

CONSTITUTIONAL HISTORY OF ENGLAND

BY

GEORGE BURTON ADAMS

LATE PROFESSOR OF HISTORY, EMERITUS, YALE UNIVERSITY

REVISED BY

ROBERT L. SCHUYLER

PROFESSOR OF HISTORY, COLUMBIA UNIVERSITY



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GENERAL EDITOR

CHARLES H. HASKINS

Professor of History in Harvard University

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PREFACE TO THE REVISED EDITION

In this revision of Professor Adams' well known text an attempt has been made to bring it up to date chronologically, and chapters have been added, accordingly, on the Irish Free State (xxi) and constitutional developments since the war (xxii). Another new chapter (xxiii) has to do with the growth of administrative activities, a feature of recent English constitutional history that has become more conspicuous than it was when Professor Adams wrote. The first ten pages of chapter xx of the original edition, which relate principally to the controversies between the lords and the commons resulting in the parliament act, have been added to chapter xix, from which it seemed desirable to omit the discussion of imperial federation. This was a subject to which Professor Adams happened to have devoted much study and thought, but perspectives on British imperial relations have changed since the war, and imperial federation, for the time being at least, is no longer within the range of practical politics. In chapter xx the constitutional history of the war period has been rewritten and expanded. The General Bibliography is new.

No changes have been made in the first eighteen chapters of the text. This is not because nothing has been added to our knowledge of English constitutional history since these chapters were written. Were Professor Adams writing to-day, he would take account, no doubt, of T. F. Tout's great work on medieval administration, to mention only one outstanding contribution in the field made during the last fifteen years. But re-touched portraits are rarely satisfactory, and I have neither the temerity nor the inclination to attempt the reconstruction of a master's work.

iv PREFACE TO THE REVISED EDITION

For personal reasons I am peculiarly glad and proud to be associated with a book of Professor Adams'. It was my good fortune to serve for several years in the Department of History at Yale of which he was then the head, and memories of his many kindnesses to me, as well as the inspiration of his scholarship, are among my treasured possessions.

R. L. S.

New York City,
June 19, 1934.

PREFACE

I have endeavored in writing this book to keep constantly in view the needs of the general reader and of the college student. I have to join in the recurring lament of those who attempt to write a small book on a large subject that they are obliged to omit so many details and that the task of selection is so difficult. In this book I have especially regretted the fact when I have thought it necessary to omit details which one teacher of English history or another has urged me to include. It seemed to me certain, however, that the chief thing to keep always in mind was to make the continuous growth of the constitution from generation to generation as clear as possible. Details in this line, or which help to make it clear, must be included. Details which are not in the direct line may be omitted, if space demands, and must be if their inclusion would tend to confuse the larger view. I am sure that some teachers will not agree with my selection, but they will not find it a disadvantage that considerable opportunity is given for the expansion of the narrative by the teacher. I believe the book will be found to include those matters which all teachers agree are essential.

It will be especially useful, I think, to expand the Introduction into a more full description of the present English government, in order that the student may know from the beginning "how the play is going to end," and what the important differences are between the American and English constitutions. It is desirable also that the student should be well grounded in English political history, which is here taken for granted, or that he should follow the account closely in some manual of the political history.

I wish to acknowledge my especial indebtedness to the

kindness of the Yale University Press, the publishers of my *Outline Sketch of English Constitutional History*, for permission to use parts of that book in the present one. The important steps in the development and the results are indicated there, and that book will be found valuable for review and for a summary statement. I am also greatly indebted to many scholars who have made me valuable suggestions and especially to Professors A. L. Cross of Michigan, Wallace Notestein of Cornell, and R. L. Schuyler of Columbia Universities, as well as to Professor C. H. Haskins of Harvard University, the general editor of the American Historical Series. I am sorry that I have not had the advantage of Professor A. F. Pollard's *Evolution of Parliament*, which is not yet available here.

G. B. A.

New Haven,

October 16, 1920.

GENERAL BIBLIOGRAPHY

There is no single comprehensive bibliography covering the whole field of English constitutional history. A wealth of bibliographical information relating to the medieval period is given by Charles Gross in *The Sources and Literature of English History* (revised edition, 1915), and for the Tudor and Stuart periods the fullest information is to be found, respectively, in Conyers Read's *Bibliography of British History, 1485-1603* (1933) and Godfrey Davies' *Bibliography of British History, 1603-1714* (1928). There is, as yet, no comparable bibliography for the eighteenth and nineteenth centuries. An excellent select bibliography of medieval constitutional history will be found in A. B. White's *The Making of the English Constitution* (revised edition, 1925), and Helen M. Cam and A. S. Turberville's *A Short Bibliography of English Constitutional History* (1929) is serviceable.

Of the many compendious single-volume histories of the English constitution perhaps the most generally useful is T. P. Taswell-Langmead's *English Constitutional History*. It presents a continuous chronological account of the subject which becomes relatively brief on the last two hundred years. The ninth edition (1929) by A. L. Poole should be used, as it incorporates in the text the results of recent scholarship. D. J. Medley's *A Student's Manual of English Constitutional History* (fifth edition, 1913) treats the subject under a number of broad topics ("The Executive," "The Legislature," etc.) rather than in its chronological development as a whole. F. W. Maitland's *The Constitutional History of England* (1911) consists of lectures delivered by the author at Cambridge in 1887-8. It sketches the development of the constitution during each of five consecutive periods, the first beginning with the Anglo-Saxons and the last ending in the

ninth decade of the nineteenth century. Like everything of Maitland's it is distinctly suggestive.

A course in English constitutional history should introduce students to some of the more detailed works on the subject. William Stubbs' *The Constitutional History of England* (three volumes), first published about sixty years ago, is a classic on constitutional development during the middle ages. The text has not been revised to keep pace with the progress of historical knowledge, but fortunately this want has been met to a considerable degree by a series of special studies appended to the several volumes of a French translation of the work. These have been translated into English and published in three volumes by the Manchester University Press with the title *Studies and Notes supplementary to Stubbs' Constitutional History*. The author is a distinguished French historian, M. Petit-Dutaillis, with whom M. Georges Lefebvre collaborated in the preparation of the third volume. A recent work, which has already taken rank as comparable in importance to Stubbs, is T. F. Tout's *Chapters in the Administrative History of Mediaeval England* (six volumes, 1920-33), a masterly study of English administration in the thirteenth and fourteenth centuries, a subject of which very little was known previously; it throws much new light on many topics in constitutional history. Henry Hallam's *The Constitutional History of England* (three volumes) treats of the period from 1485 to 1760. Though it was written more than a hundred years ago and has not been revised, it should not be ignored. Hallam strove conscientiously to be impartial, but his attitude toward the constitutional controversies of the seventeenth century was that of an early nineteenth-century Whig. More detached and objective is J. R. Tanner's *English Constitutional Conflicts of the Seventeenth Century* (1928). Sir Thomas Erskine May's *Constitutional History of England* deals with the hundred years from 1760 to 1860 and is continued by Francis Holland to 1911 (new edition, three volumes, 1912).

Comprehensive treatises descriptive of the English governmental system as it was when they were written are Sir William R. Anson's *The Law and Custom of the Constitution* (three volumes), A. Lawrence Lowell's *The Government of England* (two volumes) and Frederic A. Ogg's *English Government and Politics*. Though not primarily historical in character these works give enough constitutional history to explain how the institutions, laws and usages of the constitution came into existence. The first volume of Anson's treatise, originally published in 1886, was brought up to date in a fifth edition by Maurice L. Gwyer in 1922; the most recent edition of the other volumes was issued in 1907-8. A new edition of Lowell's work, first published in 1908, was brought out in 1912; it includes an additional chapter on the house of lords and the parliament act of 1911. Ogg takes full account of developments down to the time of writing (1929) and has a good deal to say about tendencies and present-day problems in English government.

Walter Bagehot's *The English Constitution*, written as a series of articles in *The Fortnightly Review* and first published in book form in 1867, is a brilliant interpretative exposition of the English system of government in the mid-Victorian era, as it appeared to an exceptionally well informed and clear headed observer. It quickly won the reputation of a classic, and some of the author's opinions and generalizations continued to be accepted after the factual basis on which they rested had ceased to exist. The latest edition, with an introduction by Lord Balfour, appeared in 1928. In *The Governance of England* Sir Sidney Low undertook, with marked success, to depict the salient features of the constitution as it was at the opening of the twentieth century. First published in 1904, a revised edition (1914) contains a new introduction in which the author calls attention to some of the changes that had occurred since the book was written. Similar in character to Bagehot and Low is Ramsay Muir's *How Britain is Governed* (1930), the pur-

pose of which is to examine as realistically and objectively as possible the actual working of governmental institutions in the post-war period.

The student who desires to acquire more than an elementary knowledge of English constitutional history must read some English constitutional law. He should by all means familiarize himself with a famous book, which, it has been said, "stands for all time as the classical work on the Constitution of its period," A. V. Dicey's *Introduction to the Study of the Law of the Constitution*. First published in 1885, it has gone through a number of editions, the latest of which (1915) is accompanied by a valuable introduction in which the author shows how the principles of the constitution as he had expounded them had been affected by changes in law or conventions which had taken place since the book was written. Whatever else may be read, Dicey's exposition of the nature of constitutional law, the sovereignty of parliament, and the rule of law ought surely to be read. For criticism of some of his ideas the student may consult E. C. S. Wade and G. Godfrey Phillips' *Constitutional Law* (1931), a comprehensive treatise on the subject, which emphasizes recent developments. A. B. Keith's *An Introduction to British Constitutional Law* (1931) is a brief but scholarly sketch. The practice of reading important cases should be encouraged, for, as has been said, "the educational value to be derived from a study of the *ipsissima verba* of a great judge far outweighs the additional trouble involved in reading his judgment as it was actually delivered, rather than in a mere abridgment or summary of its contents." D. L. Keir and F. H. Lawson's *Cases in Constitutional Law* (1928) is a convenient compilation. In the selection of cases the authors were influenced by important recent developments in their subject. The cases are grouped under topical headings, such as "Prerogative," "Taxation," "Allegiance," each group being preceded by an explanatory introduction.

In the field of legal history Pollock and Maitland's *History of English Law* (two volumes, second edition, reprinted, 1911) is the standard authority on the formative period of the common law and has the merit of being exceptionally well written. The student of constitutional history will find Book I, entitled "Sketch of Early English Legal History," extremely illuminating. This great treatise does not come beyond the thirteenth century. Sir W. S. Holdsworth's *History of English Law* (nine volumes, 1922-26) extends to modern times; it is the fruit of prolonged research and deep erudition. In the same author's *Sources and Literature of English Law* (1925) and in Percy H. Winfield's *Chief Sources of English Legal History* (1925) the mature student of English constitutional history will find much that is of value for his purposes.

There is no dearth of source books for the study of our subject. G. B. Adams and H. M. Stephens' *Select Documents of English Constitutional History* (1911) begins with the Norman Conquest and extends to the nineteenth century, the documents being arranged in chronological sequence; the selection is fuller for the medieval period than for the modern. William Stubbs' *Select Charters and other Illustrations of English Constitutional History* (ninth edition, by H. W. C. Davis, 1913) comes from the beginnings to the end of the thirteenth century; the Latin documents are not translated. J. R. Tanner in his *Tudor Constitutional Documents* (1922) arranges the documents by topics and contributes valuable historical commentaries; the materials include statutes, judicial opinions, royal proclamations, extracts from parliamentary debates and addresses, and selections from the works of contemporary writers. *Constitutional Documents of the Reign of James I* (1930) is a companion volume by the same scholar. G. W. Prothero's *Select Statutes and other Constitutional Documents illustrative of the Reigns of Elizabeth and James I* (fourth edition, 1913) is still useful, though

some of the materials which it contains are included in Tanner's volumes; the introduction is a valuable summary of constitutional development in the late sixteenth and early seventeenth centuries. S. R. Gardiner's *Constitutional Documents of the Puritan Revolution, 1625-1660* (third edition, 1906) is a selection by the foremost authority on the political history of the period; there is a masterly introduction. C. G. Robertson's *Select Statutes, Cases and Documents* (1904) contains extracts from statutes and judicial opinions during the period 1660-1832. Much of this material can be found in D. O. Dykes' *Source Book of Constitutional History from 1660* (1930), which extends to the present. It consists principally of extracts from statutes, with many excerpts from judicial opinions. The documents are grouped in chapters, each of which is devoted to a particular topic. A long introduction, divided into sections corresponding to the chapters, aims to place the documents in their proper context and perspective.

The Bibliographical Notes appended to the chapters that follow are not intended, of course, to be complete. They are confined in general to a few books and articles related to the subjects dealt with in the text.

ABBREVIATIONS USED IN FOOTNOTES

A. and S.	Adams and Stephens, <i>Select Documents of English Constitutional History</i> , 1911.
A. H. R.	American Historical Review.
Cheyney, Readings.	E. P. Cheyney, <i>Readings in English History from the Original Sources</i> , n.d.
E. H. R.	English Historical Review.
Gardiner, Documents.	S. R. Gardiner, <i>Constitutional Documents of the Puritan Revolution</i> , 3rd ed., 1906.
G. and H.	Gee and Hardy, <i>Documents illustrative of English Church History</i> , 1896.
Penn.	University of Pennsylvania Department of History, <i>Translations and Reprints from the Original Sources of European History</i> .

- Prothero, Documents.** G. W. Prothero, *Select Statutes and other Constitutional Documents illustrative of the Reigns of Elizabeth and James I*, 4th ed., 1913.
- Robertson, Statutes.** C. G. Robertson, *Select Statutes, Cases and Documents*, 1904.
- Stubbs, S. C.** W. Stubbs, *Select Charters and other Illustrations of English Constitutional History*, 9th ed., 1913.

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INTRODUCTION

When William, duke of the Normans, set up his tent on the battlefield of Hastings from which the Saxons had been driven beyond power to rally, one of the great transformations of history had begun. For what was decided in that one day's fight was not so much who should be king of that little island realm, then scarcely larger than the state of New York and much below the world's standard of advancement. Nor was the chief question at stake whether England should remain cut off from the ancient sources of civilization, and live out her history touching and touched by the larger currents of world affairs as little as her close relatives the Scandinavian states. The really great decision of that day was that a union should take place between two peoples that should awaken a new constitutional life of which neither alone seemed capable. Within a generation, quite as early as we can detect signs of the uniting of the two peoples, we find the beginnings of that new growth under a government which was an almost ideally complete absolutism, and from that day to this without a break that growth has gone on to ever larger results and to ever broadening influence upon the world. In the seventeenth century the line of progress divided into two branches, each developing a distinct type of government, but each drawing its special characteristics and all its life and power of growth from the main trunk.

One retained the office of king: the other in the simpler conditions of colonial life established republican government, and thus was created the most striking difference between