

**AN ADDRESS DELIVERED IN THE OLD
SOUTH MEETING-HOUSE IN BOSTON,
NOVEMBER 27, 1895 BEFORE THE
SOCIETY OF COLONIAL WARS IN THE
COMMONWEALTH OF MASSACHUSETTS**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649174072

An address delivered in the Old South meeting-house in Boston, November 27, 1895 before the Society of colonial wars in the commonwealth of Massachusetts by Abner Cheney Goodell

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

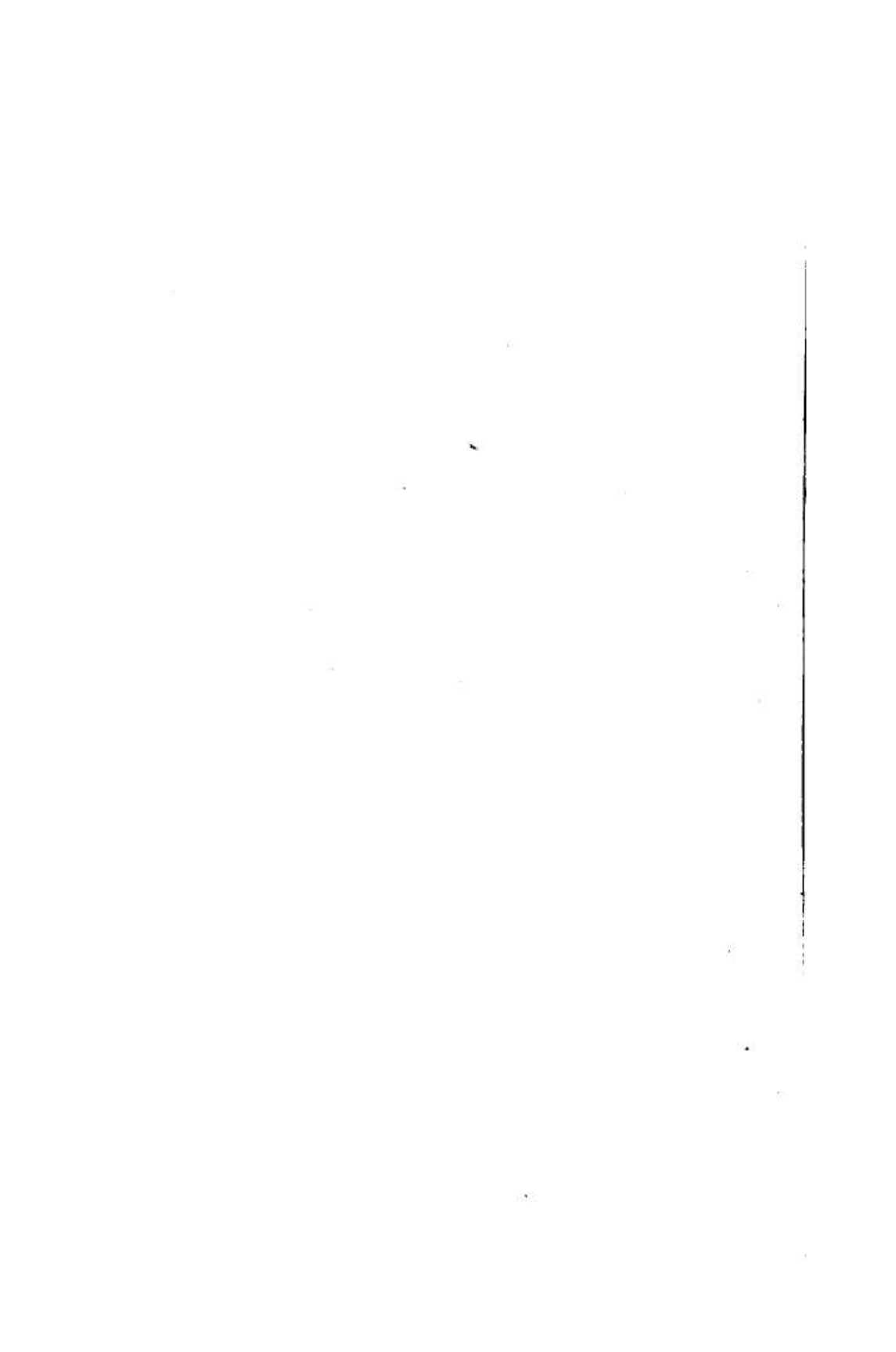
Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

ABNER CHENEY GOODELL

**AN ADDRESS DELIVERED IN THE OLD
SOUTH MEETING-HOUSE IN BOSTON,
NOVEMBER 27, 1895 BEFORE THE
SOCIETY OF COLONIAL WARS IN THE
COMMONWEALTH OF MASSACHUSETTS**



AN
ADDRESS

DELIVERED IN THE OLD SOUTH MEETING-HOUSE IN BOSTON
NOVEMBER 27, 1895

BEFORE THE

SOCIETY OF COLONIAL WARS

IN THE

COMMONWEALTH OF MASSACHUSETTS

IN COMMEMORATION OF

THE SIX HUNDREDTH ANNIVERSARY

OF THE

FIRST SUMMONING OF CITIZENS AND BURGESSES TO THE
PARLIAMENT OF ENGLAND

WHEREIN THE HISTORY OF THE HOUSE OF COMMONS IS SKETCHED
AND A COMPARISON MADE OF THE DEVELOPMENT OF THE
LEGISLATURES OF GREAT BRITAIN AND OF THE
COMMONWEALTH OF MASSACHUSETTS

BY

ABNER CHENEY GOODELL, JUNIOR

BOSTON
THE ROCKWELL AND CHURCHILL PRESS
1897

ADDRESS.

MR. GOVERNOR AND MEMBERS OF THE SOCIETY, LADIES AND GENTLEMEN: I have not felt at liberty, even under the stress of exacting and unremitting public duties, to decline the honor of your invitation to discourse, on this occasion and within these hallowed walls, upon the great theme which you have proposed. I am the less reluctant to gratify you because the subject — never to my knowledge heretofore publicly discussed in New England — is one upon which my special studies for many years, if they do not qualify me to speak with authority, justify me in holding opinions which, though in some respects they may differ from the general sentiment, may, I trust, enable you to correct some erroneous views, assist in your efforts to penetrate obscurities which shroud the history of Saxo-Norman legislation, and present in a new light data serviceable for accurately comparing the excellencies and defects of the English and American legislative systems.

The lineal relation borne by our Anglo-American legislatures to the English Parliament, or, as it now exists, the Parliament of the United Kingdom of Great Britain and Ireland, renders the study of its organization and development not only deeply interesting to us Americans, but profitable in proportion to the degree of thoroughness with which the study is pursued. The field, however, is so vast, and the details so intricate, that in order to restrict a discussion of any special topic embraced in it to the limits prescribed by a regard for your patience, it will be necessary to omit so much that is instructive or entertaining that the attempt to draw the line of exclusion is embarrassing. For this reason, also, I must forbear to cite authorities in support of views expressed upon disputable points, and of conclusions deduced in comparing with corresponding features in our own legislative system such salient and important particulars from the English prototype as I shall select for that purpose.

Ms. A. 9. 2. 4. 32. K. 10

4 FIRST REPRESENTATIVE ENGLISH PARLIAMENT.

It may seem not quite in accordance with what is expected of me on this occasion to question the assumption that the present year is a centennial multiple of the date of the event we would commemorate ; yet I confidently ask your favorable consideration of some preliminary critical observations tending to refute the generally received opinion that the essential features of the British Parliament of to-day date from the year 1295. There are two principal particulars in which it seems to me the selection of this year as an epoch is a mistake ; and these are : first, the formality of the proceedings of six centuries ago which are supposed to sustain the assumption, and second, the dissimilarity of the recognized constitutional functions and the actual political status of the Parliament of our day and of that of King Edward.

To lay the foundation for a clear expression of what I have in mind, I think I cannot do better than to quote a recent writer on the history of England, who, it is generally acknowledged, has combined with vivid and fascinating description great impartiality and thoroughness of research and a grasp extraordinarily comprehensive. I quote from the "Short History of the English People," by the lamented Dr. John Richard Green, the author's encomium of Simon de Montfort, Earl of Leicester, to whom he ascribes the merit of having caused to be issued the first writs for summoning a House of Commons in the sense in which that phrase is now understood. It is true that Earl Simon's Parliament antedates the Parliament of Edward by some thirty years ; but, as I shall attempt to show, many of the reasons for excluding this Parliament or convention from the line of deliberative bodies worthy of the name of "Parliament," according to the modern interpretation of that word, apply with equal force to the Parliament of Edward.

Dr. Green says, —

It was the genius of Earl Simon which first broke through the older constitutional tradition and dared to summon two burgesses from each town to the Parliament of 1265. Time had, indeed, to pass before the large and statesmanlike conception of the great patriot could meet with full acceptance. Through the earlier part of Edward's reign we find a few instances of the presence of representatives from the

towns, but their scanty numbers and the irregularity of their attendance show that they were summoned rather to afford financial information to the Great Council than as representatives in it of an estate of the realm. But every year pleaded stronger and stronger for the earl's conception, and in the Parliament of 1295 that of 1265 found itself at last reproduced.

The admission of the burgesses and knights of the shire to the assembly of 1295 completed the fabric of our representative constitution. The Great Council of the Barons had become the Parliament of the realm, a parliament in which every order of the State found itself represented, and took part in the grant of supplies, the work of legislation, and the control of government. But . . . in all essential points the character of Parliament has remained the same from that time to this.

Even allowing full weight to the author's subsequent qualification of this statement, no comment is necessary to impress you with the absoluteness of his belief in the exalted character and patriotic services of the brother-in-law of the ruling monarch, the third Henry. But let us be so inquisitive as to go behind the historian to his authorities, to learn how far he is justified in declaring that "in all essential points the character of Parliament has remained the same from that time to this." Let us first compare the requisite qualifications of representatives and of their constituents at the beginning and end of the six centuries intervening between the reigns of Henry III. and Victoria. We will begin with a search for the writs that were issued for summoning the Parliament of 1265; and we shall not proceed far in this search before fully satisfying ourselves that no writs to summon citizens and burgesses to that assembly were issued, but that simply "the citizens of York and Lincoln and other burghs of England were written unto to send two citizens and two burgesses according to the form of the writ directed to the Bishop of Durham," the tenor of which is exactly preserved to this day.

The writ shows that this Parliament was composed of the prelates and great men of the kingdom; that is, the bishops, abbots, and priors, and such of the noblemen as were of Montfort's party, together with two knights from each shire—all duly summoned by precepts in the king's name—and two citizens and two burgesses from the respective cities and boroughs of the realm. The returns of the writs, however, do

6 FIRST REPRESENTATIVE ENGLISH PARLIAMENT.

not show whether the sheriffs or the electors of the counties were directed to choose, or actually chose, the knights; and although the particulars are too long to be here detailed, except as they may be referred to in passing, it has been demonstrated, I think beyond a doubt, that the citizens and burgesses invited to send representatives to that convention or Parliament were exclusively the king's military tenants *in capite*, or, in other words, his inferior barons, together, perhaps, with a few who held lands in *frank ferme*, — the "free and common socage" of a later period, by which tenure the territory of Massachusetts was held under her charters. Though not a military tenure, this was an honorable one, ranking with, or embracing, the tenure of *petit sergentry*. The citizens and burgesses — inferior officers in the Norman army, or their representatives — being in the enjoyment of franchises granted by the crown, were, like the holders of frank tenements, fiefs of the king, and members of the French or Norman party, as the word "frank" implies. This word, which is sometimes by the old writers plainly written "French," as you, Mr. Chairman, undoubtedly have observed in your recondite studies of the Anglo-Norman Pleas, loses its original signification in its modern Saxon translation, "free," in which form it is misleading alike to the lawyer and the historian by association with our modern ideas of freedom or personal liberty.

No one not of this favored aristocracy of barons or "free socmen" was eligible to the king's councils, nor could he exercise the elective franchise. Hence, since that earliest House of Commons was in no sense popular either in its membership or as respects the qualifications of the electors, there is no such resemblance between it and its present namesake as to warrant us in connecting them in the same series as essentially identical in constitution and function.

At the risk of seeming to clash with the opinion expressed by our learned Chairman in his introductory address, I am compelled to say, furthermore, with regard to Dr. Green's eulogium of Simon de Montfort, that it seems to me that neither the earl's character, his motives, nor his achievements entitle him to the great honor which the historian would confer upon him. A