

Parliaments
in 1290.

estates, and restoring them with a settlement of the English estates on the earl and his heirs by Johanna. He likewise bound the earl by oath to maintain the succession of his son Edward and any other son he might have, and of his elder daughter Eleanor, before the crown could descend to Johanna¹. Although Johanna was not the king's eldest daughter, the marriage seems to have suggested the plan of raising money on the old customary plea, and Edward determined to have parliamentary authority for the exaction, either as a justification for taking an increased rate, or as an opportunity for pleading his greater necessities.

The January parliament had left business on hand to be completed in a second session three weeks after Easter; but the marriage festivities must have occasioned further delay, for it is not until the 29th of May that the full parliament is found sitting. On that day a grant of aid *pur fille marier* is made at forty shillings on the fee. The assembly, which is called a full parliament, contained only the bishops and barons, who are said to make the grant on their own behalf, and so far as lies in them for the community of the whole kingdom². The impost fell on the tenants in chief only, and these might be fairly regarded as represented by the barons. The terms of the great charter were not infringed by the act. Nor, nearly as we are approaching the time at which the consent of the representatives of the commons became necessary for legislation, does either king or baronage show any desire for their co-operation in that department. The parliament continued to sit, employed no doubt in hearing the pleas and petitions which are found in the Rolls of Parliament³, and on the 14th of June Edward issued writs, directing the sheriffs to return two or three elected knights for each shire, who were to appear at Westminster on or before the 15th of July⁴. We can only guess at the object of this summons; it was probably to get an additional grant of money. It

¹ Dugdale's Baronage, i. 214, 215; Foed. i. 742; Lords' Report, i. 205.

² Select Charters, p. 477; Rot. Parl. i. 25; Parl. Writs, i. 20; Lords' Report, i. 200.

³ Rot. Parl. i. 15. Ralph Hengham was again in employment, *ibid.* p. 17.

⁴ Parl. Writs, i. 21.

Grant of an
aid *pur fille
marier*.Knights of
the shire
summoned.

can hardly have been for the purpose of obtaining the assent of the commons to the statute of Westminster the Third, 'Quia emptores,' which was enacted by the king at the instance of the magnates on the 8th of July, a week before the day for which the knights were summoned¹. The importance of this act, like the aid which preceded it, would at the moment be chiefly apparent to the baronage; although Edward must have seen that whatever influence it gave to the lords over their tenants, it gave in tenfold force to the king over the lords². It directed that in all future transfers of land, the purchaser, instead of becoming the feudal dependent of the alienor, should enter into the same relations in which the alienor had stood to the next lord. In this way the king and the chief lords would not lose the services and profits of feudal incidents, a danger with which the constant repetition of the process of subinfeudation threatened them. But the operation of the statute had far wider consequences. As a part of Edward's policy it bears, as has been already noted, a close analogy to the statute *de religiosis*, which is partly rehearsed in it.

Of the business transacted in the assembly called for the 15th of July, we have no formal record; but it is shown by what follows to have been of a financial character, and comprised the grant of a fifteenth of all moveables, made by clergy and laity alike. It would appear that the king proposed this to the parliament, and also demanded a tenth of the spiritual revenue³. At the same time, by an act done by himself in his private council⁴, he banished the Jews from England: the safe conduct granted them on their departure is dated on the 27th of July⁵. The writs for the collection of the fifteenth are dated at Clipstone on the 22nd of September⁶: the clergy met at Ely on the 2nd of October, and there granted the tenth⁷. The delay was probably caused by the business of valuation, the assessment of

Statute *quia
emptores*.July
parliament.
Grant of a
fifteenth of
lay property.Grant of a
tenth of
spiritual
revenue.

¹ Select Charters, p. 478; Statutes of the Realm, i. 106.

² Lords' Report, i. 169.

³ B. Cotton, p. 178; Ann. Osney, p. 326; Ann. Wigorn, p. 503.

⁴ 'Per regem et secretum concilium,' Hemingb. ii. 20; M. Westm. Flores, iii. 70; P. Langtoft, ii. 126.

⁵ Foed. i. 736.

⁶ Parl. Writs, i. 24.

⁷ Ann. Dunst. p. 362; Cont. Fl. Wig. p. 243; B. Cotton, p. 179.

The shire system is the strength of the Third Estate.

only helped to link the baronage with the burghers, but formed a compact body which neither the crown nor the sheriff could diminish, as they could diminish the number of barons summoned, or of the representatives of the towns. These knights too were men likely and able to show themselves independent: certainly they could not be treated in the way in which Charles V and Philip II extinguished the action of the Spanish cortes or quelled the spirit of the Netherlands. Their rights were rooted not in royal privilege, which he who gave could take away, but in the most primitive institutions and in those local associations which are to all intents and purposes indelible.

Sub-estate of the lawyers.

194. In the uncertainty which for some half century attended the ultimate form in which the estates would rank themselves, two other classes or subdivisions of estates might have seemed likely to take a more consolidated form and to bid for more direct power than they finally achieved. The lawyers¹ and the merchants occasionally seem as likely to form an estate of the realm as the clergy or the knights. Under a king with the strong legal instincts of Edward I, surrounded by a council of lawyers, the patron of great jurists and the near kinsman of three great legislators, the practice and study of law bid fair for a great constitutional position. Edward would not, like his uncle Frederick II, have closed the high offices of the law to all but the legal families², and so turned the class, as Frederick did the knightly class, into a caste; or, like his

Foreign classes of lawyers.

drawn between the history of the third estate in Spain and that in England. The shires furnished the only absolutely indestructible part of the parliament.

¹ 'Qu'est il plus farouche que de veoir une nation ou, par legitime coustume, la charge de juger se vende, et les jugements soyent payez a purs deniers comptants, et ou legitimentement la justice soit refusee a qui n'a de quoy la payer; et ayt cette marchandise si grand credit, qu'il se face en une police un quatrieme estat de gents manians les proces, pour le joindre aux trois anciens, de l'eglise, de la noblesse, et du peuple;' Montaigne, *Essais*, liv. i. c. 22. See p. 200, note 1 below.

² See the Constitution of Roger, confirmed by Frederick II; *Const. Reg. Sic.* iii. 39. 1; cf. Giannone, *Hist. Naples*, i. 535. Gervase of Tilbury, *Otia Imperialia*, Leibnitz, *Scr. Rer. Brunsv.* i. 943, speaking of the emperor Henry VI, says, 'Hic legem instituit apud Teutones, ut militiae *more Gallorum et Anglorum*, successionis jure devolverentur ad proximiores cognationis gradus, cum antea magis penderent ex principis gratia.' He seems however by 'militiae' to mean knightly fiefs.

brother-in-law Alfonso the Wise, have attempted to supersede the national law by the civil law of Rome; or, like Philip the Fair, have suffered the legal members of his council to form themselves into a close corporation almost independent of the rest of the body politic; but where the contemporary influences were so strong we can hardly look to the king alone as supplying the counteracting weight. It is perhaps rather to be ascribed to the fact that the majority of the lawyers were still in profession clerks¹; that the Chancery, which was increasing in strength and wholesome influence, was administered almost entirely by churchmen, and that the English universities did not furnish for the common law of England any such great school of instruction as Paris and Bologna provided for the canonist or the civilian. Had the scientific lawyers ever obtained full sway in English courts, notwithstanding the strong antipathy felt for the Roman law, the Roman law must ultimately have prevailed, and if it had prevailed it might have changed the course of English history. To substitute the theoretical perfection of a system, which was regarded as less than inspired only because it was not of universal applicability, for one, the very faults of which produced elasticity and stimulated progress and reform whilst it trained the reformers for legislation, would have been to place the development of the constitution under the heel of the king, whose power the scientific lawyer never would curtail but when it comes into collision with his own rules and precedents². The action of

Peculiar growth of the profession of law in England.

¹ On the growth of the professional lawyer class, see Foss's *Judges of England*, ii. 200; iii. 46 sq., 370-390; iv. 195 sq., 251 sq.; and Gneist, *Verwaltungsrecht*, i. 341, 350. The frequent legislation of the ecclesiastical councils and the remonstrances of the better prelates of the thirteenth century withdrew the clergy in some measure from legal practice. Edward I in 1292 ordered the judges to provide and ordain seven score attorneys and apprentices to practise in the courts; a certain number to be chosen from the best in each county, and all others excluded; *Rot. Parl.* i. 84. Fleta mentions several degrees of practising lawyers, *servientes*, *narratores*, *attornati*, and *apprentitii*.

² It is a curious point, which should have been noted in the last chapter, that Bracton, although himself clearly a constitutional thinker, gives the preference in almost all cases to the decisions of Stephen Segrave, the justiciar of Henry III, who supplanted Hubert de Burgh, and was practically a tool of the foreign party. It is clear that Segrave, although a bad minister, was a first-rate lawyer.

default of good government he had lost Scotland, Ireland, and Gascony. Fourthly, he had injured the church and imprisoned her ministers; and had imprisoned, exiled, disinherited, and put to shameful death many great and noble men of the land. Fifthly, he had broken his coronation oath, especially in the point of doing justice to all. Sixthly, he had ruined the realm and was himself incorrigible and without hope of amendment. The charges were taken as proved by common notoriety, but the queen's advisers thought it wise to obtain from the king a formal resignation rather than to furnish a dangerous precedent, and leave occasion for popular reaction. After two vain attempts to persuade Edward to face the parliament—the first made by two bishops¹ and the second by a joint committee of two earls, two barons, four knights, and four citizens chosen by the parliament—the three prelates who had had the chief hand in his humiliation, Lincoln, Hereford, and Winchester², with two earls, two barons, two abbots, and two judges, were sent to request his consent to his son's election. Edward yielded at once. Sir William Trussell, as proctor for the whole parliament, renounced the homage and fealties which the members had severally made to the king³; and Sir Thomas Blount, the steward of the household, broke his staff of office in token that his master had ceased to reign. This was done on the

¹ Parl. Writs, II. i. p. 354; the two were Winchester and Hereford, who brought their answer on Jan. 12; Ann. Lanerc. p. 257.

² Parl. Writs, II. i. p. 354; Galfr. le Baker, p. 27; Chr. Edw., ii. 313.

³ Knighton, c. 2550; M. Malmesb. p. 244; Chr. Edw., ii. 290. The words of renunciation were as follows: 'Jeo William Trussell, procuratour des prelatez, contez et barons et altrez gentz en ma procuracye nomes, eyant al ceo playne et suffysant pouare, les homages et fealtez a vous Edward roy d'Engleterre, come al roy avant ces ceures, de par lez ditz persones en ma procuracye nomes, rend et rebaylle sus a vous Edward et deliver et face quitez lez persones avantditz, en la meillour manere que lez et costome donnent, e face protestacion en non de eaux. quilz ne voillent desormes estre en vostre fealte, ne en vostre lyance, ne cleyment de vous come de roy riens tenir, Encz vous tiegnent des horse priveye persone sanz nule maner de reale dignite.' The last commission contained twenty-four members, the bishops of Winchester and Hereford, the earls of Leicester and Warenne, the barons Ros and Courtenay, two abbots, two priors, two justices, two Dominicans, two Carmelites, two knights from the north of Trent, and two from the south, two citizens from London and two from the Cinque Ports; Ann. Lanerc. p. 258; cf. T. de la Moor, p. 600; Chr. Edw., ii. 313.

20th of January. Edward II survived his deposition for eight months; but his doom was sealed from the moment of his capture. So long as he lived none of his enemies could be safe; the nation was sure to awake to the fact that his faults, whatever they might have been, were no reason why they should submit to the rule of an adulterous Frenchwoman and her paramour. His death would rob the malcontents of a rallying point for revolt. He was murdered on the 21st of September, 1327. His son's reign was held to begin on the 25th of January.

The fate of Edward II suggests questions which are by no means easily answered; and the accusations brought against him by Stratford, although in themselves mere generalities on which no strictly legal proceedings could be based, probably contain the germ of the truth. Edward had neglected his royal work¹, he had never shown himself sensible of the dignity and importance, much less of the responsibility, of kingship. He had taken no pains to make himself popular, to diminish the unpopularity brought on him by the conduct of his servants, or by working for and in the face of his people to encourage the feeling of loyalty towards his own person. Except his few dangerous favourites he had had no friends, none whom he had tried to benefit; or if he had, as in the case of Reynolds, gone out of his way to promote a servant, he had chosen his men with marvellous imprudence. He had thrown off all the business of state upon his favourites, had listened to no complaints against them, and had allowed them to commit acts of illegal oppression which he himself had neither will nor energy to command. His vindictiveness, exaggerated probably by the queen and her friends, was in itself largely to be attributed to the elder Despenser, who no doubt regarded the death of earl Thomas as necessary to his own safety; but the death of

¹ 'Ecce nunc rex noster Edwardus sex annis complete regnavit, nec aliquid laudabile vel dignum memoria hucusque patravit nisi quod regaliter nupsit et prolem elegantem regni heredem sibi suscitavit;' M. Malmesb. p. 135; Chr. Edw., ii. 191. Of Richard and John even their enemies allowed that they lived and reigned 'satis laboriose;' R. Coggesh. A.D. 1199, 1216.

Charges
against the
king.

Messages
sent to him.

Renuncia-
tion of
homage.

Completion
of the
deposition,
Jan. 20, 1327.

Insecurity of
the king's
life.

His death,
Sept. 1327.

Edward's
real mis-
government.

His neglect
of his people.

His unwise
choice of
servants.

His indolence.

His vindic-
tiveness.

Frequent
parliaments
unpopular.

regarded as synonymous with frequent taxation. On the other hand the more active politicians saw in the regular session of the estates the most trustworthy check upon the arbitrary power of the king, who was thus obliged to hear the complaints of the people, and might, if they dealt judiciously in the matter of money, be obliged to redress their grievances. With the king the feeling was reversed in each case; as a means of raising money, he might have welcomed frequent and regular sessions; as a time for compulsory legislation and involuntary receiving of advice, he must have been inclined to call them as seldom as possible. Accordingly when political feeling was high, there was a demand for annual parliaments; when the king's necessities were great and the sympathy of the nation inert or exhausted, there was a manifest reluctance to attend parliament at all. Thus in 1258 the barons under the Provisions of Oxford directed the calling of three parliaments every year, and Edward I observed the rule so far as it involved annual sessions for judicial purposes; but neither of these precedents applied exactly to the parliaments when completely constituted. Three times in the year was clearly too often for the country to be called on to send representatives either to legislate or to tax. The completion of the parliamentary constitution having rendered the necessity less pressing, the latter years of Edward I and the early years of Edward II saw these assemblies called only on urgent occasions, and this no doubt, as well as the wish to imitate the barons of 1258, led the lords ordainers¹ of 1311 to direct annual parliaments; the same question arose in 1330² and 1362, and in both those years it was ordered by statute that parliaments should be held once a year and oftener if necessary³. The same demand was made in the Good Parliament and was answered by a reference to existing statutes⁴. The question and answer were repeated in the first parliament of Richard II⁵,

Three
parliaments
in the year.

Annual
parliaments,
ordered
by the
ordainers,
and by
statute.

¹ Statutes, i. 165, art. 29.

² Statutes, i. 265.

³ Statutes, i. 374: on the subject of annual parliaments, see especially the article by Mr. Allen in the 28th volume of the *Edinburgh Review*, no. 55, pp. 126 sq.

⁴ Rot. Parl. ii. 355, art. 186.

⁵ Rot. Parl. iii. 23, art. 54.

and in 1378 the chancellor in his opening speech referred to the rule now established as one of the causes of the summons of parliament¹. In 1388 the commons even went so far as to fix by petition the time for summoning the next parliament². Examples of a contrary feeling may be found: thus in 1380 both lords and commons petition that they may not be called together for another year³. Other instances show that the need of money occasionally influenced the king more strongly than the fear of receiving unwelcome advice; in 1328 four parliaments were held, in 1340 three, and in some of the later years of Edward III and of the early years of Richard II the estates were called together twice within a period of twelve months. In those years again for which supplies had been provided by biennial or triennial grants made beforehand no parliament was called at all. The result was to leave matters very much as they were; annual parliaments were the rule; it was only in unquiet times that the commons found it necessary or advisable to insist on the observance of the rule; but when they found Richard II proposing to dispense altogether with parliament and reduce the assembly of the estates to a permanent committee, they were at once roused to the enormity of the offence against their rights.

Annual
Parliaments.

Irregularity
of sessions
accounted
for.

The determination of the place of parliament and of the length of the session rested with the king. Occasionally the place was fixed with a view of avoiding the interference of the London mob with the freedom of debate; Winchester and Salisbury were chosen by Mortimer, and Gloucester by John of Gaunt for this reason; most of the deviations from the rule of meeting at Westminster were however caused by the Welsh and Scottish wars. The power of prorogation either before or after the day of meeting rested with the king, and, although in a vast majority of instances the parliaments were newly summoned and the representative members chosen afresh for each session, the few exceptional cases of prorogation are

Place of
session fixed
by the king.

Power of
prorogation.

¹ Rot. Parl. iii. 32.

² Rot. Parl. iii. 246.

³ Rot. Parl. iii. 75: 'en priantz a nostre seigneur le roi que nul parlement soit tenuz deinz le dit roialme pur plus charger sa poevre commune par entre cy et le dit feste de S. Michael proschein venant en un an.'

