distance, but everywhere exhibiting the same spirit of intelligent enterprise and of steady, resistless growth. Thus considered, America and England are necessary one to the other. Their interests now and in the future are essentially the same.

In view of these facts, let us say, with an eminent thinker,[1] whose intellectual home is on both sides of the Atlantic, "Whatever there be between the two nations to forget and forgive, is forgotten and forgiven. If the two peoples, which are one, be true to their duty, who can doubt that the destinies of the world are in their hands?"

[1] Archdeacon Farrar, Address on General Grant, Westminster Abbey, 1885.

GENERAL SUMMARY OF ENGLISH CONSTITUTIONAL HISTORY[1]

1. Origin and Primitive Government of the English People. — The main body of the English people did not originate in Britain, but in Northwestern Germany. The Jutes, Saxons, and Angles were independent, kindred tribes living on the banks of the Elbe and its vicinity.

They had no written laws, but obeyed time-honored customs which had all the force of laws. All matters of public importance were decided by each tribe at meetings held in the open air. There every freeman had an equal voice in the decision. There the people chose their rulers and military leaders; they discussed questions of peace and war; finally, acting as a high court of justice, they tried criminals and settled disputes about property.

In these rude methods we see the beginning of the English Constitution. Its growth has been the slow work of centuries, but the great principles underlying it have never changed. At every stage of their progress the English people and their descendants throughout the globe have claimed the right of self-government; and, if we except the period of the Norman Conquest, whenever that right has been persistently withheld or denied the people have risen in arms and regained it.

2. Conquest of Britain; Origin and Power of the King. — After the Romans abandoned Britain the English invaded the island, and in the course of a hundred and fifty years (449–600) conquered it and established a number of rival settlements. The native Britons were, in great part, killed off or driven to take refuge in Wales and Cornwall.

The conquerors brought to their new home the methods of government and modes of life to which they had been accustomed in Germany. A cluster of towns — that is, a small number of enclosed habitations (§ 139) — formed a hundred (a district having either a hundred families or able to furnish a hundred warriors); a cluster of hundreds formed a shire or county. Each of these divisions had its public meeting, composed of all its freemen or their representatives, for the management of its own affairs. But a state of war — for the English tribes fought each other as well as fought the Britons — made

[1] **This Summary** is inserted for the benefit of those who desire a compact, connected view of the development of the English Constitution, such as may be conveniently used either for reference, for a general review of the subject, or for purposes of special study. — D. H. M.

For authorities, see Stubbs (449–1485); Hallam (1485–1760); May (1760–1870); Amos (1870–1880); see also Hansard and Cobbett's Parliamentary History, the works of Freeman, Taswell-Langmead (the best one-volume Constitutional History), Feilden (as a convenient reference-book this manual has no equal), and Ransome, in the List of Books.

The references inserted in parentheses are to sections in the body of the history.

a strong central government necessary. For this reason the leader of each tribe was made king. At first he was chosen, at large, by the entire tribe; later, unless there was some good reason for a different choice, the King's eldest son was selected as his successor. Thus the right to rule was practically fixed in the line of a certain family descent.

The ruler of each of these petty kingdoms was (1) the commander-in-chief in war; (2) he was the supreme judge.

3. The Witenagemot, or General Council. — In all other respects the King's authority was limited — except when he was strong enough to get his own way — by the Witenagemot, or General Council. This body consisted of the chief men of each kingdom acting in behalf of its people.[1] It exercised the following powers: 1. It elected the King, and if the people confirmed the choice, he was crowned. 2. If the King proved unsatisfactory, the Council might depose him and choose a successor. 3. The King, with the consent of the Council, made the laws, — that is, he declared the customs of the tribe. 4. The King, with the Council, appointed the chief officers of the kingdom (after the introduction of Christianity this included the bishops); but the King alone appointed the sheriff, to represent him, and collect the revenue in each shire. 5. The Council confirmed or denied grants of portions of the public lands made by the King to private persons. 6. The Council acted as the high court of justice, the King sitting as supreme judge. 7. The Council, with the King, discussed all questions of importance, — such as the levying of taxes, the making of treaties; smaller matters were left to the towns, hundreds, and shires to settle for themselves. After the consolidation of the different English kingdoms into one, the Witenagemot expanded into the National Council. In it we see "the true beginning of the Parliament of England."

4. How England became a United Kingdom; Influence of the Church and of the Danish Invasions. — For a number of centuries Britain consisted of a number of little rival kingdoms, almost constantly at war with each other. Meanwhile missionaries from Rome had introduced Christianity (597). Through the influence of Theodore of Tarsus, Archbishop of Canterbury (668), the clergy of the different hostile kingdoms met in general church councils.[2] This religious unity of action prepared the way for political unity. The Catholic Church — the only Christian Church (except the Greek Church) then existing — made men feel that their highest interests were one; it "created the nation."

This was the first cause of the union of the kingdoms. The second

[1] The Witenagemot (*i.e.*, the Meeting of the Witan, or Witan, or Wise Men, § 116), says Stubbs (Select Charters), represented the people, although it was not a collection of representatives

[2] This movement began several years earlier (see § 85), but Theodore of Tarsus was its first great organizer.

was the invasion of the Danes. These fierce marauders forced the people south of the Thames to join in common defence, under the leadership of Alfred, King of the West Saxons. By the Treaty of Wedmore (878), the Danes were compelled to give up Southwestern England, but they retained the whole of the Northeast. About the middle of the tenth century, one of Alfred's grandsons conquered the Danes, and took the title of "King of all England."[1] Later, the Danes, reinforced by fresh invasions of their countrymen, made themselves masters of the land; yet Canute, the most powerful of these Danish kings, ruled according to English methods. At length the great body of the people united in choosing Edward the Confessor king (1042–1066). He was English by birth, but Norman by education. Under him the unity of the English kingdom was, in name at least, fully restored.

5. Beginning of the Feudal System; its Results. — Meantime a great change had taken place in England with respect to holding land. We shall see clearly to what that change was tending if we look at the condition of France. There a system of government and of land tenure existed known as the Feudal System (§ 200). Under it the King was regarded as the owner of the entire realm. He granted, with his royal protection, the use of portions of the land to his chief men or nobles, with the privilege of building castles and of establishing private courts of justice on these estates. Such grants were made on two conditions: (1) that the tenants should take part in the King's Council; (2) that they should do military service in the King's behalf, and furnish besides a certain number of fully armed horsemen in proportion to the amount of land they had received. So long as they fulfilled these conditions — made under oath — they could retain their estates, and hand them down to their children; but if they failed to keep their oath, they forfeited the land to the King.

These great military barons or lords let out parts of their immense manors,[2] or estates, on similar conditions, — namely, (1) that their vassals or tenants should pay rent to them by doing military or other service; and (2) that they should agree that all questions concerning their rights and duties should be tried in the lord's private court.[3] On the other hand, the lord of the manor pledged himself to protect his vassals.

On every manor there were usually three classes of these tenants: (1) those who discharged their rent by doing military duty; (2) those

[1] Some authorities consider Edgar (959) as the first "King of all England." In 828 Egbert, King of the West Saxons, once, though but once, took the lesser title of "King of the English." See § 88.

[2] Manor (măn'or): see plan of a manor (Old French *manoir*, a mansion), facing page 80, the estate of a feudal lord. Every manor had two courts. The most important of these was the "*court baron*." It was composed of all the free tenants of the manor, with the lord (or his representative) presiding. It dealt with civil cases only. The second court was the "*court customary*," which dealt with cases connected with villeinage. The manors held by the greater barons had a third court, the "*court leet*," which dealt with criminal cases, and could inflict the death penalty. In all cases the decisions of the manorial courts would be pretty sure to be in the lord's favor. In England, however, these courts never acquired the degree of power which they did on the continent.

[3] See note above, on the manor

who paid by a certain fixed amount of labor — or, if they preferred, in produce or in money; (3) the villeins, or common laborers, who were bound to remain on the estate and work for the lord, and whose condition, although they were not wholly destitute of legal rights, was practically not very much above that of slaves (§ 160).

But there was another way by which men might enter the Feudal System; for while it was growing up there were many small free landholders, who owned their farms, and owed no man any service whatever. In those times of constant civil war such men would be in almost daily peril of losing, not only their property, but their lives. To escape this danger, they would hasten to "commend" themselves to some powerful neighboring lord. To do this, they pledged themselves to become "his men," surrendered their farms to him, and received them again as feudal vassals. That is, the lord bound himself to protect them against their enemies, and they bound themselves to do "suit and service"[1] like the other tenants of the manor; *for "suit and service" on the one side, and "protection" on the other, made up the threefold foundation of the Feudal System.*

Thus in time all classes of society became bound together. At the top stood the King, who was no man's tenant, but, in name at least, every man's master; at the bottom crouched the villein, who was no man's master, but was, in fact, the most servile and helpless of tenants.

Such was the condition of things in France. In England, however, this system of land tenure was never completely established until after the Norman Conquest (1066). For in England the tie which bound men to the King and to each other was originally one of pure choice, and had nothing directly to do with land. Gradually, however, this changed; and by the time of Edward the Confessor land in England had come to be held on conditions so closely resembling those of France that one step more — and that a very short one — would have made England a kingdom exhibiting all the most dangerous features of French feudalism.

For, notwithstanding certain advantages,[2] feudalism had this great evil: that the chief nobles often became in time more powerful than the King. This danger now menaced England. For convenience Canute the Dane had divided the realm into four earldoms. The holders of these vast estates had grown so mighty that they scorned royal authority. Edward the Confessor did not dare resist them. The ambition of each earl was to get the supreme mastery. This threatened to bring on civil war, and to split the kingdom into fragments. Fortunately for the welfare of the nation, William of Normandy, by his invasion and conquest of England (1066), put an effectual stop to the selfish schemes of these four rival nobles.

[1] That is, they pledged themselves to do suit in the lord's private court, and to do service in his army.

[2] On the Advantages of Feudalism, see § 123.

6. William the Conqueror and his Work. — After William's victory at Hastings and march on London, the National Council chose him sovereign, — they would not have dared to refuse, — and he was crowned by the Archbishop of York in Westminster Abbey. This coronation made him the legal successor of the line of English kings. In form, therefore, there was no break in the order of government; for though William had forced himself upon the throne, he had done so according to law and custom, and not directly by the sword.

Great changes followed the conquest, but they were not violent. The King abolished the four great earldoms (§ 107), and restored national unity. He gradually dispossessed the chief English landholders of their lands, and bestowed them, under strict feudal laws, on his Norman followers. He likewise gave all the highest positions in the Church to Norman bishops and abbots. The National Council now changed its character. It became simply a body of Norman barons, who were bound by feudal custom to meet with the King. But they did not restrain his authority; for William would brook no interference with his will from any one, not even from the Pope himself (§ 166).

But though the Conqueror had a tyrant's power, he rarely used it like a tyrant. We have seen[1] that the great excellence of the early English government lay in the fact that the towns, hundreds, and shires were self-governing in all local matters; the drawback to this system was its lack of unity and of a strong central power that could make itself respected and obeyed. William supplied this power, — without which there could be no true national strength, — yet at the same time he was careful to encourage the local system of self-government. He gave London a liberal charter to protect its rights and liberties (§ 154). He began the organization of a royal court of justice; he checked the rapacious Norman barons in their efforts to get control of the people's courts.

Furthermore, side by side with the feudal cavalry army, he maintained the old English county militia of foot-soldiers, in which every freeman was bound to serve. He used this militia, when necessary, to prevent the barons from getting the upper hand, and so destroying those liberties which were protected by the Crown as its own best safeguard against the plots of the nobles.

Next, William had a census, survey, and valuation made of all the estates in the kingdom outside London which were worth examination. The result of this great work was recorded in Domesday Book (§ 169). By means of that book — still preserved — the King knew what no English ruler had known before him; that was, the property-holding population and resources of the kingdom. Thus a

[1] See §§ 2, 3 of this Summary.

solid foundation was laid on which to establish the feudal revenue and the military power of the Crown.

Finally, just before his death, the Conqueror completed the organization of his government. Hitherto the vassals of the great barons had been bound to them alone. They were sworn to fight for their masters, even if those masters rose in open rebellion against the sovereign. William changed all that. At a meeting held at Salisbury (1086) he compelled every landholder in England, from the greatest to the smallest, — sixty thousand, it is said, — to swear to be "faithful to him against all others" (§§ 170, 171). By that oath he "broke the neck of the Feudal System" *as a form of government*, though he retained and developed the principle of feudal land tenure. Thus at one stroke he made the Crown the supreme power in England; had he not done so, the nation would soon have fallen a prey to civil war.

7. William's Norman Successors. — William Rufus has a bad name in history, and he fully deserves it. But he had this merit: he held the Norman barons in check with a stiff hand, and so, in one way, gave the country comparative peace.

His successor, Henry I, granted (1100) a charter of liberties (§ 185, note 1) to his people, by which he recognized the sacredness of the old English laws for the protection of life and property. Somewhat more than a century later this document became, as we shall see, the basis of the most celebrated charter known in English history. Henry attempted important reforms in the administration of the laws, and laid the foundation of that system which his grandson, Henry II, was to develop and establish. By these measures he gained the title of the "Lion of Justice," who "made peace for both man and beast." Furthermore, in an important controversy with the Pope respecting the appointment of bishops (§ 186), Henry obtained the right (1107) to require that both bishops and abbots, after taking possession of their church estates, should be obliged like the barons to furnish troops for the defence of the kingdom.

But in the next reign — that of Stephen — the barons got the upper hand, and the King was powerless to control them. They built castles without royal license, and from these private fortresses they sallied forth to ravage, rob, and murder in all directions. Had that period of terror continued much longer, England would have been torn to pieces by a multitude of greedy tyrants.

8. Reforms of Henry II; Scutage; Assize of Clarendon; Juries; Constitutions of Clarendon. — With Henry II the true reign of law begins. To carry out the reforms begun by his grandfather, Henry I, the King fought both barons and clergy. Over the first he won a complete and final victory; over the second he gained a partial one.

Henry began his work by pulling down the unlicensed castles

built by the "robber barons" in Stephen's reign. But, according to feudal usage, the King was dependent on these very barons for his cavalry, — his chief armed force. He resolved to make himself independent of their reluctant aid. To do this he offered to release them from military service, providing they would pay a tax, called "scutage," or "shield-money" (1159).[1] The barons gladly accepted the offer. With the money Henry was able to hire "mercenaries," or foreign troops, to fight for him abroad, and, if need be, in England as well. Thus he struck a great blow at the power of the barons, since they, through disuse of arms, grew weaker, while the King grew steadily stronger. To complete the work, Henry, many years later (1181), reorganized the old English national militia,[2] and made it thoroughly effective for the defence of the royal authority. For just a hundred years (1074–1174) the barons had been trying to overthrow the government; under Henry II the long struggle came to an end, and the royal power triumphed.

But in getting the military control of the kingdom, Henry had won only half of the victory he was seeking; to complete his supremacy over the powerful nobles, the king must obtain control of the administration of justice.

In order to do this more effectually, Henry issued the Assize of Clarendon (1166). It was the first true national code of law ever put forth by an English king, since previous codes had been little more than summaries of old "customs." The realm had already been divided into six circuits, having three judges for each circuit. The Assize of Clarendon gave these judges power not only to enter and preside over every county court, but also over every court held by a baron on his manor. This put a pretty decisive check to the hitherto uncontrolled baronial system of justice — or injustice — with its private dungeons and its private gibbets. It brought everything under the eye of the King's judges, so that those who wished to appeal to them could now do so without the expense, trouble, and danger of a journey to the royal palace.

Again, it had been the practice among the Norman barons to settle disputes about land by the barbarous method of trial by battle (§ 198); Henry gave tenants the right to have the case decided by a body of twelve knights acquainted with the facts.

In criminal cases a great change was likewise effected. Henceforth twelve men from each hundred, with four from each township, — sixteen at least, — acting as a grand jury, were to present all suspected criminals to the circuit judges.[3] The judges sent them to the

[1] Scutage: see § 211; the demand for scutage seems to show that the feudal tenure was now fully organized, and that the whole realm was by this time divided into knights' fees, — that is, into portions of land yielding £20 annually, — each of which was obliged to furnish one fully armed, well-mounted knight to serve the King (if called on) for forty days annually.

[2] National militia: see §§ 121, 132.

[3] See the Assize of Clarendon (1166) in Stubbs' Select Charters.

ordeal (§ 127) ; if they failed to pass it, they were then punished by law as convicted felons ; if they did pass it, they were banished from the kingdom as persons of evil repute. After the abolition of the ordeal (1215), a petty jury of witnesses was allowed to testify in favor of the accused, and clear them if they could from the charges brought by the grand jury. If their testimony was not decisive, more witnesses were added until twelve were obtained who could unanimously decide one way or the other. In the course of time[1] this smaller body became judges of the evidence for or against the accused, and thus the modern system of trial by jury was established.

These reforms had three important results : (1) they greatly diminished the power of the barons by taking the administration of justice, in large measure, out of their hands ; (2) they established a more uniform system of law ; (3) they brought large sums of money, in the way of court fees and fines, into the king's treasury, and so made him stronger than ever.

But meanwhile Henry was carrying on a still sharper battle in his attempt to bring the church courts — which William I had separated from the ordinary courts — under control of the same system of justice. In these church courts any person claiming to belong to the clergy had a right to be tried. Such courts had no power to inflict death, even for murder. In Stephen's reign many notorious criminals had managed to get themselves enrolled among the clergy, and had thus escaped the hanging they deserved. Henry was determined to have all men — in the circle of clergy or out of it — stand equal before the law. Instead of two kinds of justice, he would have but one ; this would not only secure a still higher uniformity of law, but it would sweep into the King's treasury many fat fees and fines which the church courts were then getting for themselves.

By the laws entitled the "Constitutions of Clarendon" (1164) (§ 216), the common courts were empowered to decide whether a man claiming to belong to the clergy should be tried by the church courts or not. If they granted him the privilege of a church-court trial, they kept a sharp watch on the progress of the case ; if the accused was convicted, he must then be handed over to the judges of the ordinary courts, and they took especial pains to convince him of the Bible truth, that "the way of the transgressor is hard." For a time the Constitutions were rigidly enforced, but in the end Henry was forced to renounce them. Later, however, the principle he had endeavored to set up was fully established.[2]

The greatest result springing from Henry's efforts was the training

[1] Certainly by 1450 ; but as late as the reign of George I juries were accustomed to bring in verdicts determined partly by their own personal knowledge of the facts. See Taswell-Langmead (revised ed.), page 179.

[2] Edward I limited the jurisdiction of the church courts to purely spiritual cases, such as heresy and the like ; but the work which he, following the example of Henry II, had undertaken was not fully accomplished until the fifteenth century.

of the people in public affairs, and the definitive establishment of that system of Common Law which regards the people as the supreme source of both law and government, and which is directly and vitally connected with the principle of representation and of trial by jury.[1]

9. Rise of Free Towns. — While these important changes were taking place, the towns were growing in population and wealth (§ 234). But as these towns occupied land belonging either directly to the King or to some baron, they were subject to the authority of one or the other, and so possessed no real freedom. In the reign of Richard I many towns purchased certain rights of self-government from the King.[2] This power of controlling their own affairs greatly increased their prosperity, and in time, as we shall see, secured them a voice in the management of the affairs of the nation.

10. John's Loss of Normandy ; Magna Carta. — Up to John's reign many barons continued to hold large estates in Normandy, in addition to those they had acquired in England ; hence their interests were divided between the two countries. Through war John lost his French possessions (§ 243). Henceforth the barons shut out from Normandy came to look upon England as their true home. From Henry II's reign the Normans and the English had been gradually mingling ; from this time they became practically one people. John's tyranny and cruelty brought their union into sharp, decisive action. The result of his greed for money, and his defiance of all law, was a tremendous insurrection. Before this time the people had always taken the side of the King against the barons ; now, with equal reason, they turned about and rose with the barons against the King.

Under the guidance of Archbishop Langton, barons, clergy, and people demanded reform. The archbishop brought out the half-forgotten charter of Henry I. This now furnished a model for Magna Carta, or the "Great Charter of the Liberties of England."[3]

It contained nothing that was new in principle. It was simply a clearer, fuller, stronger statement of those "rights of Englishmen which were already old."

John, though wild with rage, did not dare refuse to affix his royal seal to the Great Charter of 1215. By doing so he solemnly guaranteed : (1) the rights of the Church ; (2) those of the barons ; (3) those of all freemen ; (4) those of the villeins, or farm laborers. The value of this charter to the people at large is shown by the fact that nearly one-third of its sixty-three articles were inserted in their behalf. Of these articles, the most important was that which declared that no man should be deprived of liberty or property, or injured in body or estate, save by the judgment of his equals or by the law of the land.

In regard to taxation, the Charter provided that, except the customary

[1] See Green's Henry II, in the English Statesmen Series.

[2] See § 234.

[3] Magna Carta : see §§ 247–251, and see Constitutional Documents, page xxix.

feudal "aids,"[1] none should be levied unless by the consent of the National Council. Finally, the Charter expressly provided that twenty-five barons — one of whom was mayor of London — should be appointed to compel the King to carry out his agreement.

11. Henry III and the Great Charter; the Forest Charter; Provisions of Oxford; Rise of the House of Commons; Important Land Laws. — Under Henry III the Great Charter was reissued. But the important articles which forbade the King to levy taxes except by consent of the National Council, together with some others restricting his power to increase his revenue, were dropped, and never again restored.[2]

On the other hand, Henry was obliged to issue a Forest Charter, based on certain articles of Magna Carta, which declared that no man should lose life or limb for hunting in the royal forests.

Though the Great Charter was now shorn of some of its safeguards to liberty, yet it was still so highly prized that its confirmation was purchased at a high price from successive sovereigns. Down to the second year of Henry VI's reign (1423), we find that it had been confirmed no less than thirty-seven times.

Notwithstanding his solemn oath (§ 262), the vain and worthless Henry III deliberately violated the provisions of the Charter, in order to raise money to waste in his foolish foreign wars or on his court circle of French favorites.

Finally (1258), a body of armed barons, led by Simon de Montfort, Earl of Leicester, forced the King to summon a Parliament at Oxford. There a scheme of reform, called the "Provisions of Oxford," was adopted (§ 261). By these Provisions, which Henry swore to observe, the government was practically taken out of the King's hands, — at least as far as he had power to do mischief, — and entrusted to certain councils or committees of state.

A few years later, Henry refused to abide by the Provisions of Oxford, and civil war broke out. De Montfort, Earl of Leicester, gained a decisive victory at Lewes, and captured the King. The earl then summoned a National Council, made up of those who favored his policy of reform (§ 265). This was the famous Parliament of 1265. To it De Montfort summoned: (1) a small number of barons; (2) a large number of the higher clergy; (3) two knights, or country gentlemen, from each shire; (4) two burghers, or citizens, from every town.

The knights of the shire had been summoned to Parliament before;[3] but this was the first time that the towns had been invited to send representatives. By that act the earl set the example of giving the people at large a fuller share in the government than they had

[1] For the three customary feudal aids, see § 200.
[2] See Stubbs' Select Charters (Edward I), page 484; but compare note 1 on page 443.
[3] They were first summoned by John, in 1213.

yet had. To De Montfort, therefore, justly belongs the glory of being "the founder of the House of Commons"; though owing, perhaps, to his death shortly afterward at the battle of Evesham (1265), the regular and continuous representation of the towns did not begin until thirty years later.

Meanwhile (1279–1290), three land laws of great importance were enacted. The first limited the acquisition of landed property by the Church;[1] the second encouraged the transmission of land by will to the eldest son, thus keeping estates together instead of breaking them up among several heirs;[2] the third made purchasers of estates the direct feudal tenants of the King.[3] The object of these three laws was to prevent landholders from evading their feudal obligations; hence they decidedly strengthened the royal power.[4]

12. Edward I's "Model Parliament"; Confirmation of the Charters. — In 1295, Edward I, one of the ablest men that ever sat on the English throne, adopted De Montfort's scheme of representation. The King was greatly pressed for money, and his object was to get the help of the towns, and thus secure a system of taxation which should include all classes. With the significant words, "That which toucheth all should be approved by all," he summoned to Westminster the first really complete, or "Model Parliament" (§ 269),[5] consisting of King, Lords (temporal and spiritual), and Commons.[6] The form Parliament then received it has kept substantially ever since. We shall see how from this time the Commons gradually grew in influence, — though with periods of relapse, — until at length they have become the controlling power in legislation.

Ten years after the meeting of the "Model Parliament," in order to get money to carry on a war with France, Edward levied a tax on the barons, and seized a large quantity of wool belonging to the merchants. So determined was the resistance to these acts that civil war was threatened. In order to avert it, the King was obliged to summon a Parliament (1297), and to sign a confirmation of both the Great Charter and the Forest Charter (§ 272). He furthermore bound himself in the most solemn manner not to tax his subjects or seize their goods without their consent. Henceforth Parliament alone

[1] Statute of Mortmain (1279): see § 278; it was especially directed against the acquisition of land by monasteries.
[2] Statute De Donis Conditionalibus or Entail (Westminster II) (1285): see § 277.
[3] Statute of Quia Emptores (1290): see § 277.
[4] During the same period the Statute of Winchester (1285) reorganized the national militia and the police system. See § 276.
[5] De Montfort's Parliament was not wholly lawful and regular, because not voluntarily summoned by the King himself. Parliament must be summoned by the sovereign, opened by the sovereign (in person or by commission); all laws require the sovereign's signature to complete them; and, finally, Parliament can be suspended or dissolved by the sovereign only.
[6] The lower clergy were summoned to send representatives; but their representatives came very irregularly, and in the fourteenth century ceased coming altogether. From that time they voted their supplies for the Crown in Convocation, until 1663, when Convocation ceased to meet. The higher clergy — bishops and abbots — met with the House of Lords.

was considered to hold control of the nation's purse; and although this principle was afterward evaded, no king openly denied its binding force. Furthermore, in Edward II's reign the House of Commons gained (1322), for the first time, a direct share in legislation. This step had results of supreme constitutional importance.

13. Division of Parliament into Two Houses; Growth of the Power of the Commons; Legislation by Statute; Impeachment; Power over the Purse. — In Edward III's reign a great change occurred in Parliament. The knights of the shire (about 1343) joined the representatives from the towns, and began to sit apart from the Lords as a distinct House of Commons. This union gave that House a new character, and invested it with a power in Parliament which the representation from the towns alone could not have exerted. But though thus strengthened, the Commons did not venture to claim an equal part with the Lords in framing laws. Their attitude was that of humble petitioners. When they had voted the supplies of money which the King asked for, the Commons might then meekly beg for legislation. Even when the King and the Lords assented to their petitions, the Commons often found to their disappointment that the laws which had been promised did not correspond to those for which they had asked. Henry V pledged his word (1414) that the petitions, when accepted, should be made into laws without any alteration. But, as a matter of fact, this was not effectually done until near the close of the reign of Henry VI (about 1461). Then the Commons succeeded in obtaining the right to present proposed laws in the form of regular bills instead of petitions. These bills when enacted became statutes or acts of Parliament, as we know them to-day. This change was a most important one, since it made it impossible for the King with the Lords to fraudulently defeat the expressed will of the Commons after they had once assented to the legislation the Commons desired.

Meanwhile the Commons gained, for the first time (1376), the right of impeaching such ministers of the Crown as they had reason to believe were unfaithful to the interests of the people. This, of course, put an immense restraining power in their hands, since they could now make the ministers responsible, in great measure, for the King.[1]

Next (1406), the Commons insisted on having an account rendered of the money spent by the King; and at times they even limited[2] their appropriations of money to particular purposes. Finally, in 1407, the Commons took the most decided step of all. They boldly demanded and obtained *the exclusive right of making all grants of money* required by the Crown.[3]

[1] But after 1450 the Commons ceased to exercise the right of impeachment until 1621, when they impeached Lord Bacon and others.

[2] The Commons dropped the right of appropriating money for specific objects, — except in a single instance under Henry VI, — and did not revive it until 1624.

[3] This right the Commons never surrendered.

In future the King — unless he violated the law — had to look to the Commons — that is, to the direct representation of the mass of the people — for his chief supplies. This made the will of the Commons more powerful than it had ever been.

14. Religious Legislation; Emancipation of the Villeins; Disfranchisement of County Electors. — The Parliament of Merton had already (1236) refused to introduce the canon or ecclesiastical law (§ 317). In the next century two very important statutes relating to the Church were enacted, — that of Provisors (1350)[1] and of Præmunire (1353 and 1393),[2] — limiting the power of the Pope over the English Church. On the other hand, the rise of the Lollards had caused a statute to be passed (1401) against heretics, and under it the first martyr had been burned in England. During this period the villeins had risen in insurrection (1381) (§§ 302–304), and were gradually gaining their liberty. Thus a very large body of people who had been practically excluded from political rights now began to slowly acquire them.[3] But, on the other hand, a statute was enacted (1430) which prohibited all persons having an income of less than forty shillings a year — or what would be equal to forty pounds at the present value of money — from voting for knights of the shire (§ 349). The consequence was that the poorer and humbler classes in the country were no longer directly represented in the House of Commons.

15. Wars of the Roses; Decline of Parliament; Partial Revival of its Power under Elizabeth. — The Civil Wars of the Roses (1455–1485) gave a decided check to the further development of parliamentary power. Many noble families were ruined by the protracted struggle, and the new nobles created by the King were pledged to uphold the interests of the Crown. Furthermore, numerous towns absorbed in their own local affairs ceased to elect members to the Commons. Thus, with a House of Lords on the side of royal authority, and with a House of Commons diminished in numbers and in influence, the decline of the independent attitude of Parliament was inevitable.

The result of these changes was very marked. From the reign of Henry VI to that of Elizabeth, a period of nearly a hundred and forty years, "the voice of Parliament was rarely heard." The Tudors practically set up a new or "personal monarchy," in which their will rose above both Parliament and the constitution;[4] and Henry VII,

[1] Provisors: this was a law forbidding the Pope to provide any person (by anticipation) with a position in the English Church until the death of the incumbent.

[2] Præmunire: see Constitutional Documents, page xxxii. Neither the law of Provisors nor of Præmunire was strictly enforced until Henry VIII's reign.

[3] Villeins appear, however, to have had the right of voting for knights of the shire until the statute of 1430 disfranchised them.

[4] Theoretically Henry VII's power was restrained by certain checks (see § 380, note 1), and even Henry VIII generally ruled according to the letter of the law, however much he may have violated its spirit. It is noticeable, too, that it was under Henry VIII (1541) that Parliament first formally claimed freedom of speech as one of its "undoubted privileges."

instead of asking the Commons for money, extorted it in fines enforced by his Court of Star-Chamber, or compelled his wealthy subjects to grant it to him in "benevolences" (§§ 359, 382), — those "loving contributions," as the King called them, "lovingly advanced"!

During this period England laid claim to a new continent, and Henry VIII, repudiating the authority of the Pope, declared himself the "supreme head" (1535) of the English Catholic Church. In the next reign (Edward VI) the Catholic worship, which had existed in England for nearly a thousand years, was abolished (1540), and the Protestant faith became henceforth — except during Mary's short reign — the established religion of the kingdom. It was enforced by two Acts of Uniformity (1549, 1552). One effect of the overthrow of Catholicism was to change the character of the House of Lords, by reducing the number of spiritual lords from a majority to a minority, as they have ever since remained (§ 458, note 2).

At the beginning of Elizabeth's reign the Second Act of Supremacy (1559) shut out all Catholics from the House of Commons (§ 434). Protestantism was fully and finally established as the state religion,[1] embodied in the creed known as the Thirty-Nine Articles (1563); and by the Third Act of Uniformity (1559) very severe measures were taken against all — whether Catholics or Puritans — who refused to conform to the Episcopal mode of worship. The High Commission Court was organized (1583) to try and to punish heretics — whether Catholics or Puritans. The great number of paupers caused by the destruction of the monasteries under Henry VIII and the gradual decay of relations of feudal service caused the passage of the first Poor Law (1601) (§ 455), and so brought the Government face to face with a problem which has never yet been satisfactorily settled; namely, what to do with habitual paupers and tramps.

The closing part of Elizabeth's reign marks the revival of parliamentary power. The House of Commons now had many Puritan members, and they did not hesitate to assert their right to advise the Queen on all questions of national importance. Elizabeth sharply rebuked them for presuming to meddle with questions of religion, or for urging her either to take a husband or to name a successor to the throne; but even she did not venture to run directly counter to the will of the people. When the Commons demanded (1601) that she should put a stop to the pernicious practice of granting trading monopolies (§ 440) to her favorites, she was obliged to yield her assent.

16. James I; the Divine Right of Kings; Struggle with Parliament. — James began his reign by declaring that kings rule not by the will of the people, but by "divine right." "God makes the King," said he, "and the King makes the law" (§ 471). For this reason he demanded that his proclamations should have all the force

[1] By the third Act of Uniformity and the establishment of the High Commission Court, see § 433. The first and second Acts of Uniformity were enacted under Edward VI (§ 414).

of acts of Parliament. Furthermore, since he appointed the judges, he could generally get their decisions to support him; thus he made even the courts of justice serve as instruments of his will. In his arrogance he declared that neither Parliament nor the people had any right to discuss matters of state, whether foreign or domestic, since he was resolved to reserve such questions for the royal intellect to deal with. By his religious intolerance he maddened both Puritans and Catholics, and the Pilgrim Fathers fled from England to escape his tyranny.

But there was a limit set to his overbearing conceit. When he dictated to the Commons (1604) what persons should sit in that body, they indignantly refused to submit to any interference on his part, and their refusal was so emphatic that James never brought up the matter again.

The King, however, was so determined to shut out members whom he did not like that he attempted to gain his ends by having such persons seized on charge of debt and thrown into prison. The Commons, on the other hand, not only insisted that their ancient privilege of exemption from arrest in such cases should be respected, but they passed a special law (1604) to clinch the privilege.

Ten years later (1614) James, pressed for money, called a Parliament to get supplies. He had taken precautions to get a majority of members elected who would, he hoped, vote him what he wanted. But to his dismay the Commons declined to grant him a penny unless he would promise to cease imposing illegal duties on merchandise. The King angrily refused, and dissolved the so-called "Addled Parliament."[1]

Finally, in order to show James that it would not be trifled with, a later Parliament (1621) revived the right of impeachment, which had not been resorted to since 1450.[2] The Commons now charged Lord Chancellor Bacon, judge of the High Court of Chancery, and "keeper of the King's conscience," with accepting bribes. Bacon held the highest office in the gift of the Crown, and the real object of the impeachment was to strike the King through the person of his chief official and supporter. Bacon confessed his crime, saying, "I was the justest judge that was in England these fifty years, but it was the justest censure in Parliament that was these two hundred years."

James tried his best to save his servile favorite, but it was useless, and Bacon was convicted, disgraced, and partially punished (§ 477).

The Commons of the same Parliament petitioned the King against the alleged growth of the Catholic religion in the kingdom, and especially against the proposed marriage of the Prince of Wales to a Spanish Catholic princess. James ordered the Commons to let mysteries of

[1] This Parliament was nicknamed the "Addled Parliament," because it did not enact a single law, though it most effectually "addled" the King's plans. See § 476.

[2] See § 13 of this Summary.

state alone. They claimed liberty of speech. The King asserted that they had no liberties except such as the royal power saw fit to grant. Then the Commons drew up their famous Protest, in which they declared that their liberties were not derived from the king, but were "the ancient and undoubted birthright and inheritance of the people of England." In his rage James ordered the journal of the Commons to be brought to him, tore out the Protest with his own hand, and sent five of the members of the House to prison (§ 471). This rash act made the Commons more determined than ever not to yield to arbitrary power. James died three years later, leaving his unfortunate son Charles to settle the angry controversy he had raised.

17. Charles I; Forced Loans; the Petition of Right. — Charles I came to the throne full of his father's lofty ideas of the Divine Right of Kings to govern as they pleased. In private life he was conscientious, but in his public policy he was a man "of dark and crooked ways."

He had married a French Catholic princess, and the Puritans, who were now very strong in the House of Commons, believed that the King secretly sympathized with the Queen's religion. This was not the case; for Charles, after his peculiar fashion, was a sincere Protestant, though he favored the introduction into the English Church of some of the ceremonies peculiar to Catholic worship.

The Commons showed their distrust of the King by voting him the tax of tonnage and poundage (certain duties levied on wine and merchandise), for a single year only, instead of for life, as had been their custom. The Lords refused to assent to such a limited grant,[1] and Charles deliberately collected the tax without the authority of Parliament. Failing, however, to get a sufficient supply in that way, the King forced men of property to grant him "benevolences," and to loan him large sums of money with no hope of its return. Those who dared to refuse were thrown into prison on some pretended charge, or had squads of brutal soldiers quartered in their houses.

When even these measures failed to supply his wants, Charles was forced to summon a Parliament, and ask for help. Instead of granting it, the Commons drew up the Petition of Right[2] of 1628, as an indignant remonstrance, and as a safeguard against further acts of tyranny. This Petition has been called the "Second Great Charter of the Liberties of England." It declared: 1. That no one should be compelled to pay any tax or to supply the king with money, except by order of act of Parliament. 2. That neither soldiers nor sailors should be quartered in private houses.[3] 3. That no one should be imprisoned or punished contrary to law. Charles was forced by his need of money to assent to this Petition, which thus became a most important part of the English constitution. But the King did not keep his word. When Parliament

[1] See Taswell-Langmead (revised edition), page 557, note.
[2] Petition of Right: see § 484, and Constitutional Documents, page xxix.
[3] The king was also deprived of the power to press citizens into the army and navy.

next met (1629), it refused to grant money unless Charles would renew his pledge not to violate the law. The King made some concessions, but finally resolved to adjourn Parliament. Several members of the Commons held the Speaker in the chair by force, — thus preventing the adjournment of the House, — until resolutions offered by Sir John Eliot were passed (§ 486). These resolutions were aimed directly at the King. They declared: (1) that he is a traitor who attempts any change in the established religion of the kingdom;[1] (2) who levies any tax not voted by Parliament; (3) or who voluntarily pays such a tax. Parliament then adjourned.

18. "Thorough"; Ship Money; the "Short Parliament." — The King swore that "the vipers" who opposed him should have their reward. Eliot was thrown into prison, and kept there till he died. Charles made up his mind that, with the help of Archbishop Laud in church matters, and of Lord Strafford in affairs of state, he would rule without Parliaments. Strafford urged the King to adopt the policy of "Thorough"[2] (§ 487); in other words, to follow the bent of his own will without consulting the will of the nation. This, of course, practically meant the overthrow of parliamentary and constitutional government. Charles heartily approved of this plan for setting up what he called a "beneficent despotism" based on "Divine Right."

The King now resorted to various illegal means to obtain supplies. The last device he hit upon was that of raising ship money. To do this, he levied a tax on all the counties of England, — inland as well as seaboard, — on the pretext that he purposed building a navy for the defence of the kingdom. John Hampden refused to pay the tax, but Charles' servile judges decided against him, when the case was brought into court (§ 488).

Charles ruled without a Parliament for eleven years. He might, perhaps, have gone on in this way for as many more, had he not provoked the Scots to rebel by attempting to force a modified form of the English Prayer-Book on the Church of that country (§ 490). The necessities of the war with the Scots compelled the King to call a Parliament. It declined to grant the King money to carry on the war unless he would give some satisfactory guarantee of governing according to the will of the people. Charles refused to do this, and after a three weeks' session he dissolved what was known as the "Short Parliament."

19. The "Long Parliament"; the Civil War. — But the war gave Charles no choice, and before the year was out he was obliged

[1] The Puritans generally believed that the King wished to restore the Catholic religion as the Established Church of England, but in this idea they were mistaken.
[2] "Thorough": Strafford wrote to Laud, "You may govern as you please. . . . I am confident that the King is able to carry any just and honorable action thorough [*i.e.*, through or against] all imaginable opposition." Both Strafford and Laud used this word "thorough," in this sense, to designate their tyrannical policy.

to call the famous "Long Parliament" of 1640.[1] That body met with the firm determination to restore the liberties of Englishmen or to perish in the attempt. 1. It impeached Strafford and Laud, and sent them to the scaffold as traitors.[2] 2. It swept away those instruments of royal oppression, the Court of Star-Chamber and the High Commission Court (§§ 382, 433). 3. It expelled the bishops from the House of Lords. 4. It passed the Triennial Bill, compelling the King to summon a Parliament at least once in three years.[3] 5. It also passed a law declaring that the King could not suspend or dissolve Parliament without its consent. 6. Last of all, the Commons drew up the Grand Remonstrance (§ 491), enunciating at great length the grievances of the last sixteen years, and vehemently appealing to the people to support them in their attempts at reform. The Remonstrance was printed and distributed throughout England.[4]

About a month later (1642) the King, at the head of an armed force, undertook to seize Hampden, Pym, and three other of the most active members of the Commons on a charge of treason (§ 492). The attempt failed. Soon afterward the Commons passed the Militia Bill, and thus took the command of the national militia and of the chief fortresses of the realm, "to hold," as they said, "for King and Parliament." The act was unconstitutional; but, after the attempted seizure of the five members, the Commons felt certain that if they left the command of the militia in the King's hands, they would simply sign their own death warrant.

In resentment of this action, Charles now (1642) began the civil war. It resulted in the execution of the King, and in the temporary overthrow of the monarchy, the House of Lords, and the Established Episcopal Church (§ 500). In place of the monarchy, the party in power set up a short-lived Puritan Republic. This was followed by the Protectorate of Oliver Cromwell and that of his son Richard (§§ 507–517).

20. Charles II; Abolition of Feudal Tenure; Establishment of a Standing Army. — In 1660 the people, weary of the Protectorate form of government, welcomed the return of Charles II. His coming marks the restoration of the monarchy, of the House of Lords, and of the National Episcopal Church.

A great change was now effected in the source of the King's revenue. Hitherto it had sprung largely from feudal dues. These

[1] The "Long Parliament": it sat from 1640 to 1653, and was not finally dissolved until 1660.

[2] Charles assured Strafford that Parliament should not touch "a hair of his head"; but to save himself the King signed the Bill of Attainder (see page xxxii), which sent his ablest and most faithful servant to the block. Well might Strafford exclaim, "Put not your trust in princes."

[3] The Triennial Act was repealed in 1664, and reënacted in 1694. In 1716 the Septennial Act increased the limit of three years to seven. This act is still in force.

[4] The press soon became, for the first time, a most active agent of political agitation, both for and against the King. See § 495.

had long been difficult to collect, because the Feudal System had practically died out. The feudal land tenure with its dues was now abolished, — a reform, says Blackstone, greater even than that of Magna Carta, — and in their place a tax was levied for a fixed sum (§ 534). This tax should in justice have fallen on the landowners, who profited by the change; but they managed to evade it, in great measure, and by getting it levied on beer and some other liquors, they forced the working classes to shoulder the chief part of the burden, which they still continue to carry.

Parliament now restored the command of the militia to the King;[1] and, for the first time in English history, it also gave him the command of a standing army of five thousand men, — thus, in one way, making him more powerful than ever before (§ 519).

On the other hand, Parliament revived the practice of limiting its appropriations of money to specific purposes.[2] It furthermore began to require an exact account of how the King spent the money, — a most embarrassing question for Charles to answer. Again, Parliament did not hesitate to impeach and remove the King's ministers whenever they forfeited the confidence of that body.[3]

The religious legislation of this period marks the strong reaction from Puritanism which had set in. 1. The Corporation Act (1661) excluded all persons who did not renounce the Puritan Covenant, and partake of the Sacrament according to the Church of England, from holding municipal or other corporate offices (§ 524). 2. The fourth Act of Uniformity[4] required all clergymen to accept the Book of Common Prayer of (1662) the Church of England (§ 524). The result of this law was that no less than two thousand Puritan ministers were driven from their pulpits in a single day. 3. The Conventicle Act (§ 524) followed (1664). It forbade the preaching or hearing of Puritan doctrines, under severe penalties. 4. The Five-Mile Act (1665) (§ 524)[5] prohibited nonconforming clergymen from teaching, or from coming within five miles of any corporate town (except when travelling).

21. Origin of Cabinet Government; the Secret Treaty of Dover; the Test Act; the Habeas Corpus Act. — Charles made a great and most important change with respect to the Privy Council. Instead of consulting the entire Council on matters of state, he established the custom of inviting a few only to meet with him in his cabinet, or private room. This limited body of confidential advisers was called the "Cabal," or secret council (§ 522).

[1] See Militia Bill, § 19 of this Summary.

[2] See § 13 of this Summary.

[3] See § 13 of this Summary (Impeachment).

[4] The first and second Acts of Uniformity date from Edward VI (1549, 1552); the third from Elizabeth (1559). See §§ 414, 433, 524.

[5] The Five-Mile Act (1665) excepted those clergymen who took the oath of non-resistance to the King, and who swore not to attempt to alter the constitution of Church or State. See Hallam's Constitutional History of England.