

Charles' great ambition was to increase his standing army, to rule independently of Parliament, and to get an abundance of money to spend on his extravagant pleasures and vices.

In order to accomplish these three ends he made a secret and shameful treaty with Louis XIV of France (1670) (§ 528). Louis wished to crush the Dutch Protestant Republic of Holland, to get possession of Spain, and to secure, if possible, the ascendancy of Catholicism in England as well as throughout Europe. Charles, who was destitute of any religious principle,—or, in fact, of any sense of honor,—agreed publicly to declare himself a Catholic, to favor the propagation of that faith in England, and to make war on Holland in return for very liberal grants of money, and for the loan of six thousand French troops by Louis, to help him put down any opposition in England. Two members of the Cabal were acquainted with the terms of this secret Treaty of Dover. Charles made a second secret treaty with Louis XIV in 1678.

Charles did not dare openly to avow himself a convert—or pretended convert—to the Catholic religion; but he issued a Declaration of Indulgence (1672) suspending the harsh statutes against the English Catholics (§ 529).

Parliament took the alarm and passed the Test Act (1673), by which all Catholics were shut out from holding any government office or position (§ 529). This act broke up the Cabal, by compelling a Catholic nobleman, who was one of its leading members, to resign. Later, Parliament further showed its power by compelling the King to sign the Act of Habeas Corpus (1679) (§ 534), which put an end to his arbitrarily throwing men into prison, and keeping them there, in order to stop their free discussion of his plots against the constitution.<sup>1</sup>

But though the Cabal had been broken up, the principle of a limited private council survived, and thirty years after the Revolution of 1688 it was revived, and took the name of the "Cabinet" (§ 583). Under the leadership of the Prime Minister, who is its head, the Cabinet has become responsible for the policy of the sovereign.<sup>2</sup> Should Parliament decidedly oppose that policy, the Prime Minister, with his Cabinet, either resigns, and a new Cabinet is chosen, or the minister appeals to the people for support, and the sovereign dissolves Parliament and orders a new parliamentary election, by which the nation decides the question. This method renders the old, and never desirable, remedy of the impeachment of the ministers of the sovereign no longer necessary. The Prime Minister—who answers for the acts of the sovereign and for his policy—is more directly responsible to the people than is the President of the United States.

<sup>1</sup> See Habeas Corpus Act in Constitutional Documents, page xxxii.

<sup>2</sup> The real efficiency of the cabinet system of government was not fully developed until after the Reform Act of 1832 had widely extended the right of suffrage, and thus made the government more directly responsible to the people. See § 583, and note 2.

**22. The Pretended "Popish Plot"; Rise of the Whigs and the Tories; Revocation of Town Charters.**—The pretended "Popish Plot" (1678) (§ 530) to kill the King, in order to place his brother James—a Catholic convert—on the throne, caused the rise of a strong movement (1680) to exclude James from the right of succession. The Exclusion Bill failed (§ 530); but the Disabling Act was passed (1678), excluding Catholics from sitting in either House of Parliament; but an exception was made in favor of the Duke of York. Henceforward two prominent political parties appear in Parliament,—one, that of the Whigs or Liberals, bent on extending the power of the people; the other, that of the Tories or Conservatives, resolved to maintain the power of the Crown.

Charles, of course, did all in his power to encourage the latter party. In order to strengthen their numbers in the Commons, he found pretexts for revoking the charters of many Whig towns (§ 531). He then issued new charters to these towns, giving the power of election to the Tories.<sup>1</sup> While engaged in this congenial work the King died, and his brother James came to the throne.

**23. James II; the Dispensing Power; Declaration of Indulgence; the Revolution of 1688.**—James II was a zealous Catholic, and therefore naturally desired to secure freedom of worship in England for people of his own faith. In his zeal he went too far, and the Pope expressed his disgust at the King's foolish rashness. By the exercise of the Dispensing Power<sup>2</sup> he suspended the Test Act and the Act of Uniformity, in order that Catholics might be relieved from the penalties imposed by these laws, and also for the purpose of giving them civil and military offices, from which the Test Act excluded them (§ 540). James also established a new High Commission Court<sup>3</sup> (§ 540), and made the infamous Judge Jeffreys the head of this despotic tribunal. This court had the supervision of all churches and institutions of education. Its main object was to further the spread of Catholicism, and to silence those clergymen who preached against that faith. The King appointed a Catholic president of Magdalen College, Oxford, and expelled from the college all who opposed the appointment. Later, he issued two Declarations of Indulgence (1687, 1688), in which he proclaimed universal religious toleration (§ 540). It was generally believed that under cover of these declarations the King intended to favor the ascendancy of Catholicism. Seven bishops, who petitioned for the privilege of declining to read the declarations from their pulpits, were imprisoned,

<sup>1</sup> The right of election in many towns was then confined to the town officers or to a few influential inhabitants. This continued to be the case until the passage of the Reform Bill in 1832.

<sup>2</sup> This was the exercise of the right, claimed by the King as one of his prerogatives, of exempting individuals from the penalty of certain laws. The King also claimed the right of suspending entirely (as in the case of the Declaration of Indulgence) one or more statutes. Both these rights had been exercised, at times, from a very early date.

<sup>3</sup> New High Commission Court: see § 19 of this Summary.



but on their trial were acquitted by a jury in full sympathy with them (§ 541).

These acts of the King, together with the fact that he had greatly increased the standing army, and had stationed it just outside of London, caused great alarm throughout England (§ 540). The majority of the people of both parties (§ 531) believed that James was plotting 'to subvert and extirpate the Protestant religion and the laws and liberties of the kingdom.'<sup>1</sup>

Still, so long as the King remained childless, the nation was encouraged by the hope that James' daughter Mary might succeed him. She was known to be a decided Protestant, and she had married William, Prince of Orange, the head of the Protestant Republic of Holland. But the birth of a son to James (1688) put an end to that hope. Immediately a number of leading Whigs and Tories (§§ 531, 542) united in sending an invitation to the Prince of Orange to come over to England with an army to protect Parliament against the King backed by his standing army.

**24. William and Mary; Declaration of Right; Results of the Revolution.**—William came; James fled to France. A Convention Parliament<sup>2</sup> drew up a Declaration of Right which declared that the King had abdicated, and which therefore offered the crown to William and Mary (§ 546). They accepted. Thus by the bloodless Revolution of 1688 the English nation transferred the sovereignty to those who had no direct legal claim to it so long as James and his son were living (§ 542). Hence by this act the people deliberately set aside hereditary succession, as a binding rule, and revived the primitive English custom of choosing such a sovereign as they deemed best. In this sense the uprising of 1688 was most emphatically a revolution (§§ 544, 550). It made, as Green has said, an English monarch as much the creature of an act of Parliament as the pettiest tax-gatherer in his realm. But it was a still greater revolution in another way, since it gave a death blow to the direct "personal monarchy," which began with the Tudors two hundred years before. It is true that in George III's reign we shall see that power temporarily revived, but we shall never hear anything more of that Divine Right of Kings, for which one Stuart "lost his head, and another, his crown." Henceforth the House of Commons will govern England, although, as we shall see, it will be nearly a hundred and fifty years before that House will be able to free itself from the control of either a few powerful families on the one hand, or that of the Crown on the other.

**25. Bill of Rights; the Commons by the Revenue and the Mutiny Act obtain Complete Control over the Purse and the Sword.**—In order to make the constitutional rights of the people unmistakably

<sup>1</sup> See the language of the Bill of Rights (Constitutional Documents), page xxxi.

<sup>2</sup> Convention Parliament: it was so called because it was not regularly summoned by the King,—he having fled the country.

clear, the Bill of Rights (1689)—an expansion of the Declaration of Right—was drawn up (§ 549). The Bill of Rights<sup>1</sup> declared: 1. That there should be no suspension or change in the laws, and no taxation except by act of Parliament. 2. That there should be freedom of election to Parliament and freedom of speech in Parliament (both rights that the Stuarts had attempted to control). 3. That the sovereign should not keep a standing army, in time of peace, except by consent of Parliament. 4. That in future no Roman Catholic should sit on the English throne. This last clause was reaffirmed by the Act of Settlement (1701) (§ 549).<sup>2</sup>

This most important bill, having received the signature of William and Mary, became law. It constitutes the third great written charter or safeguard of English liberty. Taken in connection with Magna Carta and the Petition of Right, it forms, according to Lord Chatham, "*the Bible of English liberty*" (§ 549).

But Parliament had not yet finished the work of reform it had taken in hand. The executive strength of every government depends on its control of two powers,—the purse and the sword. Parliament had, as we have seen, got a tight grasp on the first, for the Commons, and the Commons alone, could levy taxes; but within certain very wide limits, the personal expenditure of the sovereign still practically remained unchecked. Parliament now (1689) took the decisive step of voting by the Revenue Act, (1) a specific sum for the maintenance of the Crown, and (2) of voting this supply, not for the life of the sovereign, as had been the custom, but for four years (§ 550). A little later this supply was fixed for a single year only. This action gave to the Commons final and complete control of the purse (§ 632).

Next, Parliament passed the Mutiny Act (1689) (§ 548), which granted the king power to enforce martial law—in other words, to maintain a standing army—for one year at a time, and no longer save by renewal of the law. This act gave Parliament complete control of the sword, and thus finished the great work; for without the annual meeting and the annual vote of that body, an English sovereign would at the end of a twelvemonth stand penniless and helpless.

**26. Reforms in the Courts; the Toleration Act; the Press made Free.**—The same year (1689) Parliament effected great and sorely needed reforms in the administration of justice (§ 544).

Next, Parliament passed the Toleration Act (1689) (§ 548). This measure granted liberty of worship to all Protestant Dissenters except those who denied the doctrine of the Trinity.<sup>3</sup> The Toleration Act, however, did not abolish the Corporation Act or the Test Act,<sup>4</sup> and

<sup>1</sup> Bill of Rights: see Constitutional Documents, page xxxi.

<sup>2</sup> See, too, Constitutional Documents, page xxxii.

<sup>3</sup> Freedom of worship was granted to Unitarians in 1812.

<sup>4</sup> The Act of Indemnity of 1727 suspended the penalties of the Test and the Corporation acts; they were both repealed in 1828.



it granted no religious freedom to Catholics.<sup>1</sup> Still, the Toleration Act was a step forward, and it prepared the way for that absolute liberty of worship and of religious belief which now exists in England.

In finance, the reign of William and Mary was marked by the practical beginning of the permanent National Debt and by the establishment of the Bank of England (§ 552).

Now, too (1695), the English press, for the first time in its history, became permanently free (§ 550 [4]), though hampered by a very severe law of libel and by stamp duties.<sup>2</sup> From this period the influence of newspapers continued to increase, until the final abolition of the stamp duty (1855) made it possible to issue penny and even half-penny papers at a profit. These cheap newspapers sprang at once into an immense circulation among all classes, and thus they became the power for good or evil, according to their character, which they are to-day; so that it would be no exaggeration to say that back of the power of Parliament now stands the greater power of the press.

**27. The House of Commons no longer a Representative Body; the First Two Georges and their Ministers.**—But now that the Revolution of 1688 had done its work, and transferred the power of the Crown to the House of Commons, a new difficulty arose. That was the fact that the Commons did not represent the people, but stood simply as the representative of a small number of rich Whig landowners.<sup>3</sup> In many towns the right to vote was confined to the town officers or the well-to-do citizens. In other cases, towns which had dwindled in population to a very few inhabitants continued to have the right to send two members to Parliament, while on the other hand large and flourishing cities had grown up which had no power to send even a single member (§ 623). The result of this state of things was that the wealthy Whig families bought up the votes of electors, and so regularly controlled the elections (§ 597).

Under the first two Georges, both of whom were foreigners, the ministers—especially Robert Walpole, who was the first real Prime Minister of England, and who held his place for twenty years (1721–1742)—naturally stood in the foreground. They understood the ins and outs of English politics, while the two German sovereigns, the first of whom never learned to speak English, neither knew nor cared anything about them. When men wanted favors or offices, they went to the ministers for them (§ 587). This made men like Walpole so powerful that George II said bitterly, “In England the ministers are king” (§ 583).

<sup>1</sup> Later, very severe laws were enacted against the Catholics; and in the next reign (Anne's) the Act of Occasional Conformity and the Schism Act were directed against Protestant Dissenters.

<sup>2</sup> Furthermore, the Corresponding Societies' Acts (1793, 1799) operated for a time as a decided check on the freedom of the press. See May's Constitutional History of England.

<sup>3</sup> The influence of the Whigs had secured the passage of the Act of Settlement which brought in the Georges; for this reason the Whigs had gained the chief political power.

**28. George III's Revival of “Personal Monarchy”; the “King's Friends.”**—George III was born in England, and prided himself on being an Englishman. He came to the throne fully resolved, as Walpole said, “to make his power shine out,” and to carry out his mother's constant injunction of, “George, be King!” (§ 597). To do this, he set himself to work to trample on the power of the ministers, to take the distribution of offices and honors out of their hands, and furthermore to break down the influence of the great Whig families in Parliament. He had no intention of reforming the House of Commons, or of securing the representation of the people in it; his purpose was to gain the control of the House, and use it for his own ends. In this he was thoroughly conscientious, according to his idea of right,—for he believed with all his heart in promoting the welfare of England,—but he thought that welfare depended on the will of the King much more than on that of the nation. His maxim was “everything for, but nothing by, the people.” By liberal gifts of money,—he spent £25,000 in a single day (1762) in bribes,<sup>1</sup>—by gifts of offices and of honors to those who favored him, and by taking away offices, honors, and pensions from those who opposed him, George III succeeded in his purpose. He raised up a body of men in Parliament, known by the significant name of the “King's Friends,” who stood ready at all times to vote for his measures. In this way he actually revived “personal monarchy”<sup>2</sup> for a time, and by using his “Friends” in the House of Commons and in the Lords as his tools, he made himself quite independent of the checks imposed by the constitution.

**29. The American Revolution.**—The King's power reached its greatest height between 1770–1782. He made most disastrous use of it, not only at home, but abroad. He insisted that the English colonists in America should pay taxes, without representation in Parliament, even of that imperfect kind which then existed in Great Britain. This determination brought on the American Revolution—called in England the “King's War” (§§ 598–601). The war, in spite of its ardent support by the “King's Friends,” roused a powerful opposition in Parliament. Chatham, Burke, Fox, and other able men protested against the King's arbitrary course. Finally Dunning moved and carried this resolution (1780) in the Commons: “Resolved, that the power of the Crown has increased, is increasing, and ought to be diminished” (§ 597). This vigorous proposition came too late to affect the conduct of the war, and England lost the most valuable of her colonial possessions. The struggle, which ended successfully for

<sup>1</sup> Pitt (Lord Chatham) was one of the few public men of that day who would neither give nor take a bribe; Walpole declared with entire truth that the great majority of politicians could be bought—it was only a question of price. The King appears to have economized in his living, in order to get more money to use as a corruption fund. See May's Constitutional History.

<sup>2</sup> “Personal monarchy”: see § 15 of this Summary.



the patriots in America, was in reality part of the same battle fought in England by other patriots, in the halls of Parliament. On the western side of the Atlantic it resulted in the establishment of national independence; on the eastern side, in the final overthrow of royal tyranny and the triumph of the constitution. It furthermore laid the foundation of that just and generous policy on the part of England toward her other colonies which has made her mistress of the largest and most prosperous empire on the globe.<sup>1</sup>

**30. John Wilkes and the Middlesex Elections; Publication of Parliamentary Debates.**—Meanwhile John Wilkes (§ 604), a member of the House of Commons, had gained the recognition of a most important principle. He was a coarse and violent opponent of the royal policy, and had been expelled from the House on account of his bitter personal attack on the King.<sup>2</sup> Several years later (1768) he was reelected to Parliament, but was again expelled for seditious libel;<sup>3</sup> he was three times reelected by the people of London and Middlesex, who looked upon him as the champion of their cause; each time the House refused to permit him to take his seat, but at the fourth election he was successful. A few years later (1782) he induced the House to strike out from its journal the resolution there recorded against him.<sup>4</sup> Thus Wilkes, by his indomitable persistency, succeeded in establishing the right of the people to elect the candidate of their choice to Parliament. During the same period the people gained another great victory over Parliament. That body had utterly refused to permit the debates to be reported in the newspapers. But the redoubtable Wilkes was determined to obtain and publish such reports; rather than have another prolonged battle with him, Parliament conceded the privilege (1771) (§ 604). The result was that the public then, for the first time, began to know what business Parliament actually transacted, and how it was done. This fact, of course, rendered the members of both Houses far more directly responsible to the will of the people than they had ever been before.<sup>5</sup>

**31. The Reform Bills of 1832, 1867, 1884; Demand for "Manhood Suffrage."**—But notwithstanding this decided political progress, still the greatest reform of all—that of the system of electing members of Parliament—still remained to be accomplished. Cromwell had attempted it (1654), but the Restoration put an end to the work which the Protector had so wisely begun. Lord Chatham felt the necessity so strongly that he had not hesitated to declare (1766)

<sup>1</sup> The area of the British Empire in 1901 was nearly 12,000,000 square miles.

<sup>2</sup> In No. 45 of the *North Briton* (1763) Wilkes rudely accused the King of having deliberately uttered a falsehood in his speech to Parliament.

<sup>3</sup> The libel was contained in a letter written to the newspapers by Wilkes.

<sup>4</sup> The resolution was finally stricken out, on the ground that it was "subversive of the rights of the whole body of electors."

<sup>5</sup> The publication of Division Lists (equivalent to Yeas and Nays) by the House of Commons in 1836 and by the Lords in 1857 completed this work. Since then the public have known how each member of Parliament votes on every important question.

that the system of representation—or rather misrepresentation—which then existed was the "rotten part of the constitution." "If it does not drop," said he, "it must be amputated." Later (1770), he became so alarmed at the prospect that he declared that "before the end of the century either the Parliament will reform itself from within, or be reformed from without with a vengeance."

But the excitement caused by the French Revolution and the wars with Napoleon, not only prevented any general movement of reform, but made it possible to enact the Six Acts and other stringent laws against agitation in that direction (§ 616). Finally, however, the unrepresented millions rose in their might (§§ 623-625), and by terrible riots made it evident that it would be dangerous for Parliament to postpone action on their demands. The Reform Bill—the "Great Charter of 1832"—swept away the "rotten boroughs," which had disgraced the country. It granted the right of election to many large towns which had hitherto been unable to send members to Parliament, and it placed representation on a broader, healthier, and more equitable basis than had ever existed before. It was a significant fact that when the first reformed Parliament met, composed largely of Liberals, it showed its true spirit by abolishing slavery in the West Indies. It was followed by the Municipal Reform Act of 1835 (§ 640). Later (1848), the Chartists advocated further reforms (§ 634), most of which have since been adopted.

In 1867 an act (§ 640), scarcely less important than that of 1832, broadened representation still further; and in 1884 the franchise was again extended (§ 640). A little later (1888) the County Council Act reconstructed the local self-government of the country in great measure.<sup>1</sup> It was supplemented in 1894 by the Parish Council Act. The cry is now for unrestricted "manhood suffrage," on the principle of "one man one vote"<sup>2</sup>—woman suffrage in a limited degree already exists (§ 640).

**32. Extension of Religious Liberty; Admission of Catholics and Jews to Parliament; Free Trade.**—Meanwhile immense progress was made in extending the principles of religious liberty to all bodies of believers. After nearly three hundred years (or since the second Act of Supremacy, 1559), Catholics were (1830) admitted to the House of Commons; and in the next generation (1858) Jews were likewise admitted. Recent legislation (the Oaths Act of 1888) makes it impossible to exclude any one on account of his religious belief or unbelief.

<sup>1</sup> The "Local Government" Act: this gives to counties the management of their local affairs and secures uniformity of method and of administration.

<sup>2</sup> That is, the abolition of certain franchise privileges springing from the possession of landed property in different counties or parliamentary districts by which the owner of such property is entitled to cast more than one vote for a candidate for Parliament.



Commercially the nation has made equal progress. The barbarous Corn Laws (§§ 635, 636) were repealed in 1848, the narrow protective policy of centuries abandoned; and since that period England has practically taken its stand on unlimited free trade with all countries.

**33. Condition of Ireland; Reform in the Land and the Church Laws; Civil-Service Reform; Education; Conclusion.**—In one direction, however, there had been no advance. Following the example of Scotland (§ 562), Ireland was politically united to Great Britain (§ 609); at the beginning of the century when the first Imperial Parliament met (1801), but long after the Irish Catholics had obtained the right of representation in Parliament, they were compelled to submit to unjust land laws, and also to contribute to the support of the Established (Protestant) Church in Ireland. Finally, through the efforts of Mr. Gladstone and others, this branch of the Church was disestablished (1869) (§ 641); later (1870, 1881, 1903), important reforms were effected in the Irish land laws (§§ 642, 644, 659).

To supplement the great electoral reforms which had so widely extended the power of the popular vote, two other measures were now carried. One was that of Civil-Service Reform (1870), which opened all clerkships and similar positions in the gift of the Government to the free competition of candidates, without regard to their political opinions (§ 648). This did away with most of that demoralizing system of favoritism which makes government offices the spoils by which successful political parties reward "little men for little services." The "secret ballot," another measure of great importance, followed (1872) (§ 648).

The same year (1870) England, chiefly through Mr. Forster's efforts, took up the second measure, the question of national education. The conviction gained ground that if the working classes are to vote, then they must not be allowed to remain in ignorance—the nation declared "we must educate our future masters." In this spirit a system of elementary government schools was established, which gives instruction to tens of thousands of children who hitherto were forced to grow up without its advantages (§ 641). These schools are not yet wholly free, although the legislation of 1891–1894 practically puts most of them on that basis.

England now has a strong and broad foundation of political suffrage and national education.

The celebration of the late Queen's "Diamond Jubilee" in 1897 seemed to point toward the closer union of the English colonies with the mother-country. Such an "imperial federation" would, of course, give the British Empire new meaning and new power (§ 656).

Under King Edward VII England stands a monarchy in name, but a republic in fact; a sovereign reigns, but the people rule. The future is in their hands.

## CONSTITUTIONAL DOCUMENTS

**Abstract of the Articles of Magna Carta (1215).**—1. "The Church of England shall be free, and have her whole rights, and her liberties inviolable." The freedom of elections of ecclesiastics by the Church is confirmed. 2–8. Feudal rights guaranteed, and abuses remedied. 9–11. Treatment of debtors alleviated. 12. "No scutage or aid [except the three customary feudal aids] shall be imposed in our kingdom, unless by the Common Council of the realm."<sup>1</sup> 13. London, and all towns, to have their ancient liberties. 14. The King binds himself to summon the Common Council of the realm respecting the assessing of an aid (except as provided in 12) or a scutage.<sup>1</sup> 15, 16. Guarantee of feudal rights to tenants. 17–19. Provisions respecting holding certain courts. 20, 21. Of amercements. They are to be proportionate to the offence, and imposed according to the oath of honest men in the neighborhood. No amercement to touch the necessary means of subsistence of a free man, the merchandise of a merchant, or the agricultural tools of a villein; earls and barons to be amerced by their equals. 23–34. Miscellaneous, minor articles. 35. Weights and measures to be uniform. 36. Nothing shall be given or taken, for the future, for the Writ of Inquisition of life or limb, but it shall be freely granted, and not denied.<sup>2</sup> 37, 38. Provisions respecting land-tenure and trials at law. 39. "No FREEMAN SHALL BE TAKEN OR IMPRISONED, OR DISSEIZED, OR OUTLAWED, OR BANISHED, OR ANY WAYS DESTROYED, NOR WILL WE PASS UPON HIM, NOR WILL WE SEND UPON HIM, UNLESS BY THE LAWFUL JUDGMENT OF HIS PEERS, OR BY THE LAW OF THE LAND." 40. "WE WILL SELL TO NO MAN, WE WILL NOT DENY TO ANY MAN, EITHER JUSTICE OR RIGHT." 41, 42. Provisions respecting merchants, and freedom of entering and quitting the realm, except in war time. 43–46. Minor provisions. 47, 48. Provisions disafforesting all forests seized by John, and guaranteeing forest rights to subjects. 49–60. Various minor provisions. 62. Provision for carrying out the charter by the barons in case the King fails in the performance of his agreement. 63. The freedom of the Church reaffirmed. Every one in the kingdom to have and hold his liberties and rights.

"Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Runnymede between Windsor and Staines, the 15th day of June, in the 17th of our reign." [Here is appended the King's seal.]

**Confirmation of the Charters by Edward I (1297).**—In 1297 Edward I confirmed Magna Carta and the Forest Charter granted by Henry III in 1217 by letters patent. The document consists of seven articles, of which the following, namely, the sixth and seventh, are the most important.

6. Moreover we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy Church, as also to earls, barons, and 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.

7. And for so much as the more part of the commonalty of the realm find themselves sore grieved with the maletoke [i.e., an unjust tax or duty] of wools, that is to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same; we, at their requests, have clearly released it, and have granted for us and our heirs that we shall not take such thing nor any other without their common assent and good will; saving to us and our heirs the custom of wools, skins, and leather, granted before by the commonalty aforesaid. In witness of which things we have caused these our letters to be made patents. Witness Edward our son, at London, the 10th day of October, the five-and-twentieth of our reign.

And be it remembered that this same Charter, in the same terms, word for word, was sealed in Flanders under the King's Great Seal, that is to say, at Ghent, the 5th day of November, in the 25th year of the reign of our aforesaid Lord the King, and sent into England.

### THE PETITION OF RIGHT

JUNE 7, 1628

*The Petition exhibited to His Majesty by the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's Royal Answer thereunto in full Parliament.*

TO THE KING'S MOST EXCELLENT MAJESTY: Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembled, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward

<sup>1</sup> These important articles were omitted when Magna Carta was reissued in 1216 by Henry III. Stubbs says they were never restored; but Edward I, in his Confirmation of the Charters, seems to reaffirm them. See the Confirmation; see also Gneist's *Eng. Const.*, II, 9.

<sup>2</sup> This article is regarded by some authorities as the prototype of the statute of Habeas Corpus; others consider that it is implied in Articles 39–40.



the First, commonly called *Statutum de Tallagio non concedendo*,<sup>1</sup> that no tallage [here, a tax levied by the King upon the lands of the crown, and upon all royal towns] or aid shall be laid or levied by the King or his heirs in this realm, without the goodwill and assent of the Archbishop, Bishops, Earls, Barons, Knights, Burgesses, and other the freemen of the commonalty of this realm: and by authority of Parliament holden in the five and twentieth year of the reign of King Edward the Third, it is declared and enacted, that from thenceforth no person shall be compelled to make any loans to the King against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition, called a Benevolence, or by such like charge, by which the statutes before-mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge, not set by common consent in Parliament.

Yet nevertheless, of late divers commissions directed to sundry Commissioners in several counties with instructions have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them upon their refusal so to do, have had an oath administered unto them, not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and give attendance before your Privy Council, and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties, by Lords Lieutenants, Deputy Lieutenants, Commissioners for Musters, Justices of Peace and others, by command or direction from your Majesty or your Privy Council, against the laws and free customs of this realm:

And where also by the statute called, "The Great Charter of the Liberties of England," it is declared and enacted, that no freeman may be taken or imprisoned or be disseised of his freeholds or liberties, or his free customs, or be outlawed or exiled; or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land:

And in the eight and twentieth year of the reign of King Edward the Third, it was declared and enacted by authority of Parliament, that no man of what estate or condition that he be, should be put out of his lands or tenements, nor taken, nor imprisoned, nor disherited, nor put to death, without being brought to answer by due process of law:

Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm, to that end provided, divers of your subjects have of late been imprisoned without any cause showed, and when for their deliverance they were brought before your Justices, by your Majesty's writs of Habeas Corpus, there to undergo and receive as the Court should order, and their keepers commanded to certify the causes of their detainer; no cause was certified, but that they were detained by your Majesty's special command, signified by the Lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to law:

And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people:

And whereas also by authority of Parliament, in the 25th year of the reign of King Edward the Third, it is declared and enacted, that no man shall be forejudged of life or limb against the form of the Great Charter, and the law of the land; and by the said Great Charter and other the laws and statutes of this your realm, no man ought to be adjudged to death; but by the laws established in this your realm, either by the customs of the same realm or by Acts of Parliament: and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm: nevertheless of late divers commissions under your Majesty's Great Seal have issued forth, by which certain persons have been assigned and appointed Commissioners with power and authority to proceed within the land, according to the justice of martial law against such soldiers and mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order, as is agreeable to martial law, and is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death, according to the law martial:

By pretext whereof, some of your Majesty's subjects have been by some of the said Commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been, adjudged and executed.

<sup>1</sup> A Statute concerning Tallage not granted by Parliament. This is now held not to have been a statute. See Gardiner's Documents of the Puritan Revolution, page 1. It is considered by Stubbs an unauthorized and imperfect abstract of Edward I's Confirmation of the Charters—which see.

And also sundry grievous offenders by colour thereof, claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused, or forborne to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid, which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm:

*They do therefore humbly pray your Most Excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman, in any such manner as is before-mentioned, be imprisoned or detained; and that your Majesty will be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the foresaid commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever, to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death, contrary to the laws and franchise of the land.*

All which they most humbly pray of your Most Excellent Majesty, as their rights and liberties according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings to the prejudice of your people, in any of the premises, shall not be drawn hereafter into consequence or example: and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you, according to the laws and statutes of this realm, as they tender the honour of your Majesty, and the prosperity of this kingdom.

[Which Petition being read the 2d of June, 1628, the King gave the following evasive and unsatisfactory answer, instead of the usual one, given below.]

The King willeth that right be done according to the laws and customs of the realm: and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrong or oppressions, contrary to their just rights and liberties, to the preservation whereof he holds himself as well obliged as of his prerogative.

On June 7 the King decided to make answer in the accustomed form, *Soit droit fait comme est désiré*. [Equivalent to the form of royal assent, "Le roi (or la reine) le veult." See page 373, note 1. On the Petition of Right, see Hallam and compare Gardiner's "England"; and his "Documents of the Puritan Revolution."]

**The Bill of Rights (1689).**—This Bill consists of thirteen Articles, of which the following is an abstract. It begins by stating that "Whereas the late King James II, by the advice of divers evil counsellors, judges, and ministers employed by him, did endeavor to subvert and extirpate the Protestant religion, and the laws and liberties of this Kingdom:" 1. By dispensing with and suspending the laws without consent of Parliament. 2. By prosecuting worthy bishops for humbly petitioning him to be excused for concurring in the same assumed power. 3. By erecting a High Commission Court. 4. By levying money without consent of Parliament. 5. By keeping a standing army in time of peace without consent of Parliament. 6. By disarming Protestants and arming Papists. 7. By violating the freedom of elections. 8. By arbitrary and illegal prosecutions. 9. By putting corrupt and unqualified persons on juries. 10. By requiring excessive bail. 11. By imposing excessive fines and cruel punishments. 12. By granting fines and forfeiture against persons before their conviction.

It is then declared that "the late King James the Second having abdicated the government, and the throne being thereby vacant," therefore the Prince of Orange ("whom it hath pleased Almighty God to make the glorious instrument of delivering their kingdom from Popery and arbitrary power") did by the advice of "the Lords Spiritual and Temporal, and divers principal persons of the Commons" summon a Convention Parliament.

This Convention Parliament declares, that the acts above enumerated are contrary to law. They then bestow the Crown on William and Mary—the sole regal power to be vested only in the Prince of Orange—and provide that after the decease of William and Mary the Crown shall descend "to the heirs of the body of the said Princess; and, for default of such issue, to the Princess Anne of Denmark and the heirs of her body; and for default of such issue, to the heirs of the body of the said Prince of Orange."

Here follow new oaths of allegiance and supremacy in lieu of those formerly required. The subsequent articles are as follows: IV. Recites the acceptance of the Crown by William and Mary. V. The Convention Parliament to provide for "the settlement of the

<sup>1</sup> The Princess Anne, sister of the Princess Mary, married Prince George of Denmark in 1683; hence she is here styled "the Princess of Denmark."



religion, laws and liberties of the Kingdom." VI. All the clauses in the Bill of Rights are "the true, ancient, and indubitable rights and liberties of the people of this Kingdom." VII. Recognition and declaration of William and Mary as King and Queen. VIII. Repetition of the settlement of the Crown and limitations of the succession. IX. Exclusion from the Crown of all persons holding communion with the "Church of Rome" or who "profess the Popish religion" or who "shall marry a Papist." X. Every King or Queen hereafter succeeding to the Crown to assent to the Act [*i.e.* Disabling Act of 1678 (§ 530)] "disabling Papists from sitting in either House of Parliament." XI. The King and Queen assent to all the articles of the Bill of Rights. XII. The Dispensing Power (§ 540) abolished. XIII. Exception made in favor of charters, grants, and pardons made before October 23, 1689.

**The Act of Settlement (1700-1701).**<sup>1</sup>—Excludes Roman Catholics from succession to the Crown; and declares that if a Roman Catholic obtains the Crown, "the people of these realms shall be and are thereby absolved of their allegiance." Settles the Crown on the Electress Sophia,<sup>2</sup> and "the heirs of her body being Protestants." Requires the sovereign to join in communion with the Church of England. No war to be undertaken in defence of any territories not belonging to the English Crown except with the consent of Parliament. Judges to hold their office during good behavior. No pardon by the Crown to be pleadable against an impeachment by the House of Commons. (See § 549.)

## MISCELLANEOUS ACTS AND LAWS

**I. Bill of Attainder.**—This was a bill (which might in itself decree sentence of death) passed by Parliament, by which, originally, the blood of a person held to be convicted of treason or felony was declared to be *attainted* or corrupted so that his power to inherit, transmit, or hold property was destroyed. After Henry VIII's reign the law was modified so as not to work "corruption of blood" in the case of new felonies. Under the Stuarts, Bills of Attainder were generally brought only in cases where the Commons believed that impeachment would fail,—as in the cases of Strafford and Laud. It should be noticed that in an impeachment the Commons bring the accusation, and the Lords alone act as judges; but that in a Bill of Attainder the Commons—that is, the accusers—themselves act as judges, as well as the Lords.

**II. Statute of *Præmunire* (1393).**—This statute was enacted to check the power claimed by the Pope in England in cases which interfered with power claimed by the King, as in appeals made to the Court of Rome respecting church matters, over which the King's court had jurisdiction. The statute received its name from the writ served on the party who had broken the law: "*Præmunire facias* A. B."; that is, "Cause A. B. to be forewarned" that he appear before us to answer the contempt with which he stands charged. Henry VIII made use of this statute in order to compel the clergy to accept his supremacy over the English Church. (See §§ 317, 398, 400.)

**III. Habeas Corpus Act (1679).**—The name of this celebrated statute is derived from its referring to the opening words of the writ: "*Habeas Corpus ad subjiciendum*" (see page 273, note 1). Sir James Mackintosh declares that the essence of the statute is contained in clauses 39, 40 of Magna Carta—which see. The right to Habeas Corpus was conceded by the Petition of Right and also by the Statute of 1640. But in order to better secure the liberty of the subject and for prevention of imprisonments beyond the seas, the Habeas Corpus Act of 1679 was enacted, regulating the issue and return of writs of Habeas Corpus.

The principal provisions of the Act are: 1. Jailers (except in cases of commitment for treason or felony) must within three days of the reception of the writ produce the prisoner in court, unless the court is at a distance, when the time may be extended to twenty days at the most. 2. A jailer, refusing to do this, forfeits £100 for the first offence, and £200 for the second. 3. No one set at liberty upon any Habeas Corpus to be re-committed for the same offence except by the court having jurisdiction of the case. 4. The Act not to apply to cases of debt.

**IV. The Constitutions of Clarendon (1164).**—These measures (§ 216), says Bishop Stubbs, were "really a part of a great scheme of administrative reform." They were drawn up by a committee of bishops and barons, with the Justiciar or Chief Minister at the head. The object of the Constitutions was "to assert the supremacy of the State over clergy and laity alike." They limited the jurisdiction of the ecclesiastical courts; they established a more uniform system of justice; and, in certain cases, they provided for a kind of jury trial. (See Stubbs' Constitutional History, I, 525; or, for a brief abstract of the Constitutions, see Acland and Ransome's Political History, page 24.)

<sup>1</sup> This act, says Taswell-Langmead, is "the Title Deed of the reigning Dynasty, and a veritable original contract between the Crown and the People."

<sup>2</sup> The Electress Sophia was the granddaughter of James I; she married the Elector of Hanover, and became mother of George I. See genealogical table of Descent of the English Sovereigns in the Appendix, page xli.

SUMMARY OF THE PRINCIPAL DATES IN ENGLISH HISTORY<sup>1</sup>

[The \* marks the most important dates.]

## I. THE PREHISTORIC PERIOD

The Rough-Stone Age.  
The Polished-Stone Age.  
Age of Bronze begins, 1500 B.C.?

Divides England into four great earldoms, 1017.

Godwin made Earl of Wessex, 1020.

## II. THE ROMAN PERIOD, 55, 54 B.C.; A.D. 43-410

\*Cæsar lands in Britain, 55 and 54 B.C.  
Claudius begins the conquest of Britain, A.D. 43.  
Revolt of Boadicea, 61.  
Agricola builds a line of forts, 81.  
Hadrian's Wall, 121?  
\*Britain abandoned by the Romans, 410.

## V. THE SAXON, OR EARLY ENGLISH, PERIOD (RESTORED), 1042-1066

Edward the Confessor, 1042.  
Harold, last of the Saxon kings, 1066.  
William of Normandy lands in England; battle of Senlac, or Hastings—Harold killed—Oct. 14, 1066.

## III. THE SAXON, OR EARLY ENGLISH, PERIOD, 449-1013; 1042-1066

\*The Jutes settle in Kent, 449.  
Ella and Cissa found the kingdom of Sussex, 477.  
Cerdic founds the kingdom of Wessex, 495.  
The Angles settle Northumbria, 547.  
\*Landing of Augustine; conversion of Kent, 597.  
Church council at Whitby, 664.  
First landing of the Danes in England, 789.  
\*Egbert (King of Wessex, conquers a large part of the country (827), and takes the title of "King of the English", 828.  
Alfred the Great, 871.  
\*Treaty of Wedmore, 878.  
Invasion by the Danes—Danegeld paid by decree of the Witan for the first time, 991.

## VI. THE NORMAN PERIOD, 1066-1154

William (crowned in Westminster Abbey on Christmas Day), 1066.  
Norman system of feudal land tenure begins to be regularly organized, 1066?  
\*William grants a charter to London, 1066?  
William harries the North, 1069.  
Reorganizes the Church, 1070.  
Establishes separate ecclesiastical courts, 1070?  
The English, under Hereward, finally defeated at Ely, 1071.  
William invades Scotland, and compels the King to do him homage, 1072.  
William refuses to become subject to the Pope, 1076.

\*Domesday Book completed, 1086.—Reports: Tenants-in-chief (barons, bishops, abbots), about 1500; Under-tenants (chiefly English dispossessed of their estates), about 8000; Yeomen, north of Watling St., about 35,000; Yeomen, sunk to a condition bordering on serfdom (south of Watling St.), about 90,000; Villeins, or serfs, about 109,000; Slaves, about 25,000; Citizens, monks, nuns, priests, etc., about 1,732,000; Total population, about 2,000,000.

## IV. DANISH PERIOD, 1013-1042

Sweyn, the Dane, is acknowledged king of the English, 1013.  
Canute, the Dane, chosen king, 1017.

<sup>1</sup> Many early dates are approximate only.