1280. These York and Canterbury convocations had a curious result. York decided for 1/15 over two years, and Canterbury 1/10 over there years. In 1282 the King's treasurer John Kirkeby went round the whole country, visiting particularly the County Courts and burghs to get direct promises for grants. In the same year another experiment was carried out and two provincial councils were held in York end Northampton. To these were summoned everyone having twenty librates of land, in addition to the knights from the counties and burgesses from certain towns. This was never repeated. In the same year there gathered two other assemblies. The first was in September 1283, in Shrewsbury, to try David, Prince of Wales. At this were present burgesses from twenty-one towns. The following month the Statute of Merchants was passed ot Acton Bushhill in Shropshire. A Parliament was called in 1285 but no writs of this survived. From 1286 to 1289 the King was in Gascony and there was little parliamentary business done during this time, but in 1289 a Parliament was called in the King's absence. However the lords would not grant any till he returned. In 1290, on his return, a Parliament at which only the barons were present granted an aid to the King themselves and as «far as in them lay» for the community of the realm. Edward subsequently summoned knights to the assembly and from them obtained a further grant. Between the years 1290 to 1294 the chronicles show at least two Parliaments each year. No writs have survived.

In 1295 the famous Model Parliament assembled. To this two archbishops and twenty bishops, the three heads of religious orders sixty-seven abbots and priors, seven earls and forty-one barons, and

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1 *Statutes of the Realm*, 1, 26, 27: 3 Edw. I; Stat. Westm. prim. c. I.

proctors for the lower clergy were summoned by personal writs, including special clause in the writs to the bishops.

For the Commons there were two knights from each of thirty-seven shires, two burgesses from each of a hundred and ten cities and burghs. The writs to the sheriffs directed that they should be sent to Parliament with full authority to do whatever was ordained. Although this may be taken to have been the pattern for subsequent Parliaments, still there are three things to remember, (a) although it contained all the constitutional elements of modern Parliament, men did consider Parliament complete without these, (b) not all the elements present then took the same share in functions as later, (c) one of the elements actually summoned, by its own wish declined to take regular part — i. e. those representing the parochial clergy never attended Parliament.

So the Model Parliament is only the culminating point in a chain and its chief importance is purely formal, in that it gave a pattern which was fairly regularly followed.

There is another aspect of great importance in the development of Parliament, first pointed out by Maitland:

The growth of Parliament was the result of a number of different processes going on side by side. In particular it has one feature which was never properly analysed before Maitland, and which still requires investigation, i. e. the Mediaeval English Parliament was not only a representative assembly chiefly concerned with granting the king money, but also a Court of Law, the highest in the realm. When Parliament met a vast amount of purely legal and judicial business was dealt with. Most of the sources of information on this point were neglected for quite some time. There are two documents of interest in connection with this aspect of Parliament, (a) Writs of Summons and (b) Rolls of Parliament. They are not in any way mere early forms of journals but are records of what was actually done in Parliament while sitting or immediately following its session. In the Edwardian rolls there are three particular entries: (1) Petitions, (2) Pleas, (3) Miscellaneous memoranda. Of these (1) and (2) represent forms of Parlimentary activity. The memoranda is more difficult to describe. (1) These were requests from individuals or burghs, etc.. for special relief or remedy from the King. These came at the end of Edward's reign from England, Scotland and Gascony. (2) The pleas were simply cases of law, all judicial records of which were kept on rolls, thus giving a clear picture of the procedure followed when Edward was holding Parliament.

After writs had been issued a regular process began, seemingly unconnected with Parliament. A proclamation was made in five different places that all those who wished to petition the King must present their petitions before a fixed date. Then Chancery, Treasury, Justices of the King's bench and Common Pleas had to give in a list of suits pending in their courts. The more difficult cases were handled by King and Parliament. A certain number of temporary officials were appointed as receivers and triers of petitions. These petitions were sorted into five different classes, (1) to be dealt with by chancery, (2) by the Exchequer, (3) by ordinary judges, (4) to be kept for the King in Council (5) had already been answered. This process was of great value to petitioners, not so much in the reversal of judgements as in that (a) it caused cases to be speeded up in the courts, and (b) it enabled petitions to be revised, many of which did not require legal remedy, but just special orders or commands from the King. These were followed by a special royal ordinance, applicable to particular cases, a regular feature of Mediaeval Parliament. All these things are just as important in Edward I's Parliaments as the financial difficulties. Half of Edward's Parliaments granted no money for none was asked.

In 1405 Edward was at the height of his power. Scotland was subcued, the French war successful and Gascony recovered, while, quarrels with the Church and barons were healed or dormant. Writs were issued for Parliament to be held in February 1305. Nine earls, ninety- five prelates, ninety-four barons, seventy-four knights, about two hundred citizens and one hunderd and forty-five lower clergy were summoned. In addition special writs were issued to thirty-three particular members of King's Council, while there were others present not included in any of these categories. Parliament assembled on February 28th and remained in full session for there weeks. On March 21st a proclamation was made telling the members that they might go home if they wished, but that they should be ready to return if summoned. All who were members of King's Council were to stay and also anyone with any special business. This did not mean thatParliament had ended. to sit until It continued Easter. Maitland, from the original documents that survived, analyses the work of this Parliament under five heads, (i) Discussion of affairs of state, particularly foreign affairs, (ii) Legislation, (iii) Taxation, (iv) Audience of Petitions, (v) Judicial business and determination of causes. To take these in turn:

(i) The Parliament of 1305 considered, (a) the affairs of Scotland. Edward asked the barons of Glasgow, the Earl of Caruch and John Mowbray to make up a court todecide how Scotland ought to be represented at a Parliament to be held a year later. They reported that the best plan would be to summon two bishops, two abbots, two earls, two barons and two men elected by the community of Scotland. (b) Much Gascon business was discussed and arranged. (c) In home affairs one matter was probably discussed in full assembly. Lay barons, knights and burgesses presented a common petition complaining that monks (particularly the Cistercians) were constantly exporting money and requesting that this be stopped.

(ii) There was no proper legislation ,but a roll of Parliamentary records. The King answered the petition about the monks and we know that the statute which had been requested was enacted in a Parliament at Carlisle. It may have been drawn up in 1305. Three ordinances were made (a) relating to inquests, (b) dealing with Forest Law, (c) an ordinance of Trail Bastons.

(iii) No grants were made to the King for none were asked for. (a) Bishops, abbots and barons who had done service in Scotland were asked for writs of scutage. (b) Some for the barons complained that although they had given personal service in Scotland the Exchequer was charging scutage on all fiefs, (c) As the King had recently taken a tallage from royal domains some barons asked thet they might similarly take from their fiefs.

(iv) And (v) Actual petitions consisted mostly of little strips of parchment about five inches long and three or four inches wide. On the front was the statement of grievance and prayer for remedy, Written in «homely French», addressed to «our lord the King». On the back, crosswise, the business was stated in Latin. In the answer which was returned either the remedy was defined or it was sent away empty. Below the endorsement there was usually a clerk's note. Original petitions when dealt with by King's Council were sent to the Chancery, from which writs would be issued and steps taken to put decisions into force. The original petitions registered on the Chancery Roll - not the petitions. But both petitions and decisions were recorded on the Parliament Roll. This was not an original record - in legal phrase - but a memorandum kept for official use. It was not in strict chronological order.

After the day's work in hearing petitions the latter were handed, with fresh endorsements, to a clerk, who would copy them into the Roll.

Their originals were taken to Chancery, where whatever action was necessary was taken, hence while the early Parliamentary Rolls are so fragmentary they are not very important. The Rolls of Parliament were made in duplicate however where some other official records of more importance were concerned, e. g. Statutes, Royal Ordinances. Later in the XIVth century it became more customary for all common petitions to be dealt with together and then clerks began only to enter the common petitions and not the private ones. By the middle of Edward III's reign the entry of the latter ceased altogether.

The petitions vary greatly, both in the matters under complaint, and in the rank and character of the petitioners. None were to do with important public matters. The matters brought up in this Parliament were many and dealt with various different aspect. For example a case was brought forward by the burghs in Dunwich asked to be relieved of the service of supplying ten ships to the King in wartime because the town had become so depopulated that it could not afford it. This matter was inquired into. Some others asked leave to apply special rates on citizens for the improving and strengthening of walls - murage - and roads. Then came a petition from the two universities: from Cambridge that friars of mendicant orders should be forced to submit to University jurisdiction over brawlers and disturbers of peace, from Oxford that burgesses of the city should have to build a separate prison for women offenders. Both these were granted. Many mattres connected with the welfare of monasteries were also brought up in Parliament. Then came petitions from the counties: two from Cumberland, one concerning raiders and the other against the Sheriff. When the King was in Scotland in 1304 and had ordered the Sheriff to collect supplies against his arrival, the Sheriff had done so, had received allowances made by the Treasurer and had never paid for supplies taken. In this Parliament various individual petitions were also discussed. Their nature was quite miscellaneous. All kinds of people and affairs were covered, including petitions from widows for dowers witheld by relatives, and petitions on the seizure of ships. One case concerned Eva of Stirling, who had supplied food to the garrison when it was beseiged by the Scots. Now the Scots. had seized her property and forced her to leave Scotland. The remedy for this was sought.

So it is clear that a meeting of Parliament in Edward I's time was more like a meeting of a court of law than one might suppose. Much of the parliamentary proceedings must have been informal meetings of the

King, Council, judges and some important barons and prelates. Various separate deliberations were made by various groups, even by lords not members of the King's Council, in Parliament Chamber. Other orders went to different places to deliberate, for example the clergy in convocation, probably in Westminster monastic building. Knights and burgesses probably met separately, though they probably also met together in Edward I's time and they certainly did so in the reign of Edward II. It is impossible to give dates to any of these stages, but the evolution is quite clear(2).

Ercüment Atabay

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2 These *Studies* will be continued in the forthcoming issues of the *Sosyoloji Dergisi*.