

**THE CONSTITUTIONAL
HISTORY OF
ENGLAND, FROM
EDWARD I TO HENRY VII**

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The Constitutional History of England, from Edward I to Henry VII by Henry Hallam

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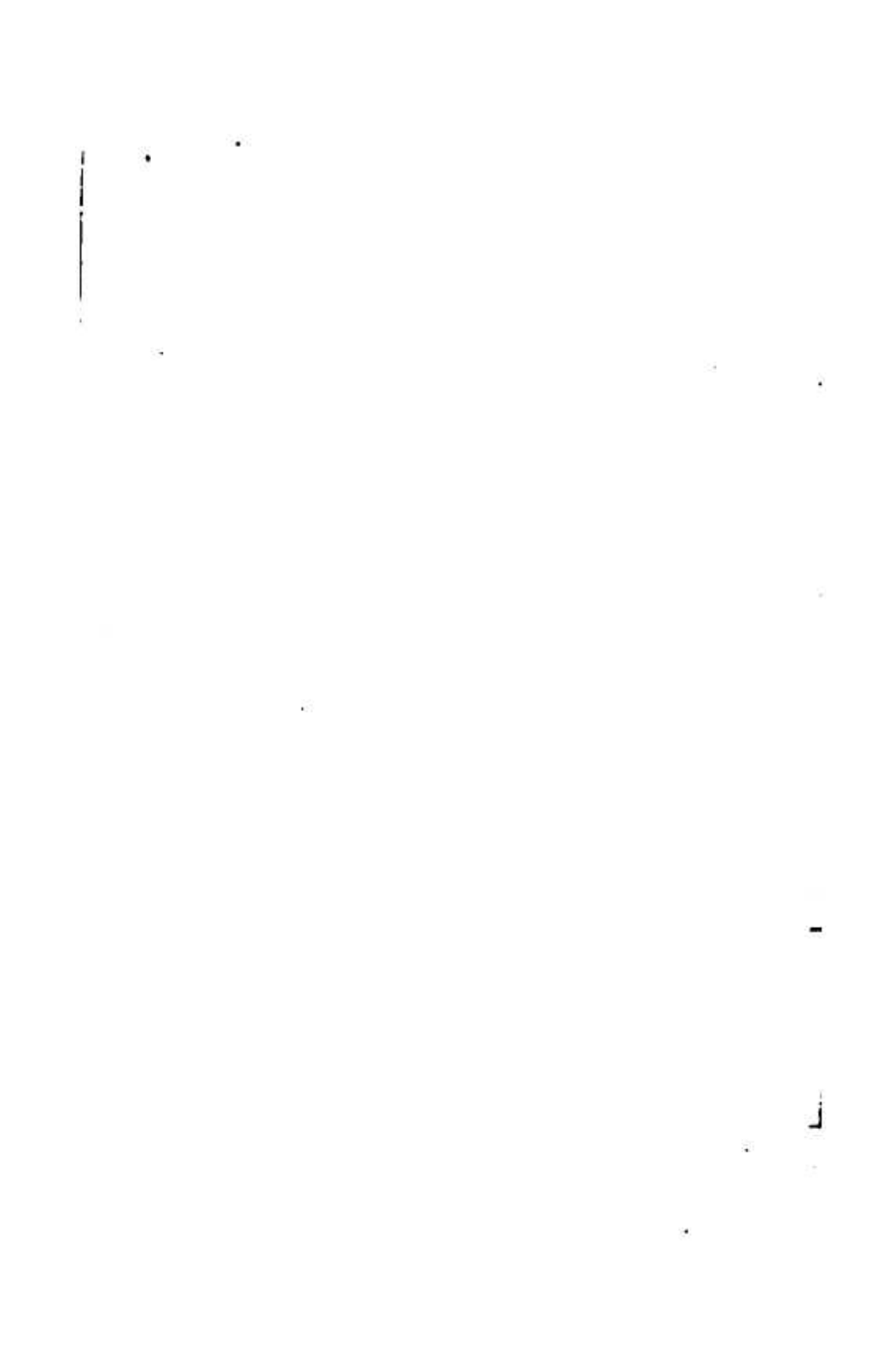
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MURRAY'S REPRINTS.

THE CONSTITUTION OF ENGLAND formed Chap. VIII. of the great work of Henry Hallam, on the **STATE OF EUROPE DURING THE MIDDLE AGES**; and the text is given complete in this issue, by

A. MURRAY.



HENRY HALLAM
ON THE
ENGLISH CONSTITUTION.

THOUGH the undisputed accession of a prince, like Edward I., to the throne of his father, does not seem so convenient a resting-place in history, as one of those revolutions which interrupt the natural chain of events, yet the changes wrought during his reign make it an epoch in the progress of these inquiries. And, indeed, as ours is emphatically styled a government by king, lords, and commons, we cannot, perhaps, in strictness carry it farther back than the admission of the latter into parliament; so that, if the constant representation of the commons is to be referred to the age of Edward I., it will be nearer the truth to date the English constitution from that than from any earlier era.

The various statutes affecting the law of property and administration of justice, which have caused Edward I. to be named, rather hyperbolically, the English Justinian, bear no immediate relation to our present inquiries. In a constitutional point of view, the principal object is that statute, entitled the Confirmation of the Charters, which was very reluctantly conceded by the king in the twenty-fifth year of his reign. I do not know that England has ever produced any patriots to whose memory she owes more gratitude than Humphrey Bohun, earl of Hereford and Essex, and Roger Bigod, earl of Norfolk. In the Great Charter, the base spirit and deserted condition of John take off something from the glory of the triumph, though they enhance the moderation of those who pressed no farther upon an abject tyrant. But to withstand the measures of Edward, a prince unequalled by any who had reigned in England since the Conqueror for prudence, valour, and success, required a far more intrepid patriotism. Their provocations, if less outrageous than those received from John, were such as evidently manifested a disposition in Edward to reign without any control; a

constant refusal to confirm the charters, which in that age were hardly deemed to bind the king without his actual consent; heavy impositions, especially one on the export of wool, and other unwarrantable demands. He had acted with such unmeasured violence towards the clergy, on account of their refusal of further subsidies, that, although the ill-judged policy of that class kept their interests too distinct from those of the people, it was natural for all to be alarmed at the precedent of despotism. These encroachments made resistance justifiable, and the circumstances of Edward made it prudent. His ambition, luckily for the people, had involved him in foreign warfare, from which he could not recede without disappointment and dishonour. Thus was wrested from him that famous statute, inadequately denominated the Confirmation of the Charters, because it added another pillar to our constitution, not less important than the Great Charter itself.

It was enacted by the 25 E. I., that the charter of liberties, and that of the forest, besides being explicitly confirmed, should be sent to all sheriffs, justices in eyre, and other magistrates throughout the realm, in order to their publication before the people; that copies of them should be kept in cathedral churches, and publicly read twice in the year, accompanied by a solemn sentence of excommunication against all who should infringe them; that any judgment given contrary to these charters should be invalid, and holden for nought. This authentic promulgation, these awful sanctions of the Great Charter, would alone render the statute of which we are speaking illustrious. But it went a great deal farther. Hitherto, the king's prerogative of levying money, by name of tallage or prise, from his towns and tenants in demesnes, had passed unquestioned. Some impositions, that especially on the export of wool, affected all his subjects. It was now the moment to enfranchise the people, and give that security to private property which Magna Charta had given to personal liberty. By the 5th and 6th sections of this statute, "the aids, tasks, and prises," before taken are renounced as precedents; and the king "grants for him and his heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor prises, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed." The toll upon wool, so far as levied by the king's mere prerogative, is expressly released by the seventh section.

We come now to a part of our subject exceedingly important, but more intricate and controverted than any other, the constitution of parliament. I have taken no notice of this in the last section, in order to present uninterruptedly to the reader the gradual progress of our legislature down to its complete establishment under the Edwards. No excuse need be made for the dry and critical disquisition of the follow-

ing pages ; but among such obscure inquiries, I cannot feel myself as secure from error, as I certainly do from partiality.

One constituent branch of the great councils, held by William the Conqueror and all his successors, was composed of the bishops, and the heads of religious houses holding their temporalities immediately of the crown. It has been frequently maintained, that these spiritual lords sat in parliament only by virtue of their baronial tenure. And certainly they did all hold baronies, which, according to the analogy of lay peerages, were sufficient to give them such a share in the legislature. Nevertheless, I think that this is rather too contracted a view of the rights of the English hierarchy, and indeed, by implication, of the peerage. For a great council of advice and assent in matters of legislation or national importance was essential to all the northern governments. And all of them, except perhaps the Lombards, invited the superior ecclesiastics to their councils ; not upon any feudal notions, which at that time had hardly begun to prevail, but chiefly as representatives of the church and of religion itself ; next, as more learned and enlightened counsellors than the lay nobility ; and in some degree, no doubt, as rich proprietors of land. It will be remembered also, that ecclesiastical and temporal affairs were originally decided in the same assemblies, both upon the continent and in England. The Norman conquest, which destroyed the Anglo-Saxon nobility, and substituted a new race in their stead, could not affect the immortality of church possessions. The bishops of William's age were entitled to sit in his councils by the general custom of Europe, and by the common law of England, which the conquest did not overturn. Some smaller arguments might be urged against the supposition, that their legislative rights are merely baronial ; such as that the guardian of the spiritualities was commonly summoned to parliament during the vacancy of a bishopric, and that the five sees created by Henry VIII. have no baronies annexed to them ; but the former reasoning appears less technical and confined.

Next to these spiritual lords are the earls and barons, or lay peerage of England. The former dignity was perhaps not so merely official as in the Saxon times, although the earl was entitled to the third penny of all emoluments arising from the administration of justice in the county-courts, and might, perhaps, command the militia of his county, when it was called forth. Every earl was also a baron ; and held an honour or barony of the crown, for which he paid a higher relief than an ordinary baron, probably on account of the profits of his earldom. I will not pretend to say, whether titular earldoms, absolutely distinct from the lieutenancy of a county, were as ancient as the Conquest, which Madox seems to think, or were considered as irregular, so late as Henry II., according to Lord Littleton. In Dugdale's Baronage, I find none of this description in the first Norman reigns, for even that of Clare was connected with the local earldom of Hertford.