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The significance of Magna Charta in English constitutional history

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THE SIGNIFICANCE OF MAGNA CHARTA IN ENGLISH CONSTITUTIONAL HISTORY

Submitted by

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1925
Outline

I. The Norman Conquest brought together two opposing sets of institutions - the Saxon and the Norman.

A. The Saxons were Teutonic tribes with a king, whose duties were those of a permanent commander-in-chief.

B. The Witanagemot was formed by bringing together the chief men in Church and State.

C. The shire moot and hundred moot seem to have contained a more popular element.

D. The Normans were descendants of the Northmen.
   1. The institutions of the Normans were similar to those of the Saxons.

II. William desired to be a strong ruler.

A. The Normans imposed a centralized absolutism organized and operated by means of a feudal system upon the Saxons.
   1. The law of tenure was characterized by three forms:
      (a) Freehold
      (b) Copyhold
      (c) Leasehold
   2. There were three obligations called incidents, aids and services.
III. William Rufus was a harsh king, who reigned but ten years.

A. His sudden death gave the barons the opportunity of exacting a charter from Henry in return for their support.

B. In Henry I's reign there appears a smaller curia bridging the intervals of the Great Council and acting with all its powers.

1. The Small Council came to be known as the Exchequer.

IV. Stephen, Henry I's nephew, was unequal to the task of preserving the monarchy intact.

A. In his reign we have the first enunciation of the principle of "benefit of clergy".

V. Henry II went back to his grandfather Henry I.

A. His problem was to get some direct contact between the central and the local government.

B. His system of circuit courts brought a session of the central curia regis to each county.

C. By the Assizes of Clarendon and Northampton Henry -

1. Reserved criminal cases for royal courts.

2. He discouraged appeals by substituting communal accusation.

3. He discouraged "trial by combat" by issuing a writ de odio et atia.
D. The Court of Common Pleas and the Court of the King's Bench come into being to handle the increased business.

E. On account of the murder of Thomas Becket, Henry was obliged to surrender to the Church a part of the criminal jurisdiction which it had usurped.

VI. Richard reigned for nine years and was in the kingdom barely nine months.
   A. Yet the machinery of government created by Henry II worked perfectly.
   B. Hubert Walter was a man trained in the methods of Henry II.
      1. He was the administrative chief for Richard.

VII. John's reign and that of his son, Henry III, mark the most important constitutional crisis in England's history.
   A. His reign falls into three parts:
      1. The loss of Normandy.
      2. The quarrel with the Pope.
      3. The struggle with the barons.
   B. John's divorce and his subsequent marriage with Isabel of Angoulême, who had been affianced to Hugh of Lusignon, a Poitevin noble, forecasted trouble for John.
      1. Philip of France summoned John to appear before a court of his peers for insults to the Lusignons.
      2. Upon John's disregard for the summons, he was sentenced to the loss of all his French fiefs.
3. John's loss in prestige was immense, and had no small share in bringing to a head the movement for rebellion.

C. The election of a successor to Hubert Walter was a vexing question.

1. When John refused to receive Stephen Langton, the Pope's candidate, Innocent placed the realm under the interdict.

2. The Pope sent Philip of France on a Crusade to expel the English king from his realm.
   (a) John knew it was time to submit.
   (b) England became a fief of the Pope's.
   (c) John changed the Pope from an enemy to a political friend.

D. The increase of the weight of feudal obligations, and the infringement of feudal jurisdictions were bitterly resented by the barons.

1. The lower orders were not exempt; the lower orders and merchants were also subject to John's abuses.

2. Only an opportunity for rebellion was required.

E. John returned humiliated from Poitou in September, 1214.

1. He brought matters to a head by demanding a scutage from the barons who had refused to accompany him to Poitou.
2. Under the leadership of Stephen Langton, the barons demanded the confirmation of Henry I's charter.

3. On June 15, 1215, John set his seal to the Great Charter.

VIII. These forces piling up against the Crown since the Conquest found expression in the issue of Magna Carta.

A. Analysis of its clauses shows that Magna Carta is purely a feudal document.

1. The Barons immediately attacked what was to their eyes the greatest of John's abuses, his arbitrary increase of feudal obligations.

2. C.12 has been called a constitutional clause and has been supposed to secure the right of consent to taxation.

   (a) But taxation without representation is a very modern idea.

3. C.14 has also been called constitutional and it has been supposed to be related to the creation of Parliament.

   (a) The composition of the council was purely baronial.

4. C.34 is plainly reactionary.

   (a) By this clause the barons struck directly at royal aggression against their feudal courts.
5. C.36 has an important bearing upon trial by combat and none at all upon habeas corpus as is often supposed.

6. It is usual to read C.39 as containing a guarantee of trial by jury to all Englishmen, as absolutely prohibiting arbitrary commitment and as dispensing free and equal justice to all.

   (a) Here as in C.21, the barons wished all cases to be judged before their fellow men and by the duellum.

7. C.60 is probably only confined to freeholders.

8. C.61 provides the machinery for all that precedes it.

IX. Was Magna Carta the result of a popular uprising?

   A. The "liber homo" in C.34 was the holder of a freehold estate of some extent, a great barony, or at least a manor.

      1. This excluded villeins and most burgesses.

   B. The merchants and trading classes received but a poor return for the support given by them to the uprising.

   C. The villein was protected against amercement in C.21 because he formed a valuable asset to his lord.

X. Magna Carta is intrinsically valuable, because it is a practical document.

   A. Its political value cannot be ignored.
XI. Magna Carta had its defects.
   A. No proper constitutional machinery was invented to turn the legal theories of Magna Carta into practical realities.
   B. All great constitutional principles are absent.

XII. The influence of the Charter has been threefold:
   A. It supplied a powerful instrument in the hands of politicians.
   B. Its legal aspect has been important, since it has often been cited before courts of law.
   C. Sentiment has exaggerated and distorted its importance to the popular mind.

XIII. The reign of Henry III saw the beginning of two powerful factors in the making of the Constitution.
   A. The consciousness of nationality.
   B. The beginning of Parliament.

XIV. The Provisions of Oxford were an attempt to put the limitation of the king into institutions which would work practically.
   A. Deputies from the boroughs and cities were first introduced into the Council by the revolutionary leader, Simon de Montford, in 1265.
   B. In 1295 the Model Parliament was called together.
   C. In 1297 the king was obliged to issue the so-called Confirmation of the Charters.
XV. Conclusion.

A. The great weakness of Magna Carta is the fact that no proper constitutional machinery was invented to turn the legal theories of Magna Carta into practical realities.

B. The rebel barons were vitally interested in the narrow question of scutage.

C. The greatness of Magna Carta lies not so much in what it was to its framers in 1215, as in what it afterward became to the entire mass of English people in later ages.
The Significance of Magna Carta in English Constitutional History

The Norman Conquest brought together two opposing sets of institutions, the Saxon and the Norman. The Saxons were Teutonic tribes which had invaded England from the southeastern shores of the North Sea. It is probable that their political progress was not far in advance of the kingless tribes described in Tacitus' Germania. The Conquest brought forth a king whose duties were those of a permanent commander-in-chief. From this beginning his power spread over internal policy and administration. An able king, for instance Cnut, built up a strong monarchy.

In the Anglo-Saxon state in its early stages of political development, there was little exercise of the legislative function. Custom took the place of written law. There were three types of assemblies. The Witanagemot, or national assembly, was formed by bringing together the chief men in church and state. "In addition to its judicial and rather vague legislative functions, it seems to have acted often as a council, and in times of national crisis, as in the vacancy of the throne, or in a time of disputed succession, to have assumed some authority to express the will of the united tribal or national whole."

Adams, G. B. Origins of E.C. p.4
Adams, G. B. Origins of F. C. p. 6
The shire moot and hundred moot seem to have contained a more popular element, perhaps representative in character. The significant feature of these assemblies was that their procedure was democratic. The presiding officer, whether king, ealdorman, or sheriff, was a moderator only, and had no right to influence the vote of the body.

On the other hand, the Normans were descendants of the Northmen, who had settled on the north coast of Gaul. Here they came in contact with the Carolingian monarchy. The Normans, being a small minority, finally adopted the Carolingian system in place of their own. The Franks in their turn were affected by the Roman government system resulting from the occupation of Gaul. The Frankish monarchy at the beginning of the reign of Clovis had been merely a kingship over a small kingdom, many of which existed. At the end of Clovis' reign, through his successes, a powerful monarchy had been established which was strengthened by his successors, and then, after a period of decline, further strengthened and perfected by the Carolingians. The institutions of the Normans were so nearly like those of the Saxons in all their essential features that conquest of one by the other was hardly possible, but a union between them was a natural process.

The disposition of William made this union practically inevitable. He desired to rule England in a strong way.
He would tolerate no opposition. His first official act after his coronation was his charter to the city of London, and it is typical of his attitude throughout his reign. It was the proclamation of a conqueror defining his policy; that is, that no foreign law was to be introduced, that no confiscation was to be made, and that his army was to be restrained from violence.

The Normans imposed a centralized absolutism organized and operated by means of a feudal system upon the Saxons. With reference to his absolute monarchy, it must be remembered that William before the Conquest, ruled over Normandy, a kingdom of considerable size. For William, the simplest and most natural thing would be to transfer to England bodily the entire machinery of government, as he was operating it in Normandy. This is just what he did. The king was limited only by his own sense of obligation to existing law, which was almost wholly customary and unwritten at this time and the only means of enforcing such law upon him was by individual protest or by a more or less general rebellion.

Feudalism as founded by Duke William in England was a system of land tenure and a social system, as well as a system of government. Originally, the lord gave protection, while the tenant owed services of various sorts. In time, legal obligations of the lord ceased to be of much importance, while those of the tenant became more exacting and burdensome. The following is a brief outline of the law of tenure on the eve of Magna Carta.

There were three forms of tenure - freehold, copyhold and leasehold. Freehold was the most important, for under it came the following services: (a) Knight's Service. This was the normal return for which an estate was granted. It consisted of the service in the field of a specific number of knights. (b) Free socage was not military but agricultural service. It was less irksome than the Knight's Service because two feudal incidents did not apply to it, wardship and marriage. (c) Fee-farm was the name applied to lands held in return for services which were neither military nor agricultural, but consisted only of an annual payment of money. (d) Frankalmoin is the tenure by which pious founders granted lands to the uses of a religious house. It was also the tenure on which the great majority of glebe lands throughout England were held by the village priests, the parsons of parish churches. (e) Grand serjeancy was a highly honorable tenure sharing the distinctions and the burdensome incidents of knight's service, but distinct in this, - that the tenant, in place of ordinary military duties, performed some office in the field, such as carrying the King's banner or lance, or performing some important ceremony at the coronation. (f) Petty serjeancy is described by Littleton as follows: - "where a man holds his lands of our lord the king to yield to him yearly a bow or sword, or a dagger or knife....or to yield such other

small things belong to war". Such person was liable for relief, but exempt from wardship and marriage. (g) Burgage was a form of socage and was confined exclusively to lands within free boroughs.

The Knight's Service is the very kernel of feudalism. There is a lack of definition of this service in Magna Carta. However, it is clear that within half a century from the Conquest each military tenant was burdened with a definite amount of knight's service; and further, it is significant that no formal record of the amount of such service was made at the time.

There were three obligations called incidents, aids and services. The various feudal incidents were: (a) Relief. The right of the heir to succeed always remained subject to one condition, namely - the payment of a sum of money known as "relief". This was theoretically an acknowledgment that the new tenant's right to ownership was incomplete until recognized by his superior. The sum payable was frequently exorbitant. (b) Escheat "signifies the return of an estate to a lord, either on failure of issue from the tenant or upon account of such tenant's felony". If a tenant were convicted of felony, that is, if he failed the ordeal of water, his lands reverted to his lord. In case of treason, the traitor's land went to the king. The innocent sub-tenants were injured by the misdeeds of their defaulting mesne lords. (c) Wardship was another incident.

'McKechnie, W. B. - M.C.:A Commentary, Part I.
When the heir of a deceased tenant was unfitted to bear arms by reason of his tender years, the lands were practically, during his minority, without an effective owner. The lord therefore considered them temporarily escheated. He drew the revenue until the tenant was of military age. The crown's wardship affected bishoprics as well as lay baronies between the death of one prelate and the instalment of his successor. Thus, it was to the King's interest to place obstacles in the way of all appointments to vacant sees, since the longer the delay, the longer the Exchequer drew the revenues and casual profits. (d) Incident of marriage was originally the right of the lord to forbid an heiress to marry a personal enemy or some one otherwise unsuitable. The claim to concur in the choice of a husband gradually expanded into an absolute right of the lord to dispose by sale or otherwise of the lands and person of his female ward. She might protect herself against an obnoxious husband by outbidding her various suitors. Large sums were frequently paid for leave to marry a specified individual or remain single. (e) Primer Seisin was the right peculiar to the Crown to take summary measures for the satisfaction of all incidents or other claims against a deceased tenant or his heir. (f) Fines for alienation were demanded when a tenant wished to part with his estate to another during his own lifetime, either as a gift or in return for a price. A compromise was usually effected, the tenant paying a fine to
the lord for permission to sell.

There were three feudal aids, upon the knighting of the overlord's eldest son, the marriage of his eldest daughter, and for the ransom of the king. There was a vague tradition that they should be "reasonable".

Suit or attendance at court had ceased to be an urgent obligation before the reign of John. Military service, on the other hand, was becoming more frequent and more expensive. At first these duties were undefined, but gradually they became fixed by custom. The returns due (servitum debitum) for each knight's fee or scutum was the service of one fully armed horseman during forty days a year. The Northern barons said they owed no service outside of England and they refused to pay scutage. Scutage was pay for exemption from personal service. At John's accession three rules had become traditional. (1) Scutage was a reserve for extraordinary circumstances. (2) The maximum payment was 20 shillings per knight's fee. (3) The payment of scutage to the King at a rate previously fixed by him acted as a complete discharge of all obligations due for that occasion. John almost from accession deliberately altered all three of these well established rules. His scutages were high and frequent. He also fined those who did not pay on time.

William the Conqueror's son William Rufus exercised
his power with such harshness, or took such extreme advantage of his opportunities to increase it as to excite hostility, at least of those whose records have come down to us, and twice there were baronial rebellions against him, though without success. His reign lasted but ten years, and his sudden death gave the barons an opportunity of which they took instant advantage. His brother Henry needed the support of the barons to secure the throne, so in return, Henry had to promise that he would return to the days of William. These promises were stated in the so-called coronation charter. It sets forth in the first clause the oppression of the kingdom by unjust customs - exactions and customs, that is, which had no right to be. In the end it did no more than make a record for future use of the fact that in the method of the charter and in the principle of contract on which it rested, there was a way provided to curb the king and set limitations to his absolutism. The promises were the outcome of an essential feature of the old English constitution, a feature so deeply rooted that it survived the shock of the Norman Conquest.

In the reign of Henry I, there appears a smaller curia, bridging the intervals of the Great Council and acting with all its powers, trying cases, supervising the sheriff's accounts, and caring for the king's revenues. Both Small Council and Great Council were called Curia Pegis. Undoubtedly where the particular matter was one affecting the whole country, like

a general levy, the Great Council instead of the small would act, but always so far as we know, and probably from the beginning, it was the Small Council which supervised the collection of the revenue. This financial business being quite specific in character could easily be set off by itself in a session specially devoted to the purpose. The Small Council meeting in such sessions was known as the Exchequer. By slow degrees the Exchequer came to be more and more highly specialized and limited to its one field of work, but originally whatever the large Council could do the Small Council could do also.

Henry introduced to the Small Council itself a new class of men, representing a new principle of government. The great offices of state previously held by men of baronial rank were now filled with creatures of Henry's own, men of humble birth, whose merit had raised them to his favor, and whose only title to power lay in his goodwill. The employment of this strictly professional class of administrators was one of the chief contributions made by Henry to the growth of the constitution.

Stephen, Henry I's nephew, was unequal to the task of preserving the monarchy intact. He issued the Oxford Charter which vaguely declared that the Church should be "free" by specific promises that the bishops should have exclusive jurisdiction and power over churchmen and their goods, along with the
sole right to superintend their distribution after death. This is the first enunciation of the principle of "benefit of clergy". Stephen also renounced all rights of the Crown to wardships over Church lands during vacancies. The powers of the crown were largely obscured during Stephen's reign, to be fully resumed and enlarged in the remarkable reign of Henry II.

Henry II in his charters carefully omitted all mention of the usurper Stephen and his charter, because he had no intention of confirming "benefit of clergy" or renouncing wardship over the lands of vacant sees. Henry II went back to his grandfather, Henry I. His charter, however, is not so explicit. The problem before Henry II was not merely to hold the people of the country to the law, but even the local officers of the government whom the opportunities of distance and difficult intercommunication were constantly tempting to use their offices for their personal advantage, or even to turn them into personal possessions annexed to their local territorial lordships. The king could not be everywhere at once, and yet some direct contact between the central and the local government was a vital necessity.

This problem was solved by making regular and permanent a practice which had been occasionally used since the Conquest and which had been inherited by the Normans from the Frankish monarchy. From the central Council, a commission of its members was sent to groups of counties throughout the kingdom to hold in each county of the circuit before the local county

Adams, G. B. Outline, p. 34.
court a session, not of the county court, but of the central curia regis. William the Conqueror had made use of this practice to collect in each county the material for the Domesday Survey. It is evident that in this manner local evidence was more easily secured, and protection more effectively offered against the local fear of the powerful offender.

By the Assizes of Clarendon and Northampton Henry (1) reserved criminal cases for royal courts. (2) He discouraged appeals by substituting communal accusation for individual accusation, that is, the duty of indicting criminals before the King's Justices was no longer left to private initiative, but was laid on a body of neighbors, especially selected for that purpose. (3) A necessary complement of the discouragement of appeals was the discouragement of "trial by combat", that is, an accused person might apply for a writ known as "de odio et atia", and thus avoid the duellum altogether by having his guilt or innocence determined by a jury of neighbors. No case could be brought before the royal court until a writ had been obtained from the chancery. Once it was issued all proceedings in other courts must stop. Chapter 34 of Magna Carta struck at this encroachment. For this increase of legal business, it was necessary to have two sets of Judges - Court of Common Pleas, and the Court of the King's Bench. Henry also invented a special procedure for determining pleas of disputed titles to land or rights of possession to take the place of the
ancient method of trial by battle.

When Henry II began his reforms, he found the most serious obstacle in his way was the fact that his clerical subjects were not within his jurisdiction. At first this separation may have been an improvement. The Church, however, which confronted Henry was relatively stronger. However, on account of the unfortunate murder of Thomas Becket, Archbishop of Canterbury, Henry was not able to accomplish his entire programme of reform, but was obliged to surrender to the Church a part of the criminal jurisdiction which it had usurped.

Under Richard I taxation was greatly increased by reason of his brilliant tournaments and crusades. His ministers shouldered the blame for these unpopular measures. In his reign of nine years he was in the kingdom barely nine months. Yet the machinery of government created by Henry II worked perfectly, and the heavy taxation was collected without difficulty. Richard's administrative chief in his later years was the great Archbishop Hubert Walter. This Archbishop of Canterbury was a man trained in the methods of Henry II. Intrusted with the task of keeping order and supplying Richard's constant demands for money, the credit for the constitutional and administrative progress of the period is due to him. Though charged with avarice and extortion, he did much to conciliate the middle classes, to confer self-government on important towns, and to extend the jury system and make it more representative. Richard in 1199 was mortally
wounded during one of his many wars in France.

John at length attained the Crown. His reign and that of his son, Henry III, mark the most important constitutional crises in England's history. In literature and history John has come down to us as the wickedest of tyrants, with scarcely one redeeming trait of character. Something may be said for John, at least in the way of intellectual statesmanship, and much for the strength of his position. He defied the most powerful of medieval popes, Innocent III, and maintained his defiance for years. Evidences of his wickedness, however, are too weighty to be ignored. His disregard of all rights that opposed him, his cruelty, and acts of personal oppression led to a combination of the barons against him which was too strong to be successfully resisted.

His reign falls into three parts - (1) the loss of Normandy, (2) the quarrel with the Pope, and (3) the struggle with the barons.

The divorce of John's wife, Isabel of Gloucester, and his subsequent marriage to Isabel of Angoulême forecast trouble for the English king. His new wife, who was only twelve years of age, had been affianced to Hugh of Lusignon, a troublesome Poitevin noble. In order to anticipate any resistance from the family of Hugh, John seized some of their castles and charged their supporters with treason, whereupon the Lusignons appealed to Philip of France, who, early in 1202,
summoned John to appear before a court of his peers at Paris. On his disregard of the summons, Philip declared his fiefs forfeited, and proceeded to make war on his Norman possessions. By the end of 1204 Normandy, Anjou, Poitou, every one of John's possessions except Aquitaine, had passed out of his hands. Thus many of the barons, broken off from their Norman connections, were drawn more and more to make common cause with the English people, while for John the loss in prestige was immense, and had no small share in bringing to a head the movement for rebellion. John struggled constantly to regain his lost territory, and to make his barons pay the cost of his folly. On May 26, 1214, John had issued writs for the collection of a scutage of three marks per annum from all tenants-in-chief, royal desmesnes, vacant bishoprics, lands in royal wardship and escheats, except those fees which were personally represented in the army in Poitou. The northern barons refused to pay. These frequent and heavy scutages were one of the immediate causes of rebellion.

The question of supplying a successor to Hubert Walter was vexing many minds. On December 17, 1214, in full consistory, the Pope set aside the claim of the bishops to a voice in the election and declared the monks to be the sold rightful electors; but he also set aside their election of Reginald, and bade them elect then and there "whomsoever they would, so he were but an earnest and capable man and above all
an Englishman". These monks had promised John not to support the Pope's candidate, but Innocent absolved them from this promise. So Stephen Langton was elected. John wanted his own candidate, and refused Langton. Innocent placed the realm under the interdict. This was a golden opportunity for John. It enabled him to put the body of the clergy in a dilemma from which there was no escape. They held their property on condition of performing certain functions; if they ceased from these functions their property was forfeit, just as that of a layman was forfeit if he withheld the service with which it was charged.

The Pope then sent Philip of France on a crusade to expel the English king from his realm. Philip wanted the English throne for his son Louis. Innocent III, however, was a good statesman, and he did not want France to have England, too. This would upset the balance of power. Just as the French fleet was sailing, the Pope sent his legates to John. John knew that it was time to submit. He wished, however, to gain an advantage that would be worth the sacrifice. He changed the Pope from an enemy to a political friend. As a fief of the Pope, England sent an annual present of one thousand marks a year to Rome. Thus, John had cut the ground from under the feel of his enemies.

The feudal grievances most bitterly resented may be ranged under one or the other of two heads—(1) increase in the weight of feudal obligations, and (2) infringement of feudal
jurisdictions. The Crown, while it exacted from its tenants the fullest measure of services allowable under the feudal contract, interfered persistently with those rights and privileges which had originally balanced the obligations. The barons were compelled to give more, while they received less.

The grievances of the barons were not the only ones however. If the Crown had retained the active interest of the Church and common people, John might have successfully defied the barons as his father had done before him. The order-loving tradesmen of the towns had been previously willing to purchase protection from Henry at a heavy price; but when John continued to exact the price, and yet failed to furnish good government in return, his hold on the nation was lost.

The lower orders were not exempt. John confiscated the goods of the monasteries and thereby deprived the people of the chief provision for poor-relief known to the thirteenth century.

After 1213 John's alliance with Rome brought new dangers in its train. The united action of two tyrants, each claiming supreme powers, lay and spiritual respectively, threatened to exterminate the freedom of the English nation and the English Church. This union of tyrants naturally led
to another union which checkmated it, for the baronial opposition allied itself with the ecclesiastical opposition. The bishops, headed by Stephen Langton, united with the baronial opposition.

Only an opportunity for rebellion was required. This opportunity came in a tempting form in 1214. On September 18, 1214, John was obliged to make peace in Poitou. Isolated and humiliated, he returned to England in the following month. Unmindful of his precarious situation, he brought matters to a head by demanding a scutage from the barons who had refused to accompany him to Poitou. Thereupon, under the leadership of Stephen Langton, the barons met at St. Edmunds under pretence of a pilgrimage, demanded the confirmation of Henry I's charter, and took an oath to wage war on the King in case he refused their terms. All through the winter negotiations went on. John put off a definite answer as long as he could and employed the interval in trying to circumvent his adversaries. The barons, when he finally rejected their terms, decided to wage war and renounced their allegiance on the ground that the King had ceased to observe his feudal obligations and marched down and occupied London. John, finding that almost no one but his mercenaries would stand by him and that Stephen Langton, in sympathy with the baronial cause, would not excommunicate his enemies, was forced to yield. After some further parley, the barons met
him on June 15, 1215, at Rynnymede, where he set his seal
to the Great Charter.

John's policy of misrule had combined against
him two interests usually opposed to each other, the party
of progress and the party of reaction. The progressive
party was comprised of the heads of the more recently created
baronial houses, men trained in the administrative methods
of Henry II, who desired merely that the system of government
they knew should be properly enforced and carried out to its
logical conclusions. They demanded chiefly that the King
should conduct the business of the Exchequer and the Curia
Regis according to the rules laid down by Henry II. Their
platform was routine and order.

The party of reaction was composed of the magnates
of the old feudal school, who hoped to wrest from the weakened
hand of the king some measure of feudal independence. They
resisted in particular the encroachments of the royal courts
of law which were gradually superseding their private jurisdic-
tion.

These forces piling up against the Crown since
the Conquest found expression in the issue of Magna Carta.
That the Great Charter is essentially a document of feudal
law must be clear from any analysis of its clauses. G. B.
Adams classifies the clauses of the Charter as follows:

I. Initial and final clauses and the granting words:
The Preamble, and clauses 1 and 63.
II. Purely feudal clauses or those containing legislative modifications of feudal abuses: 2-6; 8; 12-16; 21; 29; 32; 34; 37; 39; 43; 46; 53; 56; 60; 61.

III. Matters growing out of feudal conditions: 1; 7; 26; 27; 41; 42; 49; 58; 59.

IV. Financial difficulties of government:
   b. Only indirectly feudal: 9-11; 20-22; 25; 26; 27; 40; 55.

V. Clauses unwarranted, or of doubtful right: 25; 27; 42; 45.

VI. Clauses which wholly or in part may be called non-feudal: 23; 33; 35; 48.
   a. Judicial: 17-22; 24; 38; 34; 36; 38; 40; 45; 54.
   b. The forest: 44; 47; 48.
   d. Due to John's tyranny: 50-52; 53; 55; 56; 57; 62.

VII. Clause 61.

Edward Jenks in "The Myth of Magna Carta" gives the following classification, which also emphasizes its feudal aspects:

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
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<tbody>
<tr>
<td>Formal and temporary clauses</td>
<td>13</td>
</tr>
<tr>
<td>Purely feudal</td>
<td>22</td>
</tr>
<tr>
<td>Free men</td>
<td>3</td>
</tr>
<tr>
<td>Merchants and cities</td>
<td>2</td>
</tr>
<tr>
<td>The Church</td>
<td>2</td>
</tr>
<tr>
<td>General</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>63</strong></td>
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(1) To earls and barons  
(2) To knights are guaranteed 
(3) To the "free men" 
(4) To the lower clergy 
(5) To merchants and burgesses 
(6) To villeins

The preamble to Magna Carta opens in the form common to all royal charters of the period with a greeting from the sovereign to his magnates, his officials and his faithful subjects, and announces in the pious, legal formula used by impious and pious kings alike, that he had made certain grants by the advice of those counsellors whom he names.

Clause I. is a concession to the Church of its rights and liberties. It contains:

(a) A general promise that the Church should be free and a guarantee of freedom of canonical election. "Quod Anglicana ecclesia libera sit" is vague, but elastic.

(b) It mentions freedom of election. In spite of this, the independence of the national church was retarded rather than advanced during the long alliance between Henry III and the successive popes.

(c) After providing briefly for the Church, Chapter I. pro-
ceeds to give equal prominence to the grant or confirmation of secular customs and liberties.

Clause 2. The Barons immediately attacked what was to their eyes the greatest of John's abuses - his arbitrary increase of feudal obligations. This clause fixes the amount of relief to be paid upon a barony at one hundred pounds, and that upon a knight's fee at one hundred shillings. The language of the clause implies that this was the ancient legal relief, and by inference that the king in demanding more before admitting the heir to his inheritance had been violating the law.

Clauses 3, 4, and 5 relate to wardship. Whether the things demanded were sanctioned by ancient custom or not is beside the point. They were clearly within the baron's rights.

Clause 6 relates to the regulation of marriage. Only two expedients were open to those who objected to mate for life with the men to whom John sold them. They might (1) take the veil, become dead in law, and forfeit their fiefs to escape, or (2) outbid the objectionable suitor. Protection was provided by demanding (a) that the ward should be married to an equal, (b) that a royal ward should only be married with the consent of the next of kin.

Clause 7 is only indirectly feudal in character and requires no comment. The abuse to which Clause 8 refers,
the extension of the right of marriage to the widow of a vassal and either putting her marriage up for sale or compelling her to buy it herself, was unjustifiable in feudal law. Clauses 9, 10 and 11, relate to debts. In striking at Jews, Magna Carta is striking at the oppressive methods of the Crown in extorting money from minors and widows.

Clause 12 has been called a constitutional clause and has been supposed to secure the right of consent to taxation. In reality, the clause sought to prevent John from extorting additional payments either absolutely at his own discretion, or because of situations which he had purposely created as excuses for demanding money. The entire field of such arbitrary feudal dues was covered by the words "scutages" and "extraordinary aids". (a) Scutage was used at first as an expedient for substituting in the Crown's opinion money payments for military service. It became under John a regular source of revenue, imposed almost every year on one pretext or another. The Crown was no longer to be left sole judge of the occasions on which a scutage might be demanded. "The common counsel of the realm" must first be obtained. (b) Feudal aids were originally free will offerings. The Crown cannot exact either ordinary or extraordinary aids "unless by common counsel of the realm". The
citizens of London had a special claim of gratitude upon the barons, so it was provided that aids exacted from these citizens were to be "reasonable".

Taxation without representation is a very modern idea. This famous clause treats not of "taxation" in the abstract, but of the scutages and aids already mentioned. It does not concern itself with the rights of Englishmen as such, but chiefly with the interests of those who held freeholds of the Crown, and incidentally and inadequately with the citizens of London. Clause 13 is an elaboration of this clause.

Clause 14 has also been called constitutional and it has been supposed to be related to the creation of Parliament and to secure to the nation its representative system. This is entirely false. This clause would never have appeared but for need of suitable machinery for clause 12. (a) The barons were to be summoned by a formal writ giving the time, place and reason for assembling, to be issued forty days in advance. The greater barons were to receive individual writs, while the smaller barons were to be summoned collectively and indirectly through the sheriffs and bailiffs of each district. (b) The composition of the council was purely baronial, since none of the Crown tenants were invited to attend. The Common Council of the Charter was thus an assembly of military Crown tenants and "the common consent
of my kingdom" in John's reign was synonymous with "the consent of my barons". No claim was made by the Great Charter on behalf of the commune concilium to any right to be consulted in the making of laws or in the performance of administrative or judicial duties by the Crown. No effort was made toward formulating any doctrine of ministerial responsibility. It secured one right, a limited control over one form of taxation.

Clause 15 confers on the tenants of mesne lords protection similar to that already conferred on Crown tenants. No mesne lord was to be allowed to compel his tenants to contribute to his necessities without obtaining a written license from the Crown; and stringent rules forbade the issue of such licenses except on the usual three occasions. Henry III disregarded this.

Clause 16 states the feudal contract which exists between the man and the lord. Clauses 17-22 and clause 24 relate to the operation of the new royal system as distinguished from the older system of feudal and local courts. By securing for the common pleas a permanent home, Magna Carta gave impetus to forces which differentiated the Curia Regis as a dispenser of justice. It emphasized the difference between "royal pleas" and "common pleas" and so contributed to the splitting up of the same Curia Regis on the judicial side into two distinct tribunals - (1) "the king's Judges of the Bench", later the
Court of Common Pleas; (2) the Court of the King's Bench.

The scheme of recognitions provided for in clause 18 could not be carried out without a lessening of the baron's liberty and an interference with his own manorial court. The advantages, however, were obvious, and in all probability the barons did not realize the seriousness of the attack of royal justice upon themselves. This clause, then, marked a triumph, as far as it went, of the king's court over the tribunals of the feudal magnates.

Clause 19 is a supplement to 18. It prescribed the course to be followed when the press of other business had prevented some of the assizes on the agenda from being heard on the court day. The justices were directed to complete their labors on the morrow, but were forbidden to retain any one in attendance except the actual parties to suits and a sufficient number of jurors.

Clause 20 contains a remedy for the abuse of royal amercements. There were three stages in criminal law - (1) blood feud, (2) fixed money payments, (3) amercements, by which the offender gives all to the king, who takes what he wants and returns the rest with a pardon to the offender. The payment gradually became fixed in accordance with the gravity of the offense and the wealth of the offender.

Amercement of the freeholder - for a petty offense, only a petty sum could be taken; for grave offenses a larger
but not out of proportion to the offense. In no case must the offender be pushed absolutely to the wall. A means of livelihood must be saved to him. The amount of the amercement must be fixed "by the oath of honest men in the neighborhood."

Amercement of the merchant was to be on the same principle. His wares were to be spared.

Amercement of the villein. - Villeins were protected from the abuse of only such amercements as John himself might inflict, not from those of their manorial lords. Villein in the king's mercy shall enjoy the same consideration as the freeholder or the merchant, his "wainage", i.e., goods and possibly oxen, being saved. The king must suffer no such breach of faith as to destroy him of his own royal tenants.

Clause 21 says that earls and barons shall not act through their peers and only in accordance with the offense.

Clause 22 gives the clergy one additional privilege of amercements. In proportioning the amount no account was to be taken of
John proposed to ride a-fowling, he issued letters compells the whole countryside to repair bridges in every district which his capricious pleasure might lead him to visit.

Clause 25 relates to arbitrary increase in rents. The object of clause 26 was to regulate attaching of personal estates of Crown tenants who were also Crown debtors. It was customary for sheriffs and bailiffs of districts where deceased estates lay to seize everything possible under the excuse of securing the interests of their royal master. They attached and sold chattels out of all proportion to the sum due, and kept the surplus. Magna Carta forbid the sheriff and his bailiffs to touch a single chattel of a deceased Crown tenant, unless they came armed with a legal warrant, vouching the existence and amount of the Crown debt. Even then, officers were only allowed to attach as many chattels as could reasonably be considered to satisfy the full value of the debt due to the exchequer; and everything so taken must be carefully inventoried. All this was done "at the sight of lawful men" who formed a check on the actions of the sheriff's officers.

Clause 27 refers to intestate succession. It was omitted in the later issues of the charter.

Clauses 28, 30 and 31 relate to the prerogative action of the king of the nature of purveyance in taking
private property for public uses. In theory the provisions seized were to be paid for at the market rate. It was different in practice, however. Magna Carta did not abolish purveyance. It could be tolerated when used for its original purpose, providing for the needs of the king's household, but it was intolerable when claimed by every castle warder, sheriff and local bailiff for his own personal or official needs.

Clause 29 says that no constable shall compel any knight to give money instead of castle-guard when he is willing to perform it himself, or by another responsible man. If sent on military service, he shall be relieved from guard in proportion to the time during which he has been in service.

Clause 32 relates to the forfeiture of the lands of felons. The charter made John promise that he would not retain beyond one year and one day the lands of those who had been convicted of felony, and the lands thereafter shall be handed over to the lords of the fiefs. Clause 33 relates to obstacles to navigation.

Clause 34 is plainly reactionary. "The writ which is called praecipe shall not for the future be issued to any one, concerning any tenement whereby a freeman may lose his court". In extorting this from John, the barons gained something of infinitely greater value than a petty reform of court procedure. They struck directly at royal aggression against their feudal courts. The writ of praecipe was an
order to return property. A man would not obey it without
discussion. He would naturally take the alternative allowed,
namely, to appear before the king's justices and there "show cause"
why he had not obeyed the order. It was really an "original
writ" commencing a litigation in the king's court. At its
issue all proceedings in inferior courts must stop. The
feudal lord was the loser. This clause was not observed in
spirit, for the crown lawyer issued the writ under another
name.

Clause 36 says that nothing in the future shall
be given or taken for a writ of inquisition of life or limbs,
but freely it shall be given and never denied. This clause
has an important bearing upon trial by combat and none at all
upon habeas corpus, as is often supposed. The writ here re-
ferred to - writ de odio et atia - was intended to protect
from duel men unjustly accused of homicide.

This inquest of life and limb denied as a means of
substituting a sworn verdict for the duellum in cases of
homicide has often been claimed as the direct antecedent of
habeas corpus. Habeas corpus developed from another writ,
however. Considerable delay might occur between the
appellee's petition for the writ of inquisition and the verdict
upon it. In the interval the man accused of murder had, in the
normal case, no right to be released on bail. This was hard
in cases where the accused was a victim of malice, or guilty
only of justifiable homicide. Such prisoners might purchase from the Crown royal writs which would save them from languishing for months or years in prison. The writ best suited for this purpose was de odio et atia. It had become a great source of revenue. The Barons said that they must be free.

Clause 38 contains three rules for wardship. (1) Ordinary wardship. Wardship was not due from fee-farms, socage or burgage except where lands in fee-farms expressly owed military service. (2) Prerogative wardship. If a ward held one estate of the Crown and another of a mesne lord, the king claimed wardship over both, even if the Crown fief was of small value. John, however, pushed this privilege further and exercised prerogative wardship over fiefs of mesne lords, not merely by occasion of Crown fiefs held in chivalry, but also by occasion of Crown fiefs held by any other free tenure. Magna Carta also forbade prerogative wardship over petty serjeanties, for the barons had to pay scutage in proportion to their full quota of knight's fees even if the king had seized some by prerogative wardship.

Clause 38 says that no bailiff for the future shall put any man to his "law" upon his own mere word of mouth, without credible witnesses brought for this purpose. This was to prevent irregularities at the critical stage of a trial when the lex (ordeal) appointed by the court was
attempted. The sheriff's verbal report of the indictment, "sine testibus fidelibus ad hoc inductis" was not sufficient. The "county" and the "hundred" which had accused the prisoner must send representatives to bear witness of the facts.

The value of clause 39 has often been exaggerated. It says that no freeman shall be arrested, or detained in prison or deprived of his freehold, or outlawed, or banished or in any way molested; and that we will not set forth against him nor send against him, unless by the lawful judgment of his peers and by the law of the land. It is usual to read it as containing a guarantee of trial by jury to all Englishmen; as absolutely prohibiting arbitrary commitment and as undertaking solemnly to dispense full, free and equal justice to all.

Its main object in reality was to prohibit John from resorting to what is sometimes whimsically known in Scotland as "Jeddard justice". It forbade him in the future - (1) to place execution before judgment; (2) It provided for "per judicium parium", for judgment by the accused man's equal.

Judicium parium is often confused with trial by jury. Later generations try to explain what was unfamiliar in the Great Charter by what was familiar in their own experience. (1) The criminal petty jury cannot be intended, since it had not been invented in 1215: to introduce trial
by jury into Magna Carta is an unpardonable anachronism.

(2) The barons had repudiated trial by jury if they had known it. Here as in clause 21, they wished all cases to be judged before their fellow barons and by the duellum. It was not until the Five Knight's Case that this clause was put forth as an argument against arbitrary commitment.

Clause 40 says that to no one will we sell, to no one will we refuse or delay right or justice. It is evident, however, that Magna Carta did not put down the practice of charging heavy fees for writs.

In clause 41 the barons sought to forbid John from exacting excessive tolls from the merchants for removing obstacles of his own creating. Clause 42 gives permission for free intercourse between England and foreign lands. This was welcome to the clergy for it enabled them to proceed to Rome without royal permit.

Clause 43 is clearly feudal and requires no comment. Clauses 44, 47 and 48 relate to forests. While not directly feudal, they concern a characteristic feature of the feudal age destined to decline with the lapse of feudalism.

The object of clause 45 was to prevent the appointment of unsuitable men to responsible offices under the Crown. It was directed against John's foreign favorites.

John usurped wardship whenever possible. Clause 46 guaranteed the wardship of abbeys to the barons who held charters
to them. Clauses 49 to 53 and 54 to 59 are of temporary interest relating to the undoing of John's tyranny, or to questions arising about the immediate application of some provisions of the charter.

If the Charter is in the main a restatement of feudal law, clause 60 follows as a matter of course. If the king is to be bound by the laws which the barons lay down, they must grant that they are bound in the same way. Otherwise, the law which they are laying down is not feudal. This clause is probably confined only to freeholders, or perhaps only to feudal sub-tenants.

Clause 61 provides for the machinery for enforcing all that precedes it. Instead of preventing the king from inflicting wrongs, it merely provided forcible measures for the redress of those already committed, thus adding the crowning evil of civil war to those minor evils which it sought to reform. In this rests the justification of the charter as a whole in the eyes of the barons, and upon what right they provided for a repetition of the movement against the king if it should prove necessary in the future. It is to be inferred that they found this right in feudal law. If the results of Magna Carta were to be so creative, at the instant it seemed to demand but little change. The interest of the barons was wholly personal, selfish and temporary. "It is the unintended result which followed in the course of time, which gives to
the rebellion of 1215 its right to be regarded as the first step in the formation of the English Constitution.

It has been claimed that Magna Carta was the result of a popular uprising. Stubbs says that "clause by clause the rights of the commons are provided for as well as the rights of the nobles." Dr. Gneist says that "Magna Carta was a pledge of reconciliation between all classes. Its existence and ratification maintained for centuries the notion of fundamental rights as applicable to all classes in the consciousness that no liberties would be upheld by the superior classes for any length of time, without guarantees of personal liberties for the humble also." John Richard Green says that "the rights which the barons claimed for themselves they claimed for the nation at large."

These statements bring us to the question of "Who were the freemen of 1215," since John's words tell us that the liberties were confirmed "to all freemen of my kingdom and their heirs forever." Equality is a strictly modern notion. The "liber homo" in clause 34 was the holder of a freehold estate of some extent, a great barony, or, at the least, a manor. This excluded villeins and most burgesses.

If John kept the promises made in the Charter each class would have been affected as follows: (1) the feudal aristocracy had by far the most prominent place. Their grievances formed the most important part of the document in
1215; (2) the claims of the clergy, especially the upper clergy, went hand in hand with the barons; (3) the tenants of mesne lords must have some recognition, since the barons had to rely on freeholders to support them against the king. Clause 15 limits the number of occasions on which aids might be extorted from sub-tenants by their mesne lords to the same three as were recognized in the case of the Crown. Less than this the barons could scarcely have granted. Clause 60 is very vague. All customs and liberties which John agrees to observe toward his vassals shall be also observed by mesne lords, whether prelates or laymen, toward their sub-vassals. (4) The merchant and trading classes received only a mere confirmation of existing customs, already bought and paid for at a great price. This seems but a poor return for the support given by them to the movement of insurrection. (5) The villein must not be so cruelly amerced (C. 21) as to leave him utterly destitute; his plough and equipment must be saved to him. There is no evidence of political or civil rights. He was protected, not as the acknowledged subject of legal rights, but because he formed a valuable asset to his lord. It would seem from this analysis that the authorities quoted above are too optimistic about the rights of Englishmen.

Magna Carta is intrinsically valuable because it is a practical document. There is no philosophical theory in it, but only practical remedies for actual wrongs. It made definite
what had been vague before, and vagueness always increases the power of the tyrant. The element of sentiment cannot be ignored. Magna Carta always fired the popular imagination. Most of its power has been read into it by later generations.

In addition to its legal value, the Charter has political value. The king by granting the Charter admitted that he was not an absolute ruler. It also marked the commencement of a new grouping of political forces in England. There was a gradual change in the balance of parties. The Crown and the people no longer united against the barons. Instead, the people plus the Church plus the barons united against the Crown. A new baronial policy developed. It was clear that the barons could not maintain their petty policy of independence but must seek henceforth to control royal power. There we have the seed of nationality which is a modern idea. Nationality must include the upper and lower classes.

Magna Carta also has its defects. No adequate sanction was attached to it, in order to insure the enforcement of its provisions. No proper constitutional machinery was invented to turn the legal theories of Magna Carta into practical realities. All great constitutional principles are absent: (1) Importance of the council or embryo parliament; (2) the right of such a body to influence the
king's policy; (3) the doctrine of ministerial responsibility; (4) the need of distinguishing the various functions of government, legislative, judicial, and administrative. The Common Council is mentioned only incidentally. The rebel magnates were vitally interested in the narrow question of scutage, not in the wide possibilities involved in the existence of a national council. Not a word is said of any right inherent in the Council to share in legislation, to control or even advise the Executive or to concur in choosing the great ministers of the Crown. Its control over taxation is strictly limited to the right to veto scutages and aids - that is, it only extends over that very narrow class of exactions which affected the military tenants of the Crown.

The influence of the Charter has been twofold. (1) It supplied a powerful instrument in the hands of politicians, especially of the leaders of the House of Commons in the seventeenth century, when waging the battle of constitutional freedom against the Stuart dynasty. (2) Its legal aspect has been as important as its political one, since it has been cited in innumerable litigations before the courts of law. It has been subject to many conflicting interpretations.

Its importance has become exaggerated and dis-
torted. Trial by jury, habeas corpus, abolition of all arbitrary imprisonment at the King's command, prohibition of monopolies, enunciation of a close tie between taxation and representation, equality of all before the law, a matured conception of nationality embracing high and low, freeman and villein, have been discovered in the Great Charter.

Although, for the moment, steps were taken to carry out the provisions of Magna Carta, John had made concessions which he could not afford and did not intend to keep. Moreover, certain of the extremists among the northern barons had refused to enter into the agreement at Runnymede and continued in arms. In August John prepared to renew the war, whereupon the barons made ready to depose him. The Pope who, since John's submission was on his side, had already, before the sealing of the Charter, ordered the excommunication of the disturbers of the kingdom; now, in August, he issued a bull declaring the Charter null and void on the ground that it had been extorted by force. Also, he suspended Stephen Langton for refusing to carry out his sentence of excommunication. The leaders of the baronial opposition thereupon took the extreme step of transferring this allegiance to Louis of France "begging him to come and pluck them out of the hand of the tyrant." This drove John into one of his
spasms of energy, and during the winter of 1215-1216 he ravaged the land from the south of the Thames to the Scottish border.

In spite of papal prohibition, Louis landed at Thanet, May 21, while John, who had returned from the north, retreated before the invader to the borders of Wales, where he remained inactive until the end of August, when he marched into the east midlands, ravaging as he went. On October 19, he died at Newark of an illness brought on partly by this recent exertion, and partly by an excess of eating and drinking. His vices and weaknesses precipitated the overthrow of absolutism and the rise of constitutional liberty.

Less than two weeks after his father's death, Henry, a boy of nine, was crowned at Gloucester. Under a capable regent the reign opened with bright prospects. The King's youth and innocence were apparently a source of strength, for the barons had risen not against the royal office, but against an unpopular and aggressive King, and now that he was dead, most of them turned gladly from a foreign invader to a native king. Louis, against whom the papal Legate proclaimed a Crusade, was defeated and forced to leave the country.

As soon as the young King became of age, however, he shook himself free of his regent, Hubert de Burgh, and started to rule for himself. For the next quarter of a
century, Henry's personal government was unhampered by any wise of effective control and was marked by favoritism for foreigners and royal caprice. Henry's marriage of Eleanor of Provence in 1236 brought swarms of foreigners to England, including needy kinsmen to be provided livings. In addition, the country had to bear the burden of heavy papal exactions. At Henry's request the Pope, in 1237, sent a cardinal legate, who, it is said, during a four year's sojourn, took away as much gold and silver as he left in the country, claiming besides for his master the right to fill three hundred livings with Italians, while the spiritless King declared: "I neither wish nor dare to oppose the lord Pope in anything."

In April, 1243, after Henry had led a futile expedition to assist the Poitevin barons and the Gascon towns in a rising against the French King, he was obliged to consent to the incorporation of Poitou into the French dominions. The situation was going from bad to worse. The King fell into serious financial straits and the barons, taking advantage of his needs, began to demand that Ministers be appointed of native birth and acceptable to the country. Soon they went further, and, in 1244, as one of the conditions of a money grant, stipulated that the Justiciar, the Chancellor and the Treasurer, should be chosen in the Great Council. They were not able to gain their point. Henry might yield
to the Pope, but he maintained an absolute attitude toward his subjects. Rather than submit to the conditions which the barons persisted in attaching to their grants, Henry resorted to all sorts of expedients for supplying the necessary revenue.

In 1254 Henry culminated his impolicy by an act of folly which brought to a head all the opposition which had been festering against his misgovernment, his futile foreign policy, and his abject submission to the Pope. He accepted for his second son, Edmund, the crown of Sicily, which Innocent had long been trying to win from the House of Hohenstaufen. Henry pledged himself to provide an army and 140,000 marks, and applied to his Great Council to redeem his word. They refused. Everything combined to foster discontent. Rain, flood, cattle-murrain, and high prices exacted their toll from the poor. In 1256 the Pope had added another exaction by demanding for the first time annates, or first fruits - the first year's annual revenue from clergy newly inducted into benefices. Aside from new grievances, old ones continued from John's reign. The concessions of the charters had been disregarded. Many castles were in the hands of foreigners, sheriffs and itinerant judges were perverting justice and levying excessive fines, and the forest laws were very severe.
On April 28, 1258, a Great Council of magnates, reinforced by representative knights from the shire assembled. When the King in the face of the gathering discontent ventured again to ask for money for the Sicilian campaign, the barons and knights in full armor, though they laid their swords aside, crowded before the king and presented their terms. They demanded the dismissal of all aliens and the appointment of a committee of twenty-four - half from the royal party, half from the baronial - to draw up a scheme of reform to present at the next meeting of the Great Council. The King was forced to assent. To an assembly which met in June at Oxford, known as the "Mad Parliament" the committee submitted not only a list of grievances, but a plan of government by which all authority was to be transferred from the Crown to representative bodies of the baronage. Chief among them was a permanent committee of fifteen which was to have complete control of the administration to which the King's Ministers were to be answerable. Three times a year it was to meet with another committee of twelve chosen from the Great Council to transact the business formerly in the hands of the latter body. Other committees still were to undertake the work of financial and Church reform. Such were the Provisions of Oxford. They were short lived and their permanent value was merely as a precedent of institution making and a renewed assertion of the fundamental principles
of Magna Carta.

No sooner were the Provisions acknowledged than the baronial party split into two factions. One was led by Simon de Montford, who seems to have been honestly desirous of securing the interests of all classes. The other was selfishly concerned with the interests of its own order. For a time the King worked loyally with the new council; nevertheless, before many months, he shook himself free of the barons, made an alliance with Louis IX of France, and appealed to Pope Alexander IV to release him from his oath to observe the Provisions. This last request was granted by a bull, dated April 13, 1261, which annulled the whole legislation of 1258-1259. Thus strengthened, Henry returned to his old courses. Civil war broke out in 1263. They finally decided to arbitrate and appealed to Louis IX to settle the points at issue. However, when the French king in 1264 decided almost every question at issue in favor of Henry, Simon de Montford refused to accept the decision.

In the civil war which followed, he was able to win a great victory over the king's forces. As a result, Henry was forced to uphold the Great Charter, the charter of the Forests, and the Provisions of Oxford. During the period of his triumph, de Montford had the King issue writs, summoning a notable assembly. This has often been spoken of as the
first Parliament in English history, because it was the first body in which both knights of the shire and representatives from the towns sat with the Great Council, but it was a partisan body and far from being completely representative in other respects. De Montford's Parliament, however, is significant as a state in the development from the Great Council to the institution which came to represent the three estates of the realm.

The reign of Henry III also saw the beginning of two powerful factors in the making of the Constitution, the consciousness of nationality, and the beginning of Parliament. The feudal system was falling to pieces. Its legislative, judicial, military and financial services had been supplanted by better methods. The king was no longer a lord over his vassals; the kingdom was no longer his territorial domain to exploit as he pleased. Kingship was being looked upon as an office, whose chief function it was to serve the interests of the subjects of its community.

Before the close of the reign of Henry III another important beginning was made. The germ from which Parliament grew was the existing national assembly of the state, the great Council. This was a feudal assembly. Occasionally some person was called to the assembly by the king who had no connection with him by feudal tie, but this was seldom. In
the last half of the thirteenth century, representatives of the commercial classes and of the small landowners were present at the Great Council. These elements were essentially non-feudal. The old Great Council remained unchanged. For a long time it still acted now and then alone as Parliament. It still exists today almost unchanged in the House of Lords.

Before long new elements drew off by themselves into a separate House, the House of Commons. These new elements were first introduced to serve an immediate practical end as was related above. Deputies from the English counties were summoned to a meeting of the Council, in this case, of the Small Council, in 1254, to report the feeling of the counties about a tax which the government desired to lay. In the process by which this introduction was made, a precedent was followed which had long been in use when the Council acting as a Court desired a report from a county court upon their action in some case which had been before them. Deputies from the boroughs and cities first introduced into the Council by Simon de Montford, in 1265, only exercised the function of giving information and advice.

In 1295 what is known as the Model Parliament was called together by Edward I. It was a model Parliament in the sense that it contained all the elements that go to form
later Parliaments, but it contained also one element, the representatives of the lower clergy, which soon dropped out of Parliamentary history. In spite of a reference in the writ of summons to the "most righteous law....that what touches all shall be approved by all," Edward was more interested in getting money for his wars with France and Scotland than in perfecting the constitution of Parliament. It was the work of the next century to determine how the estates now represented should arrange themselves. The lower clergy soon dropped out and transacted their business in representative bodies of their own, known as Convocations, each divided into two houses, an upper and a lower. The higher clergy had seats both in the upper house of Convocation and in Parliament.

In 1297 the king was obliged to issue the so-called Confirmation of the Charters. "Moreover we have granted for us and our heirs," the king was made to say, "...to all the commonalty of the land that for no business from henceforth will we take such manner of aids, tasks, nor prises, but by the common consent of the realm and for the common profit thereof saving the ancient aids and prises due and accustomed." Thus, the Confirmation of the Charters may be said to have restored to the tradition of Magna Carta the principle of consent to taxation, not limited now as in the original clauses to feudal revenues but broadened out,
as taxation itself had broadened out during the century, to cover all new forms of revenue. From this date the king, although he might invent new grants or apply unwarranted extensions of old revenues, was dependent for his revenue upon a previous grant.

Conclusion:

William the Conqueror laid the foundations of a strong, orderly government, which is the basis of freedom and progress. He consolidated the kingdom, by ending those tendencies which stood in the way of national organization. The Normans paved the way for the combination of central unity and local independence which survives today as the most characteristic feature of the English government.

William Rufus shocked England by his wickedness and oppressed it by taxation. His subjects welcomed the end of his ten-year reign.

Henry I issued a charter of Liberties, in which he promised to do away with the evil customs of his brother's reign. Henry developed the machinery of government, by organizing the Curia Regis or King's Court, which served as an advisory body, a tribunal for important judicial decisions, and a Treasury board. The Curia Regis was smaller than the Great Council, and included the great officers of
the King's household. The Court in its financial sessions was called the Exchequer. Henry I also strengthened the royal power by sending Itinerant Justices into the various counties to sit with the sheriffs on Crown pleas, and oversee the levying and collection of royal taxes.

Stephen was unable to cope with the problems which confronted him. In his reign we have the first enunciation of the principle of "benefit of clergy". The local power of the barons grew at the expense of the monarchy during the nineteen years of Stephen's rebellious reign.

Henry II went back to his grandfather, Henry I. He restored, extended, and defined the organs of central government, and increased the power of the Crown against the barons and the Church. The aim of his legal reforms was to strengthen the royal powers at the expense of the barons and the Church. He brought into general use juries for accusing criminals and for deciding disputed points at law. He restored the Curia Regis and Exchequer founded by Henry I.

Although Richard reigned for nine years, he was present in England only nine months. The machinery laid down and perfected by Henry II worked perfectly in the hands of able ministers.

John's reign and that of his son, Henry III, mark the most important constitutional crisis in England's history; they witnessed the first significant limitation of the royal
absolutism since the Conquest, together with the rise of an institution which was ultimately to control the government - the English Parliament. John's reign was marked by three crises. The French War with its entailed expense, and the loss of Normandy had a critical bearing on the crowning event of John's reign. The King's second great humiliation was his submission to the Papacy. The interdict was a great trial for all classes, and added to the festering discontent. John's efforts to revenge himself against the French king brought to an issue the final crisis in the reign, the struggle with the barons. The barons resisted foreign service because the demands for it were too frequent, and nothing was accomplished by the forces John took abroad.

John was forced to yield and on the fifteenth of June, 1215, he set his seal to the Great Charter. The real significance of it is not so much in any of its particular provisions as in imposing restrictions upon royal absolutism and in establishing the principle that kings must observe the law, even though the law which the barons had in mind was feudal law.

If Henry III, John's successor, had been an absolute ruler, the Charter probably would have gone in the discard. Such was not the case. Instead, there was the long reign of a comparatively weak king with constant confirmation of the Charter. Thus, checking royal absolutism became more or less
The great weakness of Magna Carta is the fact that no proper constitutional machinery was invented to turn the legal theories of Magna Carta into practical realities. "The right of legalized rebellion" conferred on an executive committee of twenty-five of the King's enemies was an absurd error. All great constitutional principles are absent. The Common Council is mentioned only incidentally. The rebel barons were vitally interested in the narrow question of scutage and not at all in the wide possibilities involved in the existence of a national council. Not a word is said of any right inherent in the Council to share in legislation, to control or even advise the Executive or to concur in choosing the great ministers of the Crown. Its control over taxation is strictly limited to the right to veto scutages and aids - that is, it only extended over that very narrow class of exactions which affected the military tenants of the Crown. Yet it is surprising to look upon the advances the Constitution made in the next century from such humble beginnings.

The greatness of Magna Carta lies not so much in what it was to its framers in 1215, as in what it afterward became to the political leaders, to judges and lawyers, and to the entire mass of the men of England in later ages.
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