England

THE Anglo-Saxon state of the tenth and eleventh centuries was a Germanic monarchy. The kingship was elective in the ancient royal house of Wessex. An assembly of lay and ecclesiastical magnates, the Witan, elected the king and served as his council. The king had the right to demand military service from every able-bodied man. He also had a group of men called thanes who held land in return for serving him as soldiers—a system somewhat like that of the Carolingian vassi dominici. The king and his court were supported by demesne manors scattered over England. During the Viking invasions of the eighth and ninth centuries the English kings had levied a general tax called danegeld to buy off the invaders, and in the eleventh century the Danish conqueror, Canute, used this tax to support his army of occupation. While there is some doubt that an English king could rightfully levy this tax in peacetime, there existed a system of assessment based on land and its value. The king had close control over the church and chose its prelates as he saw fit. He
could also, with the approval of the Witan, issue decrees that had the force of law. But the administration of justice was carried on in local popular courts according to ancient custom. These courts, which administered both secular and ecclesiastical law, were presided over by three officials—the bishop, the earl, and the sheriff. The earl was the chief local officer and was chosen by the king with the approval of the Witan. The sheriff was the king’s personal representative who administered his demesne manors and collected his dues of every sort.

The Elements of Feudalism

Anglo-Saxon England had certain basic elements of feudalism similar to those that had existed in the early Carolingian state. Royal thanes held land in return for military service and many great landholders had their own thanes who held from them on the same basis. It is quite possible that given the necessary conditions the Anglo-Saxon state would have in time become feudalized without outside interference. But it never had time to develop to that point. In 1066 William, duke of Normandy, invaded England, defeated and killed King Harold, and subdued the whole country. William had been brought up in a feudal environment, was the head of a great French fief, and was followed to England by men who were equally imbued with feudal ideas. Such conquerors could hardly fail to turn England into a feudal state. But William was fully
aware that an Anglo-Saxon king had possessed many powers denied to a mere feudal suzerain, and he had every intention of making the most of his position as the lawful successor to Edward the Confessor and Harold. One may even wonder whether William's knowledge of the Capetian monarchy was not enough to make him wary of too pure a feudal structure.

Although King William's basic ideas would probably have led him to establish a feudal state, the military needs of his new kingdom actually left him with little choice. He had to provide a system that would prevent or suppress Saxon risings and safeguard the realm from its external foes. Frontier defenses had to be planned against the Scots and the Welsh. But far more serious was the danger of renewed Scandinavian invasions. To the historian it seems fairly clear that the age of Scandinavian expansion was over by 1066. William had, however, no way of knowing this. In 1013–1017 the Danes had almost conquered England and Canute, king of Denmark, had ruled England for eighteen years. Just before the battle of Hastings King Harold had defeated a Norwegian army at Stamford Bridge. In William's mind the Scandinavian kingdoms were a perpetual menace to his new realm. England needed a network of strong fortresses with men to garrison them and a large field army that could be mustered in time of need. It is probable that under the economic circumstances of the time nothing but a
strong feudal system could fill this need. Certainly this was the solution that would occur to William.

The Norman Fiefs

The actual process of dividing England into fiefs must have presented grave difficulties. William and his followers knew little or nothing about the geography of England and had no means of learning much more. There were no registers of lands. William had two methods at his disposal. He could use the established Anglo-Saxon territorial divisions and base his fiefs on them, or he could utilize the existing landholdings and grant as a fief the property of a particular Saxon. The first of these methods would result in integrated territorial fiefs. As the Anglo-Saxon landholders had their possessions widely scattered and intermingled, the use of the second method would avoid compact fiefs. William chose to use both methods. In regions that were of vital strategic importance he granted compact fiefs based on the Anglo-Saxon territorial divisions. The easiest path from Scotland into England lay through Northumbria. Hence the whole shire of Northumberland was granted as a fief to a Norman lord. On the Welsh border the shires of Cheshire, Shropshire, and Herefordshire were handled in the same way. The whole county of Kent was given to William’s half brother, the bishop of Bayeux. In Sussex each subdivision or rape was granted to a Norman lord. But throughout the rest of England the Con-
queror's followers received the lands of particular Saxons and so had their estates scattered and intermingled with those of others.

When King William granted a fief, he evaluated it as well as he could and set the number of knights that it was to supply for his feudal host. The few Anglo-Saxon landholders who were left in possession were assigned quotas of knights, as were the bishoprics and abbeys of the realm. The total number of knights provided for seems to have been about 5000. Then in each important royal borough William built a castle—either a massive stone tower or a fortified earthen mound. The command of each castle was entrusted to a vassal whose lands lay nearby and the garrisons were supplied by designated fiefs. Moreover, each royal vassal was encouraged if not actually directed to build castles and to garrison them with his knights. Thus there sprang up a vast network of castles. Once this system was set up and the castles built, England was comparatively safe from either Saxon revolt or invasion from outside.

The Obligations of the Barons

The men to whom the king granted fiefs are usually called barons. Each baron owed the king the service of the number of knights assigned to his fief and all the ordinary obligations of a vassal to his lord. Each baron was faced with the problem of providing his quota of knights. He had two possible alternatives—
either to keep the necessary number of knights in his household ready for service and feed and clothe them from the produce of his estates or to grant fiefs to knights who would serve him. The really great baron who owed 100 knights had little choice—it would be impracticable to keep so great a number in his household. The lesser lord who owed only ten knights might avoid granting fiefs. But here again the ideas of the day had their effect. Every knight wanted a fief of his own, and the lords could not resist the pressure. Hence the barons granted fiefs to men who became their vassals and the king’s rear vassals. Sometimes these rear vassals had large fiefs owing ten or more knights, and they in turn granted fiefs to other knights. A feudal hierarchy rapidly developed. The king of England, like the Capetian monarch, was a feudal suzerain who was the apex of a pyramid of lords and vassals. The king had his feudal court, the curia regis, consisting of the prelates and barons of the realm. Each baron also had his court where his vassals met. While the feudal relations between king and barons were decided in the curia regis, the relations between a baron and his vassals were worked out in the baron’s court. These various feudal courts slowly forged the feudal customs of England.

The Royal Authority

In addition to constructing a feudal hierarchy with himself at its head, William took over the royal herit-
age of the Anglo-Saxon kings. Although he made an important concession to the church by separating the lay and ecclesiastical courts and allowing the church to set up its legal system as it had in the rest of western Europe, he controlled as closely as had his predecessors the election of bishops and abbots and refused to allow papal legates to enter the realm without his leave. He continued to regard the bishops as part of his administration, and his writs were always addressed to the bishop and the sheriff except in the few shires where he established earls. William recognized fully the value of the right to collect general taxes implicit in the danegeld, and he collected this tax. He was thus the only feudal monarch of western Europe to have financial resources that were entirely nonfeudal in nature. Moreover, King William tried to solve the basic contradiction that existed in a feudal monarchy—that between the conception of a feudal hierarchy in which the suzerain had rights only over his direct vassals and the idea of a monarch and his subjects. He insisted that every freeman, no matter what his feudal position, should swear allegiance to him. Rear vassals of importance also swore fidelity and did homage to the king. Thus in theory at least the obligations of a vassal to his lord were always secondary to his obligations to the king. In France, when a great vassal waged war on the king, he might be committing an offense, but his men who followed him were only doing their duty. In England, any man of any station who bore
arms against the king violated his oath and was a traitor.

It was inevitable that neither the successors of King William nor their barons would be willing to keep static the arrangements established by him. Both crown and baronation were bound to attempt to increase their power at the expense of the other. Moreover, both were inclined to usurp the functions and revenues of the popular courts. This struggle between king and barons was the central thread of the political history of England for several centuries.

*Feudal Revolt*

Comparatively little is known of the progress of this contest during the reigns of William I and William II. There was a serious baronial revolt against the Conqueror and contemporary documents suggest that it was caused by the encroachments of the sheriffs on what the barons considered their privileges. It is clear that both kings made the most of their rights as feudal suzerains. When a baron died, the relief for his fief was set at the highest figure there was any chance of collecting. When a baron wanted to marry his daughter, the king charged a fee for his permission. When a baron died leaving an unmarried heiress, she was sold to the highest bidder. At the same time the great lords had been increasing their power at the expense of the popular courts and the sheriffs. In Anglo-Saxon times most men of importance had had sac and soc—that is,
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police-court authority over the peasants on their own estates. Many landowners had also had the right called *infangentheof*—the privilege of hanging one of their own men caught red-handed in larceny. Every Norman baron and many of their vassals had these privileges. Then the Anglo-Saxon kings had occasionally given a landholder the revenues from a local or hundred court. Their Norman successors simply absorbed the court and conducted it through their own officers. The Anglo-Saxons had also had a system called frankpledge by which twelve men were bound by oath to produce any one of their number who committed a crime. It was the duty of the sheriff to see that every man in England was in this system, but most great Norman lords had secured or usurped this privilege for themselves. In fact the most powerful of the barons seem to have had the right to forbid the sheriff to enter their lands. His functions on their estates were performed by their own officers. Moreover, the feudal courts had by their very existence taken away much business from the popular courts. In general all civil disputes between vassals of the same lord went to his court.

William the Conqueror divided his lands between his two elder sons. Robert, the eldest, became duke of Normandy, while the next younger, William, received the English crown. The third son, Henry, was given a modest fief in Normandy. But when King William II was killed while hunting, Henry was in Eng-
land and hence in a position to seize the throne before Robert could move. He succeeded in persuading the barons of England to accept him as their king—at the cost of a charter of liberties in which he promised to abandon the objectionable practices of his father and brother. Henry would ask only a “reasonable” relief when a baron was succeeded by his heir. He would not take a fee for granting a baron leave to give his daughter in marriage. No widow of a baron would be obliged to marry again against her will. Henry even promised not to collect danegeld from the demesnes of men who held fiefs by knight service—a concession that would have reduced enormously the yield of the levy. But there is no evidence that any of these promises ever troubled King Henry. He seems to have followed consistently the aggressive policies of his father William I and brother William II with improvements of his own devising.

The Royal Officials

William I and William II had in general used great barons as sheriffs and constables of royal castles. This practice had one advantage—the authority of these officials was supported by their own feudal resources as well as by the royal power. But magnates in office were likely to be independent and to favor their fellow barons. Henry tended to choose his officials from the lower feudal ranks and thus acquired servants whose position depended on his continued favor. The
chief of Henry's administration, his justiciar Ralph Basset, was drawn from that class. King Henry also developed a group of royal officials who operated his central administration. Under the Anglo-Saxon kings certain serious crimes, such as murder, rape, and arson, were considered offenses against the king. The culprit would be tried in the popular courts, but the king would set the penalty. William I and William II removed the trial of such cases from the popular courts and had them heard by royal justices—usually the sheriff of the county. Henry I sent groups of justices through the shires to hear these pleas of the crown and to supervise the conduct of the sheriffs and other local officials. He also established an efficient financial system. His treasurer, Nigel, bishop of Ely, organized the exchequer. Here the sheriffs and others who owed the crown money appeared to pay their obligations and render their accounts before a group of royal officials—the barons of the exchequer. These various functions were all carried out by the same group of men. The same men were the king's justices, the barons of the exchequer, and often served as sheriffs and constables. The justiciar was their chief. When the king was in Normandy, the justiciar ruled England as his viceroy.

Henry I ruled England with a heavy hand. He not only made the most of his feudal rights such as relief, wardship, and marriage, but he also prevented his barons from usurping rights of jurisdiction and for-
bade them to build castles without his permission. The barons were inclined to look longingly toward Normandy where pleasant anarchy reigned under the mild and ineffective rule of Duke Robert. The result was a series of revolts against Henry by supporters of his brother. Henry crushed the risings, invaded Normandy, subdued the duchy, and captured his brother, who died years later in an English prison. A large part of the rest of Henry’s reign was occupied in trying to bring the turbulent Norman baronage to order and in waging war against his Capetian overlord and his ally the count of Anjou. In all these contests Henry emerged triumphant, but fate dealt him a crushing blow. His only legitimate son was drowned crossing from Normandy to England. Henry obliged his prelates and barons to swear to accept as his heir his daughter Matilda, widow of the Emperor Henry V and wife of Count Geoffrey of Anjou. But he probably realized that when he died his barons would be inclined to seek a mild and weak monarch rather than the stern and able Matilda and her fierce Angevin husband. There was such a candidate for the throne: Henry’s sister had married Count Stephen of Blois, and although their eldest son Theobald was fully as formidable as his uncle, his younger brother Stephen, whom King Henry had endowed with vast lands in England and Normandy, was noted for his mildness. And many men doubted that it was proper for a woman to inherit the kingdom of England.
Feudal Anarchy

When Henry died in 1135, his nephew Stephen promptly crossed to England and was accepted as king by the prelates and barons of the realm. Count Theobald of Blois occupied Normandy but soon relinquished it to his brother. Count Geoffrey of Anjou and Matilda refused to accept this arrangement. Geoffrey invaded Normandy while Matilda crossed to England to attempt to wrest the throne from Stephen. The result was a long and bitter civil war that brought England to a state of almost complete anarchy. The barons supported whichever side promised them the most extensive privileges. Moreover, the general state of confusion made usurpation easy. If a baron could persuade neither Stephen nor Matilda to allow him to build castles at will, he did so anyway. Grants of land from the royal demesne and the hereditary possession of royal offices were extorted from both claimants. Thus a great baron, Geoffrey de Mandeville, was created earl of Essex by both Stephen and Matilda, received extensive grants from the demesne, had a number of lesser barons placed in his vassalage rather than the king’s, and became hereditary sheriff of Essex, Hertfordshire, London, and Middlesex and hereditary royal justice in those four counties. He also was made hereditary constable of the Tower of London, was allowed to build a number of castles, and was given permission to tear down a castle that annoyed him
belonging to the bishop of London. Geoffrey was one of the most successful baronial grabbers, but others followed the same policy. The great barons built up independent local positions strong enough so that they could defy the royal government. They made treaties among themselves like independent princes.

Henry of Anjou

In 1149 Count Geoffrey of Anjou relinquished the duchy of Normandy to his son, Henry, who was duly proclaimed duke. Two years later Geoffrey's death made Henry count of Anjou. In 1152 he acquired the vast duchy of Aquitaine by marrying Eleanor who had just been divorced by Louis VII. Then in 1153 Henry came to an agreement with King Stephen. Stephen was to rule England as long as he lived, his son William was to receive extensive fiefs in England and Normandy, and Henry was to succeed Stephen on the English throne. Thus when Stephen died in 1154, Henry became king of England. He promptly set to work to restore the royal government to the position it had held in his grandfather's time. Henry razed many of the castles built in Stephen's reign and took possession of others. He deprived the barons of a large proportion of the lands and privileges that they had extorted from Stephen and Matilda. Once more men of lower rank, mere servants of the crown, replaced the great barons as sheriffs and constables of royal castles. Once more the king's justices rode through the
land, and the exchequer collected and accounted for the revenues of the crown. Within a few years of his accession Henry had regained what was lost during Stephen's reign and was ready to move forward toward further development of the royal power.

King Henry II found several means by which he could increase his resources as feudal suzerain of England. He advanced the doctrine that he had feudal privileges not enjoyed by other lords. When a knightly family held fiefs from two barons, each baron had the right of custody over the lands held of him at the death of the vassal, and the baron from whom the family had held a fief the longest had the right of marriage. But Henry claimed that when a vassal held a fief directly from him, no matter how small the fief or how recently acquired, the crown had the right of marriage and custody of all the lands. Then when the vassal of a baron died, the baron was obliged to accept the homage of the heir at once and then collect the relief as best he could. But Henry maintained that he had the right to refuse to give a baron's heir possession of the fief until the relief had been paid. The king also attempted to make the military service due him more valuable and to increase the yield of such feudal aids as the aid to knight his eldest son. Most English barons had enfeoffed more knights than they owed the crown under the quotas established by William I. Thus when the king levied an aid at a certain sum for each knight's fee, they made a profit. When the king summoned his
host, they brought the knights they owed and collected a sum of money called scutage from the others. Henry was determined to share in the profits accruing from the increase in the productivity of the land and from inaccurate assessments of service. He held a great inquest to discover how many knights had been enfeoffed by his barons. He then tried to levy aids on all their fees. Although he was eventually forced to accept a compromise, he greatly increased the service owed the crown.

The Increase of Royal Power

Henry II did not content himself with developing his resources as feudal suzerain—he devoted even more attention to building up his power and revenue as king. His most important step in this direction was to increase the jurisdiction of the royal justices who traveled over England to hear pleas of the crown. According to English customary law there was only one method by which a criminal case could be brought into court—an appeal or accusation by the injured party or someone acting in his behalf. Under this system many crimes were bound to go unpunished. Whoever brought an appeal into court was subject to severe penalties if he lost the case. Hence no one was inclined to mention the murder of friendless men of little importance. In all probability there were many cases that never were brought to court because of fear of the accused and his friends. The solution that Henry
devised for this problem is still in use today—the jury of presentment.

In a decree known as the Assize of Clarendon, Henry directed that twelve men from each hundred and four from each township should appear before his justices to declare what crimes had been committed in their districts since his coronation and to name those whom they suspected of having committed them. Those accused were to be arrested and obliged to prove their innocence by the ordeal of water. This consisted of being bound and thrown into water. The man who sank was innocent; the one who floated was guilty. These proceedings were carried on with an elaborate religious ritual that made the ordeal a judgment of God. But Henry seems not to have had complete confidence in the result of such a test. He provided that if the man who cleared himself by the ordeal was generally believed to be guilty, he should leave England forever. One obvious result of this new procedure was to increase the number of criminal cases brought to court and improve the maintenance of law and order, and it also increased the king’s revenue. When a culprit was hanged, the king seized all his movable property and could “waste” his land for a year and a day. If the man accused by the jury of presentment escaped arrest, he was outlawed and his property seized. Moreover, if the jurors failed to mention a crime that the justices knew about from some other source, they were severely fined.
The invention of the grand jury was an important step in the development of English law. The direct ancestor of the modern petty jury or trial jury grew out of this system. When a man who was accused of a crime by the jury of presentment knew he was innocent and felt certain that his neighbors knew it too, he would "place himself upon the country." The sheriff would then gather a jury of the man's neighbors. If they stated that they believed him innocent, he was freed. In this way the man who felt sure that he was innocent could escape the ordeal.

The Royal Courts

King Henry made use of similar devices to extend the civil jurisdiction of the royal courts. Under English law there was but one way to determine the ownership of property—trial by battle. If both contestants were vassals of the same lord, the battle was fought before his feudal court. If they held of different lords, it was conducted before the shire court. Henry decreed that the defendant in such a case could go to the royal chancery and purchase an order moving the trial to the king's court. Then the sheriff levied a jury of twenty-four knights, called a "grand assize," who were to investigate the question and be ready to state in court which party was in the right. Obviously the holder of property who felt sure that his title was sound would prefer this procedure to the very hazardous and uncertain trial by battle.

In addition to the grand assize Henry invented pro-
cedures known as “possessory assizes.” The peace and quiet of the English countryside was continually being disturbed by powerful men who believing they had claim to land ejected by force the weaker men who were in actual possession of it. King Henry resolved to suppress this type of disorder. When a man was ejected from land in his possession without a proper judicial decision, he could go to the royal chancery and buy what was called a “writ of novel disseizin.” It directed the sheriff to collect twelve men who would appear before the king’s justices to state whether the plaintiff had been ejected by force without a court order. If this assize said that he had been, the sheriff would put him in possession again. If the man who had seized the land illegally believed that it was really his, he could bring a regular suit over the ownership to be tried by battle or by the grand assize. A similar writ called “mort d’ancestor” could be used by an heir to obtain any property that had been in his father’s possession at his death.

The possessory assizes increased the business of the royal courts by the innovation of new processes. No existing court was harmed by this. In general the same can be said of the jury of presentment—it brought into court cases that would otherwise never have been brought to trial. The grand assize, however, took business from both the feudal and the shire courts that had handled the conventional procedure of trial by battle. And although no official decree authorizing such a policy has been preserved,
it is clear that Henry encouraged his justices to interfere in other ways with the work of the feudal courts. If a widow who felt that her husband’s heir had not given her an adequate dower failed to get satisfaction in her lord’s court, she could obtain a writ from the chancery summoning the case before the king’s justices. If a lord refused to accept the homage of a man who claimed to hold land from him, he could be summoned to explain his action to the royal justices. The feudal courts continued to function, but they did so under the realization that their decisions could be questioned in the king’s court.

The legal innovations of Henry II marked the real beginning of the English common law. The king’s justices enforced the same law throughout the realm. Before Henry’s reign this common law had dealt only with a few types of cases such as appeals of crimes reserved to the crown. The feudal courts and popular courts that did most of the judicial business of the realm each had its own customary law. But as Henry extended the jurisdiction of the royal courts, he increased the scope of the common law. Late in his reign or early in the reign of his successor, one of his justices wrote a treatise on the law enforced by the royal courts—the book known to us as Glanvil’s De legibus.

The Constitutions of Clarendon

Another primary concern of Henry II was to define and stabilize the relations between church and state.
In 1164 he issued for this purpose the Constitutions of Clarendon. In this decree the boundary between the jurisdiction of the royal and ecclesiastical courts was carefully defined. Clerks accused of crimes were to answer before the king's justices. The decision as to who had the right to present a rector to a church or whether or not land was held in free alms belonged to the royal court. Actions for the recovery of debts even when payment had been guaranteed by a religious oath were to be held in lay courts. The church's power of excommunication was limited. No tenant in chief of the crown or royal official was to be excommunicated without due notice to the king or his justiciar. Inhabitants of the royal demesne were not to suffer this penalty until the king's local agent had received notice. Other clauses affirmed the king's rights as feudal suzerain over church lands and their holders. Prelates who held by barony were to perform all the obligations of barons except that they did not have to sit in the king's court when sentence of death was passed on a culprit. It was assumed that they did not owe personal military service. When a bishopric, abbey, or priory fell vacant, the crown was to have custody of its lands. The new prelate was to be elected by the "more powerful persons of his church" in the king's chapel with the king's consent. He was to perform homage and swear fidelity to the king before his consecration.

The archbishop of Canterbury, Thomas Becker, at
first accepted the Constitutions but later denounced them. This led to a bitter quarrel between the king and the primate. For some years Thomas lived in exile in France. Eventually peace was made between the two contestants and Thomas returned to Canterbury, but in reality it was impossible to reconcile the two points of view. Thomas believed that the church should be free from lay control while Henry insisted on the predominant rights of the royal government. One day a messenger came to Henry’s camp in Normandy to inform him of some arrogant act of the archbishop, and the king made some impatient remark about his rival. Three of Henry’s knights immediately left for England and murdered the archbishop in his own cathedral. King Henry drove the murderers into exile and did abject penance for his part in the offense. On the whole it seems unlikely that he ordered the murder. It is more probable that the knights were personal enemies of the archbishop who seized what appeared to be a good excuse for his assassination. Thomas was a proud, arrogant, ambitious man who had made many enemies. But his death was most convenient for the king—for the rest of his reign the church dared not oppose him. Although the English king did not succeed in obtaining jurisdiction over clerks accused of crimes, most of the questions dealt with in the Constitutions of Clarendon were decided in his favor. The Constitutions were never formally accepted by the church, but in general they governed English practice.
Henry's sons, Richard I and John, continued his policy of developing the royal power. Richard met with no serious opposition. As he led a crusade to Jerusalem and suffered severely for the cause of the Holy Land, the papacy and the church as a whole were inclined to favor him. His personal charm and his reputation as the ablest soldier of his day kept his barons quiet if not contented. But John was far less fortunate. He was fully as determined as his father to maintain and increase the royal power at the expense of its two chief rivals, the church and the baronage. He was able, industrious, and imaginative. Unfortunately he lacked the reputation for personal valor that was so important for a monarch of his day, and he never learned how to make men respect him as well as fear him. In addition, he faced two external foes of unusual quality—Philip Augustus, king of France, and Pope Innocent III; and before he had been king for five years, he had lost Normandy, Maine, and Anjou.

Pope Innocent III

John then entered into a long and bitter controversy with Innocent III over the succession to the archepiscopal seat of Canterbury. This quarrel was extremely complicated in detail, but the main issue was extremely simple. John maintained that no election to an English see was valid without the king's approval. The pope insisted that an election held in Rome in his presence required no such approval. Even-
tually John gave way. He accepted Stephen Langton as archbishop of Canterbury. Moreover, he surrendered his realm to the pope to be held in the future as a fief from the papacy. Thus he not only settled his quarrel but gained a firm friend. Innocent III was completely devoted to expanding the power and prestige of his great office. To acquire the king of England as a vassal was a decided achievement. Actually John was merely clearing his flanks for action on another front. Ever since his loss of Normandy, Maine, and Anjou, he had been planning to recapture them. He had built up a large war chest. Part of this had come from pressing to the fullest extent the financial rights of the crown. He had demanded enormous reliefs from his barons and sold privileges to them at a high price. He had collected scutage without actually carrying out the campaign for which it was intended. He had used relatively new forms of taxation—income and property levies and customs duties. Then a fair part of this war chest represented money extorted from the clergy during John’s quarrel with the pope. When Innocent placed England under interdict and forbade the performance of religious services, John had seized all the church property and had enjoyed its income for several years. Although when he made peace with the pope he promised to repay all this money, he succeeded in keeping a fair part of it. With these funds John had bought the alliance of a number of German princes, headed by his nephew the Em-
peror Otto, and of several vassals of the king of France. But his plans came to nothing. King Philip’s victory at Bouvines ended John’s hopes of recovering his fiefs on the continent.

Baronial Opposition to the Royal Power

The steady development of the royal power under Henry II, Richard, and John was deeply resented by the barons. John’s loss of Normandy lowered his prestige and encouraged thoughts of revolt. The situation was further aggravated by John’s vigorous and successful attempts to raise money. High reliefs, the demand of large sums for privileges, heiresses sold at exorbitant prices, frequent scutages, and too heavy income and property levies all extracted money from the baronage. During his quarrel with the church John kept most of his barons loyal by sharing the plunder to some extent and by convincing them that a papal victory would harm them as much as him. But his eventual surrender to Innocent III lowered his prestige still further. There were several abortive baronial plots and the great lords showed a decided disinclination to participate in the great attack on Philip Augustus. John gambled everything on the success of this campaign. Had he won, he would have been the master of western Europe and could either have crushed or have bought off his barons. When he returned defeated from Poitou in the autumn of 1214, a baronial rising was almost a certainty.
There is no doubt that in 1214 the vast majority of the barons of England disliked and distrusted King John and were deeply disturbed by his political and financial practices. But an actual revolt needs leaders. These were supplied by a small group of lords, perhaps thirty, whose grievances were particularly serious. Some of these men may have had personal reasons for their hostility to the king; our material is too scanty to allow us to know this for certain. Most, however, had actually been charged enormous reliefs or had paid vast sums for some castle, manor, or right they believed to be theirs by inheritance. Thus each baronial leader hated the king for a specific reason and wanted to gain some definite end such as the possession of a strong castle or an hereditary office. There lay at first their weakness. It was hard to get the baronage as a whole excited about the grievances of the leaders. The solution was supplied by the new archbishop of Canterbury, Stephen Langton. Langton was one of the great theologians of his day. He believed that both clerical and lay society should be governed by orderly, recognized systems of law. He persuaded the leaders of the rebellious barons to draw up a list of general demands that would benefit the feudal class as a whole. The result was the Articles of the Barons—the basis of Magna Carta. John was caught unprepared by the rising. He needed time to gather troops from Poitou and Gascony, put his castles in a state for defense, and appeal for aid to his overlord the pope.
As a result, on June 15, 1215, he accepted the baronial demands, and royal clerks were put to work drawing up the solemn document that would give them the force of law—Magna Carta.

*Magna Carta*

Magna Carta falls into four chief divisions. The first was primarily feudal and dealt with the king’s rights as suzerain. The relief due from a barony was set at a fixed sum. Rules were laid down for the custody of fiefs in the king’s care during the minority of an heir, for the treatment to be accorded to a baron’s widow, and for the marriage of heiresses. Only one provision of this part of Magna Carta was to have a lasting effect—the king promised not to levy taxes not regularly provided for by feudal custom without the counsel of an assembly of all his tenants in chief. It seems unlikely that such an assembly ever met—it would have been a hopelessly unwieldy body—but the king did in the future always ask the advice of some council before levying such a tax. The next part of the charter was concerned with various practices of the royal administration: how the crown should and should not collect the debts due it, how the constable of a royal castle should get supplies, and how frequently the king’s judges should journey about the country to hear the possessory assizes. A third part was of purely temporary interest—it provided the machinery by which the baronial leaders hoped to get
the lands and castles they wanted. The fourth part of the Great Charter is, however, still of considerable interest. It laid down certain basic principles that we still value. The chief of these was contained in the thirty-ninth article—“No free man shall be taken, or imprisoned, or deprived of his land, or outlawed, or exiled or in any other way destroyed nor shall we go against him or send against him except by legal judgment of his peers or by the law of the land.” The exact meaning of this passage has been long debated by scholars, but the general purpose is clear—the king cannot take any action against a free man without a judgment by the proper court. It is the origin of the Anglo-American conception of “due process of law.”

Almost all the detailed provisions of Magna Carta are of interest only to historians. In fact, most of them were obsolete within a century after its composition. But Magna Carta remained an extremely important document. By issuing it John admitted that he was subject to the established law of the realm. One can argue that the conception of customary law governing the relations between lord and vassals was implicit in the feudal system, but with the exception of the much briefer charter of liberties issued by Henry I, Magna Carta was the first explicit admission of this principle by a feudal monarch. The successors of the barons were fully aware of this. Again and again throughout the rest of the Middle Ages, when an Eng-
lish king showed signs of arbitrariness, he was obliged to reaffirm Magna Carta. Long after its actual provisions ceased to have much meaning, it was used as a symbol of the king’s subservience to the law.

*Simon de Montfort*

During the long reign of John’s son Henry III the barons came close to obtaining complete dominance. A revolt led by Simon de Montfort, earl of Leicester, led to the king’s capture and the rule of Earl Simon in Henry’s name. The barons’ program was to impose on the king a baronial council of their choosing and to have this body appoint the great officers of state. Simon recognized that the royal government had become too strong and well established to destroy or even reduce in power. His solution was to have the government controlled by the barons. While Simon was running the royal administration, his fellow barons took advantage of the opportunity to usurp all possible privileges. They forbade the sheriffs to enter their lands, took possession of hundred courts and had them held by their own agents, exercised the right of supervising the frankpledge system in their lands, and in general usurped the privileges of the king’s local officials. William de Beauchamp, hereditary sheriff of Worcestershire, combined the shire court with his own feudal *curia*. Richard de Clare, earl of Gloucester, withdrew his vassals from the royal hundred courts and obliged them to attend those under his control.
Thus during Henry's reign both the central and local organs of government fell under baronial control.

The Re-establishment of Royal Power

Under the son of Henry III, Edward I, the English feudal monarchy reached its height. In almost every field of governmental activity Edward made decided progress in solving existing problems and laying strong foundations for later development. He was perhaps the foremost soldier of his day. As a young boy he escaped from the guardians whom Simon de Montfort had assigned to watch him, gathered the royal partisans, and in two overwhelming victories crushed the Montfortian party. He was in North Africa on a crusade when his father died, but so complete was the baronial respect for the weight of his sword that England waited in peace and quiet while he made a leisurely journey home.

Edward resolved to put an end to the perpetual border wars with the Welsh. For centuries the Welsh had been raiding the English border and English kings had been conducting punitive expeditions against them. The heavily armed English knights could parade through the valleys of Wales at will, but the Welsh simply took to the hills where the knights could not follow. Edward decided to conquer Wales and keep it subdued. He gathered his feudal levy: his knights and mounted sergeants. With these he drove the Welsh into their hills. Then he levied great numbers of in-
fantry in the shires nearest Wales. They drove the Welsh into the inner fastnesses of their mountains. Around this high mountain section of North Wales Edward built a line of castles and garrisoned them with hired troops, some Gascon mercenaries but mostly English shire infantry. Several times the Welsh broke out, and the contest was long and bitter, but by the end of his reign he was master of Wales and had organized it into shires.

Edward was almost as successful in Scotland. The direct line of the Scots kings ran out and Edward was called upon to arbitrate among the many claimants to the throne. His jurists decided in favor of an English baron, John de Balliol. Edward obliged John to do him homage and to accept him as overlord of Scotland. When John yielded to pressure from the Scots and disobeyed the English king, Edward invaded Scotland. At the end of his reign his troops were in complete control of the lowlands. Edward died as he was crossing the border to crush a Scots rebellion led by Robert Bruce, who was eventually to free Scotland and become its king.

It was Edward I who first developed the longbowmen that were to be the most effective soldiers in western Europe for several centuries. He and his captains also worked out the tactics required for using knights and bowmen together that were to give England so many victories in the Hundred Years' War. Edward found the English army a feudal host occasionally rein-
forced by mercenary bowmen. He built up a body of English infantry drawn from the men of the shires.

*The Royal Prerogatives*

Edward also turned his attention to recovering the royal rights that had been usurped by various barons during his father's reign and to preventing further usurpation. He sent out writs of *quo warranto* (by what right) ordering every lord who claimed any special privilege to appear before the royal justices, list the rights he claimed, and prove that he possessed them legally. This could be done either by presenting a royal charter granting the privilege or proving that his ancestors had enjoyed it in the reign of Richard I. Actually Edward had no intention of pressing the matter quite so strongly. Vague statements that a right had been enjoyed as far back as anyone could remember were usually accepted. Only in the case of recent and flagrant usurpations did Edward deprive a baron of his privileges. But he had effectively put an end to usurpation. In the future a lord could not hope to claim a privilege that had not been allowed him in these inquests unless he had a recent grant to show.

One of the most serious problems that faced the royal government was the growing complexity of the feudal system. Every time a lord gave an estate to a younger son or a marriage portion to a daughter he created a new fief. There could be six or seven lords between the actual holder of a manor and the king.
This made the enforcement of feudal obligations extremely difficult. Edward determined to put an end to this process of creating new rear fiefs, but he did it by a rather indirect method. There was no legal way by which land could be sold. If a man wanted to buy a piece of land, the only method by which it could be done was to pay the holder to grant it to him as a fief. As a man’s right to diminish his son’s inheritance by granting fiefs was limited, such an arrangement could well be invalid. What was usually done was to arrange a suit in court. The man who wanted to buy the land sued the holder for it. The holder came to court, admitted the plaintiff’s claim in return for a sum of money, and the deal was legally registered before the justices. To end all this Edward provided that land could be sold, but when this was done it became a separate fief held of the higher lord. Thus if a baron sold a manor or gave one to a daughter as a marriage portion, it became a fief held directly of the king, not of the grantor. This put an end to the process of subinfeudation that had been going on since the Conquest.

*The Statute of Mortmain*

Closely related to the problem of the complexity of the feudal system was that of the growing possessions of corporations, especially religious ones. It had long been the custom, when a grant was made in free alms, for the lord and overlords—including the king
himself—to renounce the secular service due from the lands so given. Thus if a rear vassal gave a knight’s fee to an abbey, the baron and the king lost their feudal service due from it. Worse yet, by no means all such grants were made in good faith. Sometimes a man gave land to a church and thus was relieved of the service due for it. He then received it back for a nominal rent. This practice had been forbidden in an early reissue of Magna Carta, but it was hard to check. Edward decided to secure complete control of all acquisitions of land by corporations. The statute of mortmain provided that no land could be given, sold, or rented to a corporation. If it were, it became forfeited to the lord of the giver. Now actually no one seems to have expected that any such absolute prohibition would be enforced. The king could grant dispensation from a statute. Hence in practice this law simply meant that a corporation could acquire land only with the king’s permission.

The Exchequer and the Curia Regis

Legislation such as we have been discussing was an important feature of Edward’s reign and has led some writers to call him “the English Justinian.” The progress made in the development of the organs of government was equally significant. The central administration of the Norman kings, William I, William II, and Henry I, had been carried on by their household officers. The chancellor was the king’s chief spiritual
adviser and wrote his letters. The chamberlain looked after the royal chamber and also guarded the money and documents kept in a chest at the foot of the bed. Henry I had felt the need for a treasury fixed in one place rather than following the court. He had detached three chamberlains to guard his treasure in Winchester castle. Soon one of these was known as the treasurer and the other two as chamberlains of the exchequer. Henry’s treasurer set up a regular system for auditing the accounts of the king’s officers and others who owed him money. Twice a year the treasurer and the two chamberlains were joined by other household officers to hold this official audit. At one of these sessions the official annual account, the pipe roll, was drawn up. Between exchequer sessions the treasurer and chamberlains guarded the king’s money and paid it out at his order. The men who met with them to audit the accounts were called the barons of the exchequer. Then under Henry I, and particularly Henry II, royal justices became a part of the central administration. In fact, the same men performed both functions, sitting as barons of the exchequer one day and as royal justices the next. But by the time of Edward I these organs had become specialized. There were a treasurer, two chamberlains, and a group of barons of the exchequer who handled the king’s financial business. Then there were two royal courts. The court of common pleas sat at Westminster and heard civil cases between subjects—cases in which the
crown had no interest. The court of king’s bench consisted of a group of justices who followed the king. It heard serious criminal cases and any others of interest to the crown.

In all feudal states it was assumed that the suzerain would seek the advice of his vassals on important matters. In questions of major importance the English kings had summoned their full feudal curia, the prelates and barons of their realm. But in lesser matters they had simply sought the advice of their household officers and any barons who happened to be at court. Historians have used the terms “great” and “small” curia regis to distinguish these two bodies. But once the judges and exchequer officials had become specialized it was difficult for the king to seek their advice—especially when he was not at Westminster. Edward established a group of specialized advisers, men who took a special oath to give good counsel. This sworn body of counselors was the ancestor of the privy council.

*The Chancellor and the Privy Seal*

One royal office, that of chancellor, grew rapidly in importance and was in fact divided between several officials. The chancellor was responsible for the royal seal that guaranteed the authenticity of the king’s letters. Under the early kings he followed the court and saw to the sealing of royal letters. But when the exchequer was established, it needed a royal seal almost
continuously to issue summonses to the king’s debtors. Hence, a duplicate seal was kept at the exchequer in the care of a deputy of the chancellor. This official later became independent as the chancellor of the exchequer. Then as time went on the chancellor acquired too many duties to allow him to follow the court. The chancery was established at Westminster and the great seal was kept there. The king had a privy seal and an officer called the keeper of the privy seal. When the king wanted to issue a solemn document, his clerks drew it up, the keeper affixed the privy seal, and it was sent to the chancery where it was made out in final form under the great seal.

Meanwhile the chancellor had acquired important new duties—he had become a high judicial officer. According to the theory of the day the king was subject to the law, but as he was also the source of all law enforcement it was difficult to make his subjection a reality. When the king did something unjust either directly or through an official, the only recourse was to appeal to his conscience. The chancellor was the king’s conscience. Those who felt they had a grievance against the king or his officers appealed to the chancellor. Moreover, cases continually arose in which injustice seemed to have been done but for which there was no applicable law. Such cases could be carried to the chancellor and he could see that justice was done. He thus became the earliest judge of what we call equity.
The Development of Parliament

Perhaps the most significant feature of Edward's reign was the development of Parliament. We have seen that the early kings on important questions sought the advice of their feudal court. Acts such as the Assize of Clarendon were issued with the advice of the prelates and barons of the realm. When John wanted to levy a new kind of tax, an income and property tax, he sought the approval of a similar body. Magna Carta provided that no scutages or special aids could be levied without the counsel of a body composed of the prelates and the king's tenants in chief. Although it seems doubtful that all tenants in chief ever met, Henry III regularly sought the approval of his prelates and barons before levying taxes that were to be paid by them and their tenants. Then Simon de Montfort introduced a new element. He was in general more enthusiastically supported by the lower members of the feudal class than by the great barons; therefore on one occasion when he needed popular support he directed every shire court to elect knights who would represent it at the meeting of the council of prelates and barons. But there was one important part of England that had no connection with prelates, barons, or elected knights of the shire—the royal demesne. Although this royal demesne included some rural manors, its most important elements were the royal towns headed by the city of London. The demesne had always been
taxed separately from the rest of England. There the
king as seigneur had levied tallage. In actual practice he
had bargained with the towns to get the largest sum he
could. Usually it was a matter of separate arrangements
with each town, but there had been times when the
king bargained with representatives of all the towns.

In 1295 King Edward I brought all the various
elements of his realm together in what historians call
the Model Parliament. Individual writs of summons
were sent to the archbishops, bishops, abbots, earls, and
barons. Each bishop was instructed to bring with him
the dean of his cathedral chapter, his archdeacons, an
elected representative of the chapter, and two repre-
sentatives of the clergy of his diocese. Thus the clergy
as a whole were represented. Then each shire was
ordered to elect two knights and each borough two
representatives to sit in the Parliament. In short, the
Model Parliament was the direct ancestor of the
present English Parliament. The representatives of the
lower clergy soon ceased to come, but they are still
summoned. The churchmen preferred to hold their
own meeting known as a convocation and vote the
king money there. As the bishops and abbots were
barons as well as prelates they continued to be sum-
moned and to attend with the lay lords. From Ed-
ward’s point of view the Model Parliament was an
ideal body. It represented all the realm—clergy, lay
lords, and the royal demesne. Hence taxes granted by
it could be collected throughout England.
The fact that the Model Parliament had been held did not mean that all parliaments summoned by Edward had the same composition. The word "parliament" meant essentially a meeting—a talking. A gathering of the prelates and barons could be called a parliament. So could on occasion a meeting of the knights chosen by the shires. Even when all the groups were summoned, most of the business could be done by the great lords before the knights of the shire and the representatives of the towns arrived. Nevertheless the general pattern was set and the conception of a "full parliament" well established.

The primary purpose of the king in calling a parliament was to gain the support of his people—usually their consent to taxation. But once a parliament had met, it could make demands on the king. When a king needed money, he was likely to make concessions to persuade his parliament to grant him the taxes he needed. But Parliament had other functions than merely voting the king money. It soon took the place of the old great curia regis as the body to be consulted on all important occasions. Perhaps the most important of these was when the king wanted to add to the law of the land.

The Common Law and Legislation

The common law of England had its origin in the law enforced by Henry I's justices in the few types of cases that came within their jurisdiction, and this law
was greatly enlarged by the legislation of Henry II, such as the Assize of Clarendon. This legislation was enacted with the consent of the feudal court of prelates and barons. But Henry’s judges and their successors under Richard and John found ways to make new law without formal legislation. The new types of actions invented in Henry’s reign were brought into court through writs issued by the chancery. Thus if a man had been forcibly ejected from his land, he obtained a writ of novel disseizin that brought the case before the king’s justices. If a widow felt that she was being deprived of her just dower, she sought a writ of dower that brought her plea into the royal court. Hence, when the justices saw a situation that seemed to them to require a legal remedy, they were inclined to invent a new writ. By this method the common law and the jurisdiction of the royal courts expanded very rapidly. But in the reign of Henry III the barons called a halt to this process. They insisted that additions to the common law must be made by formal legislation. Such formal legislation was known as a statute. Although it is clear that in the reign of Edward I statutes were being made by the prelates and barons alone when they met as a parliament, before long it was generally understood that statutes could only be made in full parliament.