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MS. 13.

THE COMPOSITION AND WORK

OF THE ROYAL COUNCIL,

IN THE REIGN OF HENRY II,

1154 - 1189.



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## ABSTRACT OF THESIS.

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Title : The Composition and Work of the Royal Council in the reign of Henry II. 1154-1189.

The material used, with the exception of the Carte Antique in the Public Record Office, consists entirely of printed sources and secondary works. The sources are of two kinds: firstly, biographies and chronicles; and secondly, collections of charters, letters, and constitutional documents. .

The two sections of the thesis correspond to the title, one dealing with the composition, the other with the work of the council.

The first part discusses the relationship between the great feudal councils and the king's permanent advisory staff. As far as the great feudal councils are concerned, the thesis consists primarily in an attempt to reconcile the various accounts given in secondary works, with ~~th~~ certain additional facts and inferences derived from the original sources. The part dealing with the perpetual advisory group shows the change from the king's almost complete reliance on the counsels of individuals at the beginning of the reign, to an almost entirely official group at the end. There are also notices of the inter-relationship of the more prominent counsellors; <sup>and</sup> the relative use of new men and members of old-established families.

The second part of the thesis considers the work of the council, in four aspects: counsel, legislation, finance, and justice. The first of these deals with the question whether the king required counsel, automatic consent, or considered consent, and the last with the place of feudal justice in the council in relation to the judicial and legal developments of the reign. There are also notices ~~se~~ of the frequency, regularity, and place of meetings; and of the character of the council and court.

# INTRODUCTION.

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## INTRODUCTION.

The curia of the Norman and Angevin kings has been described in a variety of terms ; but the general tendency is to regard it as one assembly with two aspects. There was on the one hand a body of men who had a right or duty to attend the king's great council. On the other hand there must have been a group of men in constant attendance on the king, as it is generally acknowledged that the great council could not be in permanent session. The variety of interpretation lies in the attempts made to describe the composition of each of these elements, and the place of the division and nature of the difference between them.

The primary question at issue is whether these two organisms, or two aspects of the same organism, were haphazard in their composition, or planned on the basis of some definite system ; and secondly, what their respective functions were - during the first Angevin reign.

These thirty-five years, 1154-89, are of considerable significance, chronologically, in the development of conciliar organisms. There has been much discussion on the nature of the council which existed immediately after the Conquest, mostly in relation to that of the Anglo-Saxon kings. The similar writings on the councils of the thirteenth century kings and on the evolution of Parliament in connection with them show a great development from the early Norman council, for which the materials at least must have been provided in

the period between the death of William I and the death of John. Baldwin has said of the minority of Henry III : "It seems impossible to suppose that any new institution ----- at this time was created. There was nothing more than the adaptation and quickening of the consilium, as already understood, to the needs of new conditions".<sup>1</sup> The reign of Henry II is the most significant during this intervening period.

Not only is the reign important on account of its position in the twelfth century, but also its very length gives an opportunity to assess the development of conciliar composition and function within the course of its history ; and the scope of its legal and judicial changes, its considerable output of charters and writs, and the abundance of its chronicles, provide an ample collection of material for making the assessment. Unfortunately the quality of the material available does not always match its quantity, partly because of the undefined nature of its terminology, and partly because the great controversial issues of the reign were bound to produce bias in the works of some of the narrative writers.

Confusion has arisen from the use of the words public and private as applied to the council. Sometimes the perpetual council is called the king's private council,

1. Baldwin : The King's Council, 21. 2215-1399, 710.

2. Council and Courts in Anglo-Norman England, 3.

### 3.

dependent on his personal choice of counsellors while the great feudal council is the public assembly of the land. "The nation gave its advice in the enlarged meeting of the Curia Regis, or, later, in the Parliament ; the king considered this with the counsel of his intimate advisers and friends. From these he wanted only advice ; from the Parliament he would want consent ".<sup>1</sup> Sometimes the great feudal council is described as a private and personal council whose membership depended on a tie of land tenure. This confusion has arisen from a fundamental difference of attitude towards the function of the council. It is either regarded as a national assembly summoned by a king in which there was a conscious feeling that the members in some sense represented the community ; or, on the other hand, it has often been regarded as an assembly of the men who owed suit of court for purposes of counsel and justice to their feudal overlord in his great manor of England, in the same way as any tenant owed suit of court to his immediate lord. Adams, describing the council of William I on the basis of this second interpretation, says : "Briefly, a public duty had become a private obligation."<sup>2</sup>

It is in the duality of Henry's position as king and as feudal overlord that most difficulties have arisen in the interpretation of conciliar developments. The confusion

1. Wilkinson : Constitutional History 1216-1399, 110.

2. Council and Courts in Anglo-Norman England, 3.

cannot be resolved until three questions have been examined : firstly, from whom the king most frequently took counsel ; secondly, whether his great feudal council automatically gave consent to the business for which it was summoned, or whether it was able to hold discussion and withhold consent ; thirdly, whether the great barons, the tenants-in-chief, regarded it as a right or duty to attend, that is, whether there was an obligation on them to attend, or on the king to summon.

This same duality gives rise to another question. During this reign there was an amazing judicial and administrative development derived from Henry's powers and authority as a king : the continuation of the prerogative justice originating under Henry I. The question arises : to what extent did these measures affect the feudal baronage who owed suit of court, and had their causes determined in the king's feudal council ? Again : to what extent did the development of the bureaucracy which was an essential part of these changes affect both the position of Henry as a personal monarch and the composition of the perpetual council whose advice he asked.

In an age of increasing specialization, when departments of the older Curia Regis were beginning to go "out of court", it is questionable whether these changes altered the character of the old omni-competent curia in either composition or function. It must be decided, what remained of the business it dealt with in its undifferentiated

form, after a large portion of its litigation had been shunted off on to a branch line ; and whether the conciliar element begins to predominate and the curial to disintegrate. None of these questions can be dealt with until it is known what degree of specialization was reached during the reign, and some point of cohesion is found between the widely differing suggestions made as to the origin of the courts of common law.

Among so many doubts there is one certainty : that, in spite of the corruption so frequently attributed to the king's justices, and the difficulties caused by intractable individuals like Becket, Henry II contrived to gather together a very large group of extremely competent and reliable servants . It is difficult to tell whose was the responsibility for finding and appointing these men. Among the collections of letters written during the reign there are several instances of the good qualities of an individual being recommended to the king. But Henry's personality so regularly shows the marks of a strong individual will, that in a matter so closely concerned with his personal companions and constant counsellors, it seems necessary to give him the credit for at least the final choice. "There must have been in Henry himself some gift that called forth or detected the ability of his servants."<sup>1</sup> This is perhaps the most significant mark of his kingly astuteness, for "to choose able servants is the most necessary part of the royal wisdom."<sup>2</sup>

1. Stubbs : Constitutional History, I, 449.

2. Lyttelton : History of the Reign of Henry II, II, 17.

CHAPTER 1.

Inconsistencies of terminology.

Whereas in the administration of finance and justice the process of developing a specialized terminology was beginning, the words used for describing the royal council in either of its aspects, or the men who composed it, are many and various, and the meaning of each one is remarkable for its inconsistency. This fact seems to signify that conciliar organisms had ~~not~~ <sup>not</sup> ~~been~~ <sup>been</sup> ~~formed~~ <sup>formed</sup> at this time the regularity of the administrative units !

For the conciliar organisms themselves the English language has only two words : council, and court. The Latin words corresponding to these appear to be concilium and curia. But there are two difficulties in making this seemingly obvious translation. The first is that in modern English the word council is inevitably associated with the much later institution known as the Privy Council ; and the word court might describe the group attending the king or the place in which a judicial case is determined. Anachronism in the use of words on any historical constitutional subject is almost inevitable, however, and the second difficulty is the greater.

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CHAPTER 1.

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1. Gervase of Canterbury.
2. Battle Abbey Chronicle.

The unreliability of the English words council and court as translations of the similar Latin words is occasioned by the considerable inconsistency of meaning in the Latin words themselves. Sometimes they seem to be synonymous, and sometimes diametrically opposed. It is certain that concilium cannot signify the great feudal council, and curia the group of perpetual advisers. A comparison of the accounts which exist of the first two Christmases of the reign illustrates this point. At Christmas 1154 at Bermondsey there were important discussions on the removal of the last remnants of the anarchy.<sup>1</sup> The following year the king merely settled his affairs before going to Normandy.<sup>2</sup> Yet the first of these is called a curia and the second a concilium. The Council of Clarendon, of January 1164, is called by different authors curia, concilium, and generale concilium. In the same way the Council of Northampton of the same year is variously described as curia, concilium and magnum concilium.

The habit of adding adjectives such as magnum, générale, and plenaria to the two words very often suggests a distinction between a large and important great council, and the normal group of perpetual advisers, but it acts as a hindrance rather than a help in an attempt to establish a finer distinction of composition. As Adams has pointed out, while contemporary writers seem from the terminology to have noticed differences of size, there is nothing to show that they "felt any distinction in function or

1. Gervase of Canterbury, Chapter 19.
2. Battle Abbey Chronicle.

field of action or competence or power." There is an isolated use of the phrase in plenaria curia, but this is in a record of a judicial concord made in the king's presence.

There are also words used to describe councils, such as conventus and coetus, whose meaning is so vague that they can only be rendered by some such English translation as assembly, and are of little definite use. The first of these words was on one occasion used to signify what must have been the king's perpetual group of advisers. Henry sent his messengers from Normandy to England to assemble the praesules et proceres so that the election of Becket to the Archbishopric of Canterbury could be carried out. The account given by Gervase of Canterbury describes the king's messengers as "portantes conventui domini regis apices et mandatum". For the most part, however, the word has a very vague general meaning.

Such vagueness is more often found among words used to describe, not the organ of counsel itself, but the type of men who composed it. No definite significance can be attached to principes, optimates, magnates or majores, and unfortunately these are the words most frequently used in chronicles to describe the composition of an assembly. The charter confirming the replacement of the nuns of Amesbury by those from Fontevraud records the exchange as having been

1. Councils and Courts, Chapter 1V.
2. Delisle's Recueil, Vol.1, No. DCXVII.

episcopum, et quosdam alios familiares suos."

carried out by the counsel of "episcoporum et magnatum et baronum meorum," thus using the word magnates in the position usually occupied by Earls, between the Bishops and the barons. Yet the two words magnates and comites are never regarded as synonymous, and could not be taken as being so. The only general term which can be translated exactly is consiliarii, which may be rendered counsellors, although consilium does not always correspond to counsel.

Various words are used to signify members of the royal household, or frequent counsellors, such as aulici and familiares. Herbert of Bosham, speaking of Becket's elevation to the Chancellorship, says : "Thomas aulam ingreditur, et tribuente rege in aula, aulic~~um~~ officium suscepit." Henry Fitz Gerald, the king's chamberlain, when acting as an envoy to the Pope in 1164, is described as familiarissimus regis. But the terminology is no more consistent here than elsewhere. On one occasion, Hugh, Bishop of Durham, is included in this class. While he was a clerical tenant-in-chief of the Crown, and would therefore be included in the great feudal councils, yet he seems not to have taken a place frequently among the king's perpetual advisory group, judging from the rarity with which his name appears among witnesses to royal charters. This is understandable from the remote position of his bishopric. Yet the Gesta Regis, describing the embassy sent by Henry to Scotland to obtain consent for the Saladin Tithe, says : "Henricus rex Angliae misit Hugonem Dunelmensem episcopum, et quosdam alios familiares suos."

The smallest possible group seems to have been signified by the phrase privata familia, which presumably included the king's own family and his very closest companions. How small the group was can be seen from the account in the Gesta Regis of the Christmas of 1171, spent in Dublin, and the return to England the following March, when the king sent his household officers and his army ahead in what it calls a "multitudo navium<sup>1</sup>". The chronicle continues: "et ipse remansit cum privata familia apud Wesefordiam, retentis ad opus suum tribus navibus tantum, et expectabat ibi prosperam auram." Yet it is unbelievable that the two clerks and three laymen chosen in 1178 from the king's privata familia to hear the complaints of the kingdom should have been selected from so small a group!

Perhaps the best example of the cheerfulness with which contemporaries confused terms is in Gervase of Canterbury's account of the ecclesiastical council of 1175.<sup>2</sup> He first says that the Archbishop of Canterbury called together the clergy (convocato clero). He then describes those present as the suffragan Bishops of the province of Canterbury. Finally he says that its measures were promulgated "assensu domini regis et primorum omnium regni."

It is almost inevitable that the confusion of

1. Adams renders the phrase as synonymous for household, but this is not true of its previous use. v. Councils and Courts, 214.
2. Gervase of Canterbury is always the worst offender.

terminology should have been transmitted to later writers. It was an anachronism for Lyttelton to speak of Parliaments at this time<sup>1</sup>; yet there is one contemporary use of the word.<sup>2</sup> J.H.Round has used the two words concilium and curia adjectivally, and suggested that the concilium developed the sole function of giving counsel, while the curia concerned itself with financial and judicial administration,<sup>3</sup> although there is nothing to show that writers of the first Angevin reign, even towards the end of it, used those two words with that restricted significance.

In the same way ~~that~~<sup>the</sup> status and dignity of the members of the various classes have been the subject of varying opinions. Round has given a list of six different meanings for the word Baro. The word derived from it - barony - has been used by some writers as signifying solely the land held by a baron. On other occasions it has been used as if it described only the type of tenure by which the land was held. The precise import of the phrases barones majores, and barones minores, has also caused much controversial discussion, as well as the relation of both of these to the word knight. This latter has at least two meanings. It signifies both a subinfeudated tenant~~nt~~ of a tenant-in-chief, and the holder of the dignity of an order of chivalry.

So many inconsistencies make absolute definition

1. Lyttelton wrote in the eighteenth century. line 288.
2. In Jordan Fantosme's metrical chronicle of the rebellion,
3. The origin of the House of Lords : in Peerage & Pedigree Vol. 1.

impossible in a number of cases, particularly for the purpose of distinguishing a great feudal Council from the king's perpetual counsellors ; but in spite of the appearance of a labyrinthine disorder, the confusion is not quite hopeless, for two main reasons. In the first place Henry II was a king with a sufficiently exalted sense of his own rights to wish to have them defined occasionally ; hence the drawing up of the Constitutions of Clarendon. In the second place, the twelfth century saw the rebirth of interest in secular law, and therefore in definition. The king himself had a mind which continually showed signs of having imbibed the enthusiasm for legal and administrative regularity. Many of his servants were similarly influenced - men like Glanvill and Gilbert Foliot. The most significant sign of the tendency was perhaps the writing of the two technical treatises on the departments which had begun to live a settled existence, finance and common law.<sup>1</sup> The untidiness of Henry's court has been unfavourably compared with the systematic organisation of his grandfather's.<sup>2</sup> But the evolution of specialized forms in documents and specialized processes in administration suggests that Henry's lack of method only applied to what he must have considered the less important details of his rule. Without this continual tendency towards definition any conclusion on the subject

1. The *Dialogus de Scaccario*, by the Treasurer, and the *Tractatus de Legibus*, by the Justiciar.

2. Walter Map : *De Nugis Curialium*.

of the council would be impossible. As it is, its existence, combined with the possibility of logical inference, is supplementary, or rather complementary to the material of the narrative writers, and helps to resolve the confusion of their terminology. Kings as compared with the witenagemot of the Anglo-Saxons. Some writers have seen in the Norman feudal council a continuation from Anglo-Saxon practice in the assembly of the wisest and best men of the realm. Others see a complete break at the Conquest, when the criterion of membership was changed from wisdom to tenure. There is every indication in the reign of Henry II that membership was at that time, at least in principle, fixed, although in practice the attendance at each Council might not be the same. There is also every indication that the criterion of membership was at this time nothing but the tie of direct feudal tenure of the Crown.

Adams said of his own use of the word member: "It must not be understood to mean that at the time there was any theory of official membership. Those attended a given meeting who were summoned for that occasion or who had business there, without reference to whether they had attended before or would again." He goes on to say, however, that the formative membership was the baronial body. While in English constitutional history, practice inevitably precedes theory, and a too free use of theoretical explanations of phenomena would present a false view; yet, by the I. Councils and Courts, 5.

CHAPTER II.  
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Composition of the Great Feudal Councils.  
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Many constitutional historians have discussed at length the councils of the Norman kings as compared with the witenagemot of the Anglo-Saxons. Some writers have seen in the Norman feudal council a continuation from Anglo-Saxon practice in the assembly of the wisest and best men of the realm. Others see a complete break at the Conquest, when the criterion of membership was changed from wisdom to tenure. There is every indication in the reign of Henry II that membership was at that time, at least in principle, fixed, although in practice the attendance at each Council might not be the same. There is also every indication that the criterion of membership was at this time nothing but the tie of direct feudal tenure of the Crown.

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1. Councils and Courts, 5.

reign of Henry II, William the Conqueror's use of conciliar organs had been confirmed by three generations of experience, and the practice of Henry's predecessors had, by the time of his accession, grown, if not into a conscious body of theory, at least into a known and ~~definite~~ definable principle. It will be shown that Henry selected his perpetual advisory group, not on the basis of any legal or feudal principle, but on the basis of his personal choice and ability to detect merit ; But there are indications that the king's great feudal council, summoned specially for special occasions and causes, had a more finely regulated membership.

The main proposition put forward on this subject by Adams is that both of these were two different aspects of the same organism. This organism consisted of baronial tenants bound to attend their overlord's court on account of the tie of feudal tenure, yet whose membership was not based on any kind of theory. The explanation for the apparent contradiction is in the "two opposing principles", which are "features of the feudal age, in all countries alike". These are, on the one hand the obligations and rights of feudal law, and on the other the king's prerogative right to use the services of anyone for any purpose. He continues to justify the explanation by saying : "If the introduction of non-feudal elements into the assembly by the king's prerogative proves that the assembly is not feudal, then it can be proved that the feudal system itself did not exist, for the prerogative on occasion modified essentially almost every principle

of the system". The assembly cannot have been an entirely baronial council based on a principle of feudal law, and at the same time an assembly comprising any men whose services the king had chosen to use. This difficulty is resolved by the thesis that there was only one assembly, but that it partook of a different character at different times. It might be either of the two extremes, or it might be any of the variations possible between them. Adams also pointed out that it was extremely difficult to distinguish any grade of variation, apart from the two extremes.

It is, however, possible to derive sufficient facts and inferences from contemporary narratives and documents to show that Henry II was both a feudal overlord in a feudal age, who was prepared to abide by feudal law, and a personal monarch who had no illusions as to the use he might make of his prerogative, but that as far as conciliar organisms were concerned, the two were not confused. By the end of the reign, as the result of an extensive use of prerogative in the reorganisation of judicial and administrative processes, the duality of his position is apparent, although it did not seem to strike contemporaries as an even potential source of faction. That came a generation later. The inclusion of a large official element in the body of men who were the king's perpetual advisers is noticeable towards the end of the reign, but there is no suggestion of any irregularity in

1. Ibidem, 14.

the less frequent meetings of the great feudal council.

Part II, which deals with the work of the council, will show that its assembling was largely a matter of course, its business was very often merely formal, and its consent automatic ;and that, while there was no conscious theorizing about its summoning, it was called together as a matter of course. The whole basis of the organisation of society was feudal. It would not have occurred to the most autocratic king not to have summoned it, and Henry II was not the least autocratic of kings. Similarly, its composition, while it was not the subject of theoretical discussions on feudal principle, was nevertheless automatically based on a feudal principle, that of tenure in capite and the obligation of suit of court.

Edward Grim's account of the Council of Northampton of October 1164 speaks of the "laici vero qui de concilio regis erant".

There is nothing to suggest that the membership of these great feudal councils was haphazard or irregular ; there is much evidence to suggest that it depended solely on a man's tenure directly of the Crown, thus returning to Stubbs' proposition that "those gatherings, when they emerge from obscurity in the reign of Henry II, were assemblies of tenants-in-chief".<sup>1</sup>

There is, however, one qualification which should be made of this proposition. Stubbs says that "before the reign of Henry II it would be rash to maintain that every tenant-in-chief of the Crown was a member of the assembly".<sup>2</sup> It is

1. Constitutional History I, 356, footnote.

2. Constitutional History I, 356-7.

similarly questionable whether every tenant-in-chief played an equally important part in the assembly during the reign of Henry II. It seems that as soon as a definable principle of membership was reached, the circumstances of the time caused practice again to take a step in advance of theory. The proposition put forward by J.H.Round is that by 1215 the lesser barons had ceased to attend the great council, the mark of distinction between them and the greater barons having originated in a right to an individual as against a communal summons. Thirteenth century and very late twelfth century affairs are beyond the scope of this investigation, but it seems that even during the reign of Henry II there are signs of the origins of this tendency. While the feudal principle of summons to all barons held good, there appears to have been some distinction within the assembly according to the rank of the baron summoned.

The questions involved here are therefore three. What elements are discernible in the assemblies periodically gathered together by the king and known as Great Councils? Secondly, in what does each of these elements consist, and is there any principle behind its summoning? Lastly, what signs are there that in practice the lesser barons did not play so important a part in the business and procedure of the Councils? The sources of information for answering them are also three: definitions, either deliberate or incidental; documents containing lists of witnesses and known to have been drawn up during the 1. Family Origins, 220, and Peerage and Pedigree Vol.1, The Origin of the House of Lords.

course of these meetings ; and detailed descriptions of some of the greater gatherings.

The best known modern definition of the composition of the assembly is probably that by Stubbs : "The constituent parts of the assembly are reduced to the archbishops, bishops, abbots, earls, barons, and knights." This may be compared with three contemporary definitions, one of which is a deliberate attempt to establish a definite principle of composition, being the famous eleventh article of the Constitutions of Clarendon. The other two are incidental to the main theme of their context.

One is contained in a piece of direct speech in the chronicle of Gervase of Canterbury. The authenticity of direct speech is always doubtful, but in such cases as this the question of authenticity in the actual words as a speech is irrelevant, and its lack does not detract from the value of the passage, because the principle involved was known to the mind of the writer if not to the mouth of the speaker. The context describes how Ranulf Glanvill and Gilbert, Bishop of Rochester, both tried to persuade the sub-prior of ~~Bakerbury~~ Canterbury to transfer his case from the **p**apal court to the king's court. The sub-prior refused to do so, giving as his reason that he did not despise the help and counsel of the king, but that he always placed his difficulties first in the hands of God and only secondly in the hands of men. He then proceeded to enumerate the types of men who presumably were included in the king's great council, this being the body which would have given

judgment. "Domine episcopo, regis auxilium vel consilium nullatenus refutamus, sed in primis per Deum, deinde per homines, comites scilicet et barones, clericos et abbates, episcopos et archiepiscopos, indesinenter imploramus".

Gilbert Foliot's translation from the bishopric of Hereford to that of London, and the correspondence it involved, provide the next of these definitions. There are three letters, all addressed to Foliot, one being from the king, one from Becket, and one from the Pope. Their gist is that it would be fitting for a man like Foliot to hold the see of London because it was the most important city of the kingdom and the king most frequently held his Great Councils there. Each has a different version of the composition of these assemblies. The king's letter says: "Et barones pro negotiis suis consilio fulciendis confluunt". Becket writes of the "procerum regni conventus", while the Pope's letter replaces this by "baronum et ~~et~~ procerum conventus." Of these, the last is the least reliable, since it depends on a foreigner's interpretation of a letter from Henry himself. As the first is witnessed by Becket, his own word procerum might be considered as synonymous in this context for the baronum of the king's letter, which must therefore be accepted as the most reliable version.

As an isolated example this would be meaningless and worthless, but it is supported by the most important documentary definition on this subject which exists for the reign. Henry had the Constitutions of Clarendon drawn up in order to have a written record of the relations between the Crown and the

Church as they were under his grandfather and should be under him. It was intended as a definite document. It is significant that Clause XI, which set forth the position of clerical members in the great council, should have been among the few to which the Church could find no objection. The clause shows the criterion of membership of and attendance at the king's Great Councils as the holding of a barony, and defines barony as signifying, for this purpose at least, tenure in chief of the Crown. It is worth quoting in full.

"Archiepiscopi, episcopi, et universae personae regni, quae de rege tenent in capite, et habent possessiones suas de domino rege sicut baroniam, et inde respondent Justitiis et ministris regis, et sequuntur et faciunt omnes rectitudines regias et consuetudines, et sicut barones ceteri, debent interesse judiciis curiae domini regis cum baronibus, usque perveniatur in iudicio ad diminutionem membrorum vel mortem."

There are numerous indications in different letters except when the question was concerning life or blood, that the clergy recognised this principle as the basis of their own position in the king's feudal council. Becket, writing, during his exile, to the king, describes his different duties towards Henry according to the different relationships between them, and makes it clear that he owes counsel to Henry as his overlord: "Eo quod dominus, debeo et offero vobis consilium meum, quod tamen debet episcopus, secundum honorem Dei et

1. History of the Reign of Henry II, II, 451-2.

1. Stubbs : Select Charters, 166.

sanctae ecclesiae domino. Eo quod rex, tenor vobis ad reverentiam et commonitionem. Eo quod filius, officii ratione ad castigationem et cohortationem." The king in a letter to Rotrou, Archbishop of Rouen, addresses him as one of his barons. He has taken measures for re-establishing peace between himself and Becket "de vestro, aliorumque fidelium baronum meorum consilio."

Gilbert Foliot, as might be expected, discussed the point at some length in a letter to Becket. The relevant parts of the letter might be called a theorist's commentary on the eleventh article of the Constitutions of Clarendon. The quotation which follows is from the translation of the letter made by Lyttelton. "The power conferred by God made his ministers pontiffs, and the power conferred by the king made them earls or barons. By virtue of the latter the clergy had obtained in the palace a high degree of pre-eminence, having a principal place in all trials and judgments of the kingdom, except when the question was concerning life or blood ; in consequence of which they were bound, when cited by the king, to attend his court and try causes, even concerning the lands which the royal bounty had bestowed on the Church ; whether the contest was among themselves, or raised against them by the laity : and though in spirituals they were distinguished by different degrees, in these temporal matters they all judged

1. History of the Reign of Henry II, II, 431-2.

as peers to each other and to the temporal barons ; and each of them was equally obliged to submit to the sentence given by all."

The most difficult word ~~is~~ to interpret in investigating the nature of the clerical element in the councils is clerus. The looseness with which the word is used has already been shown. Its use can usually be understood as comprising clerical tenants-in-chief. Occasionally, however, it appears as describing an element distinct from the archbishops, bishops, abbots, and priors. It is impossible to form an absolutely certain conclusion on this subject, but it seems probable that it does not imply a violation of the principle of feudal tenure as a criterion of membership. The great lay barons attended the Councils accompanied by a large following of their retainers, who, however, took no actual share in the business of the Council but merely enhanced the prestige and glory of the whole assembly and of their own lord in particular. Similarly, clerical barons must have been accompanied by a following of attendants, whose function~~s~~ was precisely the same. There is an exceptional circumstance which would account for the presence of members of the lesser clergy. When a document was to be drawn up, the process necessitated the presence of the clerical staff of the Chancery. That they were not thought of as part of the actual membership of the council is suggested by the occasional practice of including, after and outside the list of witnesses to a charter or similar document some such phrase as "per manum Stephani Capellani." The best

example of the presence of a man who was not considered as being among the regular and proper members is the position of John of Oxford at the Council of Clarendon in January 1164. According to Matthew Paris, he presided at the Council : "praesidente Johanne de Oxonia, de mandato regis." His name does not appear in the list of those who were present, as given in the Constitutions themselves, although it would surely have been in a prominent position if he had been considered a regular and actual member of the council, which, strictly speaking, a president is not. He was at this time a royal chaplain, but had not yet been promoted to the Deanery of Salisbury.

A proportion of those who attended the Councils as followers of great barons must have belonged to the class of milites. This is another word which has caused great controversy both because of the looseness with which it was used by contemporary writers, and because it has at least two meanings. The confusion can be seen in the chronicle of Robert of Torigni, in his accounts of Henry's coronation, and, later, of the Christmas festival of 1177. Of the latter he says : "Rex Henricus senior tenuit curiam suam ad Natale Andegavis----- et vix in aliqua festivitate tot milites secum habuit, nisi in coronatione sua sive in coronatione filii sui regis junioris." Yet his account of Henry's coronation does not actually mention knights, although it included a detailed list of the archbishops and bishops who were present, any others being comprised in a vague comprehensive term. Most accounts say that the barons were present at the ceremony. Presumably the vital element

was that part which owed homage, the baronial element, and the knights would have been present merely to increase the glory and splendour of the occasion, which might be inferred from Torigni's record of 1177.

When Stubbs said, "The lowest class of tenants-in-chief who are likely to have presented themselves in the national council are the knights, who are included in general under the class of barons," he was confusing the essential distinction between the two meanings of the word, because he continues by describing the institution of chivalry. This latter must be considered as quite distinct from the principle of tenure as a basis for attendance at a Great Council. The difficulty arises from the fact that most men were able to use at least two titles at the same time. An earl or a baron might have a claim to knighthood in the sense of an order of chivalry, but not in virtue of his tenure. Similarly, all earls were also barons. They were earls in that they held the office of an earldom, and they were barons in that they held land in chief of the Crown. This is evident from phrases that the king occasionally used in charters confirming a grant made by an earl, such as that he granted "omnes alias possessiones quas ille Comes vel alii Barones mei -----eis rationabiliter dederunt." This duality of title does not, however, affect the principle by which any of the classes sat as members of the feudal council.

1. Constitutional History, I, 367.
2. Carte Antique X 21.

The carte baronum of 1166 speak of knights as the sub-infeudated tenants of the tenants-in-chief holding by knight-service. Their presence would therefore be expected in the military assemblies summoned periodically by the king. The most famous full military assembly of the reign is that of May 1177, when the army, having been summoned, was dismissed because the situation on the Continent was still uncertain, and ordered to re-assemble one month later. Gervase says of the dismissal : "Per commune edictum praecepit, -----, ut omnes milites qui illuc per mandatum eius cum equis et ~~ax~~ armis venerant, ad propria redissent." This is a perfect picture of a feudal levy.

The same event as described in the chronicles also shows that the word knight signified not only a sub-tenant, but might also mean a tenant-in-chief. The account of the summons given in the Gesta Regis says : "Per consilia familiarum suorum, mandavit omnibus comitibus et baronibus et militibus regni, qui de eo in capite tenebant quod -----essent bene parati ----u. Later in the same chronicle similar words are used of the actual assembly of the force : "Omnes comites et barones et fere omnes milites regni, qui de rege aliquid in capite tenuerunt, Wintoniam venerunt." The use of the word fere suggests that the estimate was accurate and knowledgeable, and that the chronicler was not just using the words carelessly.

A distinction must therefore be made both between knights as holders of an order of chivalry, and knights by tenure; and also between sub-infeudated knights who paid to their lord

the military service he owed to the king, and knights who were themselves tenants-in-chief. It is this last class only which can be considered as members of the feudal council.

There has been much discussion by many authors on the subject of the distinction between barones majores, barones minores, and knights. Round, having summarised the numerous versions, finally came to a conclusion on evidence taken from the Pipe Rolls on the subject of reliefs. The Dialogus de Scaccario only makes a distinction between barons and knights. Barons, greater and lesser, were all subject to arbitrary relief. The relief for a knight's fee was at the rate of £5; but the only knights mentioned in this context by FitzNeal are those who had become quasi tenants-in-chief as the result of the death or minority of the intermediate lord. Round has shown from the evidence of the Pipe Rolls that all men who held more than one knight's fee of the king paid at an arbitrary rate, however small their barony; but men with one knight's fee or less paid at the fixed £5 rate. The implication is that a barony was land held of the king by the service of sub-infeudated knights; as there could be no sub-infeudation within a single knight's fee, its hold<sup>er</sup> was known as a miles and not as a baro. What is important is that the principle of tenure directly of the Crown by knight-service is exactly the same in either case, and it is this that is the criterion of a summons to the king's great council.

1. Family Origins, 217. Reliefs.

The last class whose position with regard to the great feudal council must be considered is that of the tenants by serjeanty. The Dialogus de Scaccario recognises two types of tenure-in-chief : knight-service, and serjeanty. It explains what should happen when a tenant-in-chief dies : "cum pater-familias miles, vel serviens, de rege tenens in capite fati debita soluerit." Adams has discussed the question of the place of household officers in the great council. "As executive and administrative heads of departments, if we may use a modern term, they would almost of necessity be members of the great council. It does not follow that this was the ground of their membership, or at least it is certain that these officials make no exception to the general rule that the great council was composed of the king's vassals." He justifies the assertion by saying that serjeanty tenure probably involved a special oath of fealty, giving as his evidence the case of Adam, vice-chancellor to the young king, whose dual oath of fealty conflicted at the time of the rebellion. This circumstance is not a very fortunate choice as an example, because most men found that the homage or fealty which they had sworn to both kings conflicted at this time, and in any case, every oath to the young king was taken saving the fealty which was due to the elder king. It is probable that tenants by serjeanty were held to their duties by a feudal obligation, but this type of obligation is not the one which was the basis of a summons to the feudal council. Adams himself says in a later

1. Councils and Courts, 10.

chapter : "Officials of the king's household had a peculiar duty in respect to administrative details, enforced probably by a special oath of fealty as a member of the household, but this position gave them no peculiar standing or right in the Council."

There is very little contemporary evidence for the position of tenants by serjeanty . The two charters of September 1155, dated Apud Wintoniam in concilio, include household officials among the witnesses, as also do the Constitutions of Clarendon. Their presence may be implied in the vague phrase which sometimes closes the list of witnesses to a document: "et alii quamplurimi laici et clerici." Stubbs says that this group formed the first immediate circle round the king . In practice they would obviously have been the men most used to analysing a situation, and must have been present continually to give wise counsel, thus occupying a position analagous to that of the lawyers in a sixteenth century Parliament. It can hardly be contended that they did not take part as actual and proper members of the council in its formalities, because at its social meetings their duties were the most prominent.

On the question of principle, as to whether tenure-in-chief by serjeanty was considered to be on an equal footing with tenure by knight-service for this purpose there is one passage in Ralph of Diceto's chronicle which suggests that any tenant-in-chief by any form of tenure was a normal member of the great council. It occurs in the account of the controversy over the

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1. ~~Chronicles~~ and Courts, 115.

excommunication of a tenant-in-chief following Becket's excommunication of William of Eynesford. "Asserit namque rex juxta dignitatem regni, quod nullus capitaneorum, nullus militans regni, nullus minister regis, nullus scilicet, ut vulgariter loquar, de rege tenens in capite, castellum, villam, vel praedium, citra conscientiam regis est excommunicandus ab aliquo, ne, si super hoc rex certioratus fuerit, ignorantia lapsus, communicet excommunicato, capitaneum suum venientem ad se vel invitans ad osculum, vel recipiens in consilium."

It is interesting to note the way in which Matthew Paris who copied from Diceto, rendered this passage : "Asserit enim rex juxta dignitatem regni sui, quod nullus, qui de rege teneat in capite, vel minister, citra illius conscientiam sit excommunicandus ab aliquo ; ne si hoc regem lateat, lapsus ignorantia communicet excommunicato, comitem vel baronem ad se venientem in osculo vel consilio admittat." The alteration implies that a change had taken place in the principle of composition between the times when the two accounts were written, which, considering the developments of the early thirteenth century, would not be unlikely. The lack of evidence prevents any definite conclusion on this question of serjeanty tenure, but one certainty and one probability can be stated. The de facto attendance of household officials at the great councils must be admitted ; and there is a presumption in favour of their de jure attendance.

The evidence so far has supported the original proposition that there was a definite principle behind the membership of the great feudal councils, and that it consisted in tenure-

in-chief of the Crown, although there is some doubt as to the validity of serjeanty-tenure for this purpose. As the Becket controversy has furnished so many materials, it is possible to put the propositions to the test by an examination of the detailed accounts of the two great Councils of 1164, which were the focal point of the struggle, those of Clarendon in January and Northampton in October.

The Constitutions of Clarendon are the most reliable evidence for the first of these Councils. The preamble states that the recognition of the customs and dignities of the kingdom was made "coram archiepiscopis et episcopis et clero et comitibus baronibus et et proceribus regni," the actual recognition having been carried out "per archiepiscopos et episcopos et comites et barones et per nobiles et antiquiores regni." This is followed by the names of the two archbishops, and all the bishops who gave their consent to the Constitutions, and the names of the lay Earls, barons and officers who were present, ending with the usual vague phrase "et multis aliis proceribus et nobilibus regni, tam clericis quam laicis". Exactly the same list of those who made the recognition is given at the end.

In this account there are three questionable elements: the officers, the clerus, and the antiquiores. Only two officers are named together with the titles of their office, and the list therefore offers no clue on the difficult subject of serjeanty tenure. The interpretation of the word clerus has already been discussed. The most controversial element seems

1. Supra, p. 12-13. 11.

to be the antiquiores.

There is no reason to suppose, as Lyttelton suggested, that these were men specially called in for the purpose of making the recognition, men who in normal circumstances would not have been members of a great council. There must have been men among the usual and rightful members who were able to make the recognition. Hoveden says that the king ordered all the earls and barons to go outside and recognise and record the customs. The Life of Becket ascribed to Roger of Pontigny put these words into the king's mouth: "Surgent prudentiores et antiquiores procerum, et foras cum clericis meis egressi recordentur legum et consuetudinum avi mei regis Henrici." This agrees with Herbert of Bosham's account, which says that the recognition was made "Per quosdam regni proceres, qui has nosse debuerant." He then proceeds to explain the reason for this: "Nec enim rex, qui adhuc juvenis, sicut nec archipraesul suus norris, pristinas regni consuetudines nisi ex aliorum relatu cognoscebat." There is therefore no reason to suppose that the Council of Clarendon, although circumstances made it an unusually large gathering, was extraordinary in its composition, or comprised any other than the usual baronial elements. A similar case may be made out for the second great Council of this

1. Herbert of Bosham's account is the most reliable both because he was a personal witness of the events and because the element of bias is less pronounced. While he supports the Archbishop's cause, he can still say of the Constitutions and Council of Clarendon, "Verum rex regni et sacerdoti pacem, ut videbatur, Zelans."

year, held at Northampton. There is a letter from Henry to Louis VII containing a phrase which speaks of his Great Council as if it were an institution and not of haphazard membership. It also implies that the plenarium concilium was composed of the barons of the kingdom. It informs the king of France that Becket had been condemned as a traitor and perjurer in curia mea a plenario baronum regni mei concilio.

All contemporary writers agree in mentioning four main elements among the attendants : episcopi, proceres, aulici, and populus. There were also the Archbishop of Canterbury with his personal attendants, and the officials, such as criers and ushers, who guided the ceremonial. The detail of description given in chronicles and in the various Lives of Becket, allows an unusual opportunity for investigating the membership of the assembly. In these accounts, the story of the last day of the Council, before Becket fled, is the most important for this purpose. There is general agreement as to the more prominent facts. Becket, after celebrating Mass, arrived at the castle where the Council was being held, and entered the outer room carrying his cross. The king was at this time in an inner room with his closest counsellors. At different times he called the bishops or barons to him as he required them. After Becket had rejected the pronouncing of judgment, he left the castle via the hall, in which were seated the less important men and some household officers, and outside the castle was greeted by a large

crowd of spectators.

This Council, called originally to deal with a tenant-in-chief who owed suit of court but had disobeyed a summons, was, throughout, a place of definitions of necessary formality. Among these there are numerous indications that the members were men who owed suit of court to the king as tenants by barony. Edward Grim said of the summoning of the Council : "Statuens celebrare concilium, omnes qui de rege tenerent in capite mandari fecit." That the bishops attended as barons is evident from the controversy about pronouncing judgment, in which the bishops said to the secular barons, according to William Fitz Stephen's account : "Non sedemus hic episcopi, sed barones. Nos barones et vos barones pares hic sumus." This is the perfect illustration of a council of peers<sup>2</sup> by tenure, and is borne out by the horror expressed by Becket's opponents, that he, who held lands of the Crown, should be unwilling to submit to the judgment of the king's council.

In spite of the detail, very little light is thrown on the difficult question of serjeanty tenure. Some of the household officers remained in the hall, and took no part in the actual business of the Council. The men who were in the inner room with the king are called either aulici or familiars, and being the king's chosen<sup>and closest</sup> counsellors they acted as the men most likely to understand the implications of the situation and

1. Quoted by Adams, *Councils and Courts*, 59, Note 37.
2. Peers is used in the sense of equals as co-vassals, not in the restricted sense used from the thirteenth century onwards.

to advise the king on the most appropriate action. Having given their counsel, they did not take part in the formal execution of the business of the Council, unless they combined a household office with a title of tenure, like the Earl of Leicester. The controversy about pronouncing judgment was between bishops and barons, and the final attempt to pronounce judgment was carried out by the Earl of Leicester supported by the company of earls and barons.

William Fitz Stephen described how the king excused the bishops the task of pronouncing the final judgment and enjoined it on the earls and barons. Then, "evocantur quidem vicecomites et secundae dignitatis barones, antiqui dierum, ut addantur eis et assint iudicio." This does not destroy the hypothesis that great councils were composed of tenants-in-chief, particularly as most sheriffs were small landowners holding of the Crown ; but it does show that, even if the presence of the lesser barons was still necessary at the greatest of the Councils, yet they were not required to enter into the discussion, but only to add their presence at the critical moment, and this on account of the default of a more important section of the baronage.

This phenomenon must be related to the distinction made by J.H.Round between the greater and lesser barons with regard to their later position in the great council. His thesis is that the council was at one time co-extensive with

1. The Origin of the House of Lords : Peerage & Pedigree I.

the tenants-in-chief, the barones regis, who sat in it exclusively as such, but that it gradually became restricted to one section of the tenants-in-chief and developed into the House of Lords . He saw the turning point as Magna Carta, which introduced a new principle of writ as distinct from the old principle of tenure.

There are indications, particularly at the Council of Northampton, but also elsewhere by inference, that while during the reign of Henry II the old principle still held good, in practice the lesser barons did not and were not expected to play such an important part in conciliar affairs as the greater barons. On many occasions Henry summoned a large number of men to a Council, but only used the services of part of the assembly for the business in hand. For example, in August 1176, Henry summoned what the Gesta Regis calls a concilium at Winchester. The business before it was twofold : the settlement of the quarrel between the Archbishops of Canterbury and York and the journey of Joanna, the king's daughter, to Sicily, to marry King William. The two Archbishops with their suffragans, and the earls and barons assembled, but the case of the Bishop of Ely's attack on the Archbishop of York was settled "in conspectu regis et episcoporum circumstantium." Presumably the secular barons had been banished to another part of the palace while the case was discussed. If this could happen occasionally with the greater barons, particularly the more remote ones who would find it a burden to attend, would gradually cease to attend regularly when they saw that their services were not indispensable.

1. Infra : Part II, Chapter III.

The famous arbitration between Castille and Navarre illustrates the point. Henry would naturally have wished to impress the Spanish ambassadors with an unusually large and splendid Council. The list of witnesses to the final document agreed upon is remarkably lengthy, and is divided into four definite sections : firstly the archbishops and bishops ; these are followed by the earls ; then the phrase et de baronibus Anglie is followed by eight names ; lastly comes the phrase et aliis quampluribus tam clericis quam laicis de regno Anglie. These were the men who were present and witnessed the events. Yet the text of the document says that the advocates were elected and the allegations heard, in the presence of the king, the bishops, the earls, and the barons. These were the people with whom the king took counsel and determined the cause. The inference is that here also the least important barons took a back seat.

The question as to whether there was any feeling that the members of the great councils represented the mass of the population will be discussed in a later chapter, but something should be said here about the place of the public in the actual assemblings of the Councils. Stubbs, in his Introduction to the Gesta Regis, said : "The immense multitudes who occasionally are mentioned as attending, are evidence of the publicity of the whole transaction, not of the numbers of councillors." The

1. Gesta Regis Henrici Secundi, II, EXLX CXII.

most striking illustration of this is given by Gervase of Canterbury when he describes the king's procession to the tomb of Becket in February 1187, preceded by the two legates, the Archbishop of Canterbury, numerous bishops, abbots, and priors, and many earls and barons. He continues : "Erat enim rumor in populo quod electiones quasdam vacantium ecclesiarum ibidem essent facturi. Factus est igitur Cantuarie concursus populi innumerabilis." It is the sort of crowd which can always be relied upon to assemble to witness a great event.

The Councils of Clarendon and Northampton again furnish the most extensive information on this subject. There is one significant point in Herbert of Bosham's account of Becket's interview with Henry at Oxford just before the Council of Northampton was summoned. It reads : "Dicebat autem rex obligationem de regis consuetudinibus observandis velle sibi fieri in forma hac, in episcoporum et procerum regni conspectu et audientia publica." As there is no suggestion that the public as such was admitted to the council hall at Clarendon, in either the Constitutions or the various accounts of the Council, it seems that audientia publica must have been meant to stand in apposition to the phrase which precedes it, and that the bishops and nobles were understood to comprise the public.

There are more details available as to the place of the public at Northampton. There is no doubt that great crowds gathered outside the castle out of mere curiosity. Hoveden says that on Becket's arrival at the castle on the last day of

CHAPTER III.

the Council, "statim factus est undique magnus concursus populi, ut viderent finem." Other accounts say that the crowds were waiting outside to receive the Archbishop's blessing. There are descriptions of the less important men gathered in the outer hall, called variously curiales, vulgi and milites, who did not take any part in the actual proceedings, but are not confused with the general mass of the public. The carefully locked and bolted gate described by Roger of Pontigny presumably was an effective in keeping the public out as in keeping Becket in.

The sum total of the evidence therefore supports the proposition that the great feudal council was composed solely of the barons, of men whose attendance was fixed only by their tenure-in-chief of the Crown. There is nothing to support the idea that the Anglo-Saxon idea of summoning the best and wisest survived until the first Angevin reign, whether or not it survived the Norman conquest. The place of these men will be shown in the next chapter. Even the bishops and the wise men who attended, were not summoned for their wisdom. The great council was entirely feudal, not regal, and the sole criterion of its composition was a tie of feudal tenure.

one thousand two hundred and twenty charters and writs have been examined. These do not include great treaties, or official enactments, because each of these would have been drawn up on a special occasion, the first probably in a great council, and the

I. Appendix to Bibliography, p. 100

## Composition of the Perpetual advisory Group.

While Henry was the feudal overlord of the great manor of England, and acted scrupulously on feudal principles in the summoning of his great council, he was also a king who never under-estimated the possibilities of his prerogative, and it must be admitted that he achieved his greatest successes as a king, through the exercise of his prerogative. Part II will show that Henry was a personal monarch and that his feudal council was not expected to discuss or oppose his will. Much of the success of his measures, however, must be imputed to the ability of the amazing staff of advisers and administrators who were perpetually with him.

The most important source of information for establishing the composition of this staff is to be found in the numerous charters and writs granted by the king, and witnessed by those who were attending him. It is from the lists of witnesses that the statistical tables found in Appendices II and III have been compiled. They show the frequency with which different types of men appear as witnesses to royal documents. For this purpose one thousand two hundred and twenty charters and writs have been examined. These do not include great treaties, or judicial

enactments, because each of these would have been drawn up on a special occasion, the first probably in a great council, and the

1. Appendix to Bibliography, p. XIV-XV. The word member is used for convenience. There was no official choice. Similarly there is no indication that this perpetual group of counsellors was institutional in form.

second when an unusually large group of judicial officers predominated.

They have been divided into four chronological sections, dividing at 1164, 1173, and 1179. This has been done partly to illustrate developments during the course of the reign, and partly for convenience. None of the authentic charters of the reign are dated, but it <sup>is</sup> usually possible to ascribe a date within the limits of these divisions. Only seventy charters out of the total cannot be used owing to the impossibility of establishing an even approximate date. The choice of the divisions needs some explanation. The first section ends with the year of Becket's flight, appropriately, since he was the most important individual among the king's counsellors in the early part of the reign. Two circumstances coincide to establish the second division at 1173, one being the outbreak of rebellion against Henry in that year, and the other the approximate commencement of the use of the formula Dei gratia in the protocols of charters, which helps to establish their dates. The last division occurs at the time of Glanvill's appointment as Chief Justiciar, and the predominance of the Bishops of Ely, Winchester and Norwich.

This chapter will consider the place and importance among the king's perpetual counsellors of each of the elements included in the table<sup>2</sup>: ecclesiastical members<sup>3</sup>; earls, counts

1. Delisle discusses the whole question of dating in the Introduction to the *Recueil des Actes de Henri II*, 1-87.
2. Appendix II.
3. The word member is used for convenience. There was no official membership dependent on any other criterion than the king's choice. Similarly there is no indication that this perpetual group of counsellors was institutional in form.

and great barons ; household officers ; and administrative and judicial officers.

There is one other group included in the table, which comprises the men to whom none of the above-mentioned titles can be affixed. The frequency with which these men appear as witnesses throughout the reign is a testimony to the proposition that the permanent advisory staff had no validity as an institution, but merely depended for its composition on the will of the king, in whatever form its expression took at any particular moment. This indefinable group consisted of three types of men, distinguished by the purpose which brought them to the court. There were in the first place those whose name appeared ~~on~~ only on one occasion and whose attendance at court had a definite connection with the land or privilege granted in the one document they witnessed. Sometimes their services as witnesses were used again in another document drawn up at the same time and place, but their attendance among the king's counsellors was unique and extraordinary. The second type consists of men who seem to have been present merely in virtue of their relationship to one of the more regular counsellors. The name of Ralph Fitz Stephen the chamberlain, was occasionally followed by that of his brother Eustace. John of Oxford's first appearance, among the witnesses of a charter dated at Oxford, and granted between 1155 and 1158, was with his father, Henry of Oxford. But by far the greatest proportion of these men belonged to the third type. They were the less important barons and landholders whose attendance at the court was occasional and irregular. The ineffectiveness

of Henry's one attempt to keep his enemies away from court, just after the end of the rebellion, shows the freedom with which access to the court was in normal circumstances obtainable.

The distinction between this staff and the great feudal councils is clear in theory and in practice. In theory the composition of the first depended on tenure ; of the second on the king's personal choice of reliable and efficient servants. The first was feudal ; the second regal. In practice, although some men who were qualified by both tenure and wisdom attended both, the great assemblies of magnates could only be summoned occasionally, and the tasks of attending to everyday administration and giving counsel in matters which arose in the intervals between the meetings of the great council, fell to the perpetual counsellors. This practical distinction between the two groups is clearly seen in Gervase of Canterbury's account of the election of Becket, when the king was on the Continent with his personal counsellors, and sent messengers to England to summon the magnates and bishops of the kingdom to make the election. These messengers took the commands of the king and the staff he had with him. The king had already made up his mind. The prelates and magnates of England had merely to agree with him.

Baldwin sees in these men, variously called consiliarii, familiaries, domestici, etc., who were not necessarily the king's vassals, an element of stability. In the reign of Henry II they

seem to provide an element of ability, as distinct from the formality of attendance at a great council. Richard Fitz Neal said of them: "Rebus magnis et regni negotiis sub tanto principe decet magnos ac multos deputari".

The allocation of the credit for selecting so many able men has already been discussed,<sup>2</sup> but the Dialogus confirms the statement that ability was the primary basis for promotion, when it describes Richard of Ilchester's rise to prominence. "Hic ante tempora promotionis dum paulo inferior in regis curia militaret, visus est fide et industria regis negotiis necessarius et in computationibus atque in rotulorum et breviarum scripturis satis alacer et officiosus."<sup>3</sup>

While it must be agreed that the Norman conquest caused the replacement of a witenagemot based in theory on wisdom by a council based on the formality of feudal tenure, it seems also that by the time of the first Angevin reign, wisdom and learning had once again found their rightful place in the king's counsels if not in his great councils. Nothing seemed to please the letter-writers of the time more than to address to the king long quotations from the Book of Wisdom, and also occasionally to supplement these by examples of their own

profundity of thought. It is typical of the character of both the writers and the counsellors that Peter of Blois should write:

1. ~~Supra~~ Dialogus de Scaccario, ed. Hughes, Crump & Johnson, 78.
2. Supra, p. 5.
3. Dialogus de Scaccario, 77.

1. Letters of Peter of Blois, ed. Riley, I, 100.

"Non video, qualiter princeps perseveret in regno, aut judicet populo in aequitate, nisi consilio litteralis prudentiae muniatur."

When Henry came to the throne, the English Church was in a more powerful position than ever before. The grants and promises of favours made by both combatants to secular and ecclesiastical potentates during the anarchy of the previous reign were sources of potential difficulties later. The strength of Henry's hand was immediately made apparent to the laity. As far as the Church was concerned, however, the impression created is that he was carefully feeling his way. In the first place he must have felt the strength with which it would have opposed him in any immediate conflict. He could not, with the Church, as with the lay barons, use a policy of divide et impera because they would have fought him as the violator of their joint and not their individual rights. In the second place, in a land whose administration had fallen into chaos, and whose barons had shown themselves so untrustworthy, the clergy was the only possible source of counsel and wisdom at the moment of accession. Their support for a king who could bring peace and organised government was probably no more enthusiastic than that given by the rest of the population, but its power was more efficacious to the king.

One of the first measures of the reign was to re-establish the working organisation of the Exchequer, and this was done under the close supervision of Nigel, Bishop of Ely, who was related to Henry I's Justiciar by administrative experience as

well as by a family tie. The Chancellor was an archdeacon. The chief advisers were the Archbishop of Canterbury and the Bishops of Bayeux and Lisieux. The large proportion of bishops among the witnesses during the first period is even more remarkable than it appears in view of the fact that there are very few occurrences of the names of other bishops than the three just mentioned.

Stubbs has said that the Archbishop of Canterbury was recognised during the Norman period as the first adviser of the Crown.<sup>1</sup> Henry seemed at his accession as if he intended to continue this policy. Archbishop Theobald took over the direction of affairs during the six weeks between Stephen's death and Henry's arrival in England, but the peacefulness of the country should probably be attributed to exhaustion rather than to Theobald's ability. Possibly this accounts for Henry's extensive use of his counsels. As Lyttelton said: "He was a man whom experience and knowledge of business had made a minister of state rather than a genius; having parts good enough to be esteemed, and not great enough to be feared by his master."<sup>2</sup> That he was the most important individual in guiding Henry's policy immediately after his accession is shown in Hoveden's summary of the earliest measures adopted to restore stability: "Et ipse [Henry] pacem stabilivit in regno, et leges Henrici regis avi sui praecepit per totum regnum suum inviolabiliter teneri, et in multis acquievit consilio Theobaldi"

1. *Constitutional History*, I, 359.

2. *History of the Reign of Henry II*, II, 19.

Cantuariensis archiepiscopi." It was by his counsel that Becket was promoted to the Chancellorship.

It is ironical that Becket as Theobald's successor in the Archbishopric of Canterbury should have been responsible for the discontinuance of Henry's policy of placing his chief reliance in his Archbishop. The quarrel between Henry and Thomas was a unique circumstance, but Henry's relations with future Archbishops of Canterbury were never the same as they had been with Theobald. There is a letter, written by Peter of Blois, to Richard, Archbishop of Canterbury, 1174-84, which is supposed to express the king's opinion, but probably has a subtle significance added by the pen of his none too scrupulous secretary. Its tone is not what would have been expected from the king to his Archbishop before 1161. "Sciat, inquit, dominus archiepiscopus, quod si filius neus electus, aut aliquis episcopus terrae, vel comes, vel aliqua persona illustris suae voluntati, aut dispositioni contraire praesumpserit, aut impedierit, quo minus sibi commissae legationis munus adimpleat, inveniet in me sui contemptus persecutorem et vindicem, ac si in coronam meam proditorie commisisset."

Archbishop Baldwin, elected in 1184, seems to have had considerable influence with the king. In 1185 he prevailed on Henry to release the Queen from the semi-captivity in which she had been held since the rebellion. On the other hand his prohibition of the marriage of John with the heiress of the Earl of Gloucester on the ground of kinship was disregarded.

A change can also be seen during the thirty-five years

of the reign in the character of the episcopacy and in the place of bishops among the king's counsellors. None of the English bishops were as important during the first period as Philip of Bayeux or Arnulf of Lisieux. The Life of Becket ascribed to Roger of Pontigny says that when Archbishop Theobald wanted Becket elevated to the Chancellorship, he persuaded the King through the intercession of these two bishops, "quorum consiliis rex in primordiis suis innitebatur." As charter witnesses they appear frequently during the first few years, in many different places both in England and on the Continent. Their predominance did not last for long, however. Philip of Harcourt died in 1163, and Arnulf's letters become more embittered and resentful as they record his gradual fall from favour.

Only four bishops exercised their episcopal functions throughout the greater part of the reign: Hugh Puiset, Roger of Pont l'Eveque, Jocelin de Bohun of Salisbury, and Gilbert Foliot. The first of these, the Bishop of Durham, was the only bishop consecrated during Stephen's reign who survived until Richard's. His appearances as a witness are regular but not frequent, possibly on account of the remoteness of his bishopric, but more probably on account of the doubtfulness of his allegiance, which became apparent during the rebellion of 1173-4. In the same way, Roger, Archbishop of York, both exercised his duties in a remotely situated province and was continually immersed in intrigues. Although he was useful as an opponent to Becket in 1164, he does not frequently appear as one of the king's closest counsellors.

The position of Gilbert Foliot is strikingly different. He was Bishop of Hereford until 1163, when he was translated at the king's instigation to the see of London. In this capacity he was the only bishop who was successful in maintaining his position throughout the reign as one of the king's most trusted counsellors. His influence can be seen during the first months after Henry's accession when he persuaded the Earl of Hereford to surrender his castles to the royal power, thus by his individual action enabling the king to avoid the use of force. Even before Henry's accession, in a letter addressed to him as Duke of Normandy, the bishop gave him advice, quoting, "Beatus vir qui non abiit in consilio impiorum." Most important are the letters written at the time of his translation. The king wrote to him : "De personae etiam propriae dignitate, de regni statu, de gerendis in regno negotiis, saepius et saepius sanum et efficac<sup>x</sup> adhibuistis consilium." He had previously said that his good qualities were well-known to all, and many writers seem to have been aware of the special position he occupied in the king's counsels. Pope Alexander wrote to him of Henry : "illustrem<sup>m</sup> Angloru<sup>m</sup> regem, cui non modica es familiaritate conjunctus." It is significant, however, that all these examples of his personal importance in the king's counsels come from the first half of the reign. There are no indications that Henry ceased to regard him with the greatest esteem, but his individual predominance was lost amid the large

1. He died in 1187.

group of officials, including bishops, which surrounded the king during the latter half of his reign.

Individual bishops exercised their greatest influence during the first period, before the trial and flight of Becket. For the first years of his reign Henry did not attempt to try the allegiance of his ecclesiastical barons, and by the time controversy arose he was sure of a general support. The most difficult period for the Church was the second, 1164-73, and the statistical table bears striking testimony to this fact. The individuals who had been influential during the first years had either died or fallen from favour, with the exception of Foliot, and there was no-one who could replace them at this time. Many sees fell vacant.

The year 1173 saw elections to Canterbury, Bath, Chichester, Ely, Hereford, Lincoln, and Winchester. The sees of Norwich and St. Asaph were filled in 1175. It is at this point that the great change occurs in the character of the episcopacy, although its support for the king had never weakened. In 1170, about the time of the reconciliation between Henry and Becket, the Pope wrote to the English clergy complaining of their subservience to the king - "quia plus in vobis terreni principis reverentia quam timor Domini et episcopalis honor valuit dignitatis". The incident of the Papal subsidy requested in 1173 shows, if not the deference of the clergy to the king, at least the similarity

1. Geoffrey, the king's son, elected in this year was never consecrated.
2. Materials for the Life of Becket, VII, 360.

of their interests.

The crucial point of the change is that the most important bishops henceforth were judges and administrators, and nearly all were renowned for their learning. The three who appear most frequently, Geoffrey Ridel, Bishop of Ely, John of Oxford, Bishop of Norwich, and Richard of Ilchester, Bishop of Winchester, were all administrators of the king's newly devised judicial processes. The importance of these same men accounts for the predominance in the second period of deans and archdeacons, because at this time John of Oxford held the Deanery of Salisbury, and Geoffrey Ridel and Richard of Ilchester the archdeaconries of Canterbury and Poitiers respectively. These are the men whom Diceto call archijustitiarum regni in 1179.

In the same passage Diceto explains the king's difficulties in finding suitable administrators of his policy, and his various experiments with different types of men. Henry finally decided to use the clergy, as being the most reliable and efficient. Controversy had already begun about the use of the clergy in secular administration, but Diceto's justification of their employment is borne out by Peter of Blois. He says that it is expedient for bishops to attend the king's counsels because they have their considerable opportunities to do good in Church and state, but that they should not on that account neglect their episcopal functions.

The charter evidence shows that these three bishops in particular journeyed with the king to almost every part of England and his Continental possessions, and it seems that they could hardly ever have been present at their own episcopal sees. For the most part, however, although bishops attended great councils in many different towns, they appear as witnesses to charters drawn up in their own dioceses. The letters concerning the translation of Foliot to London show the importance of the bishop of the town in which the king was holding his Council.

Not only were many of the bishops at the end of the reign qualified by their administrative ability and legal knowledge to act as counsellors to the king, but also the episcopacy generally was noted for its ability and learning. A few examples will serve to show the type of man elected to a bishopric at this time. Reginald<sup>1</sup>, Bishop of Bath, was educated in Italy, Herbert of Bosham says of him : "Industria et probitate promerente, ab aula ad ecclesiam assumptus, in Bathoniensem episcopum promotus est." Henry was not prepared to allow his own son Geoffrey to exercise episcopal functions in the diocese of Lincoln unless he went away to Tours to study. Adam, Bishop of St. Asaph<sup>2</sup>, was an important theologian in the twelfth century. St. Hugh became Bishop of Lincoln in 1186, and Baldwin Archbishop of Canterbury in 1184, "both of them as remarkable for learning and eloquence as for piety."<sup>3</sup>

1. 1174-1191.

2. 1175-1181.

3. Stubbs : Lectures on Medieval and Modern History, 138-9.

Peter of Blois described the learned debates<sup>s</sup> and disputations held in the household of the Archbishop of Canterbury. "In the house of my master, the Archbishop of Canterbury, there are a sett of very learned men, expert in all the rules of justice, as well as other parts of prudence and knowledge. It is their constant custom after prayers and before they dine, to exercise themselves in reading, in disputations, and in the decision of legal cases. To us all the knotty questions of the kingdom are referred ; which being brought forth into the auditory, where all the company assembles, everyone, according to his rank, whets his understanding to speak well, without wrangling or obloquy, and with all the acuteness and subtilty, that is in him, declares, what he thinks the most prudent and sound advice."<sup>1</sup>

The class of ecclesiastics which as such played the most important part in both the king's administration and his counsels is that of the archdeacons. The Constitutions of Clarendon illustrate the importance of their position.<sup>2</sup> During the first period of the reign they were insignificant in secular affairs. The sharp rise during the second period in the percentages in the table of statistics<sup>3</sup> is largely due to the

1. The translated version is in Lyttelton's History, II 261-2.

2. Clause VI: Laici non debent accusari nisi per certos et legales accusatores et testes in praesentia episcopi, ita quod archidiaconus non perdat jus suum, nec quicumque quod inde habere debeat.

Clause XXX VIII : De appellationibus si emergerint, ab archidiaconis debent procedere ad episcopum ab episcopo ad archiepiscopum.

3. v. Appendix II.

prominence of the archdeacons of Canterbury and Poitiers during this period. The only important archdeacon previously had been Froger, the king's almoner, who later became Bishop of Séez. It is during the last period of the reign that their use as a class of administrators and counsellors is most remarkable. Foss lists eight who were itinerant justices! Walter of Countances, chancellor, and later Archbishop of Rouen, began his career in England as archdeacon of Oxford. Peter of Blois, one of the king's closest counsellors, who says of his own position in the court, "ego, qui conscius secretorum fui", was Archdeacon of Bath. Reginald, Bishop of Bath, was previously archdeacon of Salisbury, and during his administration of the latter office was one of the arbitrators chosen to settle the difficulties connected with the projected marriage of John with the daughter of the Count of Maurienne. Seffrid, later Bishop of Chichester, served as a justice while archdeacon of the same place. Herbert, important in the king's counsels as archdeacon of Canterbury, later became Bishop of Salisbury. Becket himself was promoted to the Chancellorship while he held the office of archdeacon. The account in the Gesta Regis of the arbitration between Castille and Navarre mentions that a large number of archdeacons were summoned for that Council.

These few examples will serve to show the importance of the office. Powicke has remarked that in the diocese of Rouen the archdeaconries seem to have corresponded with the

1. The Judges of England, I, 161.

Frankish pagi and the later Norman Bailiwicks. It may have been the convenience of this arrangement which suggested their extensive use even in England. The authority of the archdeacon throughout the Western Church culminated in the twelfth century, when there was a constant effort to increase the scope of his jurisdiction. It is typical of Henry II that he made use of a power ready to hand. Their extensive use during the last period of the reign is significant of the whole change in the character of the group of counsellors perpetually with the king, because their ecclesiastical office made them judges and administrators, men able to draw up legal documents and determine suits.

In the great <sup>f</sup>feudal councils the earls and barons were of equal importance with the ecclesiastical tenants-in-chief, but among the group of perpetual counsellors their insignificance makes a striking contrast.<sup>2</sup> This fact supports the proposition that whereas the criterion of attendance at the first was tenure, that of the latter was wisdom and ability. "It was an exceptional magnate who was willing to immerse himself in the heavy and unexciting business which must have been thrust on counsellors."<sup>3</sup> The statistical table shows a drop of about fifty per cent between the first and last periods of the reign. During the first half of the reign the tendency is not so noticeable.

Robert, Earl of Leicester, served Henry capably

1. The Loss of Normandy, 50.
2. Infra, Part I, Chapter V.
3. Wilkinson : Constitutional History, 136.

and faithfully as Justiciar until his death in 1168. Geoffrey de Mandeville, Earl of Essex, whose earldom was confirmed by the king in 1156, and Reginald, Earl of Cornwall, who was the illegitimate son of Henry I, were prominent among the king's counsellors immediately after Henry's accession. During the second half of the reign, few earls appear as witnesses.

William de Mandeville, Earl of Essex, Geoffrey's brother, and William, Earl of Arundel, were the most important, presumably because they remained faithful during the rebellion. There are entries on the Pipe Rolls which illustrate the special position of William de Mandaville among the king's closest counsellors. His name is by far the most frequent of the Earls' in the lists of witnesses for the last three periods of the reign. Occasionally during the last period Roger Bigod appears without the title of Earl, although his father died in 1177.

Foss mentioned the uselessness of an hereditary tenure only, as a qualification for dealing with the new judicial processes. "The slightest inspection of the "Tractatus de Legibus et Consuetudinibus Regni Angliae", which was composed towards the end of this reign, is sufficient to prove that the law was at this time reduced to a system, the knowledge of which

1. Pipe Roll 20 Henry II. Winchester : Et Comiti Willielmo £9/10/- ad properandam transfretacionem suam cum familia Regis, per breve Regis.
- Southampton : Et in passagio Comitis Willielmi de Mandevill et familiae Regis ad festum Sancti Laurentii quando missus fuit ad Rothomagum £60/9/6 in liberacione XXXVII navium per breve Regis.

would require more learning than could be expected <sup>from</sup> ~~for~~ the hereditary barons ; and that its principles were too difficult ~~and~~ and its ramifications too various for them to have leisure to study. A great change is consequently observable in the construction of the Curia Regis in the latter years of the reign!

Many of the earls and greater barons held hereditary offices in the royal household, and in the execution of those were present at the great social and formal gatherings ; but the less noble household officials, and those whose business was connected with the administration of a unit which was going "out of court" are the most prominent among witnesses to documents. The undue proportion of the group in the statistical table may be accounted for partly by the fact that the greatest household officers, such as the Chancellor, have been included, although their work was becoming national rather than personal to the king. It supports Stubbs' statement that the household staff formed the first immediate circle round the throne. The author of the Dialogus said that substitutes were frequently used for the greater officials at the Exchequer audit, ~~because they~~ <sup>who</sup> could not easily absent themselves from the presence of the king. The Pipe Rolls and Norman Exchequer Rolls illustrate this for the less important officials by proving that many men who were at once household officers and sheriffs or farmers of bailiwicks, executed their local offices

1. Foss : The Judges of England, I, 160.

1. De Principibus Instructionibus, 163-4.

by deputy.

When Giraldus Cambrensis described a section of the men who deserted the elder king in 1173 as "Illi quos cubicularios sibi milites elegerat, in quorum manibus mortem simul et vitam commiserat," he was probably sacrificing accuracy to literary effect, and not presenting a true assessment of the importance of Henry's household officers, which is what he must have meant by cubicularios. While their duties were not as extensive as this, the continuous preponderance of this class among witnesses to documents is remarkable. Yet here also a change can be seen during the course of the reign.

During the first few years, the predominance of a few individuals is most marked. Even among these few, none had a position comparable to that of Becket as Chancellor. There is a letter from John of Salisbury written to Becket in 1161, which says: "Si enim vera sunt quae dicuntur a redeuntibus (et utinam vera sint), rex et tota curia adeo pendent de consilio vestro ut nec spes pacis immineat, nisi eam vestra prudentia praefiguret." The impression given is that the king and his court relied on the counsels of one man, not that the king relied on the counsels of a group of talented men. Although the words are probably exaggerated, there is no doubt that Becket occupied a unique position among the king's counsellors while he held the Chancellorship.

Wilkinson contrasts the council changed by the bureaucracy of the fourteenth century with the "old council of

domestici" which "was based on an ideal of personal monarchy such as that of Henry II". Even during the reign of Henry II, the necessity of developing a form of bureaucracy to deal with the new administrative and judicial processes, conflicted with his personal kingship. The statistical table shows that the judicial element almost balanced the household element during the last period. Many men duplicated their offices and therefore are represented in both groups. The rise during the course of the reign in the proportion of justices who were constantly with the king speaks for itself. Stubbs said, in his Introduction to the Gesta Regis, that Henry's ministers "who at the beginning of his reign were little more than officers of his household, at the end of it were the administrators of the country."<sup>2</sup>

The main question to be settled was whether the membership of this group of perpetual counsellors was haphazard, or based on some definite scheme. It would be an anachronism to say that at this time there was a council in the sense of a regular and defined body with an established membership, analogous to the much later Privy Council. The very fact that many of the men belonging to this group were at the same time counsellors and administrators prevents the possibility of a fixed membership. When Becket arrived at Northampton for the case against John the Marshal, he had to await the arrival of the plaintiff, who was on the king's business at

1. Wilkinson : Constitutional History, 137.
2. Gesta Regis Henrici Secundi, II, XXI.

the Exchequer. Many documents name some of the people who were present at the transaction of the business they record, and, <sup>add</sup> some such phrase as et alii qui tunc ibi aderant, as if these others were present merely by chance. The treaty made with Philip Augustus in June 1180 was made in the presence of any bishops, earls, and barons who happened to be present : "in presentia Petri, tituli Sancti Chrysogoni presbyteri cardinalis, apostolicae Sedis legati, et Ricardi Wintoniensis episcopi, et aliorum plurimorum episcopum, comitum et baronum qui aderant."

In spite of this it is possible to trace a definite scheme of development during the course of the reign. The composition of this group depended on the king's personal choice, but his choice was bound to be based on expediency and therefore affected by circumstance. At his accession he had to use the counsels of anyone whose services were available and could be trusted, and his safest course was to rely on the household officials whom he knew, and the clergy. Very soon he found an individual in whom he chose to place all his reliance. By the time Becket showed signs of intractability, Henry was secure enough to be able to disregard the counsels of any individual. Shortly after this he began his judicial and administrative reforms, and thereafter used the servants most capable of executing these projects, particularly after his power was confirmed by his victory in 1174.

The crucial change in the character of this group

1. Delisle : Recueil des Actes de Henri II, II, 128, DL.

which gave perpetual counsel lies in this : that at the beginning of the reign it consisted of men who were servants of Henry himself ; at the end they were servants of his administration. At first the king relied very much on individuals, in whom he had confidence, and the first signs of the change occur with his rejection of the counsel of some of his closest and most trusted advisers. The earliest instance of this is at the election of Becket to the Archbishopric of Canterbury. It appears from the various accounts that the project of raising the Chancellor to the Archbishopric was openly opposed only by the Empress Matilda, but that others showed less obvious signs of scepticism. Foliot openly opposed the election in England. Yet Henry would not heed the doubts of his counsellors.

Thereafter there is a continuous series of such incidents. Henry had reached the end of the very brief period in which he had allowed himself to be swayed by the personality of an individual. Foliot's attitude towards the collection of Peter's Pence during Becket's exile may be contrasted with the action he took at the beginning of the reign against the Earl of Hereford. Concerning Peter's Pence, he wrote to Henry : "De qua prosequenda necesse est nobis, ut voluntatem vestram et consilium amodo certius agnoscamus." There is a letter concerning a conference between the Empress and one of Becket's partisans, in which Matilda declared that the king her son had concealed from her his intentions with regard to the Church, and expressed her disapproval of the writing down

of the customs of the kingdom.<sup>1</sup>

The king seems to have had very little trust in his son Henry, even in the period between his coronation and the outbreak of rebellion. Gervase of Canterbury describes how the Prior and monks of Canterbury approached the young king about the election to the vacant archbishopric in 1172 : "regem et regios, magistros magis quam ministros, adiit." Henry had appointed tutors for his son who would be chary of giving him any real power to make decisions. This is also evident from the story of Becket's embassy to the young king immediately after his return from exile in 1170. The envoys were met by the young king's tutors, who refused access to him, saying : "Agit enim quae agimus, dicit quae dicimus. Vox pupilli pendet ex responsione tutorum, apud quos quaruntur consilia, discutuntur negotia, trutinantur iudicia."<sup>2</sup> Even the tutors would not come to a decision until they learnt the will of the elder king. When Henry made Becket account at Northampton for his acts as Chancellor, he showed what little importance he attached to the acts of his son and the servants using the son's authority as a delegation of his own. Hoveden's account of the incident says of the young Henry "<sup>cu</sup> regnum adjuratum fuit." Becket had at that time been quitclaimed of any responsibility for his previous acts. Many men have spoken of the importance and authority of the regents appointed to govern during Henry's absences,

454-5.

1. Quoted by Lyttelton : History of the Reign of Henry II, II,  
2. Materials for the Life of Becket, I, 108.

mostly basing their theories on the fact that writs ran in their names. It was the business of the Justiciar in England to act as a substitute for the king in his absence. The extent of the Angevin Empire made some such measure necessary. It seems, however, that in actual fact very little power was delegated at any time, and throughout the reign it is noticeable that the king's personal presence made a great difference. The administrators left in England during the rebellion dealt efficiently with the invaders from Scotland and Flanders ; but they also had to send Richard of Ilchester to fetch Henry back to England to supervise the situation.

To only one person was any real power delegated, apart from the constant necessity of superintending the details of everyday administration, and that was to Becket as Chancellor. Much surprise was caused by the efficiency and peacefulness with which the barons were summoned, under Becket's supervision, to do homage to the young king. "Nam rege in Normanniae partibus commorante, Thomas, convocatis comitibus et omnibus majoribus regni, regis mandatum, nullo contradicente vel resistente, effectui mancipavit, mirantibus quamplurimis, quoniam id non facile absque tumultu, nec ipso rege praesente, posse fieri putabatur."

"The Chancellor's true merit lies in this, that he was Henry's best and most thorough fellow-worker—not so much his counsellor or minister as his second self."

1. Roger of Pontigny. Materials for the Life of Becket, IV, 13.
2. Norgate : England under the Angevin Kings, I, 426.

William of Newburgh says of Becket that he exercised so much power "*ut conregare videretur.*" Henry relied so much on Becket himself as an individual that he must have thought of him as the means for making his ideal of personal government feasible. When the Archbishopric of Canterbury fell vacant, the opportunity to rival the Emperor in combining the first secular and ecclesiastical offices of the kingdom in one factotum was too tempting to resist. It is Becket's refusal to hold the two offices at the same time that marks the turning-point of Henry's policy. The greatest of his great men (and there was a very large number of great men in this reign) never achieved the position of Becket. They were all one of a number, and none could be called even a primus inter pares - even a Beaumont, a Foliot, or a Glanvill. Henceforward, Henry, although he was always a personal monarch, used an administrative bureaucracy. While he never ceased to choose men for their individual qualities, he never again allowed two kings in one kingdom.

1. The Archbishop of Cologne was the imperial Chancellor.

There are also indications that Henry was first and foremost King of England, and that his Continental possessions held a less important place in his system, possibly in virtue of the fact that a kingdom rated higher in the feudal hierarchy

1. *Historia Rerum Anglicarum*, Book II, Chapter 17.  
2. *The Loss of Normandy*, 33.

## CHAPTER IV.

## Relative Use of English and Continental Counsellors.

So far the discussion has turned on the duality of Henry's position as king and overlord of England. It is necessary to take into account the fact that he was also Duke of Normandy and Aquitaine, Count of Anjou, and lord of Brittany. As usual, William of Newburgh can be relied upon for a neat turn of phrase. "Regis autem supra omnes qui hactenus in Anglia regnasse noscebantur latius dominantis, hoc est ab ultimis Scotiae finibus ad montes usque Pyrenaeos, in cunctis regionibus nomen celebre habebatur." So large and heterogeneous an empire inevitably presented problems of government.

Powicke has found indications that Henry regarded his Continental dominions as a whole, in contrast with England, because the chroniclers speak of administrative regulations governing on the one hand England, and on the other all his dominions beyond the seas.<sup>2</sup> His examples are the statute dealing with the debts of Crusaders, the reorganisation of the administrative staff, and the Assize of Arms, in each of which the Continental possessions are included comprehensively.

There are also indications that Henry was first and foremost king of England, and that his Continental possessions held a less important place in his esteem, possibly in virtue of the fact that a kingdom rated higher in the feudal hierarchy

1. *Historia Rerum Anglicarum*, Book II, Chapter IV.  
2. *The Loss of Normandy*, 33.

than a county or a duchy. English writers frequently use the word regnum as comprising all his possessions. One section of the biography of Becket, written by William, a monk of Canterbury, has the heading : "Litterae Romanae pontificis ad episcopos terrae regis Anglorum in regno Francorum." The most striking illustration is again in the history by William of Newburgh, whose critical appreciation of relative values cannot be lightly disregarded. During the rebellion of 1173-1174 Henry was recalled to England to deal with the dangerous situation caused by the rebel armies of Hugh Bigod and Earl of Leicester, and the threatened invasion of the Count of Flanders. He had left capable men in control, who had shown themselves worthy of his trust, but when alternative dangers threatened England and Normandy, he chose to give the former the benefit of his personal presence. William of Newburgh's words are : "Quibus cognitis rex Anglorum senior, malens sibi fines suos transmarinos periclitari quam regnum, quos tamen caute credidit muniendos, praevidebat enim neminem in Anglia, se absente et tanquam non exstante, illi, qui successurus exspectabatur, obstiturum, praeveniens hostibus, cum aliquanto equitatu et una Bribantionum turma in Angliam mature advehitur."<sup>2</sup>

Valin gives the same impression when speaking of the place of Normandy in the Angevin Empire. "Elle ne tient plus la première place dans leurs préoccupations ; les Ducs de Normandie sont en même temps et avant tout les rois d'Angleterre ; la

1. Materials for the Life of Becket, I, 81.

2. Historia Rerum Anglicarum, Book II, Chapter XXXII.

justice sera rendue sur le continent comme de l'autre côté de la Manche par la 'Curia Regis'.<sup>1</sup> "

This attitude can probably be accounted for partly by the fact that at this time England was beginning to develop a unity of nationality in language and law. Although there could be no real political unity as long as the king of England held so many Continental lands, yet by the reign of Henry II the foreign element introduced at the time of the Norman Conquest was being absorbed. The distinction of race by the proving of Englishry for the purposes of the murdrum fine was soon to become very difficult. There is a hint of this tendency towards absorption in Jordan Fantosme's metrical chronicle of the rebellion. He speaks of the knights fighting in England on the king's behalf : " E maint gentil chevalier d'Engleterre né.<sup>2</sup> " The same process is discernible on the Continent.

C.H.Haskins writes that the English king's Continental possessions were at this time "beginning to feel --- the nascent centripetal power of the French monarchy.<sup>3</sup> "

So wide an imperium inevitably caused problems of organisation, both because a king could never give his undivided attention to any of his lands for long, and because of the variations in the customs and laws which each portion of the Empire recognised as peculiarly its own. Powicke said that it was necessary for the king to subordinate each part to the whole for the sake of effective government, while avoiding a disruption

1. Le Duc de Normandie et sa Cour, 9.
2. Rolls Series edition, line 837.
3. Norman Institutions, 156.

of the traditions of any one.<sup>1</sup> He goes on to tell the story of how Count Geoffrey of Anjou, when he was dying, urged his son to respect the customs of his various territories without seeking to impose the traditions of one on the rest. The purpose of this Chapter is to see whether this attitude held good for Henry's conciliar and administrative staffs ; and to see how he overcame the difficulties which were bound to arise in the governing of such a heterogeneous group.

The most striking feature is the cosmopolitan character of the king's closest courtiers. In spite of the signs of the growth of a common language in England, the language of the law and the administration was still Latin, and therefore international. The common law of England was born at this time, but this development represents only a portion of the enthusiasm for law, canon and secular, which was sweeping Western Europe. Henry himself, according to Walter Map, knew the language of the world from France to Syria. One of the king's closest courtiers, Peter of Blois, belonged to a noble Breton family. He had assisted in the government of Sicily during the minority of William II, and then spent several years teaching in Paris before his services were used in England. Master Thomas Brown, who kept the king's private Exchequer Roll, had also been an important figure in the government of Sicily. Contact with the rest of Europe was further made possible by the frequent and

1. The Loss of Normandy, 23-4.

splendid embassies which are reported as presenting themselves at Henry's court. In the same way many of Henry's greatest counsellors had travelled to different parts of Europe as his envoys.

The class most obviously of an international character was the episcopacy. According to Diceto, Adam, Bishop of St. Asaph, British by birth, had been a canon of Paris. John, a native of Kent, and educated in the household of Archbishop Theobald, became Bishop of Poitiers in 1162 and Archbishop of Lyons in 1181. Geoffrey, the king's son, was sent to Tours to study while he was Bishop elect of Lincoln. Reginald fitz Jocelin, Bishop of Bath, was described by a contemporary as "natione Anglus, sed sicut educatione et cognomento Lombardus." Walter of Coutances, a native of Cornwall, was successively canon of Rouen, archdeacon of Oxford, Bishop of Lincoln, and Archbishop of Rouen. Becket's parents, according to one account, were citizens of Caen and Rouen respectively, although Becket himself was a Londoner by birth.

It is possible to use lists of charter witnesses to assess the relative numbers of English and Continental counsellors who appear at the king's court. The tables in Appendix III represent these numbers. It is only possible to make this assessment for certain classes of counsellors. The proportion of charters granted in England and on the Continent is almost the same. The most noticeable feature in the first part of

the table is the proportion of Earls to Counts. The previous table showed that the proportion of Earls and Counts together was very small, but of this small number almost all held the English title of Earl, although many held lands on the Continent also. The proportion of English to Continental bishops is almost the same throughout the reign, except for the second period, which was the time between the flight of Becket and the settlement of Avranches ; this may be related to the section devoted to bishops in the previous table. The figures relating to archdeacons suggest that their extensive use was restricted to English holders of the office.

The second part of this table shows the extent to which these classes travelled with the king to different parts of the empire. By far the largest proportion of the bishops remained in their own lands and did not cross the sea. This holds good in every case but one, which is during the first period of the reign, when the Bishops of Lisieux and Bayeux, joined occasionally by Rotrou de Newburgh, Bishop of Evreux, and Hugh, Archbishop of Rouen, accompanied Henry to all parts of his dominions. English archdeacons witnessed charters drawn up in many different towns on the Continent as well as in England. The strange proportions in the first period may be accounted for by the prominence of Froger, the king's almoner, who later became Bishop of Séez. Similarly the importance of Richard of Ilchester while he was archdeacon of Poitiers accounts for the striking difference of proportion during the second period in the column referring to Continental archdeacons.

Counts so rarely appear in England that it would be useless to devote a section of the table to that class. As far as the Earls are concerned, although the previous table shows the great decline in their use as counsellors during the course of the reign, this table shows that the few whose services were used during the later years accompanied the king on most of his journeys.

It is quite impossible to compile a similar set of figures for one of the most important groups, that of the household officers, because in a number of cases there is no means of telling whether a man belonged to Henry's royal or ducal staff, or to the staff inherited from his father as Count of Anjou or taken over from his wife as Duchess of Aquitaine. Many of the officials have titles definitely attached to one of the dominions. Seneschals occupied in the Continental possessions much the same position as the Justiciars in England, and many of them have titles connected with a particular part of the empire. For example, Fulk de Mastach was seneschal of Poitou ; Stephen of Marzai and Gosleno of Tours were seneschals of Anjou ; Robert de Newburgh and William fitz Ralph were seneschals of Normandy. Similarly Richard and William de Humez were constables of Normandy. In many cases, however, a title of office is given unconnected with any provincial name in the witness lists. The greatest officer of all, the Chancellor, could not be fitted into any such scheme of division, because Henry had only one Chancery. Other men appear with the title cancellarius but these officers

were the private servants of the Queen or the young king. In one case, the author of the Gesta Regis says that Roger, Archbishop of York, bought the "cancellariam Angliae" for Adam of Chircheduna, but he was the chancellor of the young king, and his existence shows a dual Chancery staff between the elder and the younger kings, and not a multiple staff among the different parts of the empire.

In the charters of the first few years of the reign, the Chancellor, Becket, and the Justicians, Robert, Earl of Leicester, and Richard de Lucy, are the only English officers who appear frequently as witnesses, with the possible exception of the constable, Henry of Essex. On the other hand, almost every document of these early years contains the names of one or several of Henry's Continental household officers, men who appear as witnesses to the charters he granted before his accession to the throne of England. The names which continually occur are those of the seneschals Reginald of St. Valéry, Gosleno of Tours, Robert of Newburgh, and Manasser Biset ; the constables Humphrey de Bohun, Richard de Humez, and Sehero de Quinci ; the chamberlains Warin fitz Gerold and his brother Henry, all of these being men who had witnessed charters granted in Normandy before 1154. Such ~~xx~~ of these men as exercised a local jurisdiction maintained titles connected with the province they supervised, but it very soon becomes difficult to divide the household staff perpetually with the king into groups marked by provincial titles. These men were the personal officers of Henry himself, not of Henry as king, or

duke, or count, exclusively. Whether in origin they owed their office to English or Continental holdings, they travelled with the king to all parts of his dominions, and it soon becomes impossible to make any artificial geographical divisions among them .

The same tendency is noticeable with the administrators of justice, but for a different reason. Haskins has shown that in the use of recognitions and the new judicial processes Normandy was ahead of England. Very few courtiers administered royal justice locally in England in the first period of the reign. There are only a few isolated examples of the Chancellor Thomas and the constable Henry of Essex holding pleas! On the other hand, a large proportion of the men who witnessed charters at this time were administrators of local justice in Normandy. The names of William fitz John, Osbert de Hosa, and Godard de Vaux are continually appearing in lists of charter witnesses.

By the end of the reign, a large proportion of the official class was common to both England and Normandy. This holds good for both the greater and lesser officers. Richard of Ilchester did his great work of reform as seneschal of Normandy while he was Bishop of Winchester, and had come to this work straight from an important position in the English Exchequer. He was succeeded as seneschal by William fitz Ralph, who immediately before had been an itinerant justice and a

1. The Pipe Rolls mention a few others such as Gregory of London and Guy fitz Tecii, who are unimportant as counsellors.

sheriff in England. Ralph of Warneville, once the king's Chancellor, was later Bishop of Lisieux and treasurer of Normandy.

Haskins said that Normandy was bound to its neighbours "by constant communication and interchange of officials." The Pipe Rolls and the charters provide a continual testimony to this statement. Each year the Southampton and Dover accounts in particular show large sums of money being paid for the transport of officials across the Channel, while charters granted in many different parts of the Angevin empire are witnessed by a varying group of officials, English or Continental by birth and training, but common to the whole empire by experience and as counsellors.

One exception to this general rule should be noted, the most obvious exception because it concerns the most remote part of the empire. Aquitaine had not achieved the same degree of organisation as other parts of the empire, nor had its nobles the same respect for the power of the Duke. It was the area in which rebellion was most frequent. The charter evidence shows that it was the exception rather than the rule for Aquitanian nobles and officials to appear at the court when it was held outside Aquitaine unless Eleanor, or later Richard, were present with the king. Alfred Richard has summed up his conclusion on the subject of the rule of Henry II in Aquitaine in the following few words : "En somme, si ce fut un grand roi pour l'Angleterre, où il s'appliqua surtout à faire régner la justice, et qui lui dut cette unité législatif que la France n'obtint que si tardivement, il se montra assez indifférent

pour l'administration de Poit<sup>ou</sup>ai, et, au fond, pour tout le patrimoine d'Aliénor."

It is difficult to tell how soon the amalgamation of Continental and English advisers into one personal group of counsellors took place. Gervase gives the most detailed account of Henry's journey to England in 1154. He says the king reached the coast of Normandy "magna stipatus nobilium caterva." Many of the ships were dispersed, and on his landing in England he had to gather together his scattered companions.<sup>2</sup> It seems that a number of Continental nobles were present at the coronation ceremony, and Torigni gives the names of one archbishop and three bishops from Normandy who attended.

This may be compared with Henry's later journeys to England, in 1157 and 1163. Soon after his arrival in 1157 he held a Great Council at Northampton in which was discussed the question of the Abbot of St. Augustine's profession of obedience to the Archbishop of Canterbury. A letter from the bishops of England describing the occasion ends: "Facta est haec professio apud Northamptoniam, anno gratiae MCLVII, Henrici regis secundi anno tertio mense Julio, XVI<sup>6</sup> kalendas Augusti, praesentibus episcopis octo, abbatibus XII, ipso quoque rege Henrico, et quampluribus aliis tam de transmarinis quam de partibus Anglicanis."<sup>3</sup> On the occasion of his next journey to

1. Hist<sup>in</sup>orie des Comtes de Poit<sup>ou</sup>ai, 253.
2. Congregatis vero quos mare disperserat sociis.
3. Gervase of Canterbury, I, 165.

England, the king was prevented by the weather from crossing when he had intended, at Christmas 1162, but immediately afterwards he crossed to Southampton where Becket was waiting with the young king Henry to receive him. Torigni reports that the nobility of England were also waiting his arrival: "cum magno gaudio susceptus est ab omnibus fere proceribus patriae, qui sum in littore <sup>s</sup>~~ex~~<sup>c</sup>~~pect~~abant." Both these statements support the information derived from the witness lists, that in the first period of the reign it was more usual for Henry to bring Continental counsellors to England for Englishmen to accompany him to the Continent.

As far as the great feudal councils are concerned, it is very difficult to judge whether summonses were restricted to the tenants-in-chief of the county <sup>or duchy</sup> in which a Council was held. Stubbs speaks of the few cases in which foreign prelates and Norman barons sat in Councils held in England. Many men held lands in chief both in England and on the Continent, and most important families were represented on each side of the Channel. Norman bishops and barons were present at the coronation in 1154, but this circumstance was exceptional.

The passage most informative for this purpose is the description in the Gesta Regis of the Council held at Verneuil in September 1177. The previous month Henry had crossed the Channel from England "cum maximo apparatu", having just previously summoned his English tenants to perform their military service. At this Council he made the regulations concerning

1. Gesta Regis

1. Rolls Series edition, 216.

the debts of Crusaders, according to the Gesta Regis "coram Ricardo Wintoniensi episcopo, et Henrico Bajocensi episcopo, et Aegidio Ebroicensi episcopo, et Frogero Sagiensi<sup>episcopo comite</sup>, et coram Simone<sup>comite</sup> Ebroicensi, et Roberto comite Leircestriae, et coram multis aliis comitibus et baronibus regni sui." These regulations were to be observed "ubique in potestate sua ; scilicet in Normannia et Aquitania, et Andegava<sup>vi</sup>, et Brittania." It is certain that the men present at this Council were not the baronial tenants of Normandy, because the next measure was to summon these to perform their military service. Presumably the English barons who had crossed with the king were present ; yet the regulations affected Continental territories.

There are many instances in which Henry made regulations in England affecting his Continental possessions. For example, in 1176, at a Council held at Windsor the destruction of adulterine castles was agreed upon, after which Henry sent messengers throughout England and Normandy to execute the measure. The same thing is not true, however, of regulations affecting England. The Assize of Arms, and the Ordinance for the Saladin Tithe, having been established on the Continent, were afterwards re-established in England.

The detail very occasionally given of the great Christmas social courts suggests that the barons of the ~~reign~~ region in which the court was held were specially summoned, but generally speaking there seems to be no indication ~~that~~

1. Gesta Regis Henrici Secundi, I, 194.

that a baron who happened to be with the king at the time of a Council would be excluded because his lands were not in the territory in which the assembly was held.

It seems to be generally true that the extent and character of the empire caused no problems as far as conciliar organisation was concerned. Henry used the services of any efficient and trustworthy men in any place, without theorizing about any distinction there might ~~be~~ have been in the actual scope of their titles. While differences may be noticeable in the esteem with which he regarded the various parts of his dominions, and while for purposes of local administration local custom was not disregarded, yet as far as his advisory and central administrative staffs are concerned, he seems to have looked upon his empire as a united whole.

The basis of Henry's government was a principle of mutual obligation, of mutual rights and duties. The landowners of the Crown received land to secure for military service; they received protection and legal counsel; they gave and received justice. The reign of Henry II saw a change in each of these aspects.

In the first place, in effect if not in intention, the military basis of a feudal society was destroyed by three measures. The extensive use of ~~commutation~~ commutation of military service ~~and the~~ ~~fact~~ that the sub-infeudated knights, whose ~~service~~ service due, in practice were rarely ~~required~~ required to perform military duties. Miss ~~the~~ ~~the~~

C H A P T E R            V.  
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Relative use of New Men, and Members of  
Old-Established Families.  
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A general distinction has been drawn between the two kinds of conciliar organs at the king's disposal. The distinction is never absolute, because many men were qualified to attend both: that is, they were qualified by tenure to attend the great feudal councils, and they were qualified by wisdom and the king's choice to belong to his permanent group of counsellors. It has frequently been suggested that Henry's policy was anti-feudal. The intention of this Chapter is to view the composition of the two conciliar organs in the light of this theory.

The basis of feudal government was a principle of give and take, of mutual rights and duties. The landowners holding of the Crown received lands in return for military service; they received protection and gave counsel; they gave and received justice. The reign of Henry II saw a change in each of these aspects.

In the first place, in effect if not by intention, the military basis of a feudal society was disrupted by three measures. The extensive use of scutage, that is, the commutation of military service into a monetary payment, meant that the sub-infeudated knights, whose duty was to perform the service due, in practice were rarely required to carry out these military duties. Miss Chew has shown that in the twelfth

century the king had an indubitable right to demand the corporal service of his tenants-in-chief, and that if he allowed the commutation by an act of grace, because he had little confidence in the fidelity of his barons, nevertheless he never intended that his right to such service should fall into abeyance. With this must be connected Henry's policy with regard to castles. As Duke of Normandy he had a prerogative right to garrison baronial castles. From 1161 to 1171 a constant series of confiscations occurred, including the castles of the Counts of Meulan, Ponthieu, and Séz.. In England there two main series of attacks on baronial castles, the first being immediately after his accession, when the castles which had sprung up during the period of the anarchy were razed and the second dealing with the new castles fortified by the rebels in 1173 and 1174. The second was particularly ruthless. Even Richard de Lucy's castle of Ongar in Essex was seized. The last measure which must be associated with this policy is the Assize of Arms, which furnished regulations for the arming of the lower classes of the community.

Closely associated with this are the judicial changes. The association lies in the fact that new work was found for the knights who had ceased to do regular military service. The increasing use of inquest and presenting juries necessitated the continual service of "lawful knights". The Assize of Northampton required the presentment of felonies "per sacramentum duodecim militum de hundredo." The place of the new processes in the general scheme of feudal justice will be

discussed later.

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It has been suggested that by these measures Henry was deliberately taking away judicial competence from his barons, and that his policy was deliberately hostile to the feudal nobility. It is necessary, however, to make a distinction between intention and effect. Whereas the ultimate affect of Henry's policy was anti-feudal, its intention was not. There seems to be only one principle of procedure behind all these measures, in as far as any principle can be imputed to a king who acted without theorizing. The intention was the establishment of a lawful and peaceful society. It can even be narrowed down further. His intention was to re-establish the orderliness of his grandfather's reign by abolishing all traces of the anarchy. His lack of confidence in the military nobility, his destruction of adulterine castles, his resumption of alienated Crown lands, his policy of allowing earldoms to lapse and annulling certain of Stephen's titular creations, can all be seen more clearly in the light of this assumption; and his judicial measures must be connected with it. The possessory assizes, which had no prejudice to any question of best right, and might give temporary seisin to the wrongful owner, must be seen as attempts to prevent violence in the form of disseisin, without an action at law.

The composition of the dual council may also be seen in this light. The question is, to what extent did Henry use new men, and to what extent members of old-established families? It has already been seen that there was a great proportional

1. *Infra*, Part II, Chapter VI.

increase in the official element among the king's perpetual group of advisers. Odericus Vitalis spoke with contempt of the men whom Henry I raised from the dust.

Most of the great earls had titles which could be taken back to the time of the Conquest, and lands which belonged to their families when Domesday Book was compiled. It is the earls who form the exception to this rule who are most important as royal counsellors during this reign. Robert, Earl of Gloucester, who was Henry's chief supporter during the struggle with Stephen, was the illegitimate son of Henry I, and his earldom was granted by his father. The same applies to Reginald, Earl of Cornwall. The Mandevilles acquired their earldom during the reign of Stephen and had it confirmed by Henry II. William d'Aubigny was one of Henry I's "new men", his butler, and the title of Earl of Arundel was conferred on his son of the same name.

The character of the episcopacy, as far as its reputation for wisdom is concerned, has already been noticed. Another aspect of its character may be noted here. Henry did not use the counsels of noble bishops unless they had also a qualification of wisdom. Henry of Blois, Stephen's brother, the Bishop of Winchester at the time of Henry's accession, does not often appear as a counsellor of the king, even before his flight. Neither does his nephew, Hugh Puiset, Bishop of Durham. Foliot, who, according to Gervase of Canterbury, was related to the Earl of Hereford, had an additional claim to the king's respect and attention in his wisdom. The Archbishops of

Canterbury were not noblemen. Becket's parents were important citizens of London. Baldwin's were poor citizens of Exeter.

The men who held their lands from the time of the Conquest, and the greatest landowners <sup>named</sup> in the Carte Baronum of a century later, are not the most frequent counsellors of the king. Some of the barons mentioned in these returns do not appear at all as witnesses. The most conspicuous among the counsellors are members of the families of Lucy, Basset, Rufus, Glanvill, Bardulf, Bendings, Biset, Camville, Cornhulle, Cumin, Humez, fitz Gerold, Trussebut, Quenci, Pipard ; families not important as landowners primarily, and with no long-established family titles, although many married into older families during the course of the reign. On the other hand, Henry would use a Beaumont or a Newburgh when such a man was efficient and trustworthy. His policy may be seen in the case <sup>T</sup> with which he avoided making the office of Justiciar hereditary. On the death of Robert II, Earl of Leicester, his son did not succeed to this office.

The best illustration of the tendency of Henry's policy is the way in which the empire divided in 1173. The Gesta Regis gives lengthy lists of the rebels and the loyal barons. Stubbs has remarked that in almost every case the baronage which had sprung up during the twelfth century and was fostered by Henry ~~II~~ I or his grandson, and which was free from pre-Conquest Norman connections, remained faithful. The

1. Chronicon Secundum Radulfum Niger, 137.  
1. Infra : Appendix IV.

rebel section comprised the older-established part of the baron<sup>na</sup>age. The strength of Henry's position lay in the fact that his party consisted of those who either administered or benefited from his reforms. The efficacy of the policy is proved by the fact that the administration remained secure, and the "new men" could be left to deal effectively with the situation during his absence.

Henry's preference for novi homines is indubitable, as also is his suspicion of the older and greater feudatories. Oderic had noticed the new men under Henry I. In the next century there were constant complaints of the king's "foreign" counsellors. It is questionable whether there was any disapproval of the use of these "new men" during the reign of Henry II. The most valuable critical assessment of the reign by a contemporary writer is that by William of Newburgh, who does not introduce this as any cause for adverse criticism. The only violent written attack is by Ralph Niger<sup>r</sup>, whose unreasonable bias against Henry deprives his words of critical value. His invective is well-known. "Nactus autem regnum Anglorum, servos spurios, calligatos cubili, ment<sup>s</sup>ae, regno praefecit, et ex iis quaestores, praestores, procon<sup>s</sup>ule<sup>s</sup>, municipes, forestarios super provincias constituit."

Stubbs has described the evils of anarchy inherent in the Norman feudal state, which Henry I by his power and ability weakened, but which regained during Stephen's reign the

1. Introduction to the Gesta Regis, II, xx.
2. Stubbs: Constitutional History, I, 477.

1. Chronicon Secundum Radulfum Niger, 167.

strength which they lost under Henry I. "The idea of a kingly government administered by the king's servants, in which the action of the feudal nobility where it existed was simply ministerial, and was not, so far as the executive was concerned, even necessary to the maintenance of the plan, was the true remedy for the evils of anarchy inherent in the Norman state". According to Stubbs, Henry II was strong enough to apply this remedy, but it does not seem true that his acts were consciously intended as "progressive measures for the extinction of feudal power"<sup>2</sup>. When he took measures to prevent private war and self help, he was acting as a feudal overlord in a feudal state. His action during the Toulouse campaign of 1159, when he was unwilling to make war on his own overlord, the king of France, was taken partly for strategic reasons, but partly to set an example of the observance of feudal law to his own barons. When they revolted they broke their bond of allegiance, and were no longer entitled to the benefits of the feudal tie of tenure. Henry was not a theorist. He did not consciously try to disrupt the system of feudal tenures and all that it entailed, even though the far-reaching result of measures introduced by reason of practical necessity, caused its disruption later.

In the re-establishment and extension of the measures introduced by Henry I for the maintenance of peace

1. Introduction to the Gesta Regis, II, xx.
2. Stubbs : Constitutional History, I, 477.

and order, he was exercising a newly found regality. But while he used the services of new men as counsellors and administrators, he never neglected to call the great council, which comprised the landowners, his feudal tenants. It is one example of a tendency which is continually found throughout English constitutional history ; that the new can be introduced while the old is not abolished. Henry became a king with a prerogative right ; but he did not cease to be a feudal overlord. The new was superimposed upon the old ; it did not replace it. It is a tendency particularly noticeable in conciliar developments. On each occasion that the Curia Regis or Council threw off a separate institution for the exercise of a particular function, it retained in itself the power to exercise the function as before.

Among the baronage itself there were during the reign of Henry II no signs of open opposition to his policy; no jealousy of the "new men". The almost valueless account by Ralph Niger is the only suspicion of this feeling. J.C. Russel has regarded Becket's opposition to Henry as the focal point of popular and baronial opposition to the king, who by 1170 had established his position as a strong personal monarch.<sup>1</sup> He regarded Becket's martyrdom and the king's subsequent humiliation as a moment of triumph for the baronial party, Becket being a feudal baron, and as such a

1. Anniversary Essays Presented to Haskins, 279.

member of the great council. He believed that the baronage looked upon Becket's attitude as a successful revolt of one of their own members. The lack of support given to Becket by both the lay barons and the clergy at Clarendon and Northampton suggests a revision of this assumption, however. At this time, there was no conscious feeling of corporate action among the barons, and therefore no feeling of revolt by the baronage as such against the king. The revolt of 1173 has rather the character of a return to the struggles of the previous reign, in which most men supported both sides at different times according to what seemed to be their personal advantage. This view is supported by the fact that, like the previous struggle, its immediate cause lay within the royal family itself and was connected with the succession to the throne. There are no signs that it was a revolt against the official class of counsellor or against the new prerogative processes. The significant thing is not that the seeds of revolt were sown in this reign, but that the soil was prepared for the seeds to be sown when the climate was suitable.



CHAPTER I.  
-----Purposes for which Great Councils were held.  
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"The functions of the national council, parliament, assembly of estates, diet or cortes, may be resolved into four: legislation, taxation, judicature, and deliberation on politics generally". This is Stubbs' view of the purposes for which Great Councils were held. It may be compared with Henry II's own view. "Quotiens in regno meo de magnis aliquid agendum occurit, concilia celebranda sunt, et consilia sumenda"<sup>2</sup>. The intention in Part II is to show what functions these Councils actually fulfilled during Henry's reign. It is divided, on the basis of Stubbs' definition into counsel, legislation, finance, and justice. The question of the obligation to summon the council will also be discussed.

According to Adams, the distinction between the two conciliar organs was one of size only and not of function, but he also says that "it is highly probable that, if there was no difference of function, there was from the beginning in practice a difference of fields"<sup>3</sup>. The everyday details of administration were dealt with by the perpetual group of counsellors, and Great Councils were summoned when a question of greater

1. Stubbs: Lectures on Early English History, 297.

2. Materials for the Life of Becket, V, 25.

3. Adams: Council and Courts, 110.

importance arose, their size depending on the convenience of time and place.

The division of function must have been the result of the close connection of the perpetual group with the execution of the measure agreed upon. That the function of the great council was purely advisory and not executive has been emphasised by several constitutional historians. <sup>Tout</sup> ~~Tiet~~, in his review of 'The King's Council', suggests that Baldwin devoted too much of this book to the relations of the council with other departments of state, whereas the essential function of the council was not to act, but to give advice, and consiliar action was always limited by the lack of executive authority. Wilkinson speaks similarly of the thirteenth century council, "a council which, although it quite frequently acted in the king's absence, was not clearly recognised as having executive functions of its own which were reasonably defined. Every executive act was an emergency, due to the king's absence or similar cause. The real business of the council was still to advise and not to act".

There are numerous cases in which <sup>v</sup> several chroniclers report on the same event, when one will mention that a Council was summoned to deal with a matter, and another will speak as if the king carried out the matter in hand by his own unaided authority. This may be seen particularly in the early

1. *Dialogus de Scaccario*, ed. Hughes, Crump, and Johnson, 76.  
1. Constitutional History, 117.

measures for the banishing of Stephen's mercenaries, the destruction of adulterine castles, and the resumption of alienated demesne. This supports the view that the council's function was purely advisory, and that the execution of a measure lay with the king, who may or may not have acted upon the advice given. Chapter II will show, however, that the Great Councils themselves were rarely required for advice, and that where consent was wanted and discussion allowed, they were not expected to oppose the king's will. Henry wanted from these primarily consent to measures on which he had already decided with the advice of the ever-changing group of wise men who were his perpetual counsellors. It has already been shown that this group, by the end of the reign, was dominated by an official element, which meant that in practice the same men were at once the advisers and the executors of the king's policy.

The king's impatience of ceremony is frequently indicated. The good conduct of routine administration seems to have been more important to him than the formality of holding discussion or receiving consent. FitzNeal wrote: "Sed fit interdum ut quod sano consilio vel excellenti mente concipitur intercedente pecunia citius conualescat et quod difficile videbatur per hanc quasi per quandam negotiorum <sup>t d</sup>mediorum~~um~~ facilem consequatur effectum".

1. *Dialogus de Scaccario*, ed. Hughes, Crump, and Johnson, 56.

There seems to have been no fixed principle behind the summoning of the great council as far as either time or business was concerned. The complete list of Councils given in Appendix V will show the wide variety of business for which they were called. Sometimes the inference may be drawn that they were summoned for a definite and immediate purpose; sometimes they seem to have been called automatically at intervals to deal with any business which happened to arise. In the first group must be included the great Councils of Clarendon and Northampton of 1164. Others dealt with more general business. An anonymous life of Becket says that the Council of Westminster of October 1163 was summoned "ob negotia regia pacisque regni firmamentum". The author of the Gesta Regis speaks similarly of the Council of Geddington of May 1177 which was adjourned to Windsor, and which "treated of the peace and stability of the kingdom".

This same Council illustrates the occasional habit of dealing with various kinds of business in the same assembly. Having appointed new castellans, the king then proceeded to restore the Earl of Chester's lands, and afterwards to make official appointments for Ireland. Formality and ceremonial was frequently combined with business discussion in the same Council. At the meeting at Northampton in January 1177, the first business was to receive the ambassadors of the Count of Flanders and to discuss the marriage of his nieces. In the same Council William d'Aubigny formally inherited his father's lands, and was granted the earldom of Sussex. This was followed by the judicial decision as to the lands of William de Cahannes,

and the consequent restoration of the lands of the Earl of Leicester. Afterwards, Guy, Dean of Waltham, resigned his deanery, and the king discussed his proposition to remove the secular canons from the church of Waltham and to institute regular canons. William FitzStephens' account of the Council of Northampton of 1164, summoned specifically for the trial of Becket, reports that after the flight of Becket the Council discussed other business; "Reliquum diei et concilii insumitur in tractando de copiis pedestribus in Gwalliam rebellem et regem Resum foederifragum ducendis". Sometimes a social court and a business meeting coincided; sometimes the second was an adjournment of the first. On one occasion when the king and his barons visited Mont St. Michel they were asked to deal with business affecting the Abbey after they had heard Mass and dined with the monks.

These few examples will show that although Henry never neglected to summon his tenants-in-chief and to hold Councils, the regularity of the meetings does not match their frequency. The following chapters will discuss the king's purpose in summoning them and the scope and efficacy of their authority when summoned.

1. Chronicle of Robert de Torigni, Rolls Series edition, 197.

1. Baldwin: The King's Council, 22.  
2. Constitutional History, 135.

## CHAPTER II.

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Counsel and Consent.  
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Medieval kings "did not regard it as a sign of weakness, but a source of strength, to have competent aid and counsel". It has already been shown that the element of efficiency and ability lay in the permanent group of counsellors during the reign of Henry II, and not in the great feudal council. Wilkinson, speaking of the thirteenth century institutions, says that the kings wanted advice from their council and consent from their Parliaments. The important question is, whether in the reign of Henry II the great councils were required to give advice or consent; and, in the case of the latter, whether their consent was automatic or whether they might discuss the matter in hand and as a result of the discussion refuse to give their consent. It is also open to question whether, if they refused their consent, the king was bound to abide by their will.

The only method of answering these questions is by comparing the various Councils held, according to contemporary accounts, and to assess how often the king asked for advice and how often for consent; how often his will was opposed and how often he heeded the opposition; and how often and in what circumstances he allowed discussion.

~~From the point of view of detail, contemporary writings~~  
group known as the king's "evil counsellors". Very few writers

1. Baldwin: *The King's Council*, 22.
2. *Constitutional History*, 135.

Becket. Herbert of Bosham says that the king's advisers knew

From the point of view of detail, contemporary writings on the holding of Great Councils are valuable. As far as the terminology is concerned the value is for the most part maintained, because there are several indications that the men of the time understood and appreciated the difference of meaning between presence, counsel, and consent. There is a charter in Delisle's collection which illustrates this point. It records the settlement of a dispute between the Bishop of Winchester and the Hospitallers about the Priory of the Holy Cross, "by the intervention of king Henry, in the presence of Richard, Bishop of Winchester, the Prior John and the convent of Winchester giving their assent, Roger de Molins, Master of the Hospital in England being present and giving his assent, by the agreement and common will of the brethren". There is a similar record in the Calendar of Charter Rolls, this time between the Bishop of Lincoln and the Abbot of St. Albans, which was determined in the presence of the king, the two archbishops, and the other bishops and barons of the kingdom, with Henry's assent, and by the counsel of the bishops.<sup>2</sup>

There is one feature, however, noticeable in contemporary writings, which makes it very difficult to assess the importance of the part played by the council: that is the tendency to impute praise to the king and blame to an undefinable group known as the king's "evil counsellors". Very few writers were prepared to blame the king himself for his actions against Becket. Herbert of Bosham says that the king's advisers knew

1. Recueil des Actes de Henri II, II, 258, No. DCXLVI.
2. Calendar of Charter Rolls, IV, 141.

from the first the difficulties which would be caused by the writing down of the customs of the kingdom.<sup>1</sup> Even in a matter like this, on which he felt strongly, he was reluctant to blame the king for the measure. Similarly Becket excommunicated the king's counsellors: he did not dare to touch the king himself. Writing to the pope in 1170 concerning his reconciliation with Henry, he said: "We have no fear that he will not fulfill what he promises, unless his counsellors prevent him, counsellors whom the pricking of a guilty conscience will not silence".<sup>2</sup> John of Salisbury in theory did not believe that the king should benefit from such immunity. "Si rex immunis creditur, quia licet ipsius auctoritate, aliorum tamen ministerio maleficia exercentur, potest et David non imputari sanguis Uriae, quia ab eo non proprio, sed gladio filiorum Ammon interfectus est".<sup>3</sup> But there is another letter of his to Walter de Insula in which he speaks of "those who tried to ruin his dearest lord, the great prince, hardening his gentleness with bitterness, and destroying the keenness of reason with deadly counsels".<sup>4</sup>

This makes it extremely difficult to apportion the credit or blame, to assess whether responsibility lay with the king, or with his counsellors, and therefore to discover the extent to which he asked for advice and acted upon it. Sometimes the

1. Materials for the Life of Becket, III, 277.
2. Ibidem, VII, 334.
3. Letters of John of Salisbury, ed. Giles, II, 32.
4. Materials for the Life of Becket, VI, 9.

we will do what we ought, according to the counsel of the clergy and laity of our kingdom and our lands beyond the seas. If, therefore, you think that we have done so, let us

tendency is reversed, and the credit for success is misplaced, as for example concerning the measures adopted by the king, immediately after his accession, to re-establish peace and order. The writers with a bias in Becket's favour would give the Chancellor all the credit for these measures. On the other hand, William of Newburgh, who is always prepared to interpret even a point of law in Henry's favour, gives the credit to the king himself.

In the same way, it is difficult to judge Henry's own attitude to his council, and to assess its prestige and significance in his own estimation. On the few occasions when he ~~actual~~ actually spoke of its greatness or its importance his motive seems to have been either to justify an act which had met with disapproval from outsiders, or to prove the inevitability of an act which originally emanated from his own will and whose maintenance was in his own interest. When he discussed the Constitutions of Clarendon during Becket's exile, the fact that they had been recognised and recorded at a session of the great council proved very useful to him. Any change could only be brought about by the counsel of his barons and according to the dignities and customs of his kingdom. His letter to the College of Cardinals in 1167 illustrates his attitude. "If the archbishop, having fled voluntarily, wishes to return in the same way and will do what he ought to us as his lord and king, we will do what we ought, according to the counsel of the clergy and laity of our kingdom and our lands across the sea. If, therefore, you agree that we have acted in any way

contrary to law and moderation, by the counsel of our clergy and barons, according to the customs, dignities, and majesty of our kingdom, we will freely do whatever we ought to do".<sup>1</sup> The ~~incident~~ incident of the papal subsidy of 1184 is another example of the similarity of interest between the king and barons as against a foreigner.<sup>2</sup>

It is quite certain that Henry did not anticipate opposition, and was not accustomed to successful resistance to his will, in either politics or war. The attitude is illustrated in a letter concerning the Constitutions of Clarendon, written by Foliot and quoted in English by Lyttelton,<sup>3</sup> that the king "would, long before that time, have given up such of those customs as were most offensive to the clergy, if two considerations had not hindered; first, the fear of its being thought dishonourable to him, that the rights of a kingdom which had devolved to him from his ancestors should be impaired in his days; and secondly, the shame, that what he granted from a motive of piety, should be supposed to be extorted from him by force". The early stage at which he absolved himself from the necessity of heeding the counsels of individuals has already been ~~discussed~~ discussed.<sup>4</sup>

1. Letters of Gilbert Foliot, ed. Giles, II, 283.

2. *Infra*, Part II, Chapter V.

3. History of the Reign of Henry II, II, 429.

4. *Supra*, Part I, Chapter III. Giles, I, 200-201.

There are numerous indications that it was not only useless but also dangerous to oppose the king's will, and likely to result in difficulties affecting more than the individual who had dared to express his own opinion. When Hilary of Chichester told the pope that Becket's refusal to use the counsel of wise men had embroiled the church and the kingdom in so many difficulties, the significance really was that ~~the~~ <sup>the</sup> more consilium which the Archbishop despised represented the king's will, and opposition to the king's will was always likely to cause far-reaching trouble.<sup>1</sup> The letter from Peter of Blois to Richard, Archbishop of Canterbury, which was supposed to express the king's opinion, shows that Henry was determined to have no-one marching out of step.<sup>2</sup> The general deference to Henry's will may be accounted for both by the fear in which all men stood of his disfavour, and by the advantages obtainable from his support. Gilbert Foliot's letter requesting the king's permission for the collection of Peter's Pence in England illustrates these advantages. He says that it would only be safe for him to make the collection if he did so with the king's mandate and support.<sup>3</sup>

The man who was perhaps best acquainted with the disadvantage of losing the king's favour was Arnulf of Lisieux.

1. Gervase of Canterbury, I, 192.

2. Supra, Part I, Chapter III.

3. Letters of Gilbert Foliot, ed. Giles, I, 200-201.

His letter of 1166 written to Becket during his exile suggests that the hostility of the nobles was caused by fear of the king. This implies that the general consent to the measures adopted at Clarendon and Northampton was dictated, not by personal conviction, but by knowledge of the retribution which might follow opposition. The futility of resistance he describes in no uncertain terms. "Magnus est, multorumque maximus; quoniam nec nec superiorem habet qui terreat, neque subditum qui repugnet, nec alienis extrinsecus pulsatur injuriis, quibus ab innato domesticae feritatis mansuescat affectu; sed omnes qui adversus eum contentionis causas habent, potius ad vanae pacis foedera peritura conveniunt, quam ad virium experimenta decurrant, quoniam divitiarum copia, multitudine fortium, amplitudine potestatis, excedit".<sup>1</sup> The sub-prior of Canterbury, according to Gervase, expresses the same attitude, when speaking of the royal counsellors. "The men are good and wise, but we mistrust them, because they always take the archbishop's side, and would never oppose the king, nor further the justice of our cause".<sup>2</sup>

As far as the Council of Clarendon of January 1164 is concerned, it is abundantly clear from all contemporary accounts that what Henry wanted was the consent of the bishops in the presence of the laity. There was a considerable amount of time spent on discussion as to the details of the enactment,

1. Materials for the Life of Becket, V, 306-307.

2. Gervase of Canterbury, I, 448.

3. Materials for the Life of Becket, V, 527-528.

<sup>ut</sup>  
 but once the recognition had been made, Henry wanted absolute and unqualified consent. The events provoked by Becket's reluctance to accept, and later refutation, are well-known. The other bishops were undivided, if not in opinion, at least in their ~~read~~ readiness to give the consent which the king required of them. Foliot, writing later on the subject of the Council, said, "Quis unquam pater filios in sua plus habuit confessione concordet? Quis unquam plus unanimes?"<sup>1</sup> It is likely that Foliot realised that acceptance would be the most advantageous move for both church and state, anticipating the trouble which would inevitably be caused to both by opposition to the king's will. The implication in many of the biographies of Becket is that the majority of the bishops accepted the Constitutions out of fear of the king's power and the likelihood of revenge, although this may be accounted for by the writers' bias in Becket's favour.

One of the most important sources of information for judging the business of the Councils during the next century is the writ of summons. As none are extant for the reign of Henry II, it is necessary to rely on narrative sources. The variations of the word tractare are among the most significant parts of the later writs. The only writers who used the word regularly for the reign of Henry II are Robert de Torigni and the author of the Gesta Regis. It was applied to the Councils of Bermondsey 1154, Winchester 1155, Neufmarche 1160,

1. Materials for the Life of Becket, V, 527-528.

Clarendon 1164, Argentan 1171, Geddington 1177, and Clerkenwell 1185. In ~~most~~ the further details concerning the holding of most of these Councils, however, there is no indication that the matters in hand were discussed more thoroughly than at most other sessions. The word does not seem at this stage to have acquired a technical significance.

The list given in Appendix IV shows that there were two periods of the reign in which Councils were held very frequently, these being immediately after Henry's accession, and immediately after the end of the rebellion. It is possible to compare these two groups of sessions to see the extent to which Henry required counsel or consent from his barons, and allowed discussion among them.

Gervase of Canterbury uses the word tractare of the Christmas ~~festivity~~ Council of 1154. This is the first example during the reign of the use of a Great Council for discussion followed by execution of the measure in hand according to the king's will. Gervase says that the Council of Bermondsey treated of the matter of banishing mercenaries and destroying castles, but that the measures were carried out "ex praecepto regis". Other~~s~~ authors do not suggest that Henry acted on anything but his own authority in this matter. It seems that ~~what~~ what was important to contemporaries was~~s~~ the execution of a policy, and not the discussion or consent given to it.

According to Gervase, the matter of alienated demesne was also submitted to a Great Council, in London in March 1155. The Battle Abbey Chronicle describes the assembly as a

a generale concilium. In this Council, according to Gervase, the king began to reason<sup>1</sup> with those who still held parts of the royal demesne. The general impression given in contemporary accounts is, however, that once Henry had decided on a general resumption of demesne, his most effective aid was not reason or discussion, but the universal awe of his own strength. Gervase himself proceeds to describe how the Earl of Hereford, having learnt of Henry's intention at the Council, did not remain to argue, but left the court secretly and returned to fortify his castle. It does not seem to have occurred to anyone, except William of Newburgh, to question the king's right to take this measure, and his answer was in the affirmative.<sup>2</sup>

A month later there was another Great Council held at Wallingford, a "general assembly of the bishops and nobles of all England".<sup>3</sup> Its purpose was to secure oaths of fealty to the king's baby son.

The last great assembly, excluding the Christmas gathering at Westminster, held before Henry's first return to the Continent, was summoned to Winchester at Michaelmas. The main item was the potential conquest of Ireland, which was treated with the barons. The whole scheme was postponed, however, because it was not pleasing to the king's mother, the Empress Matilda.

1. "Coepti rationem ponere". Gervase of Canterbury, I, 161.
2. "Quoniam chartae invasoris juri legitimi principis praejudicium facere minime debuerunt". Historia Rerum Anglicarum, Book II, Chapter II.
3. Gervase of Canterbury, I, 162.

Thus, within one year of his accession, Henry had held five Great Councils. Two were purely formal. In one the king reasoned with his barons. In two he treated with them. But in every one the final decision, and the execution of the measure discussed, depended on his own will and power, or in the last case on the will of the Empress.

It would be impossible to analyse in the same detail the Councils which were held in the few years after the rebellion, because they were more frequent, and each dealt with a larger amount of business. Between May 1175, when the king landed in England, and his return in August 1177, eighteen Great Councils were held. Of these, five were great social courts, two at Christmas, two at Easter, and one at Whitsun 1177. Six were concerned almost entirely with formalities; the reception of homage from the Welsh princes, and the king and barons of Scotland; the making of a treaty with the king of Connaught; and the reception of the ambassadors of the king of Sicily followed by discussion concerning the marriage of the king's daughter Joanna. One ~~was~~ a great military assembly. The remaining six were purely business meetings.

The Council held at Woodstock in July 1175 was mainly concerned with the election of abbots to vacant religious houses. According to the Gesta Regis, it was at this Council that the king forbade his enemies to come to court except by his orders, and never between sunset and sunrise. There is 1. There is no second authority to support this statement.

no suggestion of any discussion of the matter by the barons.

One of the most important Councils, constitutionally, was that of January 1176, held at Northampton, where the Assize of Clarendon was extended and confirmed, the country divided into six circuits for the administration of justice, with itinerant justices appointed for each. According to the Gesta Regis, the king made the Assize in the presence of his bishops, earls and barons, by the counsel of king Henry<sup>1</sup> his son and that of his earls, barons, knights, and men.<sup>1</sup> Diceto's version<sup>2</sup> says that the king appointed justices according to the counsel of the king his son, in the presence of his bishops, earls, barons, knights, and his other men who consented to the measure.<sup>2</sup> There seems to have been general agreement both as to the measure itself and the details of its organisation. Similarly the Assize of Clarendon, made ten years previously, had been drawn up with the assent of the archbishops, bishops, abbots, earls, and barons of all England.<sup>3</sup> Here also there seems to have been general agreement, in spite of clauses<sup>3</sup> empowering sheriffs to enter lands and jurisdictions to see to frankpledges or arrest men presented of felonies.

Of the matter of Joanna's marriage, Diceto says, "habito tractatu, commune responsum est".<sup>4</sup> The discussion was

1. Gesta Regis Henrici Secundi, I, 107.

2. Ralph of Diceto, I, 404.

3. Stubbs: Select Charters, 170.

4. Ralph of Diceto, I, 124 408.

1. Gesta Regis Henrici Secundi, I, 124.

2. Supra, p. 404.

held at London in May 1176. It was a matter on which opposition would not have been expected, and none was raised.

The question of adulterine castles was raised again at this time, and as before, a Council was held concerning their destruction, but the execution of the measure depended on the king's own will. The account in the Gesta Regis of the Council at Windsor in September 1176 says, "Venit dominus rex ad Windeshoveres, et ibi concilium suum tenuit. Et inde misit nuncios suos per universa castella Angliae, et ea in manu sua saisivit".<sup>1</sup> At the same time he appointed Richard of Ilchester Justiciar of Normandy in the place of William de Courci, and seized the rebel castles of Normandy. There is no suggestion that the responsibility for the last two measures lay with anyone but himself. In any case, it is most unlikely that the counts and barons of Normandy were present to dispute the handling of their own property.

The great variety of business dealt with at the Council of Northampton in January 1177 has already been mentioned.<sup>2</sup> The matters of restoring their lands to the Earls of Leicester and Chester, and the resignation of the deanery of Guy of Waltham were matters personal to the king rather than of national importance. No details are given as to the part played by the barons in this assembly.

The most magnificent Council held during this time was.

1. *Gesta Regis Henrici Secundi*, I, 124.
2. *Supra*, p. 93-94.

that which carried out the arbitration between Castille and Navarre. There is no doubt that there was discussion at this Council: "habito cum deliberatione consilio" are the words of the final agreement. That the barons were expected to play a prominent part in the discussion is evident from the adjournment while each party recorded its case in writing, because the English barons could not understand the ambassadors' language. In a case such as this, however, it would enhance rather than diminish Henry's prestige to hold discussion; and in any case discussion could not produce opposition to his will, because it was a matter on which he had an open mind, being outside the sphere of English politics.

The word tractare is used of the Council of Geddington of May 1177 and of its continuation at Windsor. There is no more detail of the first than the words "cumque illuc diu tractassent". Of the second part of the Council the Gesta Regis says: "Cumque ibidem diu de pace et stabilitate regni tractassent, per consilium episcoporum et comitum et baronum suorum removit custodes castellarum". There was evidently discussion of the matter in hand, but there is no indication of any sort of opposition, and the execution of the measure was again the king's responsibility.

During this period Henry carried out the introduction of the nuns of Fontevraud in replacement of those of Amesbury.

1. Gesta Regis Henrici Secundi, I, 160.

The charter recording the exchange says that it was carried out by the counsel of the Archbishop of Canterbury, and many bishops, magnates, and barons, but also, typically, by the command of the Pope and according to Henry's own will: "mandato domini pape Alexandri, voluntate etiam mea".<sup>1</sup>

Some mention should be made of the more outstanding occasions between these two periods, and during the last years of the reign, on which the king summoned Great Councils to deal with matters of importance. The best-known cases in which discussion was allowed are those in which the business was judicial, when discussion was held by the litigants themselves, or on points of procedure. The Council of Northampton illustrates this point; but a later Chapter is devoted to justice in the great council. There are four other important occasions on which the business before the council was a matter of political expediency, and which should be noticed here. These questions are the papal schism, the inquest of sheriffs, the asking of licence to go abroad, and the suggestion that the king might go on crusade. The evidence will show that to none of these matters did Henry require or receive anything but consent, and that such consent was given automatically.

The matter of the papal schism had at first very little direct connection with English politics, but later, during the

1. Delisle: *Recueil des Actes de Henri II*, II, 113, No. DXXXIX.  
2. *History of the Reign of Henry II*, II, 112-113.

Becket controversy, it became more important to the king. When Henry and Louis first agreed to accept Alexander and reject Victor, Torigni's report says that Henry assembled the bishops and abbots and barons of Normandy at Neufmarché, "et ibi tractatum est". This implies that discussion took place, but if it is taken with its context, it appears that the king had already made up his mind, and the Council had merely to agree with what he had decided, Torigni's words are: "tractatum est de receptione papae Alexandri et refutatione Victoris; et consenserunt Alexandro, reprobato Victore".<sup>1</sup> Lyttelton's history gives details of the clerical Council summoned in England on Henry's orders by Archbishop Theobald. He quotes in translation a letter of the Archbishop to the king describing the assembly: "that the Council had not passed any judgment on the matter proposed to them, nor had they decreed anything about it in prejudice to the majesty of the crown; as it would have been contrary to their duty to do so: but they had lawfully and dutifully given that advice which he had required of them by his royal mandate".<sup>2</sup>

This may be compared with Henry's later attitude to the schismatic Church. After Becket's flight, Henry could demand that his point of view be considered favourably in the papal curia by threatening to transfer his allegiance to the anti-pope, and therefore, politically, from the king of France to

1. Rolls Series edition, 207.

2. History of the Reign of Henry II, II, 112-113.

the Emperor. There is a letter from Henry to the Archbishop of Cologne,<sup>1</sup> stating that the king had long wished for an opportunity to withdraw his allegiance from the Pope, who was supporting the traitor Becket. For this reason, he had, by the counsel of his barons, and the consent of his clergy, sent ambassadors to Rome, who were to demand that the Pope should cease to support ~~the~~ Becket, and should recognise the ancient customs of the kingdom of England. Their embassy was to be carried out "publice et manifeste ex parte mea, et totius regni mei, et omnium aliarum terrarum, quas habeo". The letter continues: "Quod si forte alicui petitionum mearum contradicere voluerint, neque ego, neque barones mei, neque clerus meus aliquam eis ulterius servabimus obedientiam".

In actual fact Henry never attempted to adhere to the schismatic party, and probably never intended to. The letters of the Emperor Frederick suggest that the English envoys who attended the imperial diet took an oath to observe the anti-pope, on behalf of the king and barons of England,<sup>2</sup> but there is also a letter written by the Archbishop of Rouen, which states emphatically that no such oath was taken, and that the envoys had no mandate to take it.<sup>3</sup> The whole impression is that Henry was just playing with both parties and waiting for the

1. Letters of Gilbert Foliot, ed. Giles, II, 279-280. There is a slightly different version in Matthew Paris: *Chronica actionum Majora*, 239-240.
2. Materials for the Life of Becket, V, 182-187.
3. Ibidem, V, 194.

next move from the Pope. ~~If~~ The barons and clergy who would not preserve their obedience to the Pope if he opposed Henry's will, may or may not have known what was in Henry's mind when he took these measures. What is certain is that they would not have changed their personal convictions unanimously since the earlier agreement. There is no sign of any opposition to the change of policy, or the tricks of diplomacy, with the possible exception of the incident when the Earl of Leicester refused to receive the Archbishop of Cologne on his arrival in England. This merely suggests that Henry regarded his Justiciar with respect rather than suspicion, and would allow a difference of opinion to such a man where the matter was one of personal feeling and not of national policy. There is ~~no~~ obviously a connection between the hint that support might be given to the anti-pope, and the projected marriage of Henry's daughter Matilda with the Duke of Saxony. The important point is that whether or not there was a change either in plan or ~~of~~ opinion, Henry could safely assume, in his letter-writing, that the agreement of the barons would be with his decision.

His tendency to disavow at a later date the measures adopted by a deputy or envoy is analogous to Elizabeth's attitude to her pirates, who brought treasure to England and the Queen, but without her direct consent. The final decisions on questions of policy always rested with the king, and the action taken by the envoys before the final decision was made might have no relation to what was in the king's mind at the time. The attitude seems to have been known outside England. In

1168 Henry left three of his greatest counsellors, the Archbishop of Rouen, Richard de Humez, and Richard de Luci, to conclude the peace between him and the king of France according to the conditions which Louis had already accepted. Louis, however, was unwilling to make an agreement with these men. He must have known Henry's policy too well.

There were two Councils concerned with the inquest of sheriffs. The first was an adjournment to London for a business meeting of the social court held at Windsor for the Easter festival of 1170. Gervase of Canterbury says that the king summoned his Council, and having appointed the barons who were to carry out the inquest, told them what they had to do. This is followed by the articles of inquest. The account in the Gesta Regis says that Henry held a Council, and there dismissed almost all the sheriffs, as if by "an extraordinary act of authority". The returns were due at the time of the coronation of the young king. Gervase says of those who attended the second assembly: "Quisquis juxta conscientiam suam metuebat, nesciabant enim quid rex statuere decrevisset". There is a similar indication in each account that Henry had decided the matter for himself. The barons merely had to listen and agree.

It was at this same Council that Henry, according to the Gesta Regis, asked for permission to go abroad. The words are: "Et ibidem coepit rex licentiam a comitibus et baronibus suis transfretandi in Normanniam".<sup>2</sup> This was the last item

1. Stubbs: Constitutional History, I, 472.
2. Gesta Regis Henrici Secundi, I, 6.

in a series of formalities. The first day of the Council saw the coronation of Henry's son, and the second day the homage and fealty of the king and barons of Scotland. The impression is that the king wished to maintain the formality right to the point of the Council's dissolution. The chronicle gives as Henry's reason for going the indignation of the king of France that his daughter had not been crowned with the young king her husband, so it may be that Henry anticipated needing the support of the English nobles if trouble arose in France; and that his rigid observance of the formality was therefore a strategic move. It would be difficult to believe either that the earls and barons would have refused to allow Henry to go, or that he would have acted in any way not prompted by his own will.

A similar case occurred in 1185, more famous because a Council was specially called to discuss the matter. Heraclius the patriarch of Jerusalem, and the Master of the Hospital, came to Henry to ask for ~~to~~ a crusade against the invaders of Palestine. The vital question was whether Henry should go to the East in person. There are three independent accounts of the Council held at Clerkenwell.<sup>1</sup> Gervase of Canterbury gives the impression that Henry had already made up his mind that it would not be safe for him to leave his kingdom

1. William of Newburgh does not mention the actual Council. Matthew Paris copied from Diceto, and Hoveden from the Gesta Regis.

exposed to dangers. "Petitioni non annuit patriarchae".<sup>1</sup> He then goes on to say that the barons assembled at the Council agreed with him. The Gesta Regis says that Henry gave the keys of the sepulchre back to the patriarch until he had taken counsel with his barons. All he has to say of the meeting itself is that the matter was treated for some time, and the final agreement was to consult Philip the king of France.<sup>2</sup> The best known account is by Ralph of Diceto,<sup>3</sup> who says the king assembled his barons and agreed to abide by their decision, "ut quod acciperet ex eorum consilio modis omnibus observaret". The barons reminded him of his coronation oath, and suggested that ~~the~~ his duty lay with the safety of his own kingdom rather than with that of Jerusalem. Henry must have been aware of the importance of his personal presence in the kingdom. It does not seem improbable that, even if he did ask for advice, he accepted it because it was unfavourable to a project which his numerous recent delays suggest he already deemed inexpedient. It was not unwise to ask and accept advice on a measure in which his and his barons' interests coincided.

The question was, what did Henry want from his great councils? Could the assemblies hold discussion and withhold consent? It is clear from all accounts that discussion was held in the Great Councils in three circumstances: in the first

1. Gervase of Canterbury, I, 325.

2. Gesta Regis Henrici Secundi, I, 336.

3. Imagines Historiarum, II, 33-34.

place in matters of formality or where English political considerations were not involved; secondly where Henry knew that his and his barons' interests coincided; and lastly where the matter was one on which the king had already made up his mind and was not likely to change it. There certainly was no question of discussion on a ~~question~~<sup>matter</sup> raised by the assembled barons. On the occasions when their consent was required, the matter in question was propounded to them by the king. They had merely to agree with what he had already decided, a decision probably taken with the counsel of the experts who were constantly with him.

That there was no opposition even to measures which seem to have been in certain respects disadvantageous to the baronage is not really surprising when it is seen as part of the general picture of the reign. In 1154 the barons, who had been pursuing their individual designs during the anarchy of the  $\rho$  previous reign, were exhausted with the conflict. Hardly anyone would have opposed the only man who could bring peace to the country. The feeble efforts of the few opponents who refused to restore alienated demesne make clear the strength of Henry's position right from the start. By the time that the memory of the anarchy had become sufficiently distant for the nobles to have lost their distaste for warfare, two factors combined to place the king in a position in which he did not need to fear the efficacy of opposition: the first was the experience everyone had felt of ~~his own~~ the strength of his own hand; the second was the loyalty and efficiency of the new

class of administrators and close <sup>u</sup>consellers he was beginning to gather round him. The barons were never given a chance to develop a unity within their own class. Opposition would never be possible until they learnt the means of corporate action. It has already been shown that they again followed their individual designs when rebellion broke out. It needed more extensive abuses than Henry II's to give the barons a reason for corporate action and more urgent circumstances than the king's temporary absences to provide the occasion.

"In private perhaps the sovereign listened to advice, but, so far as history goes, the counsellors who took part in formal deliberations must have been unanimous or subservient. An assembly of courtiers, holding their lands of the king, and brought together rather for pompous display than for political business, may seem scarcely entitled to the name of a national Council. Such as it was, however, this ----- was the council by whose advice and consent the king<sup>s</sup> condescended to act, or to declare that they acted".<sup>1</sup> If there had been any possibility of discussing the royal policy and opposing it, there would have been no need for rebellion in 1173. As it was, both the policy and its execution belonged to Henry himself. His barons were sometimes required to listen and agree. Although he was scrupulous about the summoning of his great council, he wanted it for no other reason than the formality of consent.

1. Stubbs: Constitutional History, I, 357-358.

## CHAPTER III.

## Summons and the Obligation of Attendance.

The last Chapter discussed the question whether the king had to obtain the consent of his barons to a measure before its execution. There is another sort of obligation to be considered. This is the question raised by Stubbs in his Introduction to the Gesta Regis.<sup>1</sup> Did Henry II have to summon Great Councils? It has already been shown that he did summon them regularly. The question is, whether he was under an obligation to do so. Similarly, did the barons have to attend? These queries imply a further question. Who reaped the benefit from the summoning of these Councils? Did the barons regard their attendance as a burdensome duty or a coveted right? Did the king regard the regular summoning of Councils as a nuisance or as an advantage? A great deal of authority had been left to individual magnates during the time of the anarchy. The potential effects of the superimposition of strong government on this situation makes the attitude of the magnates to that government all-important. It necessarily follows the question of asking advice and obtaining consent.

That consent was a matter of formality and opposition not anticipated has already been shown. There is no sign that the barons were discontented with the situation. There are the most obvious explanations seem to be that it was a safeguard

1. Gesta Regis Henrici Secundi, II, CXVII.

three possible explanations for their attitude. Either they feared the king too greatly to dare to oppose him, or they trusted him sufficiently to allow him to execute his own will. The third possible explanation is that they were oblivious of the ineffectiveness of their own opinions.

There is an element of truth in each of these. They certainly feared and respected the king's strength. They probably trusted him, largely as a result of the wisdom of his policy towards them. After his accession he made his strength known without delay. Not one rebel remained undefeated. Those who persisted in their opposition were immediately crushed. Yet his mercy towards those whom he had defeated is no less striking than his military power. It not only shows Henry's strength at this early stage, but also provides one example of many acts which prove that Henry could have been his own master and executed his own will, but chose, when alternative methods offered, to adopt the course, which, if not essential at the moment, was a wise provision for the future. The same policy was adopted immediately after the rebellion of 1173-4. A contemporary comment on the policy is provided by Richard fitz Neal in the Dialogus: "Maluit expugnatis parcere, quam eos punire, ut eius regnum crescere viderent".

It is at these same two periods, those of the king's greatest power, that the assembling of Councils was most frequent. The most obvious explanation seems to be that it was a safeguard against a recurrence of the previous troubles. Yet, although

little is known of the main considerations which dictated the revolt of 1173, there is certainly no indication that the king's attitude to his great council furnished a motive. The revolt was definitely not a joint <sup>c</sup>stand of the baronage against the king. It was the lack of corporate action which brought about its collapse.

It seems that attendance at the Great Councils could not have been politically advantageous to the barons, because they had no real opportunity to express their opinions, and certainly no sense of corporate action. It also seems that the Councils could have been of little real benefit to the king as he formulated and executed his own policy with the help of his personally chosen ministers.

Could it have been then, that the reason for holding regular meetings lay in the necessity to gather together the whole community on occasions? Was there any theory or feeling that the barons represented the rest of the community? "The theory of a representative body was perfect; each tenant-in-chief representing and answering for his own mesne tenants, although the principles of delegation and election, already in use for other purposes, could not, so long as Councils continued to be summoned in feudal terms, be made available for this".<sup>1</sup> A feudal system of courts, in which each tenant owed suit of court to his immediate lord, seems to be incompatible with a

1. Gesta Regis Henrici Secundi, II, CXII.

representative system. Rear-tenants were being used extensively in the new judicial processes, but this feature of regal government was only just beginning. It is necessary to examine contemporary accounts to see whether any evidence exists of a representative system.

Phrases are occasionally used which suggest that the whole nation met together in representative form in the Great Councils, and this is the interpretation made by the older writers such as Lyttelton. The interpretation is chiefly due to the vagueness of the wording used by contemporary writers. Hoveden persists in describing the assembly at Clarendon in 1164 as "clerus et populus"; but it has already been shown that there was no element in this Council beyond the usual gathering of barons, ecclesiastical and lay. Lyttelton developed his theory largely on the basis of Foliot's letter which says of the Council of Northampton of the same year, "Convenit populus ut vir unus". Again, however, this was a feudal Council of tenants-in-chief, administering feudal justice, and insisting frequently on all the formalities of a feudal summons to a feudal assembly. It seems much more likely that the phrase in Foliot's letter was of the same character as his other statements about the unanimity of opinion over the Becket affair. There is no substantial indication that the picture painted by Stubbs of each tenant-in-chief representing his manorial tenants in the king's council is a true one.

The business dealt with, or the ceremonial performed did not for the most part affect the mass of the population.

There are two exceptions to this generalisation. The first is that every individual of every class was burdened by financial exactions; but these were customary obligations, and until an extraordinary tax on moveables was levied, finance did not come within the scope of the council's discussions. The other exception is the result of the prerogative legal processes and the appointment of justices to administer them. There are vivid descriptions by Peter of Blois of the troubles and tragedies caused to the ordinary people by the corruption of these men. But he goes on to say that the "clamores pauperum" cannot easily come to the king's notice. "Haec in vestram notitiam, amantissime princeps, facile venire non possunt".

As there seems to have been no system of representation, the original question remains open. Baldwin speaks of "the feudal right and duty of attendance and advice". When Henry wrote to Folbot concerning the occasions on which Great Councils were summoned, the significance of the gerund seems to have been a sense of obligation. "Quotiens in regno meo de magnis aliquid agendum occurrit, concilia celebranda sunt et consilia sumenda. Et barones pro negotiis suis consilio fulciendis confluunt". The sense seems to be that the king had to summon and the barons came. Round has said that the necessity of making a distinction between those who were and those who were not entitled to attend arose in the thirteenth century, when attendance became a right instead of a duty. No

1. Letters of Peter of Blois, ed. Giles, I, 300.
2. The King's Council, 3.

writs of summons are available for this period, but there are occasional references in narrative works to the actual summoning of Councils.

When William fitzStephen described the duties and rights of the Chancellor, he spoke as if it were a privilege of some magnitude for him to be able to attend the Councils without a summons: "ut omnibus regis conciliis, et etiam non vocatus se ingerat".<sup>1</sup>

The Council of Northampton of October 1164 furnishes the greatest detail on the question of the summons. Two writers, when speaking of the summons to this Council, suggest that in normal circumstances these might have been some slackness in attending the Great Councils. The matter of the Archbishop's hesitation to obey his summons as to a court of law and the consequent accusation of contempt cannot be used as an example because it is unique; and the king's personal anger against Becket would account for the unusual vehemence. But Diceto says of the general summons, "Convenerunt illuc episcopi, comites, barones totius regni, mandato regis urgente".<sup>2</sup> Herbert of Bosham's account supports the implication in Diceto's sentence. It says, "Ad diem et locum hunc ex edicto regio regni pontifices universi et proceres districtissime convocantur".<sup>3</sup> This indicates that even at this stage a certain significance

1. *Materials for the Life of Becket*.

2. *Imagines Historiarum*, I, 313.

3. *Materials for the Life of Becket*, III, 296.

was attached to the actual wording of the summons, and the suggestion that the Archbishop of Canterbury should have had a personal summons rather than a general summons through the sheriff of Kent, while of little importance by itself, supports the view that there was an accepted formality attached to these matters. In this particular instance the king would have insisted on the attendance of all who were summoned because a large gathering was to his personal advantage. As the envoys in the papal curia said to the Pope: "Quanto generalior esset concilii celebratio, tanto manifestior fieret fraudis et malitiae denudatio".<sup>1</sup> But the words of Ralph Diceto and Herbert of Bosham suggest that this was not always the case, and it seems impossible that the more remotely situated tenants of the Crown should continually attend Councils except as a burdensome duty.

"The constitutional limit of the power of the king is the council of the nation, and the effect of that constitutional limit will vary according as the council is composed of men who owe, or do not owe, their place there to causes within the king's power to control. In the freest ideal state the councillors will be men who do not owe their position to the king; in the most despotic, the councillors owe their position altogether to the king's will, and may be removed at his pleasure".<sup>2</sup> Stubbs goes on to say that whereas the members of the witenagemot owed their position to their

1. *Imagines Historiarum*, I, 315.
2. Stubbs: *Lectures on Early English History*, 285.

personal qualities, the members of the Norman council attended in virtue of a land qualification, a title derived from the king himself. This was unimportant during the first Norman reigns because the kings were despots, but when during the reign of Henry II "the liberties of the nation began to look up", it was necessary for the king to regulate the size and nature of the assembly. The result of this, on Stubbs' premises, was the evolution of the writ of summons.

There is no substantial indication, however, that anyone at any time during the reign of Henry II regarded attendance at the council as his right, and disputations over writs of summons and the imposing of constitutional limitations by that means could not come about until attendance was a coveted privilege. At times, but always in exceptional circumstances, it was to the advantage of the king to insist upon the attendance of his barons. The fact of the regular summoning and the equally regular attendance of the barons, suggests that the holding of Councils took place as a matter of course, even though they achieved little more than the formality of consent. The baronage certainly attached considerable importance to formalities. When Stubbs discussed this question of obligation in the Introduction to the Gesta Regis, he came to the conclusion that Henry probably did not have to summon his tenants-in-chief, particularly after his triumph in 1174, but that he chose to. The most effective means of deciding the question would be either the king's

omission to call Councils, or the barons' refusal to attend when they had been summoned. The fact that neither of these possibilities occurred is the significant point. Neither Henry nor the twelfth century baronage were theorists. They certainly showed no signs of discussing the constitutional limitations of political power. It probably would not have occurred to Henry not to summon Councils, or to the barons not to attend. In the case of displeasure the only course open to the barons was revolt, and even so their action in rebelling was not corporate. A council based so entirely on a feudal relationship would not have theorised about its assembling or attending. The feudal relationship was mutual, and based on a system of rights and duties on both sides. During the next century, when controversial issues arose on which the barons were determined to express an opinion, men began to talk of rights in the council. During the reign of Henry II the question of rights did not arise.

The best example of this is the Assize of Arms.

Contemporary accounts suggest that the king himself was responsible for the measure, even though it was likely to attract and concern the barons, being of a military nature. According to the *Gesta Regis* the ordinance was made immediately after the Christmas feast of 1180 at Le Mans. There is no indication that the barons who were with the king at Christmas

1. Norman Institutions, 159.

2. Pollock and Maitland: History of English Law, I, 136.

CHAPTER IV.  
-----The Great Council and Legislation.  
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Haskins has called this period of English history "an age when no line was drawn between legislation and adjudication". There was no system or theory of legislation by the great ~~the~~ council. All the documents extant for this reign except one are administrative regulations. Henry was primarily an administrator. "Much of what he did, much that was to determine the fate of our law in after ages, was done in an informal fashion without the pomp of legislation"<sup>1</sup>. For many of the ~~the~~ regulations there is no documentary evidence, and the first mention of some of the new writs and processes is found in Glanvill. Even in the case of the greater documents, there is not always evidence that a Great Council was summoned to deal with them.

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1. Norman Institutions, 159.

2. Pollock and Maitland: History of English Law, I, 136.

discussed the measure or consented to its promulgation. The chronicle describes the Christmas feast and goes on to say that afterwards the king ordered the Assize to be observed throughout his Continental lands: "statuit ----- publice edicto". This is followed by the terms of the Assize. The same chronicle speaks similarly of its enforcement in England: "meanwhile the king of England made this assize concerning the holding of arms in England". Gervase of Canterbury also speaks as if Henry was personally responsible for the measure: "The king of England sent his justices throughout England, ordering that rich men and poor should buy arms, each according to his capability".<sup>1</sup> The Assize itself consists of a series of commands, such as "omnes burgenses habeant", and "unusquisque juret".<sup>2</sup>

The great administrative and judicial regulations made at Clarendon in 1166, and confirmed at Northampton in 1176, have already been discussed.<sup>3</sup> No details are available as to the actual drawing up of the regulations. The Assize of the Forest was made "with the counsel and assent of the archbishops, bishops, and barons, earls and nobles of England".<sup>4</sup> Again there is no detail as to the making of the Assize. That the barons should have given their assent to these measures shows the quality of their subservience to the royal will. Clause 11, in

1. Gervase of Canterbury, I, 297.

2. Stubbs: Select Charters, 183.

3. Supra, p. 106.

4. Stubbs: Select Charters, 186.

1. Materials for the Life of Becket, IV, 34.

2. England under the Angevin Kings, II, 41-45.

enjoining their attendance at pleas of the forest, was repealed in 1215 by the Great Charter.

The nearest approach to what might be called a legislative assembly was the Council of Clarendon of 1164 at which the ancient customs of the kingdom were recognised and recorded. As was customary even with grants by charter, discussion and agreement preceded the actual writing of the necessary document. The recognition was made by the older and wiser members of the Council who were expected to remember what laws held good under Henry I in governing the relations between church and state. The biography of Becket ascribed to Roger of Pontigny says that the king's clerks went out with these men to write down the customs.<sup>1</sup> The varieties of dating given in the different accounts have been reconciled by Miss Norgate, who has shown the great length of time which was probably spent on discussion and on the recognition and drawing up of the Constitutions.<sup>2</sup>

One of the clearest illustrations of the practice of discussing first and writing afterwards is provided by Gervase of Canterbury's account of the Council of Le Mans of 1166, at which regulations were made for the collection of a tithe for the Holy Land. "King Henry crossed to Normandy, and having taken counsel with his bishops and barons, instituted a certain collection of money, which was to be made throughout all his lands; after which, by his command, the written regulation was

1. Materials for the Life of Becket, IV, 36.
2. England under the Angevin Kings, II, 44-46.

drawn up in this form".<sup>1</sup> This is followed by the Ordinance itself.

Although no theorizing about the validity of law can be expected at this time, it is interesting to note the difference between the words of Glanvill and those of Bracton on this subject.<sup>2</sup> Glanvill wrote: "Those are the laws which have been promulgated on doubtful matters with the counsel of the chief men and the authority of the prince". Bracton's words are: "That has the force of law which has been justly determined and approved with the counsel and consent of the great men, the approval of the whole commonwealth (*reipublicae communi sponse*), and the authority of the king".

The historian seeks in vain for any signs of genuine legislative activity by the council during the reign of Henry II.

1. Gervase of Canterbury, I, 198.
2. Quoted by Wilkinson: Constitutional History, 248.

until he had consulted the clergy. Glanvill was sent to advise the English clergy, who replied, *de communis consilio*, that to allow the Pope's envoys to come to England to collect the collation would establish a dangerous precedent, but that if the king chose to make a concession to the Pope and according to his own will, they would obey him if he wished.<sup>2</sup>

1. Edition by Hughes, Crump and Johnson, 55.
2. *Costa Regis Henrici Secundi*, I, 311.

CHAPTER V.  
-----The Great Council and Finance.  
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There is a passage in the Dialogus de Scaccario which states clearly the whole position with regard to discussion on money matters. FitzNeal, having spoken of the way in which abundance or lack of supplies influenced the policies of princes, said that money might be obtained by consent or law or merely by the will of the king; but in any case the king's measures were not to be discussed by inferiors. "Eorum tamen facta ab inferioribus discutienda vel condempnanda non sunt".<sup>1</sup>

There was only one occasion on which lengthy discussion was held on a matter of finance. There were two others on which Henry asked for consent to raised money.

The first of these two was concerned with the Pope's request for a subsidy in 1184, The Pope sent his messengers to the king, who refused to take any action in the matter until he had consulted the clergy. Glanvill was sent to ~~the~~ assemble the English clergy, who replied, de communi eorum consilio, that to allow the Pope's envoys to come to England to make the collection would establish a dangerous precedent, but that if the king chose to make a donation to the Pope ~~and~~ according to his own will, they would reimburse him if he wished.<sup>2</sup>

1. Edition by Hughes, Crump and Johnson, 55.
2. Gesta Regis Henrici Secundi, I, 311.

Henry must have been fairly <sup>r</sup>sure of the clergy's response. He would not have wanted interference from a foreigner. He must have been certain that the clergy did not want their purses opened by a foreigner. It was a wise measure for the king to ask for counsel and consent which he knew he would receive; and the clergy gave the reply which was advantageous to both. The time when the king and Pope joined together to tax the clergy had not yet come.

The only long discussion on a financial question took place at Woodstock in 1163 between Becket and the king. Stubbs, believing the dispute to have been about Danegeld called this "the first case of any opposition to the king's will in the matter of taxation which is recorded in our national history".<sup>1</sup> He goes on to say that it seems to have been successful, at least formally. J. H. Round has since ~~z~~ then shown that the matter under discussion was not Danegeld, but the sheriff's aid, which, <sup>t</sup>strictly speaking, could not be called a matter of taxation. "It may fairly be said to have stood to the Danegeld in the relation of rates to taxes".<sup>2</sup> How much of the conversation of Henry and Becket, as reported by Edward Grim and Roger of Pontigny, can be regarded as authentic, is open to question. In any case, neither of the reports records an actual decision on the matter. Round concludes that it is very doubtful whether the incident can

1. Constitutional History, I, 463.

2. Feudal England, 497-502.

be described as "opposition to the king's will in the matter of taxation", because Henry took his stand on the sure ground of existing "custom", recognised at that time as binding on all.

On only two occasions was an extraordinary tax levied, one which did not come within the scope of customary exactions. Both were tithes in aid of the Holy Land. Gervase of Canterbury's account of the Council in which the first tithe was instituted has already been quoted.<sup>1</sup> The ordinance of this tithe of 1166 states that the matter was raised twice, the first time in the presence of the Archbishop of Rouen, three bishops of Normandy, the bishop of Le Mans, and certain of the king's barons. Possibly this may not have been a sufficiently large assembly for so unusual a measure, because the second assembly, held at Le Mans a week later, was attended by three archbishops, eleven bishops, and many barons from Normandy, Maine, Touraine, Anjou, Brittany, and Gascony. The tithe was instituted "with the counsel and assent of all, by the petition and prayers of the lord king of the French and by his example, as he had<sup>had</sup> a similar ordinance made for his land". In spite of the appearance of consent, the enacting clause begins with a verb in the first person singular : statui. The unusual method of collection - by means of boxes placed in the churches - suggests that this new tax on moveables was an extraordinary measure and that there was no intention of regularizing it.

1. *Supra*, p. 129-130.

The more satisfactory method of assessment and collection used on the only occasion during the reign when the measure was repeated is a hint that the new method of taxing might become a regular expedient, as it did under Henry's successors. William of Newburgh's comment is interesting. "He never imposed any heavy burden on the kingdom of England or his overseas lands, until that latest tithe, levied for the relief of Jerusalem, which nevertheless was equally levied in other regions".<sup>1</sup> The assessment was carried out and the money collected by royal commissioners ~~J.H. Ramsay~~ J.H. Ramsay notices the difference between this and the method used in France, where the money was simply collected by the lord of each manor, who retained it under condition of taking the cross.

Of the drawing up of the original Ordinance at Le Mans in January 1188 the Gesta Regis says it was ordained by the king : ordinatum est ab eo : in the presence of Richard Count of Poitou, three archbishops, four bishops, two bishops elect, and the barons of Anjou, Maine, and Touraine.<sup>2</sup> Henry afterwards held a Council<sup>u</sup> in England concerning the tithe, at which, according to Gervase of Canterbury, there was considerable discussion of the matter of taking the cross, followed by the promulgation of the Ordinance.<sup>3</sup> The Gesta Regis says that

1. *Historia Rerum Anglicarum*, Rolls Series, 282.
2. *Gesta Regis Henrici Secundi*, II, 30.
3. Gervase of Canterbury, I, 409.

Henry, immediately after landing in England, called together the archbishops, bishops, earls, and barons at Geddington, and ordered a public reading of the Ordinance in the form of which it was drawn up on the Continent, after which the Archbishop of Canterbury preached the crusade. The choice of commissioners apparently lay with the king.

This is one of the few Councils mentioned by William of Newburgh, who says that Henry obtained that assent of his Continental bishops and nobles, and then crossed to England to hold a Council there, in which, with the complete agreement of the bishops and nobles, he confirmed the ordinance made on the Continent; "ea quae in partibus placuerant transmarinis".<sup>2</sup>

The importance of the occasion is illustrated by the fact that this is the only English Council mentioned in the Melrose Chronicle in which the king of Scots did not play the most prominent part. The chronicler says that Henry held a discussion on many different matters; many men took the cross; and the king ordered the tithe to be levied.

The deference of the English barons to the king's will was habitual, and the history of the attempt to levy the tithe in Scotland is more interesting. According to the Gesta Regis, the king of Scots promised the tithe in exchange for the castles held by Henry since the rebellion, if he

1. Gesta Regis Henrici Secundi, II, 33.  
2. Historia Rerum Anglicarum, 274-275.

could induce his barons to agree. English messengers were sent to Scotland, and king William assembled his Council to discuss the matter. The barons refused to agree to the tithe, and although Henry's messengers tried every expedient from threats to flattery, nothing could induce them to change their minds, and the envoys had to return to the English king with a negative answer. The barons could not be forced to give the money against their will.

In the matter of taxation, as in most other aspects of government, the reign of Henry II was important, not for any great controversies, but for measures which were a source of potential abuse and trouble in the future. The king still held the purse-strings, and his barons could not dispute the customary aids, although they might grumble about them. Here, again, Henry acted scrupulously. Although he insisted on every penny of the payments which were due to him, he did not attempt to levy an extraordinary tax except in extraordinary circumstances. He did not adopt the idea of a tax on moveables as a regular expedient. But the idea was there, and so were the means of carrying it out. It is in this king's measures that his successors' difficulties are to be found.

## CHAPTER VI.

Justice and the Great Council.

Rex, cui omne iudicium in populo datum est.

It is in the matter of justice, and its place in the council, that the duality of Henry's position as king and feudal overlord is most apparent. With the ever-expanding administrative needs of the twelfth century state, certain aspects of the omni-competent Norman Curia Regis inevitably found themselves "shunted off", exercising the functions of what for practical purposes became independent departments of state. The administration of finance had already largely gone "out of court", and the compelling force behind this movement had occurred during the reign of Henry I. The next aspect of royal administration to follow the financial was the judicial. The only parts of the judicial administration which felt the impulse of this movement were royal and not feudal; they were the new prerogative processes granted by Henry II as king, as part of his royal duty to furnish security and justice to all his subjects. While these prerogative processes had been formulated, however, feudal justice still existed as part of the total judicial system. It was administered at all levels of the feudal society in the assemblies of those tenants who owed suit of court to their

immediate lords, whether they held of the Crown directly or of a lesser landlord. The apex of the hierarchy of these assemblies was the king's great feudal council of his tenants-in-chief. Any discussion on justice and the great council, during the reign of Henry II, must concern itself with the relation between the prerogative justice of the Curia Regis and the customary justice of the great council. Before this relationship can be established it is necessary to examine both the extent to which the administration of prerogative justice can be said to have gone "out of court", and also the character of that justice; that is, the system of courts, and the prerogative procedures which they administered.

Glanvill makes his great and primary distinction between the Curia Regis and the "lesser courts". It is obvious throughout his book that whatever subdivision may be made within either of these groups, the really important distinction is between them. In the Capitula Librorum, the heading of the first section dealing with writs of right is "Placita de recto quandoque ab initio tractantur in curia regis, quandoque ex minoribus curiis ex post facto ad eam transferuntur ex pluribus causis". Within the Curia Regis the primary division was one of persons rather than of courts;

1. Whether or not he was the author of the Tractatus de Legibus, the work is so well-known under his name that it is convenient to assume his authorship for this purpose.

that is, between the king, and his justices. A further subdivision may be made of the courts held by the justices, into those held by itinerant justices, and the court known as capitalis Curia Regis, which was presumably that held by the iustitiis domini regis in banco residentibus.

The system of itinerant justices, although known to Henry II, was brought into regular use by his grandson, at the time of the Assize of Clarendon of 1166, from which year the circuits can be traced on the Pipe Rolls. These men were commissioned to deal with crimes presented by jury according to the method prescribed by the Assize of Clarendon; they were frequently concerned with details of administration and finance; they also supervised civil cases initiated by royal writ, and necessitating the use of inquest juries. Although their numbers fluctuated from year to year, hardly a year passed, after 1166, without a judicial eyre. The system was undoubtedly effective, but two reasons arose for its revision, or rather its elaboration; the first was the burden imposed on the people by the corruption of the justices; and the second was the vastly increasing amount of business dealt with by these courts.

In connection with the first of these should be mentioned the importance of the king's personal presence. Peter of Blois, having described the corruption of the justices in eyre, proceeded to contrast this with the justice administered by the king himself or his chief justiciar. "si

in auditorio vestrae Celsitudinis, aut in presentia vestrae justitiae principalis causarum negotia ventilantur, ibi nec aura munerum locum invenit, nec acceptio personarum. Ibi ~~omn~~ omnia procedunt in iudicio et justitia, nec excedunt statuta vestra vel in modico limites aequitatis".<sup>1</sup> There were constant grants of the privilege of pleading only before the king or his chief justiciar, most often made in the case of lands held by frankalmoin tenure. It is well-known that the phrase coram me or coram rege did not signify the actual physical presence of the king himself; but sometimes phrases were used whose significance was more definite, such as in mea presentia corporali. These grants occasionally gave rise to queries, in the next century, concerning the competence of a court in which the king himself or his chief justiciar was not present, to deal with cases affecting the possessors of the privileges denoted by these words. In most cases the decision was in favour of the court, but the very fact of the question being raised by the litigant shows that the actual presence of the king was regarded as a considerable advantage. The story of Walter Map's conversation with Glanvill on the subject confirms the impression.<sup>2</sup>

1. Letters of Peter of Blois, ed. Giles, I, 300.
2. Glanvill had spoken with pride about the speed of the justice of the king's court, as compared with the ecclesiastical courts, whereupon Walter Map retorted that the royal courts would be just as bad if the king were as far away from them as the Pope was from the courts of the bishops. Glanvill could not disagree. De Nugis Curialium, 241.

The elaboration of the itinerant justice system, from the time when it appears to have had a defined form, took the form of a central court administering the same prerogative processes. While all courts held in the king's name were Curia Regis,<sup>1</sup> this was capitalis Curia Regis. Its exact origin is doubtful; the importance of the passage in the Gesta Regis speaking of the selection of two clerks and three laymen seems to have been over-estimated;<sup>2</sup> its origin can probably not be attributed to any fixed moment of time, but its existence seems certain before the end of the reign. The Tractatus de Legibus, written during Henry's last years, on several occasions suggests its existence.<sup>3</sup> For example, in the section dealing with final concords occurs the sentence: "Verum distinguendum est utrum concordia illa facta fuerit in capitali curia domini regis an coram iustitiis itinerantibus".<sup>4</sup> It is almost certain that by this time there was some sort of court using prerogative processes, of a more centralized nature than the courts of the itinerant justices, although it was probably not yet fixed definitely at Westminster. However this might be, the really important distinction in

1. Glanvill speaks of suitors coming to the town where the Curia Regis happens to be: "in villam illam ubi est curia regis".
2. This whole question is discussed in Appendix VI.
3. Madox's interpretation of the word banco, as it occurs in Glanvill, is ingenious, but probably stretched too far, and, as Beames commented in his translation of the text-book, it was worked out in the light of Madox's own preconceived prejudice. v. Madox, Exchequer, I, 787-801.
4. Tractatus de Legibus, Book VIII, Chapter V.

Glanvill's book was not between the different types of courts comprised within the phrase Curia Regis, but between the Curia Regis itself in all its aspects, using prerogative processes in causes initiated by royal writs, and the lesser courts which were outside its jurisdiction.

Yet the whole of Glanvill's book shows that the feudal courts still occupied a prominent position in the judicial system of the country. Adams has pointed out that the chief difference between Glanvill and Bracton is the difference of emphasis on the evocatory character of the royal processes. The majority of Glanvill's book deals with evocation; it shows that Henry was building up a national jurisdiction "in the teeth of" private jurisdictions. In Bracton there is no reference to the evocatory character of the prerogative processes, because the royal jurisdiction was by then firmly established. The most significant point concerning the place of the new processes in the whole scheme of feudal justice is that Henry did not abolish baronial jurisdiction or deliberately attempt to disrupt it. He merely offered a choice between that and his own system; and his system for the most part proved preferable to litigants.

His new methods had a dual character; firstly there was the initiation of cases by a royal writ; secondly there was the use of the Juries of inquest and presentment. The most important single principle was that no man need answer for his free tenement without a royal writ. It is typical

1. Council and Courts, 173.

of the character of the system that this principle was negative and not positive. "Cum quis itaque clamet aliquod liberum servitium vel tenementum tenendum de alio per liberum servitium, non poterit inde trahere in placitum sine brevi domini regis vel eius iustitiarum"<sup>1</sup>. "Praeterea sciendum est quod secundum consuetudinem regni nemo tenetur respondere in curia domini sui de aliquo libero tenemento suo sine praeccepto domini regis vel eius capitalis iustitiae"<sup>2</sup>. There were two main kinds of writ which might cause the removal of cases from private courts to the royal courts, writs of right and the writ known as Praecipe. The writ de recte tenendo was addressed to a manorial lord insisting that justice be done in his court, and threatening the removal of the action to the royal court in case of default. The writ Praecipe placed the action immediately in the king's court. Its purpose seems to have been to redress in favour of the plaintiff the balance which, by means of the possessory assizes and the grand assize, was heavily weighted in favour of the defendant. Hurnard has shown that the feudal courts did not before the time of Henry II enjoy an exclusive competence in determining proprietary actions.<sup>3</sup> The normal procedure in land cases was for a lord to determine in his own court a dispute between two of his immediate tenants; if the litigants held of

1. Tractatus de Legibus, Book XIII, Chapter 2.

2. Ibidem, Book XIII, Chapter 25.

3. Essays Presented to Powicke: Magna Carta, Clause 34.

was never used by it, during the first hundred and fifty

1. Utrum, Novel Assizes, Mort d'ancestres

different lords the case came into the county court. This practice was confirmed by Clause 9 of the Constitutions of Clarendon, which introduced the assize Utrum, except that the county court was replaced for this purpose by the royal court. The procedure in the case of the four possessory assizes and the grand assize was by inquest. In criminal cases the jury of presentment was used for accusations in the royal courts.

The principle that no man need answer for his free tenement without a royal writ gave every freeman access to the Curia Regis if and when he chose to use it and paid for the privilege. This included the baronage; barons had to pay for the privilege of using the new and quicker prerogative procedures in the same way as other freemen. "In this new legal evolution, the following principle is fundamental from the very beginning: the new procedure and the new machinery are the king's private property; they are no part of the public machinery of the state to which any individual may appeal in his personal need as he might to the shire or hundred court. This principle applied just as ~~much~~ truly to the case of the baron who was bound to the king by the tie of feudal vassalage, and consequently a member of the central curia regis, as of the common freeman, or of the knight who was a rear-vassal only; he could not use the new procedure as a matter of right for this was no part of the procedure of the curia regis, and was never used by it, during the first hundred and fifty

1. Utrum, Novel disseisin, Mort d'ancestor, and Barrein presentment.

of feudal justice having been manifest, the place of the years unless by a special commission of the king's".<sup>1</sup> The ~~the~~ council in the whole judicial system will be seen by the barons did in practice use the new machinery constantly. The security of tenure which it furnished was no doubt worth the loss of a certain amount of manorial jurisdiction.

These new courts and processes were therefore royal, not feudal. The question is, what was the place in this ~~of~~ system of the tenants who owed suit of court to the king, and the place of the great council, which administered justice as any lesser baronial court? Pollock and Maitland say that the "functions of the king's court were changed, and a corresponding change in its structure became necessary. It was no longer to be an extraordinary tribunal, a court for great men, for great causes, for matters that concerned the king; it was to become an ordinary tribunal for the whole realm".<sup>2</sup> The significant point of the changes, in as far as they affected the feudal courts, is that the king's council was still a court for great men and great causes. While there are instances of the baronial use of the new processes, there are also instances of the determining of the causes of tenants-in-chief in the great council. There are records of cases involving every class of tenant-in-chief: an archbishop, a bishop, an abbot, an earl, a baron, and a household officer. The place of the new prerogative system ~~in~~ the whole scheme

1. The use of the words appellate and equitable is for convenience.  
1. Adams : Council and Courts, 182. at the twelfth century  
2. History of English Law, I, 153. modern sense.  
2. B.C. Keeney : Judgment by Peers.

of feudal justice having been examined, the place of the great council in the whole judicial system will be seen to have two aspects. In the first place it maintained its competence to judge as between tenants-in-chief, and in the second place it exercised what might be called in fact if not in law an appellate and equitable jurisdiction by deciding cases beyond the power of the lesser royal courts to determine.<sup>1</sup>

Keeney has shown that during the Norman and early Angevin periods judgment by peers was practised habitually even if it was not recognised as a legal necessity at that time. "The invaders of 1066 were familiar with the concept that a man should be judged by his peers in his lord's court. They and their descendants thought little of the matter, however, until the question became crucial in the reign of John".<sup>2</sup>

The person who would be most likely to theorize about this question, if there was to be any theorizing at this time, was Gilbert Foliot. There are two letters written by him which state the theory of judgment by peers in the great feudal council sufficiently clearly to show that it was prevalent and known at this time, even if there was no "peerage" in the later sense. The first states the theory incidentally. It is a letter to the Cardinal William of Pavia regretting that the Bishop is unable to execute the command of the Pope to promulgate an

1. The use of the words appellate and equitable is for convenience, and is not meant to suggest that the twelfth century knew of such jurisdiction in the modern sense.
2. B.C.Keeney : Judgment by Peers.

ecclesiastical censure against the Earl of Norfolk. "In hoc vero nobis regia se graviter opponit auctoritas, asserens ad summam regni sui spectare dignitatem, ut dum cuique adversus comitem vel baronem suum super terris aut feudis querelam habenti, plenam paratus fuerit exhibere justitiam, ipsum nec archiepiscopus, nec aliquis regni sui episcopus aut interdicto premat, aut excommunicationi subiciat".<sup>1</sup>

The second letter states the theory deliberately. Lyttelton's translation has already been quoted in reference to the composition of the great council.<sup>2</sup> The last sentence of the Latin version is worth quoting here, because it shows clearly the distinction between superior, inferior, and peer. It reads, "Nam qui in his quae ad Deum sunt gradu quodam distinguimur, ut superiores quidam, inferiores alii, reputemur et simus, nos in hoc pares aestimant, ut si de fundis ad ecclesiam liberalitate regia devolutis inter nos aut in nos fuerit oborta contentio, apud regem quae spectant ad singulos universorum diffiniat pronuntiatio".<sup>3</sup>

Needless to say, the competence of the council<sup>u</sup> in its judicial aspect was civil and criminal, because it retained the omni-competent jurisdiction of the old Curia Regis. The principle which held good in land cases has already been stated. Keeney has pointed out that the itinerant justices were ordered

1. Letters of Gilbert Foliot, ed. Giles, I, 244.

2. Supra, p. 23-24.

3. Materials for the Life of Becket, V, 534.

3. Adams: Council and Courts, 203.

not to deal with cases involving more than half a knight's fee, because a barony would not be involved in such a plea. Glanvill, listing the pleas which came before the king's court, apart from those determined by the prerogative processes, heads his list with placitum de baroniis.<sup>2</sup> That judgment by peers in criminal cases was also customary is shown in the famous thirty ninth Clause of Magna Carta, by which it is now agreed that the barons were not trying to disestablish the new judicial system set up by Henry II. "If they had been, they would necessarily have been thinking chiefly of the new criminal procedure established by the Assizes of Clarendon and Northampton. But why should they be thinking of this? They had not as yet been troubled by it. They never were seriously troubled by it. They were demanding the traditional curia regis trial by judgment of their peers which was still habitual in their case, not as against some other form of trial, but against no trial at all, against condemnation without trial of any kind".<sup>3</sup>

The most famous trial held in the great council during this reign is that of Becket, Archbishop of Canterbury, at Northampton in October 1164. It is clear from all accounts that Becket was originally summoned to the king's court because one of his tenants, John Marshal, who was also a tenant-in-chief of

1. The reference is to the Assize of Northampton, Clause 7, in which the sense is affirmative, not negative: "Item Justitiae faciunt omnes justitias et rectitudines spectantes ad dominum regem et ad coronam suam, per breve domini regis, vel illorum qui in loco ejus erunt, de feodo dimidii militis et infra".
2. Tractatus de Legibus, Book I, Chapter III.
3. Adams : Council and Courts, 263.

the Crown, asserted that the Archbishop had not done right to him in his baronial court. Becket, insisting that the default was not on his part, did not attend at the first summons. His later summons to Northampton was intended to deal also with his contempt of the previous summons. After these two matters had been concluded by a sentence of amercement, he was then required to give an account of his acts as Chancellor.

What is chiefly interesting is the accusation made against him by his enemies that he, a tenant-in-chief, had rejected the judgment of the court which ought to judge him. "Quo" inquit, "modo decretum publicum subterfugies, declinabis sententiam? Haereditates amplas de rege tenes, et in regis curia non respondebis, non auscultabis iudicium?"<sup>1</sup> Roger of Pontigny's account of the attempt to pronounce judgment is similar. "Et comes ad eum, 'Et quomodo' inquit, 'potest averti quin iudicium regis audias? Homo enim regis es, et villas atque castellas possessionesque infinitas de eo in feodo et baronia tenes; et idcirco iudicium in curia ejus audire et sustinere te oportet'."<sup>2</sup> Keeney has shown that the bishops who refused to give judgment were uneasy at the prospect of judging their ecclesiastical superior, but considered themselves competent judges as feudal peers of the lay barons. He also mentions that the Pseudo-Isidorian maxim, minor majorem iudicare non possit, kept cropping up, and was quoted by the Pope when he nullified the

1. Edward Grim : Materials for the Life of Becket, II, 398.  
2. Ibidem, IV, 50.

3. Later letter by Becket.

judgment. All these instances can be related to Foliot's letter, which, while it spoke in general terms of the judicial aspect of the great council, was in particular concerned with this Council of Northampton.

This assembly is also interesting as showing that the great council had developed no fixed methods of procedure. Most of the time the king sat apart with his closest counsellors. He called other men or groups of men to him as he wanted them. Occasionally the Archbishop's party discussed the case by itself. Every now and again there was a discussion as to how to proceed next. There was even a debate as to who should pronounce judgment.

The same irregularity of procedure is evident from the only other case about which there is a similar quantity of detail; that is, the case of the Abbot of Battle and the Bishop of Chichester, concerning the Abbot's independence of the Bishop's jurisdiction in spite of his profession of obedience. Again there was a small group with the king. "Rex vero, missa audita, capitulum intravit, praecipiens ut nullus nisi quem ipse vocaret ex nomine ingrederetur". Each of the parties retired to discuss its own case, and again there was discussion as to how the suit should proceed. Keeney cites this as an example of a case between barons which the king refused to allow his court to judge, but settled personally. He bases his thesis on the king's words, "Non ita, haec per vos <sup>e</sup>terminari praecipiam, verum ego vobis comitantibus, consilio super ~~h~~<sup>i</sup>s habito, fine recto concludam". A later letter by Becket concerning the

1. Battle Abbey Chronicle, *Materials for the Life of Becket*, IV, 245.

conclusion of the case says, "Sic enim placuit regi et curiae, quae ei in nullo contradicere audebat".<sup>1</sup> It does not seem a particularly good example of a personal settlement by the barons, because his speech was a reply to the Archbishop's request for the court to retire and settle the case according to Ecclesiastica custom. According to Pollock and Maitland judgment was not pronounced; the king forced a compromise because papal claims were involved. The same thing happened in the case between the Bishop of Lincoln and the Abbot of St. Albans.<sup>2</sup>

The case of the quarrel between the Archbishop of York and the Bishop of Ely has been discussed previously.<sup>3</sup> It appears from the Gesta Regis that only the ecclesiastical tenants-in-chief were present at this part of the Council's proceedings.

There was also a case between a bishop and a layman concerning land. It was between Reginald, Bishop of Bath, and Henry de Tilly, and is recorded in the Calendar of Charter Rolls.<sup>4</sup> The document called itself a "concordia et finis". It was made "in curia nostra coram me et baronibus meis". The king saw and inspected the relevant charters of the Bishop in the presence of his barons, and on the basis of this evidence Henry de Tilly gave up the lands in question to the king, who restored them to the Bishop. For this the Bishop paid Henry de Tilly 100m. It

1. Materials for the Life of Becket, IV, 244.

2. History of English Law, I, 157.

3. Supra, p. 37.

4. Calendar of Charter Rolls, III, 471.

is interesting to note that the witnesses of the document recording the case include an archbishop, two bishops, and two earls; also two archdeacons, two deans, two chaplains, and seven justices, including the two bishops.

Keeney has cited the case of Roger Bigod as an example of the king's use of his council as an assembly of advisers on points of law rather than as a court of peers whose judgment was legally indispensable, when he "sat with his ministers and barons to judge common pleas".<sup>1</sup> Again, this seems to be rather an unfortunate illustration of the point he was making. In the first place Henry decided that the case should be judged according to the law and custom of the land, as against the method which the litigants had tried to employ, that of bribes and counter-bribes to the king. The most significant point of the passage describing the incident, however, is that the king, having listened to the petitions of both parties, ordered them to come to London, so that the case could be settled by the counsel of his earls and barons, according to the law and custom of the land, the second phrase being in apposition to the first and presumably equivalent to it. The whole phrase is strikingly reminiscent of Clause 39 of Magna Carta. It reads, "*consilio comitum et baronum suorum secundum rectum et patriae consuetudinem*". The relevant phrase from the Great Charter is "per

1. *Gesta Regis Henrici Secundi*, I, 133-134.

2. The chronicler speaks as if the Earl of Leicester had a special case.  
1. The case was between Roger Bigod and his stepmother, concerning his father's inheritance. v. *Gesta Regis Henrici Secundi*, I, 143-144.  
2. That in 1175 Henry forbade his enemies in the late war to come to court except by his special summons. *Supra*,

legale iudicium parium vel legem terrae".

The same chronicle reports on a case between a baron and an earl in the great council.<sup>1</sup> It was determined in January 1177 at Northampton. William de Cahannes claimed that he should hold his land in chief of the Crown, and not of the Earl of Leicester.<sup>2</sup> The Earl stated that he and his predecessors had held these lands by charters of Henry's ancestors, and that William de Cahannes and his ancestors had held of the Earl's. He placed all his lands in the king's mercy, however. The king was so impressed by his action that he restored to him all his possessions except his castles. Certain of the lands about which there was dispute were adjudged to the Earl by the commune sacramentum comitatus. Henry took this action because he knew that the case had been brought against the Earl out of malice, in the hope that the king would give a judgment unfavourable to his enemy.

The only case of the trial of a household officer in the council during this reign was that of Henry of Essex, who in 1160 was accused of treason during the recent Welsh war, by his peer, in the sight of the princes of the land. "Insurrexit in eum Robertus de Monteforti, ipsius consanguineus, nec genere nec viribus impar, in conspectu principum terre dampnans et

1. Gesta Regis Henrici Secundi, I, 133-134.
2. The chronicler speaks as if the Earl of Leicester had a special summons to attend the Council on the day fixed for the case. This seems to be evidence in support of the previous statement by the same chronicler that in 1175 Henry forbade his enemies in the late war to come to court except by his special summons. Supra,

accusans eum de proditione regis".<sup>1</sup> The trial was by battle, in which Henry of Essex was defeated. By the king's mercy he was allowed to become a monk at Reading.

Each of these cases supports the assumption that trial by peers was practised in fact, and that there was little theorizing about it as a principle merely because it was adhered to as a matter of course. It was only discussed in connection with one case, that of Becket at Northampton, which was exceptional and concerned with such controversial issues that the protagonists would be expected to discuss any point of principle which might support their own case. Such discussion as there was served to prove, that when there was any question of theorizing, the principle held good at this time in theory as well as in practice.

There is another aspect of conciliar justice to be considered. It has already been mentioned that when a function of the old omni-competent Curia Regis went "out of court", the Curia Regis did not thereby lose the right to exercise the function as before. It is well-known that any court held in the king's name was Curia Regis. Occasionally, however, the localized Curia Regis was unable to come to a decision on a doubtful point. In such cases a reserve of justice always remained in the Curia Regis, which was with the king. The well-known passage in the Gesta Regis says

1. Chronicle of Jocelin of Brakelond, 69-70.

that difficult questions were to be referred to the king and his sapientioribus. The chronicler very rarely used the word sapientes. When he wished to denote a great feudal *æb* council he listed the bishops, earls, and barons who were present. It was shown in Part I that the element of wisdom as such lay in the king's perpetual group of advisers and not in his great council. It seems impossible to believe that the significance of this phrase was that a reserve of justice was to be held by the king in his great council. It is more likely that he would need the experience and knowledge of men learned in the law for deciding these questions, not the formal presence of his tenants-in-chief. On the other hand, it is necessary to make a qualification of the principle of judgment by peers. While a man should not be judged by his inferiors, there was never anything to prevent him from being judged by his superiors. The great council could, therefore, as a part of the old Curia Regis, exercise this reserved justice, although the reservation was not necessarily to this group exclusively.<sup>1</sup>

"Dubiorum vero vel dubitalium iudicia que frequenter emergunt sub una tractatus serie comprehendi non valent quia nec dum omnia dubiorum genera in lucem prodierunt".<sup>2</sup>

1. Documentary sources do not help greatly. Clause 7 of the Assize of Northampton says that great and difficult cases were to be referred to the king, or those acting in his place: "vel ad illos qui in loco ejus erunt".
2. Dialogus de Scaccario, 68. The Court of Exchequer occupied a similar position as an offshoot of the older Curia Regis, but it was mainly concerned with financial cases.

There was no legal theory of appellate or equitable jurisdiction in the modern sense, because there was no need for it. Adams has shown that common law and equity originated together "as one undifferentiated system in the effort of the king to carry out his duty of furnishing security and justice to all in the community by making use of his prerogative <sup>power through his prerogative</sup> machinery. The identity of the two systems at the beginning, their origin in the same prerogative action, can be clearly seen in this : the essential characteristic of equity procedure of a later date is that it begins with a petition asking the king to interfere to secure justice where it would not be secured by the ordinary and existing processes of law. But it was the essential characteristic of all common law actions in the eleventh and twelfth centuries that they began with a petition<sup>1</sup> asking the king to interfere to secure justice where it would not be secured by the ordinary and existing processes of law".

The justice dispensed by the king in his great council to the barons who owed him suit of court was also equitable in the sense that its scope was unlimited and its procedure undefined. Common law became distinct from equity when it attained definition, by means of fixed and known writ forms, writs de cursu. This was not available to Crown

1. Petition is implied in the phrase which frequently occurs in writs of right : "Ne inde amplius clamorem audiam pro penuria recti".

tenants unless they paid for the privilege of using the new procedures and used them in the king's prerogative courts like other freemen. While they used the common law

processes in this way, the possibility of having their cases dealt with by their co-vassals in the king's great council had not disappeared. During this reign the two did not conflict. It was the abuses and controversies of the next century which occasioned the origin of the conflict. Once again trouble was laid up for the future by the practice of introducing the new without abolishing the old.

It is well-known that William I and William II held their three great social courts at Easter, Whitsun, and Christmas, at Winchester, Westminster, and Gloucester respectively, and that Henry I discontinued the practice. It seems that Henry II continued the practice of crown-taking until Easter 1158, after which, according to Ralph Diceto, "nec ulterius coronatus est".<sup>1</sup> That he did not discontinue also the practice of holding great courts at those festivals is proved by the large proportion of meetings held at these seasons.<sup>2</sup> Forty eight are listed in Appendix V, this number representing not necessarily the total, but such as were noticed by contemporary writers. Of these, thirty one are Christmas courts,<sup>3</sup> thirteen Easter courts, and four Whitsun courts.

1. Imagines Historiarum, I, 302.

2. These are marked by an asterisk in Appendix V.

3. In a reign of thirty five years.

## CHAPTER VII.

## Meetings of the Council, and Character of the Court.

It is possible to discern three different types of meetings of the great council, distinguished by the purpose for which they were summoned : social meetings, business meetings, and military meetings. Any single assembly might partake of the character of one, two, or all of these.

It is well-known that William I and William II held their three great social courts at Easter, Whitsun, and Christmas, at Winchester, Westminster, and Gloucester respectively, and that Henry I discontinued the practice. It seems that Henry II continued the practice of crown-wearing until Easter 1158, after which, according to Ralph of Diceto, "nec ulterius coronatus est".<sup>1</sup> That he did not discontinue also the practice of holding great courts at these festivals is proved by the large proportion of meetings held<sup>2</sup> at these seasons. Forty eight are listed in Appendix V, this number representing not necessarily the total, but such as were noticed by contemporary writers. Of these, thirty one are Christmas courts,<sup>3</sup> thirteen Easter courts, and four Whitsun courts.

1. Robert de Torigni's Rolls Series edition, 196.

2. Christmas 1182.

3. Imagines Historiarum, I, 302.

4. These are marked by an asterisk in Appendix V.

5. In a reign of thirty five years.

It has been suggested that Henry's reason for discontinuing the practice of crown-wearing was his impatience of ceremony. "Le comte d'Anjou s'intéressait plus à la politique qu'au fêtes"<sup>1</sup>. The story of his visit to Paris in 1158 as told by Torigni contrasts strikingly with the story of the magnificence of Becket's embassy to the French king.<sup>2</sup> He certainly did not despise the accepted formalities of a feudal assembly, however. There are several indications in contemporary writings that at least some of these courts were as splendid as any held by Henry's predecessors.

As far as the size of the Councils is concerned, there is hardly any information, and it would be impossible to estimate even approximately. On one occasion Torigni mentions the presence of more than a thousand knights.<sup>3</sup> Once he drops a hint as to the size of the young Henry's court.<sup>4</sup> At Christmas 1171 William of St. John and William fitzHamo refused to admit to the hall where the king was eating anyone who did not bear the name of William, and those who remained numbered one hundred and ten. A feast of this size he calls a magnificent celebration.

Some of these courts were described in greater

1. Richard : Histoire des Comtes de Poitou, 119.
2. Robert de Torigni : Rolls Series edition, 196.
3. Christmas 1182.
4. "Ut appareat multitudo eorum qui interfuerunt."

detail, although the majority of accounts merely say that Henry held his court, adding the date and place. Sometimes just a few words were added; for example, the Christmas of 1158 was celebrated "with a great company of princes, as befitted so great a king".<sup>1</sup> Sometimes the one word regaliter<sup>2</sup> is used, or the phrase regale sollempnitate.<sup>3</sup> Very often the chronicles say that the earls and barons were present,<sup>4</sup> or the nobles of the land in which the feast was held.<sup>5</sup> On one occasion the Gesta Regis speaks as if the presence of the nobles was an absolute necessity at these feasts. It says that Henry kept the solemn feast of Christmas 1188, in spite of the fact that many of his earls and barons had left him.

There are not very frequent references to the formalities and ceremonial of these occasions. Walter Map told the story of how William de Tankarville adopted violence when asserting his right to perform the duties due to his office as Chamberlain of Normandy. The biographer of William the Marshal spoke of this incident as occurring at the same Council as that in which the Marshal's enemies tried to have him convicted of treason.<sup>6</sup> He described the court as the

1. *Continuatio Beccensis*, 321.
2. Christmas 1172 : Robert de Torigni, 255.
3. Whitsun 1177 : *Gesta Regis Henrici Secundi*, I, 175.
4. Easter ~~and Whitsun~~ 1176 and 1177, and Christmas 1179 and 1182, : *ibidem*.
5. Christmas 1169 : Ralph of Diceto. Christmas 1177, 1180, and 1184 : *Gesta Regis Henrici Secundi*.
6. Christmas 1182.

most brilliant ever held in Normandy. "On y vint de lointains pays. De Saint-Mathieu jusqu'à l'empire, d'Aix-la-Chapelle jusqu'en Gascogne, d'Aigues-Mortes à Cologne la fête fut annoncée". Torigni said of this same Council that the king forbade his barons to hold their own courts but ordered them to come to his.

There is a more detailed description also of the Christmas feast of 1186, at Guildford, in which the Earls of Leicester and Arundel, and Roger Bigod served at the king's table, "de servitio quod ad illos pertinebat in coronationibus et sollempnibus festis regum Angliae".

At some of these festivities business seems to have been dealt with by the assembled Council. Very often a social court seems to have been adjourned, and re-assembled immediately as a business meeting. At Christmas 1180 Henry celebrated the feast at Le Mans, and immediately afterwards the Assize of Arms was promulgated. Sometimes the court seems to have moved between the two meetings. At Easter 1170 Henry held his court at Windsor, and immediately afterwards moved to London where he held a Great Council to depose the sheriffs of the kingdom. Similarly in 1179 the reorganisation of the judicial circuits was carried out in a Council held at Windsor just after the Easter festival held at Winchester.

There are several similar indications that a large

1. Not called Earl of Norfolk.
2. Gesta Regis Henrici Secundi, II, 3.
3. v. Appendix V.
4. Quo peracto.
5. Gesta Regis Henrici Secundi, I, 4-5.
6. Ibidem, I, 238.

assembly of men would move from place to place as one unit. Peter of Blois described picturesquely the speed and suddenness of the court's movements. He had set out to look for the king and had found the utmost difficulty in tracing his route. "Solomon said that there are three untraceable paths, and a fourth scarcely to be found : the way of an eagle in flight, the way of a ship on the sea, the way of a serpent on the earth, and the way of a man in his youth. To these I would add a fifth : the way of a king in England".<sup>1</sup>

Henry certainly did not keep to the three towns mentioned by William of Malmesbury, although a few were obviously accorded a greater degree of favour than others : towns such as Clarendon, London, Northampton, Westminster, Winchester, Windsor, and Woodstock ; and on the Continent Caen, Rouen, Argentan, Angers, Cherbourg, and Le Mans. The particular importance of London has already been mentioned, in connection with the translation of Foliot.<sup>2</sup> The Pipe Rolls bear testimony to the great amount of building and repair works to royal habitations. Totigni says that Henry held his Christmas feast of 1167 "in nova aula sua", at Argentan. The Council of Clarendon<sup>q 1164</sup> was held, according to Herbert of Bosham, at a noble mansion belonging to the king, and the Council of Northampton at his castle : "nobile illud et regium castrum quod dicitur Norhamtune".<sup>3</sup> The accounts of Henry's visits to

1. Letters of Peter of Blois, ed. Giles, I, 125.

2. Materials for the Life of Becket, III, 296.

3. *Supra*, p. 53.

Mont St. Michel and Grandmont show that he occasionally stayed at a monastery. *Flanders, "quos varia trahebant negotia"*.

The characteristic which seemed to strike chroniclers most was the great wealth and splendour of the court. The only way to transport money was to carry it in bulk, as is evident from the Pipe Rolls. Torigni says that Henry crossed to Normandy in March 1182 to act as mediator between France and Flanders, "cum magna auri et argenti copia".<sup>1</sup> Even the prosaic pen of the author of the Gesta Regis could not fail to be impressed by the assembly which met at Montferrand in February 1173. Among the princes present were Alphonse king of Aragon, Raymond Count of St. Giles, Gerard Count of Vienne, Humbert Count of Maurienne, and the young king Henry. Diceto says: "Procerum, equitum, civium, quos varia trahebant negotia, multitudo numerosa non defuit; ubi gazae multiplices, et ab antiquis congestae temporibus sumptibus regis, affluentia expensarum, donariorum multiplicitate, possent exinaniri, ni thesaurorum acervus quos Anglia destinaverat excresceret in immensum".<sup>2</sup> The same author says that in November 1176 you could see<sup>3</sup> all together in the king's court at Westminster the envoys of the kings of Castille and Navarre, of Manuel the Emperor of Constantinople and Frederick the Roman Emperor, of

1. Robert de Torigni, Rolls Series edition, 301.

2. *Imagines Historiarum*, I, 353.

3. Conspiceres.

4. *Imagines Historiarum*, I, 310.

5. *Norman's translation: England Under the Angevin Kings*, I, 413.

William Archbishop of Rheims, of Henry Duke of Saxony, and of Philip Count of Flanders, "quos varia trahebant negotia".<sup>1</sup>

Peter of Blois had no small opinion of the wide-spread fame of Henry's court. Speaking of the Spanish arbitration, he commented that just as a Southern queen came from the ends of the earth to hear the wisdom of Solomon, so in his day the most remote kings came to Henry's court to seek judgment.<sup>2</sup>

The impression given by the writers who were themselves courtiers is of a "bustling, scrambling, roving, Pandemonium";<sup>3</sup> to be compared most unfavourably with the order and discipline of Henry I's court. Attention has frequently been drawn to the letter of Peter of Blois which describes the lack of organisation, and Henry's annoying habit of changing his mind about a pre-arranged plan at the last moment before it should have been put into execution, while large numbers of courtiers were continually in a state of preparedness to obey the sudden impulse of the king's will. There is, however, a later letter which says that the author was very ill at the time when the first was written, and his opinions seem to have been softened a little by his return to health. Speaking specifically to the clergy at court, his earlier opinion was "vita curialis mors est animae". Later he admits that the presence of the clergy at court might allow opportunities for doing good. He does

1. *Imagines Historiarum*, I, 416.

2. *Letters of Peter of Blois*, ed. Giles, I, 125-126.

3. Norgate's translation: *England Under the Angevin Kings*, I, 413.

not, however, change his opinion concerning the universal corruption of the courtiers, and in this he is supported<sup>r</sup> by Walter Map and John of Salisbury.

The other characteristic that is most noticeable is the tendency to leave matters great and small undecided and in the balance as long as it pleased the royal will. The king's attitude over the papal schism has already been discussed.<sup>1</sup> Richard de Anesty's writings illustrate the way in which a judicial case might wait years for a final settlement, the plaintiff having to follow the king half way round England and the Continent to obtain the necessary permits at each stage of the proceedings. The Abbot of Battle sought the king in the North of England and on the Continent before his case was determined, and on several occasions when a day had been fixed for the settlement, it had to be postponed because the king was occupied with other business.

The final impression given by Walter Map is that Henry had built up an institution which was becoming too powerful to contain him. He said, "The king in his court is like a husband who is the last to learn of the unfaithfulness of his wife". His courtiers persuaded him to go out hunting while they remained behind to deal with more serious matters and to determine causes. When the king returned from hunting he showed them his bag ; but they did not show theirs to him. "Is

1. Supra, p. 109-112.

it surprising if he is deceived, who is so rich in enemies of his own household?" The suggestion is that circumstances had changed somewhat since the early days of the reign, when an Abbot could pursue the king to Bridgnorth and interrupt a siege for the sake of justice. Henry had of necessity developed a great bureaucratic machine. By the end of his reign almost all his counsellors were officials. Yet he had not lost sight of his position as a personal monarch ; he himself held the reins of government to the moment of his death. His officers had power to deal with everyday administration, but no real authority and initiative was entrusted to them. He did not tolerate opposition, so deceit was the course inevitably adopted. Henry himself did not live to see the conflict which resulted from the inconsistency of the position he had built up between bureaucracy and autocracy. The conflict could scarcely fail to arise in the circumstances of the next two reigns.

Officials of feudal formality were rigidly observed. Where features of the feudal system were adapted to the needs of the developing state, both in the military and judicial aspects of government, the rights and duties inherent in the system were not abolished.

Less has been said about the second inconsistency. The developments in administration have been discussed. Its obvious corollary was the growth of a bureaucratic machine, which correlates with the increasing proportion of officials among the king's permanent staff of counsellors at the end of the

CONCLUSION. . . . .

The gist of what emerges from all the available details about the government and administration of the reign of Henry II comprises two apparent inconsistencies in the position of the head of the state. In the first place Henry was both a king and a feudal overlord. In the second place he was an increasingly autocratic monarch and at the same time the head of an ever-developing bureaucratic machinery. It seems surprising that there was no conflict within either. The importance of this reign in the development of conciliar organisms is revealed by an examination of the nature of the inconsistencies, which itself provides an explanation for the lack of conflict.

A great deal has been said about the duality of Henry's position as king and feudal overlord. The administrative developments of the reign were prerogative and royal ; yet the essentials of feudal formality were rigidly observed. Where features of the feudal system were adapted to the needs of the developing state, both in the military and judicial aspects of government, the rights and duties inherent in the system were not abolished.

Less has been said about the second inconsistency. The developments in administration have been discussed. Its obvious corollary was the growth of a bureaucratic machine, which correlates with the increasing proportion of officials among the king's permanent staff of counsellors at the end of the

reign. Parellel with this development was the increasing autocracy of Henry's position. He very soon ceased to heed the counsels even of his most trusted advisers when they conflicted with his will. There is no doubt that Henry regarded his power as ordained by God. His belief was continually emphasised by phrases used in his charters. The author of the Dialogus spoke of the necessity of submitting to Henry as to a power ordained by God.

Peter of Blois grasped the essential quality of this contradiction when in one of his letters his facile wit, having produced a lengthy dissertation on Henry's annoying habit of trusting every decision to the sudden impulse of his own mind, turned to prayer : "verte et converte cor hujus regis ab hac pestilenti consuetudine, ut sciat se esse unum hominem". Henry, although a great man, was only one man, and could only exercise the powers and capabilities of one man. He could not deal with a vast empire, constantly subject to war and rebellion, and at the same time develop the administration of his territories, without having recourse to a large and ever-increasing group of administrators. At the same time, even in his lengthy absences, he did not trust in individuals, at any rate not after his disillusion over Becket.

The very nature of the two inconsistencies explains why they caused no conflict at this time. Henry always used for his policies what was dictated by the expediency of the moment ; he did not stop to theorize ; but he used consistently what would have been found correct if there had been occasion

to theorize. There was no possibility of opposition. The baronage had no feeling for corporate action, because they had no experience of it : when they assembled in council they could not oppose the measures they were called to discuss ; their rebellions were such as looked back to the anarchy of Stephen's reign, not forward to the joint protests of the thirteenth century. The men who worked the bureaucratic machinery had neither cause nor occasion for opposition, because the new processes they administered were still largely at the experimental stage, and because Henry never allowed anyone any real power. There could be no drastic developments of either a permanent council of powerful administrators or a Parliament composed of men with a right to attend and discuss, until it was forced by a circumstance more urgent than the mere absence of the king on the other side of the Channel.

What then is the importance of this reign in the development of conciliar organisms? The first Angevin king did not disrupt or abolish the Norman council. His genius has been called imitative and adaptive rather than creative. The most important measures of his reign were not creatures of his genius : they were the continuation in detail of his grandfather's work, which had been interrupted by the anarchy. A tremendous conciliar development would not have been typical of the reign of Henry II. What was important was the effect of the detailed developments on the whole system when unusual circumstances arose to test it. The origin of

thirteenth century developments must be sought very largely in the reign of Henry II. An analysis of the Great Charter shows it to be little more than an adaptation and reorganisation of the reforms of Henry II, based on a generation's experience of the potentiality of abuse<sup>inherent</sup> in the system until it was checked.

It has already been remarked that a usual tendency in English constitutional development is to allow the new to co-exist with the old and not to supersede it, until in process of time and with the justification of experience the best parts of new and old blend together to form a co-ordinated whole and are separately indistinguishable. Henry II unconsciously prepared the political arena for the influence of the minorities, regencies, and financial difficulties of the next century. His reign was not the banquet; it was rather the preparation of supplies.

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A P P E N D I X I .

MATERIALS.

The prolific output of materials both narrative and documentary during the period under review is perhaps the most marked indication that the chaotic conditions of Stephen's reign had given way to a situation governed by a man who combined an administrative genius and an appreciation of learning with a personality strong enough to impose his will on the people he ruled. The enthusiasm for learning and literature at the court of Henry II is well-known.

For the greatest collection of writings on any single subject, however, the court cannot claim credit. They were the outcome of the main controversy of the reign, the conflict between the king and Becket, and were mostly compiled by men suffering exile in the Archbishop's cause. The most reliable biographers are William fitz Stephen and Herbert of Bosham, who were personal witnesses of many of the events. The Life by William, a monk of Canterbury, must be very largely based on second-hand knowledge, and John of Salisbury's is intended as a summary of those by previous writers. There are also several anonymous lives. The value of all is considerably reduced by an element of

1. Stubbs: Lectures on Medieval and Modern History, 137.

There are two works which can strictly be called

bias unavoidable where so poignant a struggle produced so much ill-feeling.

Among other important biographies, the life of William the Marshal, written in French, has been used.

Most of the chronicles used were monastic, and their value depends largely on the geographical position of their monastery and the personal importance of its Abbot. Torigni, Abbot of Mont St. Michel, is the most important of these ; ~~W.~~ William of Newburgh had less easy access to information, but his critical appreciation of events helps to supply the deficiency ; Gervase of Canterbury's chronicle is not entirely original, and ecclesiastical affairs predominate in it, Other monastic chronicles, such as those of Battle and Abingdon, are useful for their description of judicial cases held before the king, in which they were involved. The most important chronicle of the reign is the Gesta Regis Henrici Secundi, whose author is not known for certain, but which, from its detailed information and its inclusion of numerous documents, has the marks of a work by a high-ranking member of the official class, if not of an official chronicle. There are also a valuable history by Diceto, Dean of St. Paul's ; an account of the rebellion of 1173-74 by Jordan Fantosme ; an accumulation of invective against the king by Ralph Niger ; and, lastly, the works of Giraldus Cambrensis, in which wit unfortunately takes precedence over accuracy.

There are two works which can strictly be called

neither narrative nor documentary, the one being descriptive and the other philosophical. The first, De Nugis Curialium, by Walter Map, is a witty and brilliant account of the trivialities of court life by an author who was a member of the court and a justice ; but the contents bear out the title in rendering its factual value less promising than its generalised indications of the court's character. John of Salisbury's Polycraticus, while being primarily philosophical, also draws attention to the vices and corruptions of the age, and the writings of so great a scholar must be treated with considerable deference.

John of Salisbury is also among the men whose letters have been collected together and printed. Within these collections, the Becket controversy again furnishes the chief topic of writing. There are printed editions also of the letters of Gilbert Foliot, Bishop of London, Arnulf, Bishop of Lisieux, and Peter of Blois, who was secretary both to Henry himself and to Richard, Archbishop of Canterbury. These would be a more satisfactory source of information if medieval editors had not removed much of the unartificial in order to leave a memorial to literature rather than to history. The letters of John of Salisbury and Gilbert Foliot suffer least from this tendency. Peter of Blois' writings about the court are of much the same nature as Walter Map's ; and the tone of Arnulf of Lisieux's correspondence becomes embittered with his fall from favour. The letter being the basic form of many legal and

administrative instruments, leads naturally to the subject of documentary sources. Of these, the most conspicuous for their consistency are the Pipe Rolls. They are the best illustrations of the speed with which the organisation of government was re-established after Henry's accession. All the Pipe Rolls for this reign are in print. There is extant one Receipt Roll, for the Michaelmas term, 1185. Such parts of the Norman Exchequer Rolls as exist have been published by Stapleton. For an investigation on the subject of the royal council these are the most useful for their revelations as to the offices, lands, and families of the king's counsellors, and, from 1166 onwards, for tracing ~~judicial~~ judicial developments.

Financial administration formed the basis of one of the two great technical treatises of the second half of the century. As the Exchequer, although it had practically gone "out of court" at this time, was an offshoot of the Norman Curia Regis, the Dialogus de Scaccario, written by Richard fitz Neal, the treasurer, is an essential reference book to any discussion on the council.

The other treatise is the first book on English common law, compiled at the time of its birth : Ranulf Glanvill's Tractatus de Legibus et Consuetudinibus Regni Angliae. It is a book which consists largely of writs, and describes the justice administered by the king's court. Its probable author was the king's capital justiciar and one of his most important counsellors.

Henry himself, however, was active rather as an administrator than as a legislator. "He issued no code ; we may even doubt whether he published any one new rule which we should call a rule of substantive law".<sup>1</sup> But his reorganisation of legal procedure and his measures for the better administration of justice produced documents invaluable for a study of the constitutional history of the time. Among these are the Assizes of Clarendon and Northampton, the Assize of the Forest, the ordinance for the Inquest of Sheriffs, and the Assize of Bread. Of a similar nature are the Constitutions of Clarendon, which defined the relationship of Church and State as it held good under Henry I, and the Assize of Arms, which regulated the arming of the nation. Henry II twice levied a tax on moveables, and the rules for raising each are in documentary form.

The great treaties of the period, with France, Flanders, Ireland, and Scotland, the reconciliation between Henry and his sons in 1174, and the famous arbitration between Castille and Navarre, also belong to this class.

The chief monument to the classification of forms and the methodical organisation of justice is the evolution of the final concord, which was a solemn act made before the king's justices as the result of a plea in the king's court. Much of their value lies in the fact that they allowed no possibility of appeal and were therefore a permanent record.

1. Pollock and Maitland : History of English Law, I, 136.

Those extant for this reign are not numerous, and are scattered, but there has been some attempt to collect together such as are known to exist. Earlier judicial records are in charter form.

Charters and writs form the last group of materials and the most abundant. The former contain grants by the king of lands, privileges, offices or protection. Although there are frequent references and inferences of interest in the texts, the chief value lies in the lists of witnesses attached to each document. None of the authentic charters of the reign of Henry II are dated, but it is possible to ascribe dates to most, within varying limits. As it would be impossible, for this purpose, to use all the extant charters of the period, a representative selection has been made from printed and manuscript collections. Delisle's monumental work on the charters of Henry II only attempts to include those which have some connection with his Continental possessions, although many of these were drawn up in England. This is balanced by the use of three English collections : grants to monasteries in Dugdale's *Monasticon* ; and miscellaneous grants, found in *vidimuses* and confirmations from the *Calendar of Charter Rolls*, and in the charter rolls in the Public Record Office known as the Carte Antique, the latter being the only manuscript source used.

1. Maitland : *Select Pleas of the Crown*, and Round : *Feudal England*, 509-516 and *English Historical Review*, XII, 293.

The lists of witnesses frequently include not only members of the court, but also their servants, or mere spectators, so that the presence of a name does not necessarily show a member of the court. However, the constant recurrence of the same name shows a counsellor who was regularly with the king, and it is from these that deductions can be drawn as to the type of counsellor who predominated in the king's court, thereby establishing the details of its composition.

A P P E N D I X     I I.

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TABLE TO SHOW THE DIFFERENT TYPES OF COUNSELLORS  
USED AS WITNESSES IN RELATIVE PROPORTIONS.

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	1154-64	1164-73	1173-79	1179-89
Bishops and Archbishops.	21.8	11.8	22.6	19.81
Abbots and Priors.	.48	.59	.07	.45
Deans.	.24	3.24	1.42	.6
Archdeacons.	.6	8.95	3.1	6.45
Chaplains.	.24	.2	.82	.45
Earls and Counts.	10.68	6.88	7.46	5.03
Household Officers.	46.85	30.97	24.83	26.48
Sheriffs.	15.94	7.77	13.2	19.28
Justices.	-	8.46	20.06	21.53
Men without title or office.	18.05	30.87	24.83	19.13

N.B. The totals will in no case be 100% because many men possessed more than one of these titles or offices. All the figures are percentages.

A P P E N D I X     III.

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TABLE TO SHOW THE RELATIVE USE OF ENGLISH AND  
CONTINENTAL COUNSELLORS AS WITNESSES.

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	1154-64.	1164-73.	1173-79	1179-89.
English bishops.	61.8	30.6	63.4	60.2
Continental bishops.	38.2	69.4	36.6	39.8
English archdeacons.	85.7	63.7	93	89.5
Continental archdeacons.	14.3	36.3	7	10.5
Earls.	97	95.7	89	94
Counts.	3	4.3	11	6
English bishops in ) English towns.        )	89.6	74	91.1	72.5
English bishops in ) Continental towns.   )	10.4	26	8.9	24.5
Continental bishops in ) Continental towns.    )	61.3	99	91	94.3
Continental bishops in ) English towns.         )	38.7	1	9	5.7
English archdeacons in ) English towns.         )	25	53.4	60	35.1
English archdeacons in ) Continental towns.    )	75	46.6	40	64.9
Continental archdeacons ) in Continental towns.   )	100	36.4	100	100
Continental archdeacons ) in English towns.       )	0	63.6	0	0
Earls in English towns.	90.4	56.7	66.3	49.2
Earls in Continental towns.	9.6	43.3	33.7	50.8

N.B. All the figures are percentages.

A P P E N D I X    I V .

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Inter-relationship of the Counsellors.

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(N.B. For the sake of clarity the names of counsellors have been underlined in red).

One striking aspect of the subject of Henry II's council which merits notice is the inter-relationship of a large number of the counsellors. It has been suggested as most probable that the final choice <sup>of</sup> ~~of~~ <sup>adviser</sup> ~~es~~ lay with the king himself, but there are occasional hints that a relationship with an important official or counsellor might secure an appointment. Nigel Bishop of Ely probably bought the office of treasurer for his son for £400. There is a letter written by Gilbert Foliot praising the excellent qualities of "amicus et affinis noster R. Brito". Perhaps the most significant indication is in a letter from Peter of Blois to the king begging him to appoint efficient and worthy officials, who would do justice without accepting bribes, and "qui de vestrorum familiarum parentela fiduciam impunitatis, et audaciam saeviendi non habeant".

Most of the men who had held earldoms from the Conquest were related to the royal family, or rather to the ducal house of Normandy. Many of the newer earls were also related to Henry II. The Earldom of Surrey went to Hamelin, the illegitimate son of Count Geoffrey of Anjou, who married Isabel the Countess of Warenne. The first holder of the Earldom of Arundel, William d'Aubigni, son of Henry I's

butler, married Adeliza, that king's widow. Her brother, Joscelin de Louvain, occasionally appears as a witness to royal charters, as also does Ralph de Faia, Queen Eleanor's uncle, who was seneschal of Aquitaine. Richard, Viscount of Beaumont, whose daughter married William, king of Scots, had a brother, Ralph, who became Bishop of Angers, and who was described by Torigni as "cognatus germanus Henrici regis". William the king's brother, appears frequently as a witness at the beginning of the reign. The Earls of Gloucester and Cornwall, both important and trusted counsellors, were illegitimate sons of Henry I.

The most amazing family is perhaps the Beaumont-Newburgh family. The accompanying genealogical table shows not only that many members of the family occupied positions of importance on both sides of the Channel, but also that its members married into many other families, old and new, which were important during the reign. They themselves held the Earldoms of Leicester and Warwick, and the County of Meulan ; they were related to the royal houses of England, France, and Scotland ; they were connected by marriage with the Earls of Ferrers, Northampton, Surrey, Cornwall, Gloucester, and Clare, and the Counts of Vermandois, Perche, and Evreux. Into this family married many important counsellors of less distinguished rank ; the names of Bohun, d'Oilli, Basset, Creon, Talbot, Toeni, Quenci, and Painel appear on the table.

Many such men married into the greater families

during the reign, families which are mentioned on this one small genealogical table, so that a large-scale table could show that an amazing proportion of the king's counsellors had intermarried, thus making the royal council a tremendous family circle. J. H. Round commented, in his Introduction to the *Rotuli de Dominabus*, on the number of cases in which the hand of male wards was sought in marriage by Crown officials for their nieces or other relatives.

The first section of the lists which follow includes only such relationships among royal counsellors as established a connection, distant in some cases, with the Beaumont-Newburgh family, or the families connected with it by marriage ; that is, those which make up this great family circle in the royal council.

William, Earl of Gloucester, who appears on the Beaumont chart, had three daughters who were co-heirs : one married the Count of Evreux, one the Earl of Clare, and the third was a Crown ward at the end of the reign ; she later married king John. Roger, Bishop of Worcester, was a son of Robert, Earl of Gloucester, and William's brother. Hugh de Montfort was the nephew of the wife of Richard, son of the Earl of Gloucester.

The daughter of the Count of Evreux was given in marriage by Henry to Hugh, Earl of Chester, whose son married Constance, Duchess of Brittany, Count Geoffrey's widow, and whose daughter married David, Earl of Huntingdon.

The Clare family inherited the Giffard lands on

the death of Walter Giffard in 1164, on account of the marriage of Rohais, sister of the first Earl of Buckingham, to Richard fitz Gilbert of Clare. William Marshal married the daughter of his great-grandson, also Richard fitz Gilbert, Strongbow. William Marshal was the son of John Marshal and Sibil, sister of Patrick, Earl of Salisbury. The daughter of Gilbert fitz Richard of Clare was the mother of Gilbert de Montfichet.

Patrick, Earl of Salisbury, married Adela, the widow of William de Warenne, whose mother was the widow of Robert de Beaumont. His son, William fitz Patrick, married Eleanor, daughter of Robert de Vitri and Widow of William Paine. Another William Paine was archdeacon of Avranches.

A Fulk Paine, whose father and son were both called William, married a daughter of William de Humez, the son of the constable Richard de Humez. The Gervase Paine who married Isabel de Beaumont, the widow of Simon de Senlis, Earl of Northampton, was probably of the same family. Another Fulk Paine married one of the daughters and co-heirs of Gilbert de Avranches, son of Hasculf de Soligny; another of whose daughters married Thomas de Colunciis.

Maud de Senlis, daughter of the Earl of Northampton, married Sehero de Quenci, who was either father or uncle of the Sehero de Quenci who married Margaret de Beaumont. Another Maud de Senlis was the mother of Walter fitz Robert who married first Maud de Lucy, daughter of Richard de Lucy the Justiciar and sister of Godfrey de Lucy Bishop of

Winchester, and secondly Margaret de Bohun.

Gervase Paine's mother was daughter of the Earl of Ferrers, whose grandson married the daughter of William de Braose, whose son married the widow/~~the~~ of Hugh Bardulf. Philip de Braose, William's uncle, married Berta, granddaughter of Miles, Earl of Hereford, who was father of Roger, Earl of Hereford. According to Gervase of Canterbury, Gilbert Foliot was related to the Earls of Hereford. He was also a near relation of Robert Foliot, Bishop of Hereford.

Bertram de Verdun married Maud, daughter of Robert, Earl of Ferrers. Robert de Ferrers, Earl of Derby, married the daughter of William Peverel of Nottingham, another of whose daughters married Richard de Redvers, Earl of Devon. His grandson Richard de Redvers married Dionysia, daughter of Reginald, Earl of Cornwall.

Another daughter of William de Humez married William de Fougères and their <sup>daughter</sup> son married Robert, Earl of Chester in 1200. His eldest son, Richard de Humez, married Aegidia, one of the daughters ~~of~~ and co-heirs of Richard de Haia by his wife Matilda, the daughter of William de Vernon.

Another of the daughters and co-heirs of Richard de Haia, Nicholaa, the widow of William ~~de~~ fitz Erneis, married Gerard de Camville, son of Richard de Camville. Richard de Camville's other son, William, married the daughter of Geoffrey Marmion.

To return to the Warennes, the Earl who married Elizabeth the widow of Robert de Beaumont, had a sister,

Edith, whose daughter Gundred married Nigel d'Aubigni, the younger brother of William d'Aubigni who was butler to Henry I and father of the first Earl of Arundel. Nigel's two sons, Roger and Henry, adopted the name of Mowbray, Henry being succeeded by his son Robert de Mowbray.

The daughter of William d'Aubigni by Adeliza the Queen dowager married John, Count of Eu, and after his death Alured of St. Martin. John's son, Henry, Count of Eu, married the daughter of Hamelin Plantagenet, Earl of Warenne. Another daughter of Hamelin married Gilbert de Aquila, the eldest son of Richerius de Aquila, whose daughter Juliana married William de Courci, the dapifer.

William d'Aubigni, father of the first Earl of Arundel, married Maud, daughter of Roger Bigod and sister of Hugh Bigod, Earl of Norfolk. Hugh's son Roger married Isabel daughter of Hamelin of Warenne, and Roger Bigod's daughter married William of Hastings. Hugh married twice : his first wife, and Roger's mother, was Juliana, the sister of Aubrey de Vere, Earl of Oxford ; his second wife was Gundreda, who after his death married Roger de Glanvill, brother of the Justiciar Ranulf Glanvill, who married Berta, daughter of Theobald de Valoines. His two nephews were Hubert Walter, and Theobald Walter, the butler of Ireland. Glanvill's niece married William de Stuteville, the son of Robert de Stuteville, and nephew of Roger and Nicholas de Stuteville. The sister of Robert de Stuteville married William de Vesci. Rohese, the daughter of Aubrey de Vere, chamberlain

to Henry I, and of Alice, the Daughter of Gilbert de Clare, married Geoffrey de Mandeville, first Earl of Essex, and after his death Payn de Beauchamp, the father of Simon de Beauchamp. Geoffrey de Mandeville's sister Beatrice was the wife of William de Sayn, grandfather of Beatrice de Say who married Geoffrey fitz Peter. Geoffrey and William de Say were grandsons of Alice, sister of Walkelin Maminot. This Alice married ~~with~~ Ralph de Chesney, father of William de Chesney, whose daughter Margaret married Hugh de Cressi.

The two sons of Geoffrey de Mandeville, Geoffrey and William, were both Earls of Essex. William de Mandeville married Hawise, daughter of the Earl of Albemarle, whose son by her second husband was William de Fortibus, Earl of Albemarle. Her third husband was Baldwin de Béthune.

Adelina, sister of William de Warenne, married Henry, Earl of Huntingdon, the son of David, king of Scots. Henry's daughter, Margaret, the widow of Conan, Count of Brittany, married Humphrey de Bohun, the constable. Maud de Bohun married Henry d'Oilli, whose father married a sister of Roger, Earl of Hereford, of whom another sister was married to Philip de Braose and a third to Herbert fitz Herbert. Henryd'Oilli's niece, Margaret, married Henry, Earl of Warwick. His sister Edith married Gilbert Basset, the father of Thomas Basset. The daughter of his cousin, Fulk d'Oilli, married John Belet, the brother of Michael Belet. Thomas Basset married Alice of Dunstanville. Gilbert Basset had a daughter who was married to Richard de Camville. A sister

of William Basset married Robert de Cauz and had a daughter who married Ralph fitz Stephen the chamberlain. Geoffrey Ridel, probably related to the Geoffrey Ridel who was Bishop of Ely, was a member of the Basset family, and he married Sibil, daughter of William Mauduit, the chamberlain. Sibil's nephew married the daughter of Thomas fitz Bernard, who married Eugenia d. Picot, the widow of William Malet.

Maurice de Creon made a payment of 200m. in 28 Henry II for licence to marry the daughter of Thomas Basaet, son of Edith d'Oilli. A daughter of Maurice de Creon married Guy de la Valle.

Besides this complicated chain of inter-marriages there were other marriages between official families, which do not come within the general scheme of intermarriage. The sister of William de Lanvallei married William de Beauchamp. The wife of Simon de Crevequer was the daughter of Robert fitz Ernisius, Stephen de Turneham married the daughter of Ranulf de Broc. The wife of Everard de Ros was the daughter of William Trussebut and sister of Robert Trussebut. William de Soliers married the sister of Ralph Taisson, the son of Jordan Taisson. Reginald de Curtenay's brother married Alice, the widow of Gilbert Pipard. Walter of Coutances, Chancellor and Archbishop, was either the brother or the brother-in-law of Roger fitz Reinfred, and his nephew John de Coutances was Bishop of Worcester. William of St. John married the daughter of Stephen, Count

of Penthièvre. Hugh de Nunant, Bishop of Chester, was the nephew of Arnulf of Lisieux. Reginald Bishop of Bath was the son of Jocelin de Bohun Bishop of Salisbury and the nephew of Richard de Bohun Bishop of Coutances. According to Torigni, Walter, Bishop of Rochester was the brother of Archbishop Theobald. The family of William fitz Ralph, seneschal of Normandy, was important in various clerical and secular offices : his brother Robert was Bishop of Worcester ; one son was archdeacon of Nottingham, and occasionally appeared in an official capacity at the Exchequer at Caen ; another son was Canon of Evreux.

One other family which should be mentioned is that of the treasurers Nigel of Ely and his son Richard fitz Neal, the nephew and great-nephew respectively of Roger, Bishop of Salisbury, the man responsible for the reorganisation of the Exchequer under Henry I. Stubbs has suggested that Richard of Ilchester might have belonged to this family, because his son Herbert, Bishop of Salisbury<sup>1</sup> had the surname Poor, which seems to have been applied peculiarly to the family. The connection is a possibility but no more than that. In the first place, Richard himself was given at different times a number of different surnames, such as Tocliff and More, which are difficult to account for. He was born in the diocese of Bath,<sup>2</sup> but apart from this nothing

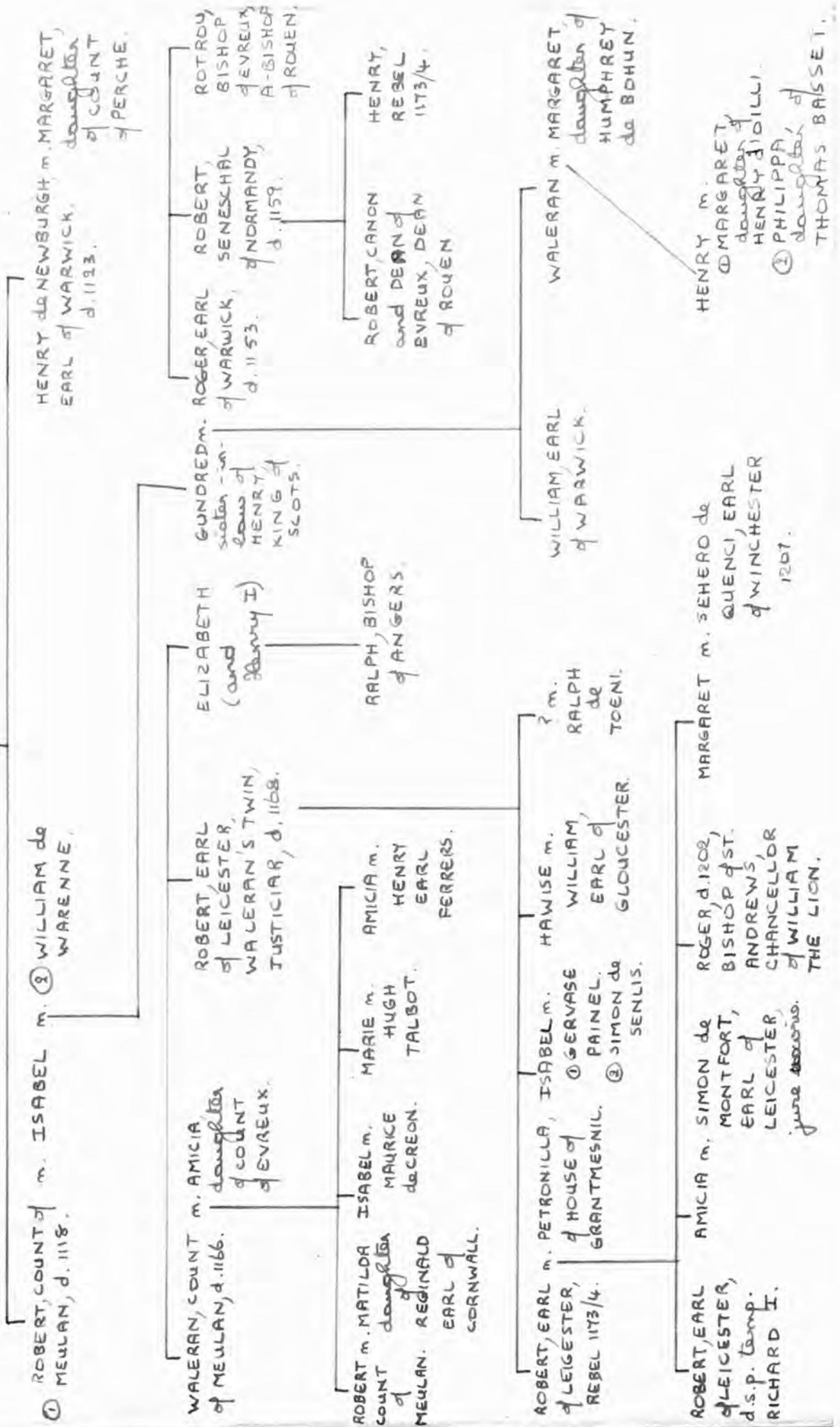
1. Madox : Formulare, 47 and 52.

2. Ralph of Diceto : Imagines Historiarum, I, 319.

seems to be known of him until he appears as an unimportant clerk in the Exchequer, and then as archdeacon of Poitiers. Richard fitz Neal in the Dialogus de Scaccario says he rose to prominence on account of his ability as a clerk. As for the family name, there is some dispute as to whether the significance was "pauper" or "puer", and it seems to have belonged to certain families important in Irish affairs as well as to the Marshal Robert Puharius.



ROGER de BEAUMONT m. ADELINE (daughter and sister of Counts of Meulan)



A P P E N D I X      V.

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COUNCILS HELD BETWEEN 1154 AND 1189.

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Date.	Place.	Business.
1154. Dec. 8	Winchester. <sup>1</sup>	Fealty of barons.
Dec. 19	Westminster. <sup>1,2,3,4,5,6,7.</sup>	Coronation.
Dec. 25 <sup>x</sup>	Bermondsey. <sup>1</sup>	Expulsion of mercenaries. Adulterine castles.
1155. Mar. 27 <sup>x</sup>	London. <sup>1,7.</sup>	Resumption of demesne.
Apl. 10	Wallingford. <sup>1,2.</sup>	Fealty to king's son.
July 7	Bridgnorth. <sup>7.</sup>	Peace with Mortimer.
Sept. 29	Winchester. <sup>2.</sup>	Conquest of Ireland.
Decr. 25 <sup>x</sup>	Westminster. <sup>7.</sup>	Settlement of English affairs.
1157. May 19 <sup>x</sup>	Bury St. Edmunds. <sup>7.</sup>	Coronation.
July 17	Northampton. <sup>1.</sup>	Profession of obedience by Abbot of St. Augustine's.
Decr. 25 <sup>x</sup>	Lincoln. <sup>5,6.</sup>	Coronation.
1158. Apl. 20 <sup>x</sup>	Worcester. <sup>3,4,5.</sup>	Coronation.
Decr. 25 <sup>x</sup>	Cherbourg. <sup>2,8.</sup>	Social court.
1159. Decr. 25 <sup>x</sup>	Falaise. <sup>2,9.</sup>	Presenting jury for Normandy.
1160. July	Neufmarché. <sup>1,2.</sup>	Papal schism.
Decr. 25 <sup>x</sup>	Le Mans. <sup>2.</sup>	-----
1161. Decr. 25 <sup>x</sup>	Bayeux. <sup>2</sup>	-----
1162. Feb.	Rouen and Lillebonne. <sup>2</sup>	Reorganisation of local officials.
Decr. 25 <sup>x</sup>	Cherbourg. <sup>2</sup>	-----
1163. July 1	Woodstock. <sup>2,3.</sup>	Homage of Scots and Welsh Princes.
Oct.	Westminster. <sup>9.</sup>	"Customs of kingdom".

Date.	Place.	Business.
1164. Jan.	Clarendon <sup>1,3,4,5,6,9.</sup>	Recognition of customs.
Oct. 1166	Northampton. <sup>1,3,5,9.</sup>	Trial of Becket.
Feb.	Clarendon. <sup>5.</sup>	Assize of Clarendon. Justices.
Apl. 24 <sup>x</sup>	Angers. <sup>2.</sup>	Tithe for Jerusalem.
May 10,16	Le Mans. <sup>1.</sup>	Institution of Tithe.
June	Chinon. <sup>9.</sup>	Appeal to Pope against Becket.
Dec. 25 <sup>x</sup>	Poitiers. <sup>2.</sup>	-----
1167. Dec. 25 <sup>x</sup>	Argentan. <sup>2.</sup>	Social court.
1168. Dec. 25 <sup>x</sup>	Argentan. <sup>2.</sup>	-----
1169. Jan. 6	Montmirail. <sup>1.</sup>	Negotiations with Louis, and with Becket.
Nov.	Montmartre. <sup>1.</sup>	Negotiations with Becket.
Dec. 25 <sup>x</sup>	Nantes. <sup>2,3,10.</sup>	Social court.
1170. Apl. 5 <sup>x</sup>	Windsor. <sup>1,2,10.</sup>	Social court.
April	London. <sup>10.</sup>	Deposition of sheriffs.
June 11	London. <sup>2.</sup>	Returns of Inquest.
June 1 4	Westminster. <sup>1,2,3,5,10.</sup>	Coronation of young Henry.
July 22	Fréteval. <sup>9.</sup>	Reconciliation with Becket.
Dec. 25 <sup>x</sup>	Bure. <sup>2,9,10.</sup>	-----
1171. July	Argentan. <sup>2.</sup>	Invasion of Ireland.
Dec. 25 <sup>x</sup>	Dublin. <sup>1,10.</sup>	Fealty of princes and bishops of Ireland.
1172. Dec. 25 <sup>x</sup>	Chinon. <sup>2,10.</sup>	Social court.
1173. Apl. 8 <sup>x</sup>	Alençon. <sup>10.</sup>	-----
Dec. 25 <sup>x</sup>	Caen. <sup>1,10.</sup>	-----
1174. Dec. 25 <sup>x</sup>	Argentan. <sup>2,10.</sup>	-----
1175. Apl. 13 <sup>x</sup>	Cherbourg. <sup>10.</sup>	-----

Date.	Place.	Business.
1175. June 29	Gloucester. <sup>10.</sup>	Agreement with Welsh Princes
July	Woodstock. <sup>10.</sup>	Ecclesiastical vacancies. No-one to come to court except by summons.
Aug.	York <sup>6,10.</sup>	Homage <sup>of</sup> <del>to</del> King of Scots.
Oct. 6	Windsor <sup>10.</sup>	Treaty with King of Connaught.
Dec. 25 <sup>x</sup> 1176.	Windsor <sup>10.</sup>	-----
Jan.	Northampton <sup>1,3,5,10.</sup>	Assize of Northampton. Itinerant justices. Subjection of Scottish Church.
Apl. 4 <sup>x</sup>	Winchester <sup>10.</sup>	Social court.
May	London <sup>3,5,10.</sup>	Marriage of Joanna.
Aug. 15	Winchester <sup>10.</sup>	Agreement between York and Ely.
Sept. 28	Windsor <sup>10.</sup>	Adulterine castles. Richard of Ilchester made Justiciar of Normandy.
Dec. 25 <sup>x</sup> 1177.	Nottingham <sup>10.</sup>	-----
Jan.	Northampton <sup>5,10.</sup>	Ambassadors from Flanders. Earldom of Sussex conferred. Case of William de Cahannes. Resignation of deanery of Waltham Restoration to Earl of Chester
Mar.	London <sup>3,5,10,11.</sup>	Arbitration between Castille and Navarre.
Apl. 24 <sup>x</sup>	Wye <sup>10.</sup>	Social court.
May	Geddington <sup>10</sup> and Windsor.	Adulterine castles. Irish appointments.
May	Oxford <sup>5,10.</sup>	Negotiations with Welsh Princes. Irish appointments. John made King of Ireland.
June 12 <sup>x</sup>	London <sup>10.</sup>	Social court.
July	Winchester <sup>10.</sup>	Military levy.

Date	Place	Business
1177. Sept.	Gué-Saint-Rémy <sup>2.</sup>	Negotiations with Louis about a Crusade, Treaty.
Sept.	Verneuil <sup>10.</sup>	Debts of crusaders.
Dec. 25 <sup>x</sup> 1178.	Angers <sup>2, 10.</sup>	Social court.
Apl. 9 <sup>x</sup>	Angers <sup>10.</sup>	Social court.
Dec. 25 <sup>x</sup> 1179.	Winchester <sup>10.</sup>	-----
Apl. 1 <sup>x</sup>	Winchester <sup>5, 10.</sup>	-----
Apl. 10	Windsor <sup>5, 10.</sup>	Appointment of Justices.
May 20 <sup>x</sup>	? <sup>10.</sup>	-----
Dec. 25 <sup>x</sup> 1180	Nottingham <sup>2, 10.</sup>	Social court.
Apl. 20 <sup>x</sup>	Le Mans <sup>2, 3.</sup>	-----
Dec. 25 <sup>x</sup>	Le Mans <sup>2, 10.</sup>	Social court. Assize of Arms.
1181. Apl. 5 <sup>x</sup>	Chinon. <sup>10.</sup>	-----
Dec. 25 <sup>x</sup> 1182	Winchester <sup>10.</sup>	-----
Feb.	Waltham <sup>1.</sup>	King made his will.
Dec. 25 <sup>x</sup> 1183	Caen <sup>2, 10, 12.</sup>	Social court.
Dec. 25 <sup>x</sup> 1184.	Le Mans <sup>2, 10.</sup>	-----
Aug.	Reading <sup>10.</sup>	Election to Canterbury.
Dec. 25 <sup>x</sup> 1185	Windsor <sup>10.</sup>	Social court.
March	Clerkenwell <sup>1, 3, 4, 5, 6, 10.</sup>	Whether Henry to go on Crusade.
Apl. 21 <sup>x</sup>	Rouen <sup>3.</sup>	-----
Dec. 25 <sup>x</sup> 1186	Domfront <sup>2, 10.</sup>	-----
Sept 5	Woodstock <sup>10.</sup>	Marriage of King of Scots.
Sept 14	Marlborough <sup>10.</sup>	Election to vacant bishoprics.
Dec. 25 <sup>x</sup> 1187.	Guildford <sup>10.</sup>	Social court.
Dec. 25 <sup>x</sup>	Caen <sup>10.</sup>	-----

Date.	Place.	Business.
1188.		
Jan. 21	Gisors <sup>10</sup> .	Negotiations with King of France.
Jan.	Le Mans <sup>5,10</sup> .	Saladin Tithe.
Feb.	Geddington. <sup>1,5,6,10</sup> .	Saladin Tithe.
Dec. 25 <sup>x</sup>	Saumur <sup>10</sup> .	-----
1189.		
May 8 <sup>x</sup>	La Ferte Bernard <sup>10</sup> .	Peace with Philip.
June 9	Le Mans <sup>1</sup> .	Negotiations with Philip.

1. Gervase of Canterbury.
2. Robert de Torigni.
3. Ralph of Diceto.
4. Matthew Paris.
5. Roger of Hoveden.
6. William of Newburgh.
7. Battle Abbey Chronicle.
8. Continuatio Beccensis.
9. Materials for the Life of Becket.
10. Gesta Regis Henrici Secundi.
11. Giraldus Cambrensis.
12. History of William the Marshal.

N.B. x denotes a council at one of the three great feasts, Easter, Whitsun or Christmas.

## A P P E N D I X VI.

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The Significance of the Judicial Reorganisation of 1178.  
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There is a passage in the *Gesta Regis*<sup>1</sup> which has come in for a considerable amount of discussion. As constant reference will be made to it, it is worth quoting in full :-

"Itaque dominus rex moram faciens in Anglia quaesivit de justitiis quos in Anglia constituerat, si bene et modeste tractaverunt homines regni ; et cum didicisset quod terra et homines terrae nimis gravati essent ex tanta justitiarum multitudine, quia octodecim erant numero, per consilium sapientium regni sui quinque tantum elegit, duos scilicet clericos et tres laicos, et erant omnes de privata familia sua. Et statuit quod illi quinque audirent omnes clamores regni, et rectum facerent, et quod a curia regis non recederent, sed ibi ad audiendum clamores hominum remanerent ; ita ut si aliqua quaestio inter eos veniret, quae per eos ad finem duci non posset, auditui regio praesentaretur, et sicut ei et sapientioribus regni terminaretur".

The older opinion was represented by Stubbs who believed that this was the establishment of the court of king's bench as a separate committee of the Curia Regis. Maitland revised this : he still regarded it as a differentiation from the Curia Regis, but believed it to be the origin of the court of common pleas. Adams supported Maitland's view that it was

1. *Gesta Regis Henrici Secundi*, I, 207.

the origin of the court of common pleas, but believed it to have been created by an act of legislation. Many other historians have commented on it, but always on the basis of these three opinions.

The two aspects of the passage to be noticed first are the numbers of justices and the nature of the complaint. On many occasions the passage has been taken at its face value ; that is, it has been interpreted as signifying that eighteen justices were considered too many and replaced by five. The eighteen are assumed to have been the itinerant justices appointed in 1176, which seems on the face of it most probable. The six circuits of 1176 as described in the Gesta Regis are mentioned on the Pipe Roll of Michaelmas 1176. In the following year the first five circuits were still operating, and two new names appear in addition to these fifteen. The Roll of the following year, 1177-1178, 24 Henry II, shows only eight justices operating, of whom one only was new. Henry did not reach England until the middle of July 1178. Any change would therefore have taken place after the apparent reduction in the number of itinerant justices. In any case the Roll of 1178-1179 shows the same eight justices in eyre, and in 1179 the same chronicler speaks of a further reorganisation, and the appointment of twenty four justices, whose circuits can be traced on the Pipe Roll. It seems therefore that there can be no connection between a complaint about the number of justices, and the appointment of the five. Either the chronicler made a

mistake, or he did not intend to signify any such connection.

Assuming that the complaint was not connected with the number of justices, it is necessary to investigate any other possible grounds for complaint. The most obvious cause is the corruption of the itinerant justices, and the extensive financial exactions which followed their visits ; about which John of Salisbury, Walter Map, and Peter of Blois speak in no uncertain terms. The two latter speak also of the difference made by the personal presence of the king or his chief justiciar. The imputation of corruption is borne out by Diceto, who describes the king's difficulties in finding suitable men and his numerous experiments with different classes of officials'. The greatest difficulty must have been to provide a system efficacious during the king's absence.

Another indication of the <sup>reason</sup> ~~necessity~~ for complaint may be found by a comparison of these few years with the years 1166-1170, and the coincidence again supports Diceto's statement about the necessity for experimenting to find suitable officials. The Assize of Clarendon of 1166 was followed by a four-year absence of the king on the Continent. When he returned he found that the people had been burdened by exactions, and carried out an inquest which resulted in the dismissal of a large number of sheriffs and bailiffs. In 1176 the Assize of Northampton was shortly followed by

1. Imagines Historiarum I, 434.

another absence, resulting in a similar complaint on the king's return. The consequent re-shuffle on this occasion concerned the king's justices. Diceto's description of the king's experiments is under the year 1179 ; the passage in the Gesta Regis under 1178.

The fact that complaints arose during the king's absence supports the proposition that the prime necessity was for someone capable of administering justice while he was not in England. Possibly this is the significance of the statement that the men appointed were not to leave the Curia Regis but were to remain there to hear the clamores hominum'. The difficulty is, and it has been admitted by most writers, that it is quite impossible to trace any regular organization from 1178 of the type described in the passage in question. It has already been seen that it had no prejudice to the system of itinerant justices, and certainly did not replace it. The circuits of the years 27-30 Henry II were quite small. Thereafter large numbers of justices in eyre were again appointed. J. H. Round, using the evidence of such final concords as are extant and available, said of the passage in the Gesta Regis : "I cannot think that this reform, if it took place, enured, for the central body that we really meet with from 1179 onwards is, it seems to me, distinctly different." He deduced from the evidence of the fines that the three "archjusticiars", the Bishops of Winchester,

1. v. Adams : Council and Courts, 220, note 16.

Ely, and Norwich, together with Glanvill~~x~~ the chief justiciar, held a position severed from that of the other justices. These men were respectively at the head of the four circuits mentioned in the Gesta Regis as appointed in 1179, although the names of the bishops themselves do not appear on the Pipe Rolls in this connection.

The fact that the measure of 1178 as described by the chronicler was altered almost immediately suggests that it should not perhaps be regarded as a legislative creation, a view which is supported by several other indications. In the first place, if every use of the word statuit were interpreted as signifying a legislative creation, the chronicles would present a very disproportionate view of the legislative activity of the reign. Adams says that the passage would imply the creation of a court by an act of legislation, if it could be interpreted as record evidence would be. Such an interpretation does not seem justified. There is no other independent authority to support the statement in the Gesta Regis. Even more significant is the fact that Hoveden, who for the most part copied and re-edited the Gesta Regis, and was himself a royal justice, omits this passage from his chronicle altogether. Glanvill indubitably appreciated a valuable legislative measure. He speaks of the Grand Assize in this way: "Est autem assisa illa regale quoddam beneficium clementia principis de consilio procerum populis indultum." He would surely have made some reference to an act of legislation which established an important court.

Adams himself says that judging from the evidence of the Pipe Rolls, no change in actual practice was made by the legislation of 1178, because the Pipe Roll headings are the same after as before that date. He has found a possible explanation of what happened by comparing the pleas of the itinerant justices with the placita ad scaccarium, and the placita curie, which seem to imply that the itinerant justices continued or completed the unfinished business of their circuits at Westminster after their return, because the business under these headings was plainly itinerant Justice court business. He also suggests this as a possible reason for the complaint of 1178 about the number of justices, although he takes the same evidence from the Rolls of the years before and after 1178. In the first place, as regards the justice done in the courts, every court held in the king's name was Curia Regis and would administer the same justice, the king's justice. Presumably that is what the author of the Gesta Regis meant by Omnes clamores regni: signifying that the five were to deal, not with every plea, but with any plea within the scope of the king's prerogative justice. As far as the Pipe Rolls themselves are concerned, there is considerable confusion in the case of individual debts, which might appear under one heading at their original levying, and under another in subsequent years if they were not paid off immediately. The tendency to confuse entries in this way suggests that the compilers of the Rolls were not aware of any very important

distinctions within the Curia Regis, although it comprised many courts.

The placita curie appear first in 1175, three years before the reform mentioned in the Gesta Regis; that is, in the same year as the pleas in the Curia Regis, which have been established by J. H. Round as pleas held by justices travelling with the king, in addition to the four justices in eyre for that year. This was immediately before the king's absence on the Continent. Possibly the success of the experiment then tried suggested its resurrection in a different form after the king's return, a form which would hold good in Henry's absence as well as in his presence. There is no evidence, however, that the scheme as described in the Gesta Regis was immediately put into effect. It is doubtful whether it can be regarded as <sup>the</sup> establishment of a definite court. The chronicle only mentions two of the circuit reorganisations. ~~He~~ <sup>It</sup> says nothing of the great circuits of the 1180's or of the lesser ones before 1176. Possibly <sup>its</sup> ~~his~~ mention of the measure of 1178 may be regarded similarly, as an isolated illustration of one of many measures. It is well known that Henry was continually experimenting. The most satisfactory explanation of the reorganisation of 1178 seems to be to regard it as just one experiment in a series of experiments.