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THE  
CONSTITUTIONAL HISTORY  
OF ENGLAND

*IN ITS ORIGIN AND DEVELOPMENT*

BY

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THE History of Institutions cannot be mastered,—can scarcely be approached,—without an effort. It affords little of the romantic incident or of the picturesque grouping which constitute the charm of History in general, and holds out no small temptation to the mind that requires to be tempted to the study of Truth. But it has a deep value and an abiding interest to those who have courage to work upon it. It presents, in every branch, a regularly developed series of causes and consequences, and abounds in examples of that continuity of life, the realisation of which is necessary to give the reader a personal hold on the past and a right judgment of the present. For the roots of the present lie deep in the past, and nothing in the past is dead to the man who would learn how the present comes to be what it is. It is true, Constitutional History has a point of view, an insight, and a language of its own; it reads the exploits and characters of men by a different light from that shed by the false glare of arms, and interprets positions and facts in words that are voiceless to those who have only listened to the trumpet of fame. The world's heroes are no heroes to it, and it has an equitable consideration to give to many whom the verdict of ignorant posterity and the condemning sentence of events have consigned to obscurity or reproach. Without some knowledge

of Constitutional History it is absolutely impossible to do justice to the characters and positions of the actors in the great drama; absolutely impossible to understand the origin of parties, the development of principles, the growth of nations in spite of parties and in defiance of principles. It alone can teach why it is that in politics good men do not always think alike, that the worst cause has often been illustrated with the most heroic virtue, and that the world owes some of its greatest debts to men from whose very memory it recoils.

In this department of study there is no portion more valuable than the Constitutional History of England.

I would fain hope that the labour spent on it in this book may at least not repel the student, and that the result may not wholly disappoint those friends in England, Germany and America, by whose advice it was begun, and whose sympathy and encouragement have mainly sustained me in the undertaking. To them I would dedicate a work which must stand or fall by their judgment. And I would put on record my grateful feeling for the unsparing good-will with which my work in other departments has been hitherto welcomed. A more special debt I would gladly acknowledge to the two Scholars (the Dean of Christ Church and the Rev. G. W. Kitchin) who have helped me with counsel and criticism whilst passing the book through the Press; to whom I am specially drawn by their association with my early Oxford ambitions, and whose patient kindness an acquaintance of now nearly thirty years has not exhausted.

KETTEL HALL,  
*Christmas Day, 1873.*

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first occasion on which the laws of Henry I are recurred to as a basis of liberty, and it may be regarded as a mark of the vast increase in royal power which had accrued since the early years of Henry II. Probably few knew what the laws of Henry I were; but the archbishop took care that they should soon be informed. Another council was called at S. Paul's on the 25th of August, and there Henry's charter was produced<sup>1</sup>. It was seen at once that it furnished both a safe standing-ground and a precedent for a deliberate scheme of reform. The justiciar laid before the king the claims of the council, and died almost immediately after, on the 2nd of October<sup>2</sup>.

Council of London. The charter of Henry I produced, Aug. 25, 1213.

The king's remark on the death of the justiciar, Oct. 2, 1213.

With him the king lost his hold upon the baronage, but his first thought was one of relief: 'When he arrives in hell,' he said, 'he may go and salute Hubert Walter; for, by the feet of God, now for the first time am I king and lord of England.' This speech recalls the words addressed by the English to Henry I when he had humbled Robert of Belesme; but the circumstances were very different. The people had then rejoiced in the humiliation of a tyrant who was persecuting the king and themselves alike; John rejoices in the death of a faithful servant who had until now stood between him and the hatred of the people,—between the tyrant and his destined victims<sup>3</sup>. Geoffrey's successor was a foreigner; the king, to the great disgust of the barons, confided the justiciarship to Peter des Roches, the Poictevin bishop of Winchester<sup>4</sup>.

Peter des Roches succeeds.

Importance of the assembly at S. Alban's.

The meeting at S. Alban's is the first occasion on which we find any historical proof that representatives were summoned to a national council. The reeve and four men were probably called upon merely to give evidence as to the value of the royal lands; but the fact that so much besides was discussed at the time, and that some important measures touching the people at large flowed directly from the action of the council, gives to

sicut vitam et membra sua diligunt, ne a quoquam aliquid violententer extorqueant, vel alicui injuriam irrogare praesumant, aut scotalla alicubi in regno faciant sicut facere consueverunt.'

<sup>1</sup> M. Paris, ii. 552.

<sup>2</sup> M. Paris, ii. 558; W. Cov. ii. 215; R. Coggeshale, p. 168.

<sup>3</sup> M. Paris, ii. 559; see above, p. 168.

<sup>4</sup> R. Coggeshale, p. 168.

their appearance there a great significance. To the first representative assembly on record is submitted the first draught of the reforms afterwards embodied in the Charter: the action of this council is the first hesitating and tentative step towards that great act in which Church, baronage, and people made their constitutional compact with the king, and their first sensible realisation of their corporate unity and the unity of their rights and interests. How the justiciar would have carried on the undertaking we cannot even guess. Unfortunately, as is so often the case in great crises of history, the attention of the historians is devoted to points of minor interest; and, when we should hear of great constitutional debates, we find only the record of the doings of the legates and the bishops. The one significant fact is this,—that the king on the 7th of November summoned a council at Oxford to which, besides the armed force of the knights, each sheriff is directed to send four discreet knights from his county to discuss with the king the business of the country<sup>1</sup>. The four legal men of the demesne townships are replaced by the four discreet men of the shire: the very words, 'ad loquendum nobiscum de negotiis regni nostri,' are an omen of the institution of representative parliaments. Again however the historians forsake us, and we do not even know that the assembly was ever held.

It is a general meeting of representatives.

Obscurity of the historians.

The writ of November 7, 1213.

The eventful year came to a close without overt action. Early in 1214 John went abroad and stayed there until October; when immediately on his return he called the northern barons to account for not accompanying him. But they had been beforehand with him. They had met on the pretence of pilgrimage at S. Edmund's, and had there sworn that if the king delayed any longer to restore the laws and liberties, they would withdraw their allegiance, and would make war upon him until he should confirm the concession by a sealed charter. The propositions were to be laid before him immediately after Christmas; in the meantime a force was to be raised sufficient to begin if not to decide the struggle<sup>2</sup>. The king however accelerated the

In 1214 John goes abroad until Oct. 19.

Confederation of the barons at S. Edmund's.

<sup>1</sup> Report on the Dignity of a Peer, App. i. p. 2; Select Charters, p. 287.

<sup>2</sup> M. Paris, ii. 582, 583. The northern barons again took the lead.





























intention of claiming those territories as rightfully belonging to his Cumbrian principality. Henry II not only obtained the restoration of the northern counties from Malcolm IV, but compelled him to do homage<sup>1</sup>: William the Lion, who succeeded Malcolm, acted throughout his whole reign as a vassal of England, attending the royal courts and acquiescing for the most part in a superiority which it would have been folly to dispute<sup>2</sup>. After the unsuccessful attempt in 1174 to assist the rebellious earls, in which he was defeated and captured, Henry II imposed on him the most abject terms of submission: compelling him to surrender the castles of Lothian, and to enforce on his bishops and barons a direct oath of fealty to the English crown. From that obligation Richard released him for the sum of ten thousand marks; but neither Henry's exaction of the homage, nor Richard's renunciation of it, affected the pre-existent claims. With William the Lion it was a far more important object to recover Northumberland, Cumberland, and Westmoreland, than to vindicate his formal independence. The states he ruled or claimed to rule were as yet unconsolidated: he had little authority in the real Scotland that lay beyond the Forth, and from which his royal title was derived. The English-speaking provinces, which he held as lord of Lothian and of Strath Clyde, were as yet no more Scottish than the

counties which he wished to add to them. Yet both he and his people aimed at an independence very different from that of Wales. The Scottish bishops, who from the beginning of the twelfth century had struggled against the attempt to reduce them to dependence on York or Canterbury, refused to submit themselves to the English Church, even when they swore fealty to the English king; and actually obtained from Pope Clement III a declaration that they were subject immediately and solely to the apostolic see itself. The Scottish barons, even before they had been released by Richard, refused to be bound by the English undertaking to pay the Saladin tithe<sup>1</sup>. When it is remembered that a large portion of these barons were adventurers of Norman descent, who had obtained estates in the Lowlands, too far from the English court to fear royal interference, it is not difficult to see how the feudal principle gained its footing in Scotland in such strength as to colour all its later history. The Scottish constitution, as it appears under king David, was a copy of the English system as it existed under Henry I, but without the safeguards which the royal strength should have imposed on the great vassals. Hence the internal weakness which so long counteracted the determined efforts of the people for national independence.

The anomalous condition of the principality of Galloway, which, as an outlying portion of the Strath Clyde kingdom, clung to English protection to evade incorporation with Scotland, and was from the beginning of the twelfth century subject ecclesiastically to York, gave the English kings another standing-point beyond the border<sup>2</sup>. But although

<sup>1</sup> Bened. ii. 44.

<sup>2</sup> Galloway was under the rule of Fergus, an almost independent prince (princeps), who was connected by marriage with Henry I, until the year 1160, when the country was subdued by Malcolm. Fergus then became a canon and died the next year. On the outbreak of war in 1173, the sons of Fergus expelled the Scottish officers from their country, and in 1174 Henry sent envoys to invite them to become his vassals. They however quarreled among themselves, and Henry, finding that they intended to make a tool of him, abstained from further negotiations; and William the Lion did homage for Galloway as well as Scotland. In 1176 the king of Scots compelled Gilbert of Galloway, who had murdered his own brother Uhtred, to do homage to Henry, as a Scottish baron, under the terms of the treaty of Falaise.

Scottish  
homage from  
1174 to 1189.

The Scottish  
Church  
made im-  
mediately  
dependent  
on Rome.

Refusal to  
pay the  
Saladin  
tithe.

English in-  
fluence in  
Scotland.

Relation of  
Galloway to  
England and  
Scotland.

<sup>1</sup> Malcolm IV did homage to Henry II at Chester in 1157; he attended him at the siege of Toulouse, and was knighted by him at Tours in 1159. He did homage to the younger Henry at Woodstock in 1163. These homages were apparently due for the county of Huntingdon.

<sup>2</sup> William succeeded his brother in 1165; in 1166 he followed Henry II to Normandy, according to the Chronicle of Melrose, as a vassal, but returned shortly after. In 1170 he and his brother David did homage to the younger Henry, according to Lord Hailes for Huntingdon, according to Lord Lyttelton for Lothian: there is no decisive evidence on the point. After his release from imprisonment he frequently attended the English court; especially at Northampton in 1176, at Winchester in 1177, at Nottingham in 1179, in Normandy in 1181, at Nottingham in the same year, at London in 1185, at Marlborough in 1186. He attended on Richard at Canterbury in 1189, and was there relieved from the bondage imposed by Henry II; and was again at court in 1194 at Nottingham. In 1200 he did homage to John at Lincoln, 'salvo jure suo.' At this time the county of Huntingdon was in the hands of his brother David; it is therefore difficult to see for what the homage could have been due, unless it were for the traditional claim. Possibly William yielded it in the hope of recovering the northern counties, in which he did not succeed.































































































