The Confirmation of the Charters, 1297

II

The first task of the regency was to acquire a seal. The king had taken the great seal with him and the seal of absence was one that was stored in the exchequer. From Robertsbridge on their way back to London they sent William of Blyborough on ahead of them to have a search made for it. London was evidently strongly disaffected for they took the opportunity of sending instructions by him for the custody of the vile and the Tower, and for a proclamation in the city that prizes would be paid for. This was proclaimed at the Guildhall the next day (26 August). They had the seal of absence by the evening of the 27th. On the 28th the nation, as the king had ordered, was assured that aid given in the present urgentissima necessitas would not be used as a precedent. They also acted

1 This would appear to be the significance of the Bury chronicler’s sigillum regis de scaccario, seal from the exchequer, not exchequer seal. Cf. ante, lviii. 67 and 281. In that case the chronicler’s description of the seal (though not necessarily his account of its use on 10 October) is perfectly accurate.

2 Trans. R. Hist. Soc., N.S. iii (1886), 290.

3 One would like a royal record of this. Save for the fact of some proclamation and the date (which fits in with Blyborough’s instructions) I have made no use of the London record, Liber Custumarum, ed. Riley, i. 71–2. It has features which need to be explained before it can be accepted as genuine, notably the proclamation that no prise henceforth would be taken without the consent of the owner of the goods concerned (did this apply to the whole country, or merely to London?—Stubbs, Const. Hist. ii. 565, n. 5). This is not the proclamation—that no prise should be taken without payment—which the regent and his council had authorized. But even if we allow that the barons of the exchequer exceeded their instructions (which is far from impossible) there is still the difficulty of the movements of the chancellor, John de Langton. He is said to have been present at the Guildhall. After handing over the great seal to the king on board ship near Winchelsea on 22 August (Cal. Pat. Rolls, 1292–1301, p. 306), he was apparently with the regent and council at some time or other during 24–25 August (Blyborough’s credentials, cf. n. 2, above). He was again with the regent on the evening of the 27th (Cal. Pat. Rolls, 1292–1301, p. 306), and his presence in London in the interval needs to be confirmed, especially as it does not seem to be envisaged in the letters which Blyborough carried.


5 Foederi, i. ii, 877; Cal. Pat. Rolls, 1292–1301, p. 307. The inference from this document that the demand of a higher urban rate of a fifth had been dropped (Stubbs, Select Charters, 9th edn., 487; Pasquet, Origines, transl. Laffan, p. 108) cannot be maintained. Both sides speak conveniently of ‘the eighth’, meaning the eighth and fifth (Trans. R. Hist. Soc. N.S. iii. 284–90 passim). On 10 September the exchequer was still ordering the collection of the eighth and fifth (K.R. Memor. Roll, no. 70, mm. 117–19).

VOL. LX.—NO. CCXXXVII.
on their own responsibility. The king before he left had summoned a *colloquium* of knights to Rochester for 8 September. They enlarged this by issuing fifty-six more summones. They also summoned Henry le Tyeys, John de Segrave, Robert Fitz-Roger, and John Lovel for 4 September at whatever place Edward and his advisers might be on that date, for what is obviously a private *colloquium* with the regent and council four days before the main Rochester meeting. These men were followers of Bohun and Bigod. On 31 August the regency sent Winchelsey and the other prelates of the church a last-minute warning: Sunday 1 September was the day for the general excommunication of 'invaders' of the church's property ordered by the convocation of 10 August. As it happened, the day went by safely. The order was carried out, despite the warning, at Canterbury and a number of other places, but it was far from generally obeyed.

What passed on 4 September is not known. But next day a fuller council was called for the 30th, and instead of proceeding to Rochester for the 8th as arranged, the regent and his advisers contented themselves with sending instructions. On the 9th the oppositions were summoned; on the 15th, the representatives of the shires—these last to arrive within the octave of Michaelmas, by which time, evidently, the business of the meeting was expected to be sufficiently advanced to receive them. As before, there was to be a meeting in advance of the main one.

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2 *Parl. Writs*, i. 297–8 (28 Aug.).
3 *Op. cit.* p. 298, no. 39: . . . locuturi et tractaturi ac facturi quod tunc . . . per ipsum et consilium suum injungeretur (also 28 Aug.).
4 They are mentioned by name as having been with them in the exchequer scene of 22 August (*Trans. B. Hist. Soc. N.S.* iii. 281–91). Segrave and Fitz-Roger had appeared for the earls at Waltham (cf. supra, p. 27).
7 *Parl. Writs*, i. 55 (no. 10): 27 writs, all evidently to men who could be relied upon. Twenty-five of them were members of the Lord Edward's council or officials. The two were the bishops of Carlisle and Worcester. Worcester had proved himself on 1st September (cf. *Ann. Mon.* iv. 533). The only difficulty is whether ‘Magister J. Lovel, clericus de Consilio’ really is (as Morris, Welsh Wars, p. 284 suggests) the same as the ‘Sire Johan Lovel’ who appeared with the earls at the exchequer on 22 August (*Trans. R. Hist. Soc. N.S.* iii. 284): if so, he was playing an ambiguous part.
9 Writs to Bohun, Bigod, and eight other laymen, most if not all of them supporters of the earls. Writs to Winchelsey and 29 other prelates, regular or secular. *Parl. Writs*, i. 56, no. 11. How Winchelsey was regarded at this time there is not evidence enough for us to be certain. We may conjecture that after 10 August and 1 September he was regarded as hostile, but not actively so like the two earls. As is well known, when the council met he did as he had done in July and tried, this time successfully, to mediate between the king and the earls.
10 Cf. infra, p. 179, n. 2.
Fifty other writs had gone out on 9 September, summoning the earl of Arundel and others of lesser rank to a *colloquium* with the Lord Edward on the 22nd, eight days before the main meeting, at whatever place he might be on that date. Some of them were men who had been summoned to the earlier *colloquium* at Rochester on 8 September. All, we may perhaps infer from the fact that they were required to come *cum equis et armis*, were reckoned as supporters of the regency. The earls and the ecclesiastics summoned on 9 September had not been required to come armed.

What the regency intended by the body they had thus curiously summoned it is impossible to say. Too much depends on the undocumented meeting of 4 September. The knights of the shire summoned for within the octave of Michaelmas were summoned to receive a confirmation of the Charters, letters patent giving assurances about the eighth, and to do what the regent and council should enjoin. It looks as if in a final effort to carry their policy, the regency had decided to make the only further concessions it was possible for them to make: (1) to add performance to the king’s promise of a confirmation of the Charters; (2) seeing that, although it had all along been the king’s contention that the eighth had been granted, the nation could not be persuaded that it had been properly granted, to let the eighth be regularized in an assembly whose competence no one would question. But even this is conjecture. All that we can be certain of is that the Michaelmas parliament of 1297 was not meant to be a parliament of surrender. The immense effort made to reassure the nation and to inform it as to the

1 *Parl. Writs*, i. 298–9, no. 41.
2 *Quia . . . pro octava omnium bonorum singularum laicorum . . . pro urgentissima nunc dicti regni . . . necessitate levanda, concessimus pro nobis et heredibus nostris confirmare et firmiter teneri facere magnam cartam de libertatibus Anglie et cartam de libertatibus forestae et concedere omnibus et singulis ejusdem regni litteras nostras patentes quod dicte octave levacio non cedet eisdem in pre-judicium servitutem exheredacionem usum vel consuetudinem in futurum (two knights from each shire) plenam potestatem pro ipsis et tota communitate dicti Comitatus habentes (to come to the Lord Edward in London before the Octave of Michaelmas at the latest) cartas super confirmacione nostra cartarum predictarum et litteras nostras super dicta concessione . . . recepturi et facturi ulterius quod per dictum filium et consilium nostri tertium fuerit ordinatum. . . . Teste Edwarde filio Regis . . . xv. die Sept.’ (*Parl. Writs*, i. 56, no. 12). *Cal. Close Rolls*, 1296–1302, p. 129, is somewhat too loose an abstract of this important writ.

3 If this is a correct surmise, then it is probable that the county court of Worcestershire on 26 September, when it asked for confirmation of the Charters to precede payment, did no more than express what was the temper of a great part of the nation at this time. *Ann. Mon.* iv. 534: ‘Sexto kal. Octobris cum ministri regis exigerent sextam partem infra burgum bonorum omnium et octavam extra burgum, responsum fuit eis per comitatum; ‘Rex H(enricus) aliando promisit communitati regni, quod libertates magnae chartae et forestae concederet et confirmaret, si daretur ei quinta decima quam tunc petebat; sed pecunia accepta libertates tradidit oblivioni. Ideo quando habuerimus libertatum saisnam, gratis dabimus pecuniam nominatam.”
royal policy had had no appreciable effect, and the unrest in the country had by the middle of September reached such proportions that the regency feared widespread disturbances and civil war. But the very writs which summon the knights of the shire to receive a confirmation of the Charters and assurances about the eighth assume that the eighth will go on. So far, indeed, was the regency from abandoning its policy that it was preparing to fight for it, civil war or not, recruiting troops, making ready the castles of the land, concentrating on London to overawe opposition at the centre.

They did not know that on 11 September Earl Warenne had let himself be outwitted at Stirling Bridge, and the whole of the north of England lay open to invasion. It was nearly, if not quite 24 September before the news reached London. When it did, Warenne, who had been called south for the parliament, was at once ordered to stay where he was and some of the troops intended for London were detached to reinforce him. The Michaelmas parliament was not abandoned—it was more than ever necessary—but it would meet in unforeseen circumstances and the regency would be at the mercy of the body which it had planned to control. It was true there was now a genuine emergency. But there could be no civil war and no bluff. The issue of the domestic crisis depended on the opposition.

Parliament met on 30 September as arranged. The earls insisted on the eighth being dropped. They did not refuse to make a fresh grant, but they would not be satisfied with a simple reconfirmation of Magna Carta and the Forest Charter in return for it. They demanded securities for the observance of the Charters—the chief guarantee of their law, customs, and liberties—which Magna Carta of 1225 did not contain. Perhaps they

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1 Precautions of 16 and 18 September, Cal. Close Rolls, 1296–1302, pp. 129, 131–2 and Cal. Pat. Rolls, 1292–1301, pp. 309–10 respectively; military concentrations and recruiting (16 Sept.), Parl. Writs, i. 56, no. 14; 300–1, no. 48; 56, no. 15; and 299–300, nos. 42–3. Morris, Welsh Wars, p. 282, brings out clearly the domestic significance of this last set of writs. The effect of the news of Stirling Bridge is also well brought out. The rest of a fresh and interesting account of the regency period is marred by confusions.

2 litteras nostras patentes quod dicte octave levacio non cedet eisdem in prejudicium etc., cf. supra, p. 179, n. 2.

3 See supra, p. 179, n. 1, supra.

4 Parl. Writs, i. 300 (nos. 45, 46; 47, 44). The order to Warenne has not survived but is evidenced by the writ to R. de Clifford (no. 45). The reinforcement, naturally enough, consisted for the most part (nos. 46; 47, 44) of the more northerly of the troops that had on 16 September been ordered to concentrate in London (ibid. i. 299–300, nos. 42–3).

5 What follows is based on the official records, royal and ecclesiastical, chiefly, of course, on Confirmatio Cartarum itself. I have excluded chronicle-accounts (e.g. Walter of Hemingburgh) for which there is no official corroboration. I have also excluded De Tallagio non Concedendo, whose character is still in dispute. My own views on it will be given in the concluding part of the present article.
had always had something of the sort in mind, or else why had they held out in July? They also demanded, seeing that the unwritten custom was evidently not enough, a reaffirmation of the right of consent, which the tallages and prises\(^1\) of recent years had endangered, and this in terms which would prevent a repetition of the mockery of consent they had lately witnessed in the case of the eighth. This was new. There had not been a word about consent in their petition.\(^2\) They demanded in the case of the maltote on wool, too, some sort of security as to the future. The Charters in the now usual 1225 form provided none of these things. They should therefore be added. It amounted to a demand for revision.

Once it was decided to permit revision, and the regent and his advisers were in no position to refuse, the question would arise of what form it should take, a reissue of the Charters or an addicio to the existing texts. One would involve giving the new articles, too, the authority of a charter; the other need not. The latter was the method adopted.\(^3\) Confirmatio Cartarum is the concessions of 1297 drafted in French in the form of royal letters patent added to an inspeximus and confirmation by letters patent of the 1225 texts. The pardons to the insurgents (no doubt because of their impermanent character) were given as separate letters patent and thereby seem to be denied the status of an addicio.\(^4\)

It took until 10 October to agree on the details of Confirmatio Cartarum. We know nothing of the debates except that they were 'many and various'\(^5\) and that Winchelsey again played

\(^1\) The phrase 'tallages and prises' had been used by the earls in their Petition (see following note).

\(^2\) Better known as the Articles of Grievance (Stubbs, Constit. Hist. ii. 143-4), from the opposition's description of them on 22 August as 'daukunes grevaunces dont il aviente fait monstrer les Articles' (Trans. R. Hist. Soc. N.S. iii. 284). If this be found clumsy, it seems better to describe it for what it is—a petition, and reserve Monstraunces (Edwards, ante, lviii. 148, 169-71) and Nocumenta (Power, Medieval English Wool Trade, p. 78) respectively, to distinguish between the French and Latin versions of it. The French version is, of course, now best read in Mr. Edwards's edition (ante, lviii, loc. cit.).

\(^3\) Whether with or without discussion it is impossible to say. There is no proof that the earls made this an issue, and to assume it would be to beg an important question. See the concluding part of the present article.

\(^4\) For Confirmatio Cartarum as an addicio see note A below and official evidence on the ecclesiastical side, Reg. Winch. pp. 204, 208 and the implication of pp. 269-70. The only complete record of the 10 October settlement (as distinct from the king's own acta of 5 November) is that preserved in Reg. Winch., ed. Graham, pp. 201-7. The royal record, compiled after the king himself had accepted the settlement, replaces the 10 October promises to obtain pardon by the actual pardon of 5 November ('The Great Roll of the Statutes', mm. 40, 39, 38; printed in Statutes of the Realm, i. 114-24. It may be noted that these three membranes were once an independent enrolment, as is shown by the inscription at the foot of the dorsé of m. 38). The actual confirmations of the Charters by inspeximus on 12 October must, however, be read in the royal record: Reg. Winch. does not give those.\(^5\) Cotton, p. 337.
the part of mediator. We certainly cannot follow their course. But this much can be said:

(1) The demand for extra safeguards for the Charters issued as Confirmatio Cartarum, articles i-iv. Besides the widest publicity for the fact that the king had confirmed the Charters and ordered them to be observed in all points, the Charters themselves are to be published throughout the land, and thereafter regularly published. For this purpose of regular publication sealed copies are to be sent to all cathedral churches to be kept there and read to the people twice a year. Twice a year archbishops and bishops are to denounce and excommunicate all infringing, or in any way conniving at the infringement of the Charters. The archbishops are given authority to enforce regularity of publication and excommunication. In other words, the king who had been a party to his father's confirmation of the Charters in 1265 was compelled by the son of one of the Nine to agree to the revival of regular publication. Lest it again fall into desuetude, there is to be ecclesiastical publication as well as ecclesiastical excommunication, and Winchelsey is to see that both are regular. Thus is 1279 avenged in 1297, and Peckham in his successor. What is entirely new is that these securities are added to the Charters themselves.

(2) The safeguard of the right of consent which was evolved is that which we are now accustomed to think of as Confirmatio Cartarum v and vi, but which is best read as one. The first thing one notices is 'aydes, mises, ne prises'. In their petition the earls had complained of 'tallages, aids, prises', or 'tallages and prises', and as late as their attempt to stop the eighth at the exchequer on 22 August had complained of being tallaged at will. As Mr. Edwards has clearly shown, they did not by this mean tallage in the technical sense. I suggest that 'tallage' was dropped in phrasing the 10 October settlement simply in the interests of precision, probably at the instance of the regent and council, anxious to avoid jeopardizing through ambiguity the prerogative of tallage in the technical sense. The second

1 References are to the conventional divisions of the text as given in Stubbs, Select Charters, 9th edn., pp. 490–1.
2 This would naturally be at the times of publication.
3 Which, besides allowing ecclesiastical excommunication, provided for regular publication twice a year by royal machinery (Stubbs, Select Charters, p. 406).
4 Humphrey de Bohun, junior, ob. October 1265. The names of the Nine are given ante, xlviii. 566.
5 Cf. supra, p. 181, n. 4.
6 'tallagia, auxilia, prises', 'tallagia et prisas antedictas' (Stubbs, Select Charters, 9th edn., p. 434); 'diverses talliages et diverses prises', 'les talliages et les prises avadvites' (Edwards, ante, lviii. 170, 170 n. 10, 154).
7 'taille a volunte' (Trans. R. Hist. Soc. N.S. iii (1886), 284).
8 Cf. supra, p. 34, n. 3.
thing one notices is that the essential difference between aids and mises that are granted and prises that are taken is recognized. Thirdly, one notices that the subject of the whole passage (articles v and vi) is the aids, mises and prises of recent years, especially of course since the outbreak of the war with the king of France in 1294,\(^1\) and it is to these that 'teles' and 'tieu manere' refer. These had in fact been abnormal in a number of ways. Apart from their cumulative effect of impoverishing the nation (which was what the earls had complained of in their Petition—that was the reason why they could not serve abroad and could not give further aid) aid had been levied yearly; the higher rate imposed on cities, boroughs and ancient demesne\(^2\) seems to have been an innovation of these years;\(^3\) Edward's demands on the clergy during these years, following on a long period of collusion between king and pope, threatened to absorb them wholly into the royal system of taxation;\(^4\) prises had increased in frequency and had assumed the proportions of national, not local, burdens.\(^5\) For one kind, in particular, of prise—general seizures of wool—one had to go back a century to find a parallel.\(^6\) Lest these things should be used as a precedent, the pledge which had already been given that the eighth of 30 July 1297 would not be 'drawn into a custom'? is here repeated for all the 'aids and mises' of recent years. It is extended to cover prises too, a prerogative matter about which Edward had been significantly silent when he gave his pledge about the eighth.

The undertaking about commun assent in future is, for the same reason, similarly made to cover aids, mises, and prises of the whole period. But the real genesis of it is the eighth andprise of 30 July 1297. It was only after that date that the earls had raised the issue of consent.\(^8\) What did Edward I undertake when he promised that neither he nor his heirs would henceforth for no business take such manner of aids, mises, nor prises (except the ancient aids and prises due and accustomed) save by 'commun assent de tout le roiaume'?

\(^1\) These are conveniently listed by Mr. Edwards, ante, lviii. 158-9.
\(^2\) 1294: a sixth against a tenth from the rest of the laity; 1295: a seventh against an eleventh; 1296: an eighth against a twelfth; 1297 (the eighth of 30 July): a fifth instead of an eighth.
\(^3\) Willard, Parliamentary Taxes on Personal Property, pp. 9 seqq.
\(^4\) The historical background of Henry III's reign and Edward I's earlier years will be found in M. V. Clarke, Medieval Representation and Consent, pp. 259-63.
\(^5\) This is well brought out in a work of a colleague and friend of mine, the late Walter S. Thomson, A Lincolnshire Assize Roll for 1298, shortly to be published by the Lincoln Record Society.
\(^7\) Cf. supra, pp. 33 and (28 Aug.) 177.
\(^8\) There had not been a word about consent in their petition (for whose date see ante, lviii. 148-53). Cf. supra, p. 181.
The passage has been regarded as the bedrock of constitutional government in that it is believed to have asserted the principle of parliamentary consent to taxation. But the negative character of the undertaking is far more obvious than the positive, and when in 1340 it was desired to bind the king to parliamentary consent it was thought advisable to add 'and that in parliament'. Moreover, parliamentary control of prises is a startling thought and something which was not attempted even in 1340. A parliament was not the only way of negotiating consent in 1297. The clerical order was within a generation of withdrawing from parliament at this time and making grants in convocation instead. Attendance at parliament was anything but popular with the other estates. We have no right to assume that the king here binds himself exclusively to consents negotiated in a national assembly, still less to consents given in parliaments composed in a particular way. It is safer to begin with the negative aspect of the undertaking and ask what it was the king had done that he was not to do again. Since 30 July he had tried to raise an aid through a body which, the 'communauté de la terre' agreed with the earls, was not competent to express the 'commun assent de tout le roiaume'; in the case of the clergy he had openly asserted a prerogative right to dispense with consent altogether if necessary. The need of the times was not to bind the king to novel consents so much as to bring him back to the customary ones.

When Edward tries to present the eighth in a way which will render it acceptable to his subjects, he may be taken to be giving one contemporary theory of consent to aids. The writs of 30 July ordering collection describe it as granted by the 'Comites, barones, milites et ceteri laici regni nostri'. This was the usual form. The Forma ad informandum taxatores qualiter loqui debeant ad populum says it was granted by the 'Countes e Barouns ... pur eaux e pur le pueple'. On 12 August, when opinion is

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1 'The confirmation of charters in 1297 recognised on the king's part the exclusive right of the parliament to authorise taxation. ... Already the right of the commons to a share in the taxing power of parliament was admitted', Stubbs, Constitutional History (4th edn.) ii. 257. Modern criticism, in so far as it has concerned itself directly with the meaning of 1297 and not questioned Stubbs's view of Edwardian history on general grounds, has directed itself against the second rather than the first half of this judgement. On the subject of the first half, from Riess (History of the English Electoral Law, tr. Wood-Legh, Cambridge, 1940) to Petit-Dutaillis and Lefebvre (Studies Supplementary ... iii, Manchester, 1929, p. 485) the assumption still is, with Stubbs, that parliamentary consent is meant.


3 Stat. of the Realm, i. 288. Prise is not mentioned, ibid. 289–90.

4 The 1297 settlement itself is evidence. The ninth from cities, boroughs, and ancient demesne was negotiated after the 'Confirmation of the Charters' parliament. The clerical tenth and fifth were voted in convocation, not in parliament.

5 Parl. Writs, i. 53–4; Stubbs, Select Charters, p. 434.


7 Cf. supra, p. 31.
turning against him, the king in his manifesto describes how 'les graunt seygneurs qui nadguers furent a Londres ove lui . . . li graunterent un commun doun . . . il prie a tutes les bones gentz e a tut le puple de son reaume . . . qe cest doun ne leur ennoye mye'. These differ only in degrees of formality; the theory behind them is the same.

The earls’ protest at the exchequer on 22 August shows another point of view. The writs of 30 July are contradicted inasmuch as the earls, barons, knights, and the ‘Comounaute du Reiaume’ (here equated with the ‘ceteri laici’ of the writs) could not be said to have consented when neither they (the earls’ party) nor ‘la dite Comounaute’ had given their consent. It was a point of view which, in principle, was a commonplace of the century (‘Quod omnes tangit ab omnibus approbetur’) and which in practice the king deferred to every time he afforded his council with a representative element. As Mr. Edwards has shown we can even trace, in the form of words by which such representatives were summoned, the efforts of the royal chancery to meet this feeling. From being summoned ‘ad audiendum et faciendum ea quae sibi ex parte nostra faciemus ostendi’ (1283), they are summoned in 1295 ‘ad faciendum quod tune de communi consilio ordinabitur’. But we must not let words mislead us, nor force them into a framework. ‘Communi consilio’ is the phrase of Magna Carta 1215, c. 12.

For us the question should rather be the steps to be taken ‘ad habendum commune consilium’. For clarity, moreover, we must separate the questions of representation and consent, allowing that, once committed to obtaining the consent of the shire and borough communities, the king for administrative convenience might—it may have been assumed that for administrative convenience he would—prefer to summon representatives rather than treat with the commons locally. But was the king committed to obtaining the consent of the commons?

There is the clearest evidence that by the last decade of the thirteenth century, in normal circumstances, he was. By that time the precious definition of the steps to be taken ‘ad habendum commune consilium regni’ in 1215 (Magna Carta, c. 14) probably satisfied nobody. The magnates doubted their powers—‘quantum in ipsis est’—in 1290. In 1290 and 1294 the king called the

1 Bémont, Chartes des libertés anglaises, pp. 83–4.
2 Trans. R. Hist. Soc., N.S. iii. 284: ‘. . . e dit qe en les briefs qe sunt issuq pur lever le vtime est contenu qe Countes, Barouns, Chinaliers e la Comounaute du Reiaume vnt graunte le vtime sicom a eux e leur auncestres vnt fait cee en ariere, la ou le dit vtime par eaux ne par la dite Comounaute vnques ne feut graunte’.
shire and the boroughs, through their representatives, 'ad
consulendum et consentiendum'. But there is also the clearest
evidence that no one regarded them as having anything but a
minor part in the business of granting an aid. ' . . . ad con-
sulendum et consentiendum . . . hiis quae comites, barones,
et procurati praedicti tunc concorditer ordinaverint' the writs
of 1290 and 1294 go on. Their entry, through representatives,
into the great council of the kingdom no chronicler save one
thought worth mentioning. No chronicler at all mentions them
in connexion with Confirmatio Cartarum. So little of a novelty is
'commun assent de tout le roiaume' that for most of them it
calls for neither comment nor explanation. The few who do
interpret 'commun assent' for us do not go beyond the magnates.
That Bartholomew Cotton was the exception we referred to in
the other matter just mentioned, makes his evidence this time all
the more remarkable. For him 'fors ke par commun assent
de tout le roiaume' means 'nisi de consensu archiepiscoporum,
episcoporum, praepotitorum, comitum et baronum' and no more.

In what, then, lay Edward I's offence in 1297? Was it
that (a) he had not received even the common assent of the
magnates to the eighth, and (b) the writs for collection went out
before he had obtained the consent of the commons to what the
magnates had ordained, the collectors, instead, being ordered
to tell the commons that it was their duty to accept this 'leemnet
de bone volente'—'sicome bones gentz e leaux deiuent e sount
tenz a faire a leur lige seigneur a si graunde e si haute beusoigne? It
is permissible to ask which of these is the offence and which
the aggravation, and to wonder whether but for (a) we should
have heard very much of (b).

We can at any rate safely say that Edward I did not, where
the commons were concerned, by Confirmatio Cartarum, bind
himself to parliamentary consent to taxation. There is no
evidence whatever for that view save the parliamentary assump-
tions of historians themselves.

It may be doubted whether he committed himself to anything
more than he was already committed to in the writs of 1290
and 1294; the political effort of 1297 seems to be directed to
bringing him back to that basis, in particular to scotching in

1 Stubbs, op. cit. pp. 473 and 477, and Edwards, loc. cit. p. 150.
2 1294; 1290 identical, save 'duxerint concordanda' instead of 'concorditer
ordinaverint'. References as in preceding note.
3 See Edwards, op. cit. p. 145, quoting Pasquet and the exception (Bartholomew
Cotton s.a. 1294, Rolls series, p. 254).
4 Walter of Hemingburgh, ed. Hamilton, ii. 148: 'nullum . . . pateret vel exigeret
. . . absque magnatum voluntate et assensu'; Cotton, as given; Pierre de Langtoft,
ed. Wright, Rolls series, ii. 302-3, mentions only earls and barons among the laity.
5 B. Cotton, ed. Luard, p. 337.
6 Cf. supra, p. 185 and n. 2 on that page.
7 The forma ad informandum taxatores quoted supra, pp. 31-32.
this regard any claim to emergency powers. Certainly the
chroniclers interpret *Confirmatio Cartarum* in the 1294 sense.

We can safely say that, after *Confirmatio Cartarum* nothing
less than consent in the 1294 sense would be expected of Edward.
And yet it would seem necessary to distinguish between the
strict theory of the king’s position and what the practice of a
prudent king would be—necessary to take ‘commun assent’
first of all in a larger sense—if we are to explain two features of
*Confirmatio Cartarum*. It is noteworthy that the king is pledged
not again to make such extraordinary demands on his subjects
as those of recent years unless with the ‘common assent’ of,
and for the common profit of, the realm, yet there is not a word
as to how the king is to ascertain these things. Secondly, aids,
mises, and prises, are provided for together under ‘commun
assent’ and ‘commun profist’. A prudent king would take
counsel, but the responsibility was not less his. We must not
forget that Magna Carta 1215, c. 14, had itself been withdrawn.
The reason we do not know. But there was no attempt to rewrite
it in 1297 and the form adopted—making the ‘arcevesques . . .
toute la communauté de la terre’ the classes to whom the grant
is made without imposing on the king any specific method of
honouring his pledges—avoided the appearance of fettering the
king. In principle it was for the king to sense the will of the
nation, just as *ex officio* it was for him to judge the common
profit; failing that, to seek counsel on these matters of his
recognized advisers.

In this larger sense of ‘assent’, in which the primary responsi-
bility for judging would be the king’s, there is no longer any
difficulty in providing for aids, mises, and prises together after
recognizing the difference between things ‘granted’ and things
‘taken’ only a few lines before. But even in this larger sense
it is still remarkable that the king should accept any limitation
of the sort in a prerogative matter such as prise. It was the
greatest of his concessions in 1297, the one to which he im-
mediately addressed himself on his return to England in 1298,1
and which he spared no pains to undo. The royal solution to
the problem of prise is c. 2 of *Articuli super Cartas*, 1300. This
is a most conservative provision. Designed to meet discontents
by eliminating maladministration of the prerogative, it accepts
practically no limitation of the prerogative itself. It is allowed
that a royal official demanding prise should have a warrant,
and that he must show it or the owner of the goods may refuse
to sell. But it is also assumed that a subject has no alternative
but to comply with a properly warranted prise.2 Since, as in

1 Cf. the present writer, *ante*, xlviii. 263.
1297, the 'ancient prises due and accustomed' are again reserved, this was Edward's remedy even for the admittedly abnormal prises of the war years. We may therefore take it as the utmost that he was prepared to grant, and stand by, in the case of prise. It provided the practical remedies that Confirmatio Cartarum did not provide (which is perhaps what made it acceptable to the nation in 1300), but (and this is what must have recommended it to the king) they were remedies of a royal order, avoiding the dangerous admission that he had made in 1297.

It is really quite as remarkable that the opposition should have asked for assent to prise—even in this larger sense. It was not at all the usual baronial approach to a problem that was new at the end of the thirteenth century only in its dimensions. Dr. W. S. Thomson's forthcoming work 1 will show that there was very little history of assent or consent to prise, still less of its application to prise ad opus regis, and that that little is usually found to be subordinate to the other ambition of payment for goods taken. Matthew Paris preserves a popular opinion that, besides being paid for, prises should be taken only with the consent of the owner of the goods in question, 2 and that much Edward I, in 1275, had allowed where other people's prises were concerned. 3 But it had no such standing in the case of prise ad opus regis. Magna Carta as confirmed by Edward in 1297, i.e. Magna Carta 1225, admitted it only in two special cases of prise; 4 it was in 1297 still, as in Matthew Paris's day, an element in popular opinion on the subject important enough for Edward to notice on 30 July, but only as something to be overborne. 5 Responsible opinion seems never to have asserted it as a principle of general application (not even on the two occasions in the century when, if ever, it had the opportunity, 1215 and 1258); but, instead, to have limited itself to the attainable where prise was concerned, payment and elimination of maladministration. On those lines it made such advance as was made after 1215. Articuli super Cartas, c. 2, returns to those lines.

Even in 1297, as late as the Petition, after years of war-time prises, the grievance still is, apart from the burdensomeness by that time, non-payment. The last straw, which made payment

1 Cf. supra, p. 183, n. 5.
2 Chronica Majora, ed. Luard (Rolls series), v. 6: 'Culpatus est insuper, nec immerito, quod quicquid in escis, potibus, et etiam robis expendit, praecipue in vinis, rapit violenter contra voluntatem eorum, qui ea sunt vendituri et veri possessores . . .'.
3 Westm. i. c. 1 (Statutes of the Realm, i. 27); this, even without c. 50 (ibid. p. 39), shows that this is protection to subjects against fellow-subjects, not against the crown.
4 Provisioning of castles and prise of timber, Magna Carta 1225, cc. 19 and 21 (McKechnie, Magna Carta, 2nd edn., p. 503).
5 Cf. supra, p. 30, n. 4.
not enough and drove the nation into seeking another approach to the prerogative, was evidently the way in which the prise of 30 July was being exacted.\(^1\) We have on 22 August\(^2\) evidence of the resentment caused by it, but no indication as yet—not then even—of the remedy that would be sought.

(3) It would follow that in the security which was obtained for the future as regards maltote, the king did not by ‘commun assent’\(^3\) necessarily bind himself to parliamentary consent to new or increased duties. This sets in a new light Edward I’s attempt to get the consent of an assembly of merchants and burgesses to a \textit{nova custuma} in 1303.\(^4\)

The earls agreed to receive the king’s pardon for not having gone with him to Flanders and for their conduct during his absence. Instead of the eighth, they consented to the grant of a ninth. By a separate negotiation with the city of London this was extended to include the cities, boroughs, and ancient demesne also, the recent practice of exacting a higher rate from them thus being abandoned.\(^5\) The clergy too made a separate grant on their ecclesiastical property, a tenth in the convocation of the southern province, and a fifth in the northern, under such safeguards that Winchelsey thought they ‘probably’\(^6\) had not infringed \textit{Clericis laicos}.

Thus, in the face of a genuine ‘urgens et evidens necessitas’,\(^7\) the clergy submitted, without knowing it, acting on the basis of \textit{Romana mater ecclesia} instead of \textit{Ineffabilis amoris}. Winchelsey emerges from the contest with his stature increased, moderate himself and a true moderator, a political prelate who can marry principle with opportunity without sacrificing either; who, while keeping universals before him in the profound conflict of the \textit{lex divina} and the \textit{lex terrena} raised by \textit{Clericis laicos}, is statesman enough to recognize and accept a local solution for

1 Cf. supra, p. 30.
2 '... e dit apertement, et toutz les autres apres, que tiel taillage e prise de leines ne furent mie suffrables, ne il ne suffreint en nule manere ...' (Trans. R. Hist. Soc. N.S. iii. 284).
3 Confirmatio Cartarum, article vii (Stubbs, Sel. Charters, 9th edn., p. 491).
4 Stubbs, op. cit. p. 496.
5 There was an interval of nine days between the first writs for collection of the ninth (14 Oct., Parl. Writs, i. 63) and the writs adopting it as a flat rate for the whole country (23 Oct., ibid. 64). Whether the delay implies, as Pasquet (tr. Laflan, p. 110) suggests, another (but in that case unsuccessful) attempt to get a higher rate, or whether it is to be explained by the fact that knights of the shire but no borough representatives had been summoned to this parliament, is not a matter that can be decided without more evidence than is at present available. One may remark that it would avoid both the awkward question of the king’s special rights over cities, boroughs, and ancient demesne and the equally awkward alternative of abandoning their ally, for the earls to evade a decision on the matter in parliament but to give London their political support in the ensuing negotiations outside. But this, again, is pure conjecture.
7 Ibid.
them. Even Bohun and Bigod's action seems more than merely 'personal'.¹ It is perhaps less than fair to dismiss it as feudal—in any narrow class-sense. Allowing that their class, as, normally, the only politically-vocal element, was the recognized leader of the community of the realm, where is the evidence for denying the baronial leaders of 1297 any public spirit, any political intelligence?² But, however that may be, above personalities there was the law, the law that gave the king rights just as assuredly as it secured those of his subjects, and the interest of 1297 is that, both by the occasion of the conflict and its course, it brings out more clearly than any other crisis in the 'first century' of Magna Carta just this truth: that a constant weakness in the baronial position against the king was that for them too the prerogative was something as undeniable as Magna Carta itself. The issue in 1297 was neither privilege nor parliament, but prerogative: how far in an emergency could the king legally go? When events gave them the power, the earls enforced their interpretation of the law—that the nation too must be judge of the emergency: but dare we describe their interpretation as merely feudal and dare we imagine that English liberties would have developed as they did if the regency had been spared Stirling Bridge?

H. ROTHWELL.

(To be concluded.)

NOTE A-

(Page 181, note 4)

In 1297 the Hospitallers and Templars, as was usual with them about this time, compounded for the ninth agreed to by the Michaelmas parliament. The exchequer recorded—L.T.R. Memor. Roll, 25–26 Edw. I (E. 368/69), m. 32, among the Communia of the Michaelmas term 'anno regni Regis Edwardi xxv finiente'—the fines made, 700 marks in each case, first of all as follows:—

Magister et fratres Milicie Templi in Anglia dant Regi de curialitate sua in subsidium (MS. subsidium) guerre Regis DCC. marcas. Et pro hac curialitate Rex concessit eisdem quod iidem Magister et fratres et villani eorum quieti sint omnino a prestacione None nuper Regi concessae de propriis bonis suis. Ita quod nichil soluam ad nonam predictam.

(Similarly, mutatis mutandis for the Prior et fratres Hospital, . . . .)

The entries are then cancelled and vacated ('Vacat quia infra sub alia

² Petit-Dutaillis, Studies Supplementary to Stubbs' Constitutional History, iii (Manchester, 1929), 315.
forma per Thes’ in margin) and then, immediately below, rewritten in
the following form:—

Prior et fratres Hospital’ sancti Joh’ Jerlm’ in Anglia dant domino
Regi pro defensione regni et pro confirmacione magne carte de Libe-
tatibus Angl’ et de foresta vna cum ceteris articulis nunc eiden carte
additis et concessis. Et pro nona omnium bonorum temporalium
predictorum Prioris et fratrum et villanorum suorum in Anglia .DCC.
marcas. Ita tamen quod istud donum nunc factum alias non vertatur
in seruitutem vel consuetudinem Libertatum suarum.

(Similarly mutatis mutandis for the Magister et fratres milicie
Templi except contra libertates suas for libertatum suarum at end.)

(In margin, heavily framed in a double line and with a pointing
hand, ‘De dono fratrum Hospital’ et Militie templi in Angl’ pro
defensione regni etc.’)

(In the text, following the Hospitallers entry but applying to
both, ‘Et cedula dictorum Prioris et fratrum continens istud donum
et donum Magistri et fratrum templi inuenitur inter Inquisiciones
retorn’ ad seaccarium hoc anno xxvito incip’ and in margin ‘fin’
DCC ma’ (scored through)/finis DCC mar’ (scored through)/in Extract’.)