

**THE TEXT-BOOK OF THE  
CONSTITUTION: MAGNA  
CHARTA, THE PETITION OF  
RIGHT, AND THE BILL OF RIGHTS**

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The Text-book of the Constitution: Magna Charta, the Petition of Right, and the Bill of Rights by  
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THE TEXT-BOOK  
OF  
THE CONSTITUTION.

MAGNA CHARTA, THE PETITION OF RIGHT,  
AND THE BILL OF RIGHTS.

WITH HISTORICAL COMMENTS, AND REMARKS ON THE PRESENT  
POLITICAL EMERGENCIES.

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"Magna Charta, the Petition of Right, and the Bill of Rights form the code, which I call  
the Bible of the English Constitution."—Lord CHATHAM.

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THE  
TEXT-BOOK OF THE CONSTITUTION.

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WHATEVER may be thought of the execution of this work, I have little fear of the chief portion of it being censured, so far as regards the design. An attempt to arrange in a simple form, and to place before the public, in a few easily accessible pages, the great principles of our Constitution,—to prove their antiquity, to illustrate their development, and to point out their enduring value,—will surely, in times like the present, not be discouraged as blameable; and, in the strange dearth of really useful treatises on this all-important topic, it will hardly be slighted as superfluous.

I am aware that I assume a more questionable and difficult function in proceeding to consider what political measures should now be taken, in order that our Constitution may extend its benefits more amply, and more securely for the future. But this branch of the subject is intimately connected with the other; for, the same earnest and long-continued studies which teach the historical inquirer to believe in and venerate the great principles of the English Constitution, also display to him the workings of its normal law of progress, its plastic power of self-amelioration and expansion, through which alone we may hope to see the exigencies of the present and of the coming time supplied, not only without danger, but with additional security to the fundamental institutions of ages past.

It is in the first place necessary to have a clear idea of what we mean by the word "Constitutional." For, there are few terms in our language more laxly employed than this word and its converse in party political discussion. And so very vague are the ideas which many entertain of the English Constitution, that when the opponent of a particular measure or a particular system of policy cries out that it is unconstitutional, it generally means little more than that the matter so denounced is something which the speaker dislikes.

Still, the term is susceptible of full and accurate explanation, though it may not be easy to set it lucidly forth without first investigating the archæology of our history, rather more deeply than may suit hasty talkers and superficial thinkers, but with no greater expenditure of time and labour than every member of a great and free state ought gladly to bestow, in order that he may rightly comprehend and appreciate the polity and the laws in which, and by which he lives, and moves, and has his civic being.

Some furious Jacobins, at the close of the last century, used to clamour that there was no such thing as the English Constitution, because it could not be produced in full written form like that of the United States, or like those with which Sièyes crammed the pigeon-holes of his bureau, to suit the varying phases of the first years of the French Revolution. And, as the trade of Constitution-mongering is again thriving on the Continent, perhaps some who see that other nations are providing themselves with full written formulas of social and political rights and processes, in all the paraphernalia of article, section, supplement and proviso, while England is content with her old statute-book, and old traditional government and laws—may think that the term “English Constitution” means nothing beyond the no-meaning of designating the actual state of things in the country at the particular moment when the phrase is used, and which, of course, is liable to vary with the varying hour.

In order to meet these cavils, there is no occasion to resort to the strange dogma of Burke, that our ancestors, at the Revolution of 1688, bound, and had a right to bind, both themselves and their posterity to perpetual adherence to the exact order of things then established; nor need we rely solely on the eulogies which foreign as well as native writers, a hundred years ago, used to heap upon our system of government. Those panegyrics, whether exaggerated or not, were to a great extent supported by reasonings and comparisons, which are now wholly inapplicable. But, without propping his political creed on them, an impartial and honest investigator may still remain convinced that England has a Constitution, and that there is ample cause why she should cherish it. And by this it is meant, that he will recognise and admire, in the history, the laws, and the institutions of England, certain great leading principles, and fundamental political rules, which have existed from the earliest periods of our nationality down to the present time; expanding and adapting themselves to the progress of society and civilisation, advancing and varying in development, but still essentially the same in substance and in spirit.

These great primeval and enduring principles are the principles of the English Constitution. And we are not obliged to learn them from conflicting speculations or suppositions; for they are imperishably recorded in the Great Charter, and in the Charters and Statutes connected with and confirmatory of Magna Charta, with which the volume of the laws of the land auspiciously commences. In Magna Charta itself, that is to say, in a solemn instrument deliberately agreed on by the king, the prelates, the great barons, the gentry, the burghers, the yeomanry, and all the freemen of the realm, at an epoch which we have a right to consider the commencement of our nationality, we can trace all these great principles, some in the germ, some more fully revealed. In the statute entitled *Confirmatio Chartarum*, which is to be read as a supplement to its great original, we discern these principles manifested with additional clearness. And thus, at the very dawn of the history of the present English nation, we behold the foundations of our great political institutions imperishably laid, and their essential forms proclaimed.



These great primeval and enduring principles of our Constitution are as follows :—

The Government of the Country by an hereditary sovereign, ruling with limited powers, and bound to summon and consult a Parliament of hereditary Peers, and of elective representatives of the Commons.

That the Subjects' money shall not be taken by the Sovereign, unless with the Subjects' consent, expressed by his representatives in Parliament.

That no man be arbitrarily fined or imprisoned, or in any way punished, except after a lawful trial.

Trial by Jury.

That justice shall not be sold or delayed.

These great constitutional principles can all be proved, either by express terms, or by fair implication, from *Magna Charta*, and its above-mentioned Supplement.

Their vigorous development was aided and attested in many subsequent statutes, especially in the *Petition of Right* and the *Bill of Rights*; in each of which the English nation, at a solemn crisis, solemnly declared its rights, and solemnly acknowledged its obligations:—two enactments which deserve to be cited, not as ordinary laws, but as constitutional compacts, and to be classed as such with the *Great Charter*, of which they are the confirmers and the exponents.

Lord Chatham called these three statutes "*The Bible of the English Constitution*," to which appeal is to be made on every grave political question. The great statesman's advice is still sound. It deserves to be considered by subjects as well as by princes; by popular leaders without the walls of Parliament, as well as by Ministers within them. In the present period of general commotion, when startling changes in our system of government are advocated by still more startling means, while at the same time there is a general feeling of the necessity for some change being effected, these texts of our Constitution deserve peculiar study, in order that we may learn from them, First, What our Constitution is, and whether it deserves to be earnestly upheld by us as a national blessing, or ought to be looked on as an effete incumbrance, whose euthanasia we should strive to accelerate; and Secondly, That when we have convinced ourselves of its merit, we may be able to test proposed measures by their conformity with or hostility to its principles.

It is remarkable how few even of educated Englishmen possess, or have ever read these three great statutes. *Magna Charta*, in particular, is on everybody's lips, but in nobody's hands; and, though perpetually talked of, is generally talked of in utter ignorance of its contents, beyond a vague impression that it prohibits arbitrary imprisonment, and is in favour of Trial by Jury. If the publication of this little Treatise tend to familiarise any of my fellow-countrymen with its true letter and spirit, I shall assuredly not think that my labour in compiling and in commenting has been thrown away.

A remark has been made in the preceding page respecting the epoch of the *Great Charter*, the correctness of which every reader may not admit as self-evident, but which is of vital importance in estimating the full nature and value of that great corner-stone of our

Constitution. It has been said that Magna Charta is coeval with the commencement of our true nationality ; in other words, that we have had our present Constitution, as represented in Magna Charta, throughout the whole period of our true national history. This is best explained at the outset, though at the risk of enunciating what to some may be historical truisms.

Our English nation is the combined product of several great elements of population. Of these there have been four principal ones—the Saxon, the British (i. e. the Romanised Celtic), the Danish, and the Norman. The Saxon is mentioned first, as being undoubtedly the most important, and as constituting the chief fountain with which the other sources have mingled, forming at last in their complete junction the English people such as it has since been, and such as it now is. But each of the four elements has largely modified the rest, and each has exercised important influence in determining our national character and our national career. To take the last of them in point of date—by the influx into this island of the victorious Normans, (that is to say, of Scandinavians by origin, who had for 150 preceding years been settled in France,) the former Government in this island was overthrown ; new divisions of rank and class were introduced ; new tribunals and new laws regulated property and person ; almost the whole of England was parcelled out to new men to hold on new terms, and a martial nobility of the bravest and most energetic race that ever existed, was far and wide planted as a dominant class in the land.\*

Moreover, although the coming over of the Normans made up the last great element of our population, many years elapsed before it coalesced with the rest. For upwards of a century after the Conquest,

\* Gibbon in his seventh volume, sketches the Norman character and early conquests with his usual power and splendour. He ratifies the comparison between the Normans and Franks drawn by William of Malmesbury ; and finally pronounces that "England was assuredly a gainer by the Conquest." Sismondi, also, ("Histoire de France," vol. iii., p. 174), has brilliantly and powerfully portrayed the superiority of the Normans to the degenerate French noblesse, and the crushed and servile Romanesque provincials, from whom they wrested the district in the north of Gaul, which still bears the name of Normandy. It was not merely by extreme valour and ready subordination to military discipline, that the Normans were pre-eminent among all the conquering races of the Gothic stock, but also by an instinctive faculty of appreciating and adopting the superior civilisations which they encountered. Thus Duke Rollo and his followers readily embraced the creed, the language, the laws, and the arts which France, in those troubled and evil times with which the Capetian dynasty commenced, still inherited from Imperial Rome and Imperial Charlemagne. "Ils adoptèrent les usages, les devoirs, la subordination que les capitulaires des empereurs et les rois avoient institués. Mais ce qu'ils apportèrent dans l'application de ces lois, ce fut l'esprit de vic, l'esprit de liberté, l'habitude de la subordination militaire, et l'intelligence d'un état politique qui conciliât la sûreté de tous avec l'indépendance de chacun." So also in all chivalric feelings, in enthusiastic religious zeal, in almost idolatrous respect to females if of gentle birth, in generous fondness for the nascent poetry of the time, in a keen intellectual relish for subtle thought and disputation, in a taste for architectural magnificence, and all courtly refinement and pageantry, the Normans were the Paladins of the world. Their brilliant qualities were sullied with many darker traits of pride, of merciless cruelty, and of brutal contempt for the industry, the rights, and the feelings of all whom they considered the lower classes of mankind. Still it is to the Norman element in our nation, that much of England's greatness and glory is due. And I believe that most of the free institutions which we justly

Anglo-Norman and Anglo-Saxon kept aloof from each other; the one in haughty scorn, the other in sullen abhorrence. They were two peoples, though living in the same land. It is not until the thirteenth century, the period of the reigns of John and his son and grandson, that we can perceive the existence of any feeling of common nationality among them. But in studying the history of these reigns, we read of the old dissensions no longer. The Saxon no more appears in civil war against the Norman, the Norman no longer scorns the language of the Saxon, or refuses to bear together with him the name of Englishman. No part of the community think themselves foreigners to another part. They feel that they are all one people, and they have learned to unite their efforts for the common purpose of protecting the rights and promoting the welfare of all. The fortunate loss of the Duchy of Normandy in John's reign, greatly promoted these new feelings. Thenceforth our barons' only homes were in England. One language had, in the reign of Henry III., become the language of the land, and that, also, had then assumed the form in which we still possess it.\* One law, in the eye of which all freemen are equal without distinction of race, was modelled, and steadily enforced, and still continues to form the groundwork of our judicial system.†

With this period our true nationality commences; for our history from this time forth is the history of a national life, then complete and still in being. All before this period is a mere history of elements, and of the processes of their fusion. The first great event of this period, the first effort of this awakened English spirit, was the obtaining of Magna Charta *by* all and *for* all the freemen of the land. The constitutional principles promulgated therein were at once the first fruits and the guarantees of our nationality; and we are enabled to appeal to them as embodying the terms of an original contract between

cherish, are quite as much due to the Normans as to the Saxons. "C'est peut-être à la Conquête des Normands que l'Angleterre a dû ses libertés," is the expression of Guizot ("Essais sur l'Histoire de France," vi. Essai, Chap. prem.) And whoever will peruse the admirable analysis of the origin of our Representative systems which that great historian introduces near the close of the Treatise referred to, and will also study in "Palgrave's History of the English Commonwealth," the Norman origin of our Trial by Jury, will feel little doubt of the importance and the ultimate blessing of the Norman Conquest; fearful as were the sufferings which it caused to some generations.

I have dwelt on this topic at greater length, on account of the absurd and fallacious tone in which the Norman Conquest is spoken of in some standard works on our history and laws, from which it might be supposed that the Battle of Hastings led to little more than the substitution of one Royal family for another on the throne of this country, and to the garbling and changing of some of our laws through the "cunning of the Norman lawyers."

\* The earliest extant specimen of the English language, as contra-distinguished from the Saxon and the semi-Saxon, is the proclamation of Henry III. to the people of Huntingdonshire, A. D. 1258. See "Latham on the English Language," p. 77, 2nd Ed.

† Our Common Law, with its peculiar features of Pleading, &c., assumed its present form in the thirteenth century. See Bracton's Treatise, written in Henry III.'s reign. During the same period, also, Trial by Jury in criminal charges was generally introduced. Some remarks on this will be introduced in an after part of this treatise, in commenting on the provisions of Magna Charta.