

Growth
of eccle-
siastical
claims.

The controversy is a memorable one, not the least so because Henry and Anselm are an almost solitary example of a king and a bishop who could each maintain claims which he held to be right without loss of temper or breach of personal friendship. Anselm was a true saint. He was no mere stickler for ecclesiastical privileges, but a denouncer of moral evil. One of his canons again denounces the slave-trade, and indeed denounces slavery itself. Yet it is plain that through Anselm the power of the Roman see in England greatly advanced, and he laboured hard to forbid the English use which allowed marriage to the clergy. Under his successors the claims of Rome grew yet faster, and a succession of canons were passed against the married clergy. Under the anarchy it is not wonderful if the ecclesiastical power grew: it was the only thing in the realm which kept any likeness of law. Ecclesiastical synods took upon themselves to judge the king; and the right of succession to the English crown was argued in a solemn pleading before the court of Rome. The doctrine of clerical exemptions grew; it was held that no clerk might be tried in a temporal court for any crime whatsoever. Nothing did greater damage to Stephen than his imprisoning two bishops, the famous Roger of Salisbury and his nephew Alexander of Lincoln. On the other hand, the ecclesiastical courts continued to draw to themselves a large class of causes which concerned laymen. Nor was this in those days altogether without a good side. The bishops' courts had a bad name for corruption, that is, for letting off offenders for money. But at least they were not bloody. As they could not inflict death, so neither could they inflict the horrible mutilations which were common, even in the case of very trifling offences, in the courts of the king.

This period was also marked by the introduction of the Cistercian order into England. Houses of this order, a reform of the older Benedictine rule, never reached the wealth and importance of the Benedictine houses; but they have added a special feature to English scenery. The monks of this order habitually sought wild and lonely spots; the ruined abbey is most commonly Cistercian. At the same time, we see the first beginnings of the university system in England. Oxford, a flourishing borough, a strong military post, a favourite seat of national assemblies, and an occasional royal residence, now became for the first time a seat of learning. The teaching of divinity began under Robert Pullen in the days of Henry; that of law began under Vacarius in the days of Stephen. This is really all that we know of the beginnings of that great university; but its growth must have been steady during the whole of this century; for at the beginning of the next the scholars of Oxford were a numerous and important body.

Rela-
tions
with
Scotland.

The relations of England to the rest of Britain are of considerable importance during this time. The marriage of Malcolm and Margaret had most important results on both countries. The Scottish kings became in truth English kings, more truly English than the Normans and Angevins who reigned in England. Their culture was English; they dwelled mainly in the English or Anglicized parts of their dominions; strangers from England of both races were welcome at their court. This English influence began under Malcolm; after a period of struggle, it became fully established under David. Malcolm invaded England more than once, both in the days of the Conqueror and in those of Rufus, and his last invasion saw also his death at Alnwick (November 14, 1093). This invasion was perhaps caused by an act of the king of the English which may well have been dangerous to Scotland. Rufus was the one king of his race who enlarged the actual kingdom of England. He made Cumberland, meaning by that name the old diocese of Carlisle, an integral part of England; he peopled it with colonists from southern

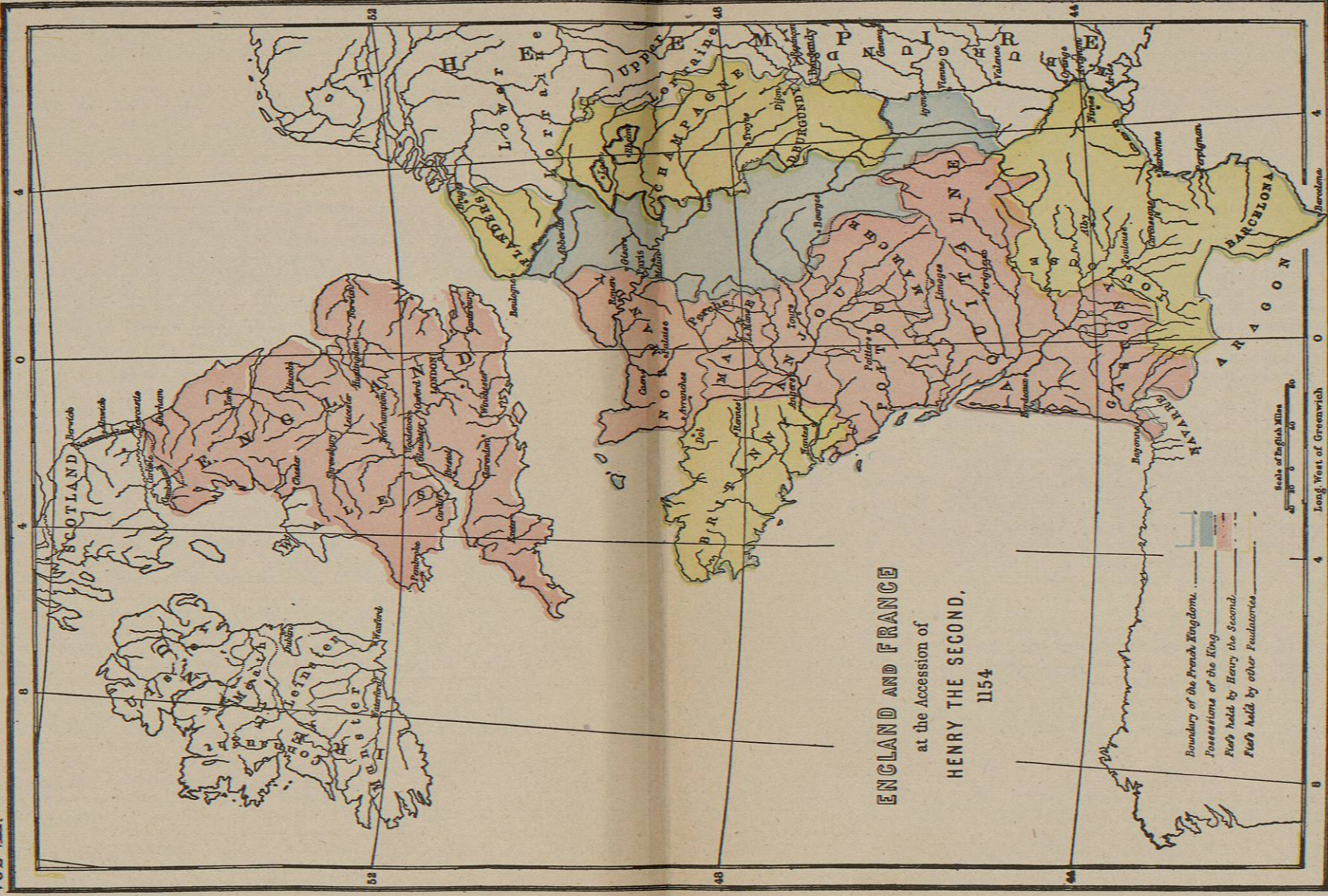
England, and he rebuilt or repaired the local capital, which became a strong fortress against Scotland. After Malcolm came a time of struggles between the Scottish and the new English party in Scotland, which was ended by Eadgar, the son of Malcolm and Margaret, being placed on the throne by English help. Under his reign and those of Alexander and David (1097-1153) the relations between England and Scotland were close, and, as long as Henry of England lived, perfectly peaceful. In Stephen's day David asserted the rights of his niece the empress; he twice invaded England; he suffered a great defeat in the battle of the Standard; but he obtained the cession of the newly won land of Cumberland, and also of the earldom of Northumberland. Like Lothian at a former time, these lands were to be held as English earldoms. Their possession by the Scottish kings was short; but it doubtless tended, along with other things, to make Lothian become more directly a part of the Scottish realm.

Along the Welsh frontier the power of England greatly advanced under the two Williams and under Henry. We may say, roughly speaking, that South Wales was conquered at this time. But the conquest amounted to little more than the settlement of Norman lords with a following of all nations, who kept up from their castles an endless warfare against the Welsh in their mountains. But one part of the land was settled in another way. The southern peninsula of Pembrokeshire, and seemingly the peninsula of Gower in Glamorgan, were under Henry (1111) planted with a Flemish colony, which may be fairly called the last of the Teutonic settlements in Britain. In the Flemish district of Pembrokeshire the Britons and their tongue vanished as utterly as they had done from Kent. Two of the chief towns, Pembroke and Tenby, keep Welsh names in a corrupt form; the rest of the local nomenclature preserves the names of the Flemish leaders.

With the accession of Henry of Anjou a new period begins. The purely English period has ended. The Norman period has ended also; England and Normandy are alike under the rule of the cosmopolitan prince from Le Mans. Englishmen tried to see a native king in the man who sprang through three generations of females from the son of Eadmund Ironside.¹ And Henry was too wise to refuse to listen. Whatever he was, he was not Norman, and under him the last traces of distinction between men of English and of Norman birth in England altogether died out. Of all the kings between the Conqueror and Edward the First, he has the best right to the name of lawgiver. He is not the author of any formal code; but he is the author of a greater number of actual enactments than any king before him. His reign falls naturally into three parts. The first is taken up with the restoration of order after the anarchy. To this work the young prince of twenty-one, who had already won a name beyond the sea, gave himself with a good will. He was helped in the work by one of the clerical statesmen of the age, Thomas the son of Gilbert Becket of London, archdeacon of Canterbury and the king's chancellor. Thomas is one of the great examples of the fusion of Normans and English. Born in London of Norman parents, he appears throughout his career as a passionate lover of his native land and his native city. He was a favourite with the English people, nor is there a word to show that he deemed himself, or was deemed by them, to be other than their countryman in the fullest sense. King Henry and Chancellor Thomas worked hard for eight years to restore the rule of law. One great difficulty in

¹ See especially the dedication of the *Genealogia Regum* by Athelred of Rievaulx to Henry II. The king's pedigree is there traced up to Adam, without any reference to his Angevin father or to his Norman grandfather.

Affairs of
Wales
Reign of
Henry II



ENGLAND AND FRANCE
 at the Accession of
 HENRY THE SECOND,
 1154

their path was the new doctrine of the immunity of the clergy from secular jurisdiction. These years were a time of comparative peace, broken chiefly by a war (1159) with Lewis of France for the succession of Toulouse. This war was, as we shall presently see, of great importance in a constitutional point of view; and in it the chancellor's functions, ecclesiastical and civil, did not hinder him from showing himself in the third character of a stout man-at-arms. At last, on the death of Archbishop Theobald (1162), Henry committed the fatal mistake of raising his great minister to the see of Canterbury, and the further mistake of expecting the new archbishop to remain his minister. The step was in every way new; other bishoprics had been used as rewards for temporal services; the primacy had been reserved, if not always for saints, at least for men whose character was not prominently worldly. Most archbishops had been monks. And though, both before and after the Conquest, archbishops of Canterbury had been rulers of the realm in more characters than one, no archbishop had ever held a post in the king's service like that of chancellor. The see was forced upon Thomas; but, once archbishop, he put on the character of his new office in all its fulness. As a mere deacon holding secular office, he had been the king's most trusty servant; now become priest, bishop, archbishop, he threw up his secular post, and became the champion of the ecclesiastical claims in their most extravagant shape. Quarrels soon arose between him and the king, quarrels which neither king nor primate carried on in the spirit of Anselm and Henry I. Thomas showed himself violent and provoking; Henry showed himself mean and spiteful. The first great quarrel arose out of the ecclesiastical claims; for Thomas, in his new position, tried to shelter even the most guilty churchman from any punishment at the hands of the temporal courts. The king caused a body of ordinances, known as the Constitutions of Clarendon, to be drawn up, which professed to state the law as it stood under Henry I. before the anarchy. They were certainly not, as the ecclesiastical party called them, innovations of his own; but it was only natural that they should seem innovations to the ecclesiastical party. There was to be no appeal to any power out of the realm without the king's special leave. As a natural consequence, the clergy were not to leave the realm without the king's licence. The ecclesiastical courts were no longer to shelter offenders against the laws of the land. Advowsons were declared to be lay fees. The baronial character of the estates of bishops and abbots was distinctly asserted, and on this followed, as a logical consequence, the rule that those estates should pass into the king's hands during a vacancy. Elections of prelates were to be made in the king's chapel, with his consent. Another provision was added, not wholly new, and which hardly touched the general question, but which still marks the growth of the new ideas. The villain was not to be admitted to holy orders without the consent of his lord. The ecclesiastical legislation of Henry II. was, in fact, only a little more than a codification of the practice of Henry I.; it was only a little less than a forestalling of the legislation of Henry VIII. It contained innovations on the practice of England before the Norman Conquest; but they were the innovations of Flambard, not of Henry himself. But the attempt was premature. Thomas, in a moment of weakness, assented to the Constitutions, and then withdrew his consent. Henry, thus far in the right, put himself in the wrong by raking up all kinds of forgotten and frivolous demands against the archbishop. Thomas fled from England and found shelter in France. It was the interest of Lewis to support any enemy of Henry. A weary time of dispute and intrigue followed, in which Thomas was but feebly supported by the pope Alexander

His disputes with the king.

III. Henry sometimes threatened to acknowledge the imperial antipope; sometimes he forsook his own position; once, men said at the time, he went so far as himself to accept a legation from the pope. At last the first quarrel was patched up (1170). Thomas came back to England only to find a new and distinct ground of quarrel. The king had caused his eldest son Henry to be crowned by Roger archbishop of York, to the prejudice of the rights of the see of Canterbury. New excommunications, new disputes, followed. At last four knights in the king's service, mistaking a few hasty words of their master, crossed from Normandy to England, and slew the archbishop in his own church.

Thomas really died for the rights of the church of Canterbury, not for any more general principle. But the second quarrel, as could not fail to happen, got mixed up in men's minds with the first; and the murdered archbishop was looked on as a saint and as a martyr to the general privileges of the church. The dead martyr was a more dangerous enemy to the king than the living primate had been. We now enter on the third period of Henry's reign, a time of nineteen years, in which Henry had to struggle against foes on every side, but chiefly against foes that were of his own household. His overlord of France, his vassal of Scotland, his own nobles, his wife and his own children, were all arrayed against him. As far as England was concerned, Henry was successful against all. The rebellion of the earls and the Scottish invasion (1174) both failed. On the continent his fate was harder. The death of his eldest son, the rebellion of the youngest, the loss of the city of his birth, utterly broke down his spirit. At the age of fifty-six he died (1189) at Chinon, far away alike from England and from Normandy, a worn-out and broken-hearted man.

The great lawgiver was gone, and his dominions passed to his rebellious son Richard. This king has in popular belief become one of the heroes of England. That he should ever have been looked upon as such, that he should by strangers have been so looked upon even in his own time, shows how England had come to be looked on as the head and centre of the vast dominion of her kings. Personally Richard, though born on English ground, was the least English of all our kings. Invested from his earliest years with his mother's Southern dominions, Richard of Poitou had little in him either of England or of Normandy: he was essentially the man of Southern Gaul. Twice in his reign he visited England; to be crowned on his first accession, to be crowned again after his German captivity. The rest of his time was spent in his crusade, and in various continental disputes which concerned England not at all, except so far as she had to pay for them. The mirror of chivalry was the meanest and most insatiable of all the spoilers of her wealth. For England, as a kingdom, all that he did was to betray her independence by a homage to the emperor, which formed a precedent for a more famous homage in the next reign. His reign is an important one in constitutional progress, but as such it was the reign of his ministers and not of himself. One event towards the end of his reign has been often misunderstood. A commotion was raised in London (1196) by William the son of Osbert, known as William with the Long Beard, a fellow-crusader and seemingly a personal friend of the king's. William professed to be the champion of the poor against the rich. Out of this a romantic story grew that he was the champion of the English against the Normans. The writers of his own time show that he was deemed a martyr by his followers and a traitor by his enemies; but they give no hint that he was the champion of one race against another. Nor do they give us any clue as to his own descent, English or Norman. There is not a word in any writer of the reign of Henry or Richard to make us think

Reign of Richard I.: its un-English character

that the distinction between the two races was at all remembered in any hostile sense. Everything shows that all the inhabitants of the kingdom were fast drawing together, in opposition to men born out of the realm, whether in Normandy or anywhere else.

Richard died, as he had lived, far away from England and Normandy, in a petty quarrel with a Southern vassal (1199). Constitutional progress had gone on silently in his absence. In the next reign freedom had to be won openly from a tyrant by force of arms. No period of our history, save those of the Conversion and the Conquest, is of greater importance than the seventeen years of John. A popular confusion has to be got rid of with regard to his accession at the death of Richard. John, the youngest son of Henry, was the only survivor of his brothers; but Geoffrey, the third son of Henry, had left a son Arthur. Richard seems at one time to have designed Arthur for his successor. But his last bequest was in favour of his brother; and, even without that bequest, all English precedent was in favour of the brother rather than of the nephew. Arthur does not seem to have had a single partisan either in Normandy or in England. John was received as duke, chosen and crowned as king, without opposition. But on the continent generally the new doctrine of hereditary right had made much greater advances than it had in England. Anjou acknowledged Arthur; and Philip of France was led by an obvious policy to receive his homage for all the continental dominions of his uncle. But Arthur and his followers were soon crushed by the king- duke (1202), and the disappearance of Arthur left little room for doubt that he had been put out of the way by his uncle. The king of the French called into being a new jurisprudence out of the romances of Charlemagne, and called on the twelve peers of France to sit in judgment on their felon brother. Sentence of forfeiture of all lands held of the French crown was pronounced against John. The sentence was carried out by an easy conquest of continental Normandy. The islands clave to their duke, and they have ever since remained possessions of the English crown, keeping their local independence and their ancient laws. On behalf of the duchy John did not strike a blow; but he led more than one expedition to secure or to win back his southern dominions, and the final result was that, of all the continental possessions of Henry and Richard, Aquitaine alone remained to their successors. The relations of England to the continent were thus completely changed. Under Henry and Richard England had been only one, though the greatest, among the endless possessions of her king. Now that Normandy, Maine, and Anjou became provinces of France, Aquitaine became distinctly a distant dependency of England. To the crown of France the gain was beyond words; the king was now a greater potentate than any of his vassals. He had won back those old possessions of the French duchy which had so long cut off its dukes and kings from the sea. To England the loss was the greatest of gains. It broke the last tie which bound any part of the inhabitants of England to any land beyond the four seas of England. If anything was still wanting to wipe out every trace of distinction between the descendants of those who a hundred and forty years earlier had been the conquerors and the conquered, the French conquest of Normandy did the work. Every man in England was now an Englishman, and nothing but an Englishman. One question only has to be asked: Why did Normandy, the old foe of France, submit so tamely to a French conquest? The reason seems plain. Normandy was a conquered land. With Henry I. the line of her national dukes had ended. If the French king was a stranger, he was not more a stranger than the king of England and count of Anjou. The duchy really lost nothing by passing from a state which might seem that of

a dependency, to become an integral portion, often a royal apanage, of a kingdom of its own speech. Aquitaine, on the other hand, foreign alike to England, Normandy, and France, found its account in cleaving to the more distant sovereign. The nobles were drawn to France by community of feeling in many ways; but the cities clave to the distant king, who was their ally and protector rather than their master.

The English nation was now united: the smaller mass of the conquerors had been received and assimilated by the greater mass of the conquered. Events now thickly press one upon another, and all of them tended to draw all the sons of the soil closer and closer together. John, like Richard, was born in England; but, like Richard, he was in feeling neither English nor Norman. He surrounded himself with foreign counsellors and with foreign soldiers. He presently plunged into an ecclesiastical quarrel which showed the weak side of the ecclesiastical policy of the Conqueror. It needed William himself to carry out William's system. A disputed election to the see of Canterbury gave Innocent III. an opportunity for putting in a nominee of his own, and his choice—it must have been unwittingly—fell on one of the foremost of English patriots, on the first of the noble band who defied pope and king alike on behalf of the freedom of England. The candidate of the king and the candidate of the monks both gave way to Stephen Langton. John had so utterly turned away from him all the hearts of his people that none stood by him, even when the pope took upon him to declare the king of the English deposed from his crown, and to offer that crown to the king of the French. In his despair John became the man of the Roman pontiff, as his brother had become the man of the Roman Caesar. Archbishop Stephen now came back to England. The laws of king Eadward were renewed. When John flew to arms, the barons and people of England, with the primate at their head, swore to bring back the ancient laws, the laws of Eadward, the laws of Henry. Those names are now heard for the last time. John was constrained (1215) to sign the Great Charter; and from that day Englishmen called for the observance of the Great Charter, as they had hitherto called for the laws of Eadward. By that charter resistance to the royal power was legalized; in the struggle that followed it was the king who was the rebel. John had hardly sealed the charter, when he sent to his overlord at Rome, and the pontiff took upon him to annul the recovered liberties and to denounce suspensions and excommunications against those who had won them. At the head of his foreign mercenaries, the king laid waste his own dominions. The barons in despair chose a new king, and offered the crown to Lewis of France. Such a choice seems to us yet more strange than the speedy submission of Normandy to Lewis's father. That the step was most unwise was presently proved; but at the time it was intelligible alike to Normans and to Englishmen. If Lewis was a stranger, so was John. Personally Lewis promised far better than John, nor was it easy to find any other available candidate. If not Lewis himself, yet his wife, came by female descent of the royal stock; and the only likely competitor, the emperor Otto, was at once closely allied with his uncle John and had shown that he could not keep the kingdoms which he had already. But, even before John died, men began to feel that, in inviting a French king, they had invited a French conquest. In a few months (1216) the death of John cut the knot; all English feeling turned to the side of his young and innocent son. He was indeed a minor, but a minor was better than a stranger. Henry III. succeeded as a national king, and a burst of national feeling drove the French out of the land. A long and weary time followed, in which the freedom of England was slowly growing up,

John's quarrel with the pope.

The Great Charter.

Election of Lewis.

Succession of Henry III.

till, fifty years later, the time came when it had to be again asserted on the field of battle.

No time is richer than this in legal history. The whole reign of Henry II. was a reign of legislation, and the work was not interrupted even during the time of the great struggle with the archbishop. In the year before the promotion of Thomas to the primacy, king and chancellor had dealt one direct blow at all feudal ideas. In the war of Toulouse the *scutage* was first devised; a money payment was accepted instead of personal military service. The money was of course spent in hiring mercenaries; and it was largely by the help of mercenaries that Henry subdued his rebels in England. But later in his reign, by the Assize of Arms (1181), he regulated the old constitutional force of the country, and enjoined that every free Englishman should be ready to serve with the weapons belonging to his rank. Other incidental notices show us that much legislation was done while Henry still had Thomas to his minister. But the ordinances of which the text is preserved belong to a later time. The reign of Henry is rich in charters to boroughs, several of which are early enough in his reign to bear the signature of chancellor Thomas. And a reference in the Constitutions of Clarendon shows that, thus early in his reign, Henry had begun that great step towards the development of jury trial which is one of the special marks of his reign. By the work of Henry and his chancellor the system of recognition was organized, by which sworn men gave a verdict, but as yet a verdict given from their own knowledge. The great legal writer of Henry's reign, the justiciar Randolph of Glanville, speaks of the recognition as a special gift of Henry to his people, and enlarges on its superiority to the wager of battle. All this comes within the chancellorship of Thomas; and we shall do the chancellor great injustice, if we think wholly of his later ecclesiastical character, and forget his services in the days when he was the chief minister of one of our greatest kings. Of the extant ordinances of Henry's reign, the oldest after the charter issued at his coronation are the Constitutions of Clarendon themselves (1164). The Assize of Clarendon—a wholly distinct document (1166)—and the Inquest of Sheriffs (1170) came during the time of the quarrel with Thomas. On these, after the death of Thomas, follows in 1176 the Assize of Northampton, in 1181 the Assize of Arms, and in 1184 the Assize of the Forest. All these bear witness to Henry's care, even when he was most occupied with other matters, to preserve the peace of the land, and to enable all his subjects to have justice done to them in the king's name. And in all, the mode of inquisition by the oath of twelve lawful men grows at each step. The Assizes of Clarendon and Northampton have a special reference to one of Henry's great measures, that by which the visitation of the country by itinerant judges going regular circuits was finally established. It was not an invention of his own; the visits of the king's judges had begun to take a regular shape under Henry I. But it was Henry II. who organized the whole system afresh after the anarchy. It was he who finally established the specially English principle that justice should be administered in different parts of the kingdom by judges not belonging to the particular district, but immediately commissioned by the king. When the king's judges came and received the inquisitions of the local jurors, though the complete modern ideal of a judge and jury had not been reached, yet something had been reached which could grow into that ideal without any one moment of change so great as the changes wrought by Henry himself. By him the jury was applied to all manner of purposes. The Assize of Arms was distinctly a return to the old military system. It gave a new life to the *fyrð*, the ancient militia, which had never gone out of

use, but which had been overshadowed by feudal levies on the one hand and by the use of mercenaries on the other. Each man was to have the arms which befitted the amount of his property. It was by a jury that the liability of each man to be ranked in such or such a class was to be fixed. Even in the Assize of the Forest, an ordinance framed to protect the most exceptional and most oppressive of all the royal rights, the popular element comes in. Sworn knights are appointed in each shire to protect those rights. Lastly, when in 1188 the tithe was levied for the defence of Eastern Christendom against Saladin, the liability of each man to the impost was assessed by a local jury. In all these ways the appeal to the oath of lawful men, as opposed to any other form of finding out truth, was strengthened by every step in the legislation of Henry.

Meanwhile the administrative system which had been growing up ever since the Conquest took firm root under Henry. We have a contemporary picture of it, drawn by one of Henry's own officials, in the *Dialogus de Scaccario*. This was the work of Richard, treasurer of the exchequer and bishop of London, one of the family of officials founded by Roger of Salisbury. Alongside of this, we have our first strictly legal treatise, as distinguished from private compilations and codes, in the work of the great justiciar Randolph of Glanville. In short, we may say that under Henry the legal system of England took a shape which it has practically kept ever since. The endless changes of the last seven hundred years are rather special amendments of Henry's work than anything which can be said to start altogether afresh from a new point. Strictly constitutional advance rather belongs to the reigns of Henry's sons than to that of Henry himself. Nor is this wonderful. Constitutional advance commonly means the lessening of the royal power, and acts which lessen the royal power do not often issue from the free will of kings. In Henry's time, above all, a time when law and order had to be restored after the reign of anarchy, the momentary need was rather to strengthen the royal power than to lessen it. Legal reforms are often, as in this case, the free gift of wise kings; constitutional reforms have commonly to be wrested from weak or wicked kings. But the legal reforms of Henry supplied an element which largely entered into the constitutional reforms of the next stage. Out of Henry's favourite institution of recognitions on oath grew, not only trial by jury, but also the House of Commons.

By the time of Henry II. the force of circumstances, especially the working of the practice of summons, had gradually changed the ancient assembly of the whole nation into a mere gathering of the great men of the realm. The work which had now to be done, and which, in the space of about a hundred years, was gradually done by a number of instruments, conscious and unconscious, was to call into being a second and more popular assembly alongside of the assembly which had lost its popular character. To use language which belongs to a somewhat later time than that with which we are now dealing, the House of Lords already existed; the House of Commons had to be called into being alongside of it. The details of this great process of constitutional growth must be drawn out by the strictly constitutional historian. All that can be done here is to call attention to the main lines of the process and to its more remarkable landmarks. And it may be well from the very beginning to give the warning that the two Houses of the English Parliament did not arise out of any theoretical preference for two houses over one or three. The number was fixed, like everything else in English history, by what we are apt to call circumstances or accidents. Our whole parliamentary system was eminently one which was not made, but grew. Thus, for instance, it was only gradually established that the barons should be personally summoned