

## Part 1 Barons' Community of the Realm in England

### 2

#### Magna Carta and the Community of the Realm, 1215–1258

In the Provisions of Oxford of 1258, fifteen barons chosen both from the king's side and from the side of the Community of the Realm swore on the Holy Gospels to be bound together to reform the state of the realm. In chapters 9 and 23, it was provided that the 'Council of Fifteen shall have power to advise the king in good faith on the government of the kingdom and on all things touching the king and the kingdom: and amend and redress everything that they shall consider to need redress and amendment: and authority over the chief justiciar and all other persons'.<sup>1</sup> The fifteen would consist of two prelates, seven earls, five barons and one courtier. Since the sworn council was empowered to advise the king and to amend everything, it was supposed to share the decisive power of the government with the king. This was the first example in English constitutional documents to specify that the authoritative power of the governmental administration is a cooperative duty of the king and the barons<sup>2</sup>.

The reform movement, after experiencing a setback, resumed power on May 14, 1264 when the army of Simon de Montfort, earl of Leicester, defeated the army of Henry III on the hillside of Lewes. In the *Song of Lewes*, a contemporary political song about the battle, we can recognize how the community of the realm was acting to reform the state of the

realm. According to the same *Song*, the community of the realm was recognized as a kind of advisory committee to the king, and not as the king's subordinate.

On the other hand, Powicke gave a different interpretation of the community of the realm in his authoritative book, *King Henry III and the Lord Edward*. According to his explanation, the community of the realm in the thirteenth century was a corporation of all the inhabitants of the kingdom, and the king ruled the subjects as a symbol of the harmonious community. His theory about the community of the realm was published in 1947 and since then has been the established interpretation of the constitutional idea during the reign of Henry III<sup>3</sup>. In 1980s, however, some criticism of this interpretation appeared from Professor Robert Stacey and Dr. Michael Clanchy<sup>4</sup>.

Thus the interpretation of the community of the realm in the thirteenth century has varied among scholars. Whether the idea was of national unity or a barons' association bound by a common oath, has not yet been clarified. As early as 1215 the phrase, "community of the realm", was used in clause 61 of Magna Carta when a group of barons forced King John to affirm their vested liberty. In the present chapter I would like to trace the transition of the meanings of the "phrase" from Magna Carta in 1215 to the Provisions of Oxford in 1258, and investigate what the community in the provisions of Oxford means in the constitutional history of thirteenth-century England.

## 1. Magna Carta, 1215 and Community of the Realm

### (1) The Community of the Realm in Magna Carta, 1215

In Magna Carta, a charter granted by King John to the magnates of England at Runnymede in June, 1215, the phrase,

community of the realm, is used only once. In almost all the clauses John granted his major subjects, namely prelates, magnates and boroughs, their customary interests. The clause for securing the peace, "*Forma Securitatis ad observandum pacem*", was attached as the sixty-first clause to allow twenty five barons to resist against the king's breach of promise. This was a special regulation attached only to Magna Carta, 1215. It reads as follows:

'For the better allaying of the discord that has arisen between us and our barons ..., we give and grant them the under-written security, namely, that the barons shall choose any twenty five barons of the kingdom they wish, who must with all their might observe ... the liberties which we might have granted and confirmed to them by the present charters of ours, so that if we ... offended in any way against anyone or transgress any of the articles of the peace or the security,... And if we do not correct the transgression, ... within forty days, ... the aforesaid four barons shall refer that case to the rest of the twenty five barons and those twenty five barons together with the community of the whole land (*cum communa totius terre*) shall distraint and distress in every way they can ...'<sup>5</sup>

The names of these twenty five barons have already been identified by Cheney and Holt, but *communa totius terre* is a puzzle. What kind of the people were meant by the word *communa* is not clear, since the word appeared only in clause 61<sup>6</sup>. In thirteenth-century England there were several kinds of community, such as parish community, county community, or borough community, but in clause 61 the word means a single community of the whole land. *Communa* could have a two-fold

meaning, denoting either the common or general substance. If we assume that the word in the context meant the general inhabitants of the realm, we have to ask if those twenty five barons cooperated with the general inhabitants of the kingdom in order to resist the king's policy directly. It is hard to imagine that the general people of the kingdom assembled together with the barons at Runnymede. It is impractical to suppose that the free peasants, merchants and clerks resident all over the country came together to work politically with the magnates. So the word *communa* did not mean the general inhabitants in the context. It seems to mean a specific group of people who opposed the king's policy together with the magnates sharing some common interests<sup>7</sup>.

Before proceeding to check the next year's version of Magna Carta, I think it is important to consider the meaning of community in other clauses of Magna Carta, 1215. As mentioned before there is no other mention of the noun, "*communa*", in the same year's Charter. But we can find the adjectival form of the word, "common", twice, one in clause 12 and other in clause 14. In clause 12, it reads, 'No scutage or aids shall be imposed in our kingdom unless by common counsel of our kingdom...' And in clause 14 it reads, 'and to obtain the common counsel of the kingdom about assessing of an aid or of a scutage we will cause to be summoned the archbishops, bishops, abbots, earls and greater barons, individually by our letters, and in addition, we will cause to be summoned generally through our sheriffs and bailiffs all those holding of us in chief... the business shall proceed on the day appointed, according to the counsel of those present, though not all have come who were summoned.'<sup>8</sup>

From the wording 'common counsel of our kingdom' in

clauses 12 and 14, we can infer that the counsel would be given by those summoned by the king, namely prelates and lay magnates. Then is it possible to regard the "*communa*" in clause 61 as that of tenants-in-chief? Therefore, we should consider the meaning of the word 'kingdom' in Magna Carta next. The word is referred to in several clauses of Magna Carta and is used in two different ways. In the first group it means the territory owned or governed by the king, '*regni nostri*', used in clauses 12, 14, 18, 35, 42, 61 and 62. The second group uses the word from the side of magnates, as in clauses 39, 42, 45, 55 and 61. Among these, the example in clause 42 is suggestive of the baronial idea of the community of the realm. It reads as follows: henceforth anyone, saving his allegiance due to us, may leave our realm and return safe and secure by land and water, save for a short period in time of war on account of the general interest of the realm, (*propter communem utilitatem regni*), and excepting those imprisoned or outlawed according to the law of the land and natives of an enemy country and merchants who shall be treated as aforesaid.<sup>9</sup>

Does the word anyone, *uniquique*, mean every inhabitant in England? The answer could be 'no.' The clause says, in time of war, 'natives of enemy country and merchants' as well as those imprisoned or outlawed were excluded. For the king and for the common interest of the realm, those who should be excluded in time of war, were the ones who would fight against the interest of the king or kingdom. Therefore, anyone here meant only people who could fight, the men-at-arms. The important point of this clause is the fact that competency to the general interest of the realm was written in the same category with allegiance to the king as the qualification to be permitted an entry to the

realm. The “Kingdom” was treated in this context not only as John’s property but also as the common property of lords who would uphold the law of the land.

In the famous clause 39, it is provided that ‘no free men shall be arrested or imprisoned or disseized or outlawed or exiled or in any way victimised, neither will we attack him or send anyone to attack him, except by the lawful judgement of his peers or by law of the land.’<sup>10</sup> As was seen in the former section, the law of the land was treated here as parallel to the lawful judgement of the king’s peers, and set against the unlawful attack by the king. Similar provisions can be found in clauses 45 and 55. In clause 45 it reads ‘We will not make justices, constables, sheriffs or bailiffs who do not know the law of the land and mean to observe it well.’<sup>11</sup> From these passages or clauses, we can easily notice what the magnates understood by the law of the land. It was independent from the king’s self-interest, and fitted more with the interest of magnates who demanded the Charter.

There are two images of the kingdom in Magna Carta, 1215. The one is that of the king’s own property, and the other is the common property of the land-holding lords, who have the common interest in paying scutage, administration of justice and military duties. These two images of the kingdom are not separated from each other but mingled in each clause of the Charter. As Professor Holt once wrote, Magna Carta failed either to solve the conflict between John and the magnates, or to establish a constitution of the realm.<sup>12</sup>

**(2) Twenty five barons of Magna Carta and the Community of the Realm**

What does *communa* in clause 61 of Magna Carta mean?

Who was included? How did the twenty five barons of Clause 61 relate to the *communa*? Professor Holt has done detailed research on this theme.<sup>13</sup> Clauses 52 and 55 as well as 61 refer to the twenty five barons. In clause 52 they were mentioned as follows: 'If anyone has been disseized or deprived by us without lawful judgement of his peers of lands, castles, liberties or his rights we will restore them to him at once; and if any disagreement arises on this, then let it be settled by the judgement of the twenty five barons referred below in the security clause' And in clause 55, they were mentioned as follows: 'All fines which were made with us unjustly and contrary to the law of the land, and all amercement imposed unjustly and contrary to the law of the land, shall be completely remitted or else they shall be settled by the judgement of the twenty five barons mentioned below in the security clause, or by the judgement of the majority of the same .... If any one or more of the aforesaid twenty five barons are in such a suit they shall stand down in this particular judgement, and shall be replaced by others chosen and sworn in by the rest of the same twenty five, for this case only'<sup>14</sup>.

As is above-mentioned, what was protected by the provision of clause 52 was the feudal rights of land and castles as well as the liberties and the *jura* (income from judgement), which were part of the royal rights (*regalia*). With this clause, the twenty five barons, as a group, were given the jurisdiction of the disputes concerning these rights. If so, did the king grant them part of the *regalia*? In clause 55 concerning the right to levy fines and amercement, which was then exclusively controlled by the king, it was provided that its jurisdiction was virtually granted to the twenty five barons<sup>15</sup>. If the twenty five barons

could execute these rights, the regalia was not monopolized by King John but shared with a small group of barons<sup>16</sup>.

As the granted rights were part of the regalia, and protected rights were feudal ones, the clause of security was meant not for the general inhabitants of England but for a small group of liberty holders and greater barons, which might be what was meant by *communa*. Professor Holt thought that the *communa* of clause 61 meant all of the barons, who were represented by the twenty five barons. As far as the wording of Magna Carta is concerned, both the king and the twenty five barons used the word *communa* in their own way, not in a divided fashion but mingled together. This might mean either side imagined the realm as conglomerate of a lot of liberties, the largest of which was that of the king<sup>17</sup>. As long as the magnates believed in the merit of the realm as a unity, England was not divided, while it was divided later when they asked the French prince to come to England.

## 2. Magna Carta, 1216, and the Community of the Realm

Two months after King John granted Magna Carta to the magnates in June, 1215, the conflict between the king and the magnates became a real war. In the Charter the king admitted that a group of twenty five barons could force the king to make redress when he erred in disseising liberty holders, such as tenants-in-chief, the Church, and boroughs. So part of the authoritative power of the state was divided among the limited liberty holders and decentralized constitutional structure of the feudal state emerged. King John himself thought that he could retain his central authority by granting franchise to his faithful subjects and by distraining his opponents. In practice, the group



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of twenty five barons tried to assume the executive power of the state after June 19, 1215. They drove off and imprisoned some of the king's agents from royal castles, and some of the twenty five barons obtained letters of restitution of their old rights between 19 and 28 June, 1215. 'On 23 June, John's institution was replaced by baronial orders that the sheriffs were to give a baron the seisin as his predecessors had enjoyed.'<sup>18</sup> The king regarded this scheme as an infringement of the prerogative power of the king and ordered the barons to surrender the properties to his agents and started to attack Rochester castle, which was held by the barons.<sup>19</sup>

In December, John began procedures to dispossess the barons, and the barons decided to depose the king. The baronial party had been driven to exceed the terms of Magna Carta, when they decided to invite Prince Louis of France during the autumn. They lost the capacity to serve for the sake of the general good and became more a faction seeking shelter behind a concocted claim to the throne from an alien prince.<sup>20</sup> Next June Louis landed England and fought against John's army in several places. However, in October, 1216, John died abruptly, and nine-year-old Henry succeeded his father. The regent, William Marshal, adopted a policy of appeasement towards the barons and reissued Magna Carta in 1216 and also in 1217. In 1217 Louis left England, and peace returned.

In 1223 Archbishop Langton sent messengers to Rome. They brought back a letter from Pope Honorius III dated April of 1223, which declared that the fifteen-year-old king was old enough to rule on his own. In 1225 the great council conceded a tax on movables in return for a renewed grant of the Charter.<sup>21</sup> This version of Magna Carta would be used as a usual form of

compromise when the king and the magnates came into conflict later.

So far in reading Magna Carta, 1215, I focused on the constitutional points of prerogative powers of the state in the early thirteenth century. Was the king automatically given the executive power of the kingdom? Or did the king and a group of magnates share the power to govern the land and the people of England on a tacit or written agreement? I would like to compare the versions of Magna Carta in 1216, 1217, and 1225 to see how these issues were treated as time passed. How did the *communa* in clause 61 of Magna Carta, 1215, change in the following versions of the Charter? What of the power of the twenty five barons, or the common counsel, or the law of the land, or above all, the prescriptive liberties of the magnates?

### **(1) The Community in Magna Carta, 1216**

In 1215 the word *communa* was used only once in Magna Carta. In all the later versions it disappeared completely. So did the twenty five barons. Controversial clauses in the constitutional meanings disappeared as time went on. Why were they erased? It may be explained politically. Since the new king was nine years old in 1216, and the regent took a policy of appeasement, and the authoritative power of the state was favourable even for the twenty five barons, because their liberty originated from the grant of the king, the barons may have agreed to erase the clause. However, as the security clause was necessary to protect the liberty of the magnates, there should have been some other forms of security provision in the later versions of the Charters. It was also necessary for the king to avoid the conflict experienced in 1215 and 1216.

What could be the alternatives? It was the common counsel.

First it was written in clauses 12 and 14 of Magna Carta, 1215. In the version of 1216 it appears in clause 42.

It read as follows: 'because there were certain articles contained in the former charter which seemed important yet doubtful, namely on the assessing of scutages and aids, on debts of Jews and others, on freedom to leave and return to our kingdom... above-mentioned prelates and magnates have agreed to these being deferred until we have fuller counsel, when we will, most fully in these as well as other matters that have to be amended, do what is for the common good and the peace and estate of ourselves and our kingdom'<sup>22</sup>. So in this context the king was supposed to use his power with the guidance of the counsel of prelates and magnates to do what was for the common good and the peace. The matters mentioned in these clauses include not only feudal duty, such as scutages, but also regalia, like granting freedom to leave and return to the kingdom. In Magna Carta, 1215, common counsel was necessary only when scutage and aids were levied. However, in the 1216 version the principle was also applied to the king's preferential treatment, such as granting free warren, as well as feudal matters. As a substitute for the phrase, community of the realm, the new system of security, common counsel to the king was introduced in the 1216 version of Magna Carta. With this the magnates could assume the commonweal stipulating that they would give counsel to the king not only for securing their own liberty but also for the common good for the kingdom. As a result, this avoided decentralization of the prerogative power as well as a double structure of the governmental power.

## **(2) Liberties and Magna Carta, 1217**

Many clauses of Magna Carta, 1217, do differ from those of

the former versions. First of all several clauses concerning the royal forests were separated from the main body of the Charter, and called the 'Charter of the Forest.' Second, some of the important clauses, such as those of petty assizes, disseisin from the Welsh and giving counsel to the king, were removed, and instead some new clauses, such as prohibition of selling knight's land, sheriff's tourn and mortmain, were inserted.<sup>23</sup> Most of the clauses dealing with feudal incidents, for example relief, wardship and *maritagium*, survived. The famous clause 39 of Magna Carta, 1215 was also retained.

Among the new clauses, nos. 13, 14, 15 and 42 concerned assizes, such as novel disseisin at the county courts. Before that year assizes were administered by the king's itinerant justices missioned to each county some times a year. According to Magna Carta, 1217, an assize would be held by royal itinerant justices only once a year in the county, and those cases unsettled there would be transferred to the court of Common Pleas at Westminster. Moreover presentment for assize of *darrein* should always be administered by the Bench. These provisions could be interpreted as a centralization of jurisdiction.

Concerning county courts, clause 42 provided a new arrangement. 'No county court shall in future be held more often than once a month. Nor shall any sheriff or his bailiff make his tourn through the hundred save twice a year, once after Easter and again after Michaelmas. View of frankpledge shall be held then at Michaelmas term without interference, that is to say, so that each had his liberties which he had an was accustomed to have in the time of King Henry our grandfather or which he has since acquired. View of frankpledge shall be held in this manner, namely, that our peace be kept, that a tithing be kept full as

it used to be, and that the sheriff shall not look for opportunities for exactions.' Concerning the sheriff's tourn, McKechnie has already given a detailed explanation. But he did not explain there how much the administration of the liberties were changed in Magna Carta, 1217<sup>24</sup>.

Liberties of magnates often include leet jurisdiction, i.e., view of frankpledge. People under the jurisdiction of magnates did not attend the sheriff's tourn. So clause 42 of Magna Carta, 1217, stipulated a new and important arrangement for the magnates who held liberty. The same clause prohibited sheriffs to exploit the local people by excess exactions through tourn. It was also beneficial to the king to punish sherrifs who abused exactions, because he was eager to get more aids from the locality. In addition, the same clause was also beneficial for liberty holders, whose jurisdiction competed with that of the sheriff<sup>25</sup>.

Clause 44 of Magna Carta, 1217, was also a new provision. The king's right to levy scutage had been regulated each time in 1215. In 1216 the new regulation was postponed until the fuller consultation had taken place. And in 1217 the new regulation was made that scutage should be taken in the future as it used to be taken in the time of King Henry II<sup>26</sup>. For the king's tenants-in-chief, it would be favourable for feudal obligation to be limited to the amount accustomed in the past. Clauses 45 and 46 were general sanctions granting prelates, military orders, magnates and all others, ecclesiastical and secular, the liberties and free customs they had enjoyed previously<sup>27</sup>. Such a comprehensive grant could be the cause of future troubles between the grantor and the grantees. But we should consider the implications of the political background during which these clauses were inserted in the version of Magna Carta, 1217.

The key point of these clauses seems to be the liberty. What the grantees paid attention in the stipulation of the Charter in 1217 may be the condition by which their liberties would be protected. Some of the other clauses of Magna Carta, 1217, seem to reflect their intention. For example, clauses 25 and 26 were revised version of clause 23 of Magna Carta, 1216, which restricted the sheriff's power. 'No demesne cart of any ecclesiastical person or knight or of any lady shall be taken by the aforesaid sheriffs'<sup>28</sup>. These clauses protected liberty holders' vested rights as in the case of clause 42.

As mentioned above, in Magna Carta, 1217, feudal clauses were intact. But on scutage a further restriction to the king's right was added in clause 44. In clause 24 if a knight had been sent on military service by the king, he was to be excused from guard in respect of the fief for which he did service in the army in proportion to his former service. Considering these restrictions on the king's power, the comprehensive clause 46, granting magnates liberties and free customs, seems to correspond with to the security clause in 1215.<sup>29</sup> According to Professor David Carpenter the minority government in 1216 was dependent upon the support of great councils and it seemed highly unlikely that it could or would levy taxation without their consent.<sup>30</sup> Clause 47 seems to reflect the political situation. Castles built during the war between King John and the magnates in 1215 and 1216, should be demolished. And these decisions were made with 'the common counsel of the whole realm', while the rebellious phraseology of twenty five barons in clause 61 of Magna Carta, 1215, disappeared from the version of 1217. Indeed the great council's counsel to the king seems to protect the liberty holders' feudal interests, at least.

As Professor Carpenter indicated, a clause of enforcement of power upon the king's discretion disappeared from Magna Carta, 1217. In that year the magnates did not make the great council an institution independent from the king's own will, or regalia. The tendency towards appeasement by the regency government seems to have satisfied the magnates who wanted to keep their liberty as it used to be. So in 1217 the power structure of English constitution changed from that of 1215

### (3) Magna Carta, 1225, and the power-sharing structure

Magna Carta, 1225, appears not so much different from that of 1217. The Charter of the Forest of 1225 became longer than that of 1217. Between 1217 and 1225 King Henry III came of age, the regent William Marshal died in 1219, and Hubert de Burgh, justiciar, had increased his influence with Henry. Of the twenty five barons of Magna Carta, 1215, nine had died before 1225.<sup>31</sup> In 1225 there was no war between the king and magnates. Rather, the grantees submitted to a tax of a fifteenth on movables to the king in return for the reissue of Magna Carta. (*pro concessione et donatione*)<sup>32</sup>

The significant difference from the former versions is that Magna Carta, 1225, lacked any word meaning community or common counsel. In 1215, twenty five barons, together with community of the whole land, forced the king to redress his problems (*excessum*). A year later the clause of security was erased from Magna Carta, though it retained the clause about common counsel for the magnates to advise the king. Another year later, in 1217, the influence of the common counsel became less, and instead more provisions appeared requiring that the king should acknowledge and secure the liberties of his tenants-in-chief. In 1225 the king promised the grantees that 'we have

also granted to them for us and our heirs that neither we nor our heirs will procure anything whereby the liberties contained in this charter shall be infringed or weakened; and if anything contrary to this is procured from anyone, it shall be avail nothing and be held for nought.’<sup>33</sup> The king’s promise was given to each of the liberty holders, not to the community in 1225. There was no provision for an institution of security when the king or his heirs should break their promise.

Maitland has written as follows, ‘We find in the thirteenth century that there are large masses of men who never go near the sheriff’s tourn. They are the men of lords who rightfully or wrongfully exercise the franchise that is known as “view of frankpledge”; that is to say, of lords who in their own courts see that their tenants are in frankpledge and take the profits which arise from the exercise of the jurisdiction.’ As Maitland added, ‘Of all the franchises, the royal rights in private hands, view of frankpledge is perhaps the commonest.’<sup>34</sup> Clause 42 of Magna Carta, 1217, reduced the frequency of sheriff’s tourn, and also secured that ‘the view of frankpledge shall be held without interference, so that each has the liberty which he had and was accustomed to have in the time of King Henry II, or which he has since acquired, and sheriff shall not look for opportunities for exactions’<sup>35</sup>. So Magna Carta, 1217, stipulated that part of the royal jurisdiction should be administered not only by sheriffs but also by liberty holders. Moreover it acknowledged that the magnates held the liberties or franchises by prescription, that is, since the days of Henry II.

Although not only the clause of security but also the words of community or common counsel disappeared from Magna Carta, 1225, there remained the provisions that sanctioned the



protection of the vested liberty of tenants-in-chief as mentioned above. In 1225 there was no war between the king and magnates. So these promises were enacted by agreement. Both sides agreed that magnates should keep their liberty to exercise part of the royal jurisdiction by prescription, and that the king should not interfere. community of the realm, if mentioned in 1225, meant the liberty holders' community in order to secure their interests gained by prescription. It was not a community of the whole nation.

### 3. 1225–1258

#### (1) Before 1250

After 1225 Magna Carta was sometimes mentioned in royal documents. According to Faith Thompson it was in 1237 when Magna Carta was next reissued.<sup>36</sup> But it appeared in 1234 when at a great council the king recognized and reformed the wording of Magna Carta concerning frequency of sheriff's tourn to soften the obligation of attendance of tenants under the liberty of magnates<sup>37</sup>. In the following year, 1235, Henry III said in his letter to the Emperor, 'we failed in securing the faith of our tenants-in-chief, when we asserted our prerogative right too far (*attribueret plenitudinem regiae potestates*).'<sup>38</sup> The king regretted that he had offended his subjects. He recognized the importance of his powerful subjects' allegiance. But we cannot find any use of the phrase 'community of the realm' as a cooperative body of powerful liberty holders in his letter<sup>39</sup>.

In 1240s Matthew Paris mentioned the word *universitas* several times in his Chronicle, which means in this context the community<sup>40</sup>. In 1244 in the famous document, the Paper Constitution, the word *communitas* was used also by Matthew Paris

meaning the community of a limited number of magnates, who tried to urge the king to reform the state of the realm. But as is known, the reform project of the Paper Constitution was not put into practice<sup>41</sup>. So magnates kept their right to execute part of the royal power within their own liberty, and the prerogative power to govern the realm was not centralized around 1240s. The greater authority was mainly kept and executed by the king, but part of governing power was distributed among some of the powerful liberty holders.

This uncentralized power structure of the government would be drastically changed after 1250, when King Henry III adopted a new policy against liberty.

## **(2) From prescription to franchise: after 1250**

Dr. Michael Clanchy once wrote an article about Henry III's new policy against liberty.<sup>42</sup> In his speech at the Exchequer Henry had ordered his sheriffs to preserve all royal rights and liberties specially pertaining to the crown, and named particular liberties like return of writs and view of frankpledge: no one was to have such privileges without the warrant of the king's charters or of use from ancient time. In 1255 articles of the nation-wide inquest into infringement of royal rights were included in an investigation concerning those who claimed to have liberty without a royal charter.

I interpret Dr. Clanchy's analysis as follows. Soon after inviting his Lusignan half brothers from Poitou to England, Henry III changed his European policy drastically, especially in regards to his administration of Gascony in southern France, and also concerning the throne of Emperor, and his oath of taking the cross to come to Sicily. Concerning domestic policy, he intended to change his magnates' liberty from prescription to franchised.

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First he forced many boroughs to buy a charter from him to renew their privileges. Then he did the same with religious houses. And in 1257 Walter de Cantilupe, bishop of Worcester, was challenged concerning his franchise, return of writ and *vee de naam* by the sheriff of Worcester, William de Beauchamp, through the king's order. Dr. Clanchy added, 'After success with the boroughs, Henry might well have put more pressure on the prelates, had not revolution overtaken him in 1258.'<sup>43</sup>

It was in early April, 1258, that local servants of one of the king's half brothers, bishop-elect of Winchester, offended the liberty of John fitz Geoffrey at Shere in Surrey<sup>44</sup>. This incident became a signal for the powerful liberty holders to rise up against the king's franchise policy. They shared a common interest to protect their vested liberty against the privatisation of prerogative power of the state by the king and his court party.

The distributed liberty among the magnates had to be united to be strong enough to match that of the king. In Henry's letter of May 2, 1258, they were said to have promised the king that they would use their influence with the community of the realm so that a common aid should be granted to the king.<sup>45</sup> More than fifty years later than Magna Carta, the community of the realm as a group of powerful magnates to stop the arbitrary use of prerogative right by the king appeared in royal documents again, and began to reform the state of the government. In 1215 it was a revolutionary party of rebellious barons who forced the king to redress problems. But by 1258 it had become a community to build a united governing power of the state with the king.

## Notes

- 1 *Documents of Baronial Movement of Reform and Rebellion*, ed., by R. F. Treharne, and I. J., Sanders, Oxford, 1973, pp.110–11.
- 2 Wright, T., ed., *The Political Songs of England*, Camden Society, 1839, pp.72–124, esp. pp.110–1.
- 3 Powicke, F. M., *King Henry III and the Lord Edward*, Oxford, 1947, pp.38–9, 421.
- 4 Powicke, *The Thirteenth Century 1216–1307*, 2nd ed., Oxford, 1962; Stacey, Robert, *Politics and Finance under Henry III 1216–1245*, Oxford, 1987, vii; Clanchy, M., ‘Inventing Thirteenth Century England: Stubbs, Tout, Powicke — now what?’, *Thirteenth Century England*, V, 1995, pp.1–20, esp. pp.12, 14.
- 5 Magna Carta (MC hereafter), cl.61; *English Historical Documents*, (EHD hereafter) III, London, 1975, p.323; Holt, J.C., *Magna Carta*, 2nd., ed., appendix.
- 6 Latham, R.E., *Medieval Latin Word List*, Oxford, 1994, p.99; Cheney, C. R., ‘The Twenty-five Barons of Magna Carta’, *Bulletin of John Ryland’s Library*, L, p.280–307.
- 7 Holt, *Magna Carta*, app.
- 8 EHD, iii, p.318.
- 9 Holt, *op. cit.*, app.6, p.463.
- 10 EHD, iii, p.320.
- 11 Holt, *op. cit.*, p.463.
- 12 Holt, *op. cit.*, 2nd ed., p.1.
- 13 *Ibid.*, esp. ch.8.
- 14 *Ibid.*, pp.363–3.
- 15 MC, (1215) cls. 1, 13.
- 16 Cheney, *op. cit.*; Lambeth MS., 371, fol. 56v.
- 17 Holt, *op. cit.*, p.359.
- 18 *Ibid.*, pp.351–2, 359.
- 19 *Ibid.*, pp.357, 360, 361, 362.
- 20 *Ibid.*, pp.376–77.
- 21 Mckechnie, *Magna Carta, A Commentary on the Great Charter of King John*, 2nd ed., New York, 1914, p.153; EHD, iii, pp.311–349; *Statutes of the Realm*, vol.1, London, rep., 1963, pp.9–23; Carpenter, D.A., *Minority of Henry III*, London, 1990, pp.302, 379.

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- 22 *EHD*, iii, p.331.
- 23 MC 1216, cls.14, 40, 42; MC 1217, cls.39, 42, 43.
- 24 McKechnie, *op. cit.*, pp.308–9, 320–1.
- 25 Maitland, F.W., *History of English Law before the time of Edward I*, 2nd ed., Cambridge, 1968, i, pp.532, 580–1, 592–3.
- 26 McKechnie, *op. cit.*, pp.233–4.
- 27 *EHD*, iii, p.337.
- 28 MC, cl.26, (1217), *EHD*, iii, p.335.
- 29 Carpenter, (*op. cit.*, p.63) thinks that the omission of means of enforcement of Magna Carta 1217 was a crucial defect. He seems to understand that the king was forced by the magnates to surrender in 1217.
- 30 *Ibid.*, p.61.
- 31 Holt, *op. cit.*, p. 386. Among the witnesses of Magna Carta, 1225, there appeared the names of 33 prelates, 9 earls, 22 barons and 2 courtiers. In 1217 in the preamble of Magna Carta included, as counsellors, other than Gualo, legate, and William Marshal, the regent, we can recognize only two prelates, the archbishop of York and bishop of London, known by name.
- 32 MC, (1225) cls.1, 37. Charter of the Forest, cl.17.
- 33 MC, (1225) cl. 37; *EHD*, iii, p.346.
- 34 Pollock and Maitland, *History of English Law*, vol.1, p.570.
- 35 *EHD*, iii, p.337.
- 36 Faith Thompson, *The First century of Magna Carta*, p.116, app. C; Holt, *op. cit.*, p.394.
- 37 *Close Rolls* 1231–34, pp.588–9.
- 38 *Royal Letters, Henry III*, i, p.468.
- 39 Carpenter, D.A., ‘Justice and Jurisdiction under King John and King Henry III’, in *The Reign of Henry III*, London, 1996, pp.30–31, 38–41, 42; Do., ‘The Fall of Hubert de Burgh’, *Journal of British Studies*, 19–1, 1980, p.14; Vincent, N., *Peter des Roches*, Cambridge, 1996, pp.464–4.
- 40 Matthew Paris, *Chronica Majora, Rolls Series*, iv, pp.185–7, 180, 181, 183.
- 41 *Chronica Majora*, iv, pp.362–3, 366–8; Powicke, *King Henry III*, p.298, n.2; *Chronica Majora*, iv, p.395; *Handbook of British Chronology*, 3rd ed., 1986, p.537; *Chronica Majora*, iv, pp.363–5; Denholm-Young, N.,

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- 42 Clanchy, 'Did Henry III have a policy', *History*, 53, 1968, pp.209-10, 215-6; PRO, E368/25, memoranda roll, m2; printed E. Coke, *Brief Animadversions on...*, London 1669, p.53.
- 43 Clanchy, 'Franchise of Return of Writ', *TRHS*, 1967, p.69.
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- 45 *DBM*, pp.72-3.

## The Community of the Realm in England, 1258–1260

Professor Michael Prestwich examined how the meaning of the phrase ‘community of the realm’ altered over the course of the thirteenth century. His investigations reveal that ‘the idea of the community of the realm appeared to be a potent one, as it developed in the first half of the thirteenth century’, although ‘the sworn association of 1258, the commune, failed to retain its identity’. Consequently, ‘it became little more than a convenient phrase by Edward I’s reign; losing the revolutionary overtones of earlier days’.<sup>1</sup> Prestwich also argues that while ‘the commune of 1258 can be interpreted as being a narrow baronial body’, there was also ‘a much broader concept at work, of the community as a whole, extending beyond the bounds of the baronage’. The meaning of the term, community of the realm, ‘altered as the century progressed, but the phrase, imprecise as it was, did reflect a genuine sense of national unity’. Prestwich also mentions the ‘radical overtones’ or ‘revolutionary overtones’ of the commune of 1258. Yet, in what sense was it radical or revolutionary? Why did the revolutionary ‘community of the realm’ suddenly appear in English history in 1258? How and when did it lose its revolutionary meaning and ‘develop into a community in a much wider sense’?

Furthermore Prestwich argues that historians should be careful when interpreting this phrase because, even in the days of the baronial reform movement between 1258 and 1265, it had more than one meaning. A narrow understanding of this term implied ‘a limited sworn baronial confederacy’, including the seven magnates who in early April 1258 demanded that Henry

III reform the state of the realm. A second, broader, meaning embraced 'the community as a whole, extending beyond the boundary of the baronage'.<sup>2</sup> This multiplicity of meanings ensured that both the king and the baronial reformists had differing interpretations of the phrase during the early stages of the reform movement in 1258.

In the following pages I will examine how the usage of the term 'community of the realm' altered between 1258 and 1265. Using contemporary documents, I will illustrate how the reformist barons viewed the nature of Henry III's government during the 1250's and their subsequent development of a reforming programme in 1258-59. Finally, I will demonstrate the historical significance of the community of the realm between 1258 and 1260.

### 1. The community of the realm between 1258 and 1260

Dated May 1258, a letter patent issued by Henry III stated that 'since, for difficult business of ours, affecting both ourselves and our kingdom, we have caused the great and loyal men of our realm to be summoned to us at London in the quinzaine of Easter last. ..., since they have replied to us that if we should be pleased to reform the state of our realm by the counsel of our loyal subjects, they would loyally use their influence with the community of our realm so that a common aid should be granted to us for that purpose.'<sup>3</sup> This letter patent illustrates that the king viewed the 'the community of our realm' as if it were a community of his supporters. Witnessed by the Lord Edward, Guy de Lusignan, William de Valence, Peter of Savoy, John de Plessis, John Mansel, Henry de Wingham, Peter de Riveaux, Guy de Rocheford and Robert Walerand, all of whom



were either members of the royal family or the king's half-brothers or members of the royal household. The king eagerly hoped that 'the community of the realm' would contribute aid to the king.

An alternative meaning of the same phrase can be found, however, in the *Petitio Baronum*. Recorded in the Burton annals, it was submitted by the barons 'to make the provisions and ordinances for the reform of the kingdom'.<sup>4</sup> Clause nine of the petition states that 'whereas the forests were disafforested by royal charter and by a fine made between the lord king and the community of the whole realm, in order that everyone might be able to hunt freely everywhere, the lord king arbitrarily grants rights of warren to many persons from this liberty, which grants infringe the grant of the liberty.'<sup>5</sup> In this instance, the baronial petitioners used the phrase, 'the community of the whole realm', while complaining that the king's arbitrary grants might infringe the initial grant of the liberty.

Evidence from a range of documents that date from May 1258 indicates that both the king and the barons thought 'the chief men and the magnates of our realm'<sup>6</sup> represented the community of the realm. During May, the community's side became a distinct group from the king's side. On 2 May 1258, Henry issued a letter patent ordering that 'the state of our realm shall be put in order, corrected, and reformed by twelve loyal men of our council, already chosen, and by twelve others of our royal subjects chosen by these leading men, who shall meet at Oxford one month after next Whitsunday'.<sup>7</sup> The Provisions of Oxford contained a similar expression. Dated June 1258, the preamble empanelled 'twelve men from the king's side and as many from the community's side'.<sup>8</sup> Thus it appears that Henry

believed that men from the community's side were not included in the king's council in May. Yet in June they were definitely included in the king's council of fifteen magnates as is shown in the Provisions of Oxford. From the wording, 'the king's side' and 'the community's side', the community of the realm in June, 1258, may be regarded as a corporation independent from the king. In other words the king was not incorporated in that community.

The importance of the council of fifteen of the Provisions of Oxford lies in the fact that its members were not nominated (*nomez*) by the king. Instead, they were chosen by four nominators among the twenty-four leading men of the realm. An equally important fact is that the king was to rule with the consent of the new council. This same idea was repeated in the letter patent of October 18, 1258.<sup>9</sup>

What did the reformist barons plan to accomplish with the reformed king's council in May and June, 1258? From the expression 'by the consent of the council of the whole realm of England,'<sup>10</sup> recorded in *Petitio Baronum*, it can be inferred that the reformists planned to substitute a new executive council for the former king's council. Their plans were realized in June 1258, when the Oxford parliament established the council of fifteen. Up to this point the king had regarded his own council as a gathering of his supporters who wished to contribute to his financial needs. But the baronial reformists used different words, i.e. the council of 'England' or of 'the whole realm'. They seem to have thought themselves representing the community of the realm at that time.

Details of the programme, drawn up by Henry's baronial opponents in the name of the community of the realm during

1258–9, are roughly known from the Provisions of Oxford and the Provisions of Westminster. Various topics dealt with in these two documents could be categorised under two headings: the settlement of the troubles of feudal relations between lords and tenants, and the reform of the governmental machinery to control both central and local administration. It is significant that the phrase of community of the Realm only occurs in the clauses of the latter category. Among the 24 clauses of the Provisions of Oxford, only clause one, which commanded the inquiry of misconduct of local officials, does not include the phrase, while in the other clauses, which dealt with the administrative reform of both central and local government, the phrase plays an important role. The same pattern is repeated in the case of the Provisions of Westminster. This provision, subject to the research tradition, is divided into two sections: legal clauses and administrative clauses. The phrase only appears in the latter section.

In my opinion, the baronial reformists first of all wanted to establish a firm position for themselves based on the support of the community of the realm. The various functions, which the Provisions of Oxford gave the new king's council to rule, were very important capacity of sanction, which only the king used to have, for example, to send envoys to the Roman Curia or the French King, or to appoint a treasurer, chancellor and justiciar.<sup>11</sup> Since there were difficulties in transferring such important capacity to the baronial council, the reformists stressed the collective support of the community of the realm in their reform plans. In fact, clause 29 of the Provisions of Westminster says that the reform plan and the regulations were made both by the king and the council elected by the common counsel in the

presence of the community of England.<sup>12</sup> The transfer may well be called 'revolutionary'.

Yet the clauses concerning feudal disputes between lords and their tenants did not employ the phrase. A possible reason for this omission may be that the reformists believed that feudal disputes were of a private nature, an area into which the public authority should not interfere. Nevertheless both the Provisions of Oxford and Westminster ordered inquiries into such local or feudal problems. There should have been some relations between the feudal or local troubles and the community of the realm. The complainants in the eyre were mainly the local gentry who held land from the reformist barons, too. It has been said that the two reforming provisions 1258 and 1259 contained some clauses, which were intended to protect the interests of the local gentry or feudal tenants of the barons.<sup>13</sup> Whether those clauses protected the gentry's interests or not, that the two provisions, stipulated under the initiatives of the reformist barons, mentioned the interests of the gentry, implies some consent among the reformist barons. Tenurial grievances, such as a lord's use of distraint when enforcing suit of court, were sources of litigation in the surviving eyre rolls of the latter half of the thirteenth century. Similar tensions were exhibited in the relation between Henry III and the baronial reformists and their tenants. Both the king and the magnates were also troubled by this kind of complaint from their tenants. The barons certainly hoped that the grievances would be redressed. The point here is not whether there was a redress or not, but who ordered the redress or how the redress was made. What in fact the reformist barons planned in the course of their movement survived the turbulence, and was revived in 1263 and 1264, and in 1267,

moreover, it was enacted as the Statute of Marlborough, and in 1285 as the Statute of Westminster II. Even after ‘the revolutionary community of the realm’ lost its leader in 1265, these clauses in the provisions, stemming from the baronial reform movement, survived till the next king’s reign. I will come back to this point later. (See section two of this chapter)

In the spring of 1260, the reformist barons began to split among themselves, and Simon de Montfort was isolated from his fellow reformists. At the same time the phrase, community of the realm, disappeared from official records. After November 1259, ‘the community of the realm’ appeared less and less frequently in public records and began to have a different meaning after the beginning in 1260. In March or April, 1261, King Henry complained in French about the administration of the reformed king’s council, saying ‘whereas fifteen councillors were given to the king by the community, now, by their advice, the king is more heavily burdened with the costs of justices than he formerly was, and yet, if any complaint is made against them, no justice is done, but only against poor men’.<sup>14</sup> From his complaint we may infer that after the reform movement started in 1258 the council members were not nominated by the king but elected by the community of the realm and also that the advice of the reformist barons had some influence on the king’s justice. We, however, should bear in mind that what this document tells us is not the state of the community of the realm in 1261 but of that in 1258 and 1259. For, the reformed council stopped issuing any document after December 28, 1260. There is no evidence, either, that the king was complaining about the deeds of the council especially in 1261. For example in the same document, the king complained, saying ‘whereas the king used formerly to

grant his wardship especially to those who had given him long services, now is the king's power so restricted that little or nothing of this kind is done at his orders'.<sup>15</sup> The council replied that 'by agreement between the king himself and the community of England a council was chosen for the king, who himself granted that he would accept and listen to their advice concerning wardships, escheats, and other valuable royal rights to his profit and honour, and that it was provided by them that the justices and others should, for the king's advantage'.<sup>16</sup> There is no doubt that the word 'formerly' in the king's complaint means 'before the reform movement started in 1258'. The word 'now' in his complaint is an interpretation by the editor of the document, Professor I. J. Sanders. The original French word is 'taunt'. I think the medieval word in this context should be translated as 'then' or 'at that time'.<sup>17</sup> Because the king was complaining about the status of his rights in the days when the reform movement was active, not when the reformed council had withered. He virtually neglected to mention that he had agreed to the reform of the state of the realm at the beginning of the movement. On the other hand, in their reply, the reformed council only mentioned the said agreement of 1258, and did not make clear the state of the king's patronage in 1261 when he complained. Could we conclude that the revolutionary community of the realm had waned some time before 1261?

In 1263 the phrase was used in several documents now located in the Archives Nationales in Paris, which the reformist barons had prepared for the arbitration between the king and them to be conducted by the king of France, Louis IX. King Henry III also submitted his own claim to Louis, but he did not use the phrase nor mention his oath to the reform movement in

it. He said, 'he also asks that by your arbitration and ordinance, lord king of France, the provisions, upon which his adversaries rest their cause, and all ordinances, statutes, and allegations and everything else which has resulted from them or on account of them, shall be quashed and invalidated, and declared null and void'.<sup>18</sup> On the other hand the reformist barons, specifically the earl of Leicester and his adherents, used the phrase in their assertion, but, although they stressed that the king had once agreed to reform the state of the realm, they did not emphasize that the community of the realm was still active in 1263. We should also pay attention to the way the phrase was used in their assertion. They said, 'the barons and the community of the realm of England and their proctors in their name, ask should be approved by your award, illustrious lord king of France'.<sup>19</sup> Were then, in 1263, the barons not included in the community of the realm in their own opinion? Another document used on the same occasion, with the title 'Grievances, which oppressed the land of England'<sup>20</sup> used the phrase to mean an organization of people having to pay a tax of a fifteenth on movables to the king. There is no mention of the barons' initiative in this document. The meaning of the phrase changed continually from 1258 to 1264.

In 1264, Louis IX of France did not employ the phrase in the Mise of Amiens either. After the defeat of Henry III's army at Lewes in 1264, de Montfort regained the power to rule in the king's name with the monarch being a virtual hostage. De Montfort ruled as a dictator until he was defeated and killed by Lord Edward's army at Evesham in August 1265. During the period of his dictatorship several examples of 'community of the realm' appear in public records, but the phrase's meaning is not

the same as it used to be. For example, *Forma Pacis* dated June 1264 lists, 'prelates, earls, barons and the community of the realm'. Does this mean, that earls and barons were not included in the community?<sup>21</sup> So the revolutionary community of the realm existed only for two years, between spring of 1258 and spring of 1260. (See the next chapter)

## 2. The community of the realm and lord-tenant relationship

This section will discuss how the reformist barons, acting as the representatives of the community of the realm, secured control of the government. It will also focus upon the reasons why they introduced reforms that, while redressing the tenurial grievances of local landholders, might act in direct opposition to their own interests as superior lords.

At the Oxford Parliament, the newly established king's council took a decisive step in consolidating its constitutional position. It acquired the power to nominate, in consultation with the King, the chief royal officials including the justiciar, treasurer and the chancellor. The council had the authority to reform the judicial procedures used in the royal courts and was even able to send delegates to the French King or the Roman Curia. Compared to its role during the period of Henry's personal rule, the post-1258 council became a powerful instrument of government that cooperated with the king in the administration of the realm. This transformation was even recognised by Henry himself, who complained in 1261 and 1263 that 'his opinion had not been regarded since the new council got power'.<sup>22</sup>

This expansion of the council's position highlights two other important issues. First, why did such a big transformation in



both the character and power of the council occur in 1258? This question needs to be considered within the political context of 1257 and 1258. The political ambitions of some magnates, such as Simon de Montfort or John fitz Geoffrey, may have encouraged other discontented barons to make a stand against the king and his half-brothers. Dissident barons may likewise have made common cause with de Montfort in the expectation of securing a greater share of royal patronage. Ambition and patronage were not, however, peculiar to this period. Consequently, these factors need to be considered not only in a political but also within a wider historical context.

Secondly, the reformist barons described themselves as the representatives of the community of the realm. Yet they comprised only a small part of the baronage, not to mention of all the inhabitants of the realm. Presumably Henry III also considered himself the leader of the community of the realm. Did, therefore, the baronial opposition believe itself to be more representative of the realm than the monarch? In the following pages these two issues will be examined.

In 1258, who constituted the revolutionary community of the realm? Who represented whom? Professor Treharne stated that the community in question was the community of the tenants-in-chief.<sup>23</sup> Unfortunately, however, he did not disclose the evidence for such a conclusion. Treharne insisted that all the magnates in the council of fifteen except for John Mansel, the archbishop of Canterbury and the bishop of Worcester, represented the entire corpus of the barons. This small grouping is expanded somewhat by Treharne's inclusion of the twelve barons who were to negotiate at Parliament with the council of fifteen. Treharne did not, however, provide any explanation as to

why the community of the tenants-in-chief should be synonymous with the community of the realm. Some royalists, such as the earls of Warwick and de Warenne, are also included in his description of the community of the realm. Treharne apparently presumed that the earls and barons were politically united at this stage of the reform movement. According to Treharne's definition, therefore, the lesser landholders were entirely excluded from the community of the realm.

Contemporaries who were present at the Oxford parliament could probably distinguish between the king's supporters and those who adhered to the 'community's' side. There is not, however, any surviving documentary evidence to confirm such an assumption. While it is impossible to ascertain with any certainty the extent of support for either party, I believe there are some criteria that can determine a baron's political allegiance. The following section of this chapter will identify what these criteria or basis of categorisation is.

The identities of the reformist barons who were said to represent the community in 1258 can be established. A document deposited in the Archive Nationales in Paris records the names of the seven leading magnates who, in early April 1258, confronted Henry III at Westminster and demanded that he reform the state of the realm. These magnates were recorded as being Richard de Clare, earl of Gloucester, Simon de Montfort, earl of Leicester, Roger Bigod, earl of Norfolk, Peter of Savoy, earl of Richmond, Hugh Bigod, John fitz Geoffrey and Peter de Montfort. At the Oxford Parliament of June 1258, twelve magnates drawn from the 'side' of the earls and barons were named as members of the twenty-four who were to advise the king. They were listed as being the bishop of Worcester, Simon de

Montfort, Richard de Clare, Humphrey de Bohun, Roger Bigod, Roger Mortimer, John fitz Geoffrey, Hugh Bigod, Richard de Grey, William Bardolf, Peter de Montfort and Hugh Despenser. Since de Bohun was among those nominated, not all of the twelve were reformists. During the same parliament, a council of fifteen was named. Nine of its members are recognised by Sanders as reformists although he fails to provide any supporting evidence.<sup>24</sup> These are the bishop of Worcester, Simon de Montfort, Richard de Clare, Roger Bigod, Humphrey de Bohun, John fitz Geoffrey, Peter de Montfort, Richard de Grey and Roger Mortimer. I tend to agree with Dr. Clanchy and Professor Prestwich and understand the seven magnates of April as the core of the reformist barons.<sup>25</sup>

Here now I will consider the first issue mentioned above, why the 'revolutionary' community of the realm appeared in 1258. To compare the state of the realm before the reform movement started with the state after it began, let us first trace the reform movement from May 1258 to November 1259. According to Dr. Brand, the reformist barons presented the king in May with a document, enumerating complaints from various groups, which is called *Petitio Baronum*<sup>26</sup>. The issues were considered in the council, and in June at the Oxford parliament in the presence of the king and other barons, the provisions of Oxford were publicized. Its first clause ordered four knights from each shire to make inquiries and to record local problems before the chief justiciar's visit to their respective county. Other clauses dealt with the reform of the administrative machinery of central and local government. Using the collected reports from each county the reformists began to draft a more detailed plan of reform, and some time after autumn parliament in 1258, a

plan was made, titled *Providentia Baronum Angliae*. Subsequently adjustments, modifications and amendments were made to original plan. One such new plan was known as *Ordinationes Magnatum*, publicised in the name of the king in February and also in March, 1259. The last reform plan publicised by the name of 'revolutionary' community of the realm was the Provisions of Westminster in October 1259.

It has been said that there were political conflicts between the more progressive reformists and those more conservative in early 1259. However the reform plans were not publicised in the name of individual barons or earls, but as being of a united group of barons sitting in the king's council. This is significant. They used the king's council as a place where the king and the barons decided upon issues by mutual consent.<sup>27</sup> And they also used parliaments as occasions to publicise these important decisions. The transformation of the components and the function of the council in the constitution of the realm took place through these transactions during baronial reformists' councillorship. The king also acknowledged that the council became the occasion to deliberate on governmental issues with the magnates.<sup>28</sup> As a result of this transformation the king and the allied group of magnates began to cooperate in the administration of the realm. The group of earls and barons in April were able to make such a major transformation by declaring themselves the representatives of the community of the realm.

It seems to me that settling feudal or tenurial problems between lords and tenants would not be an issue that could only be treated by the reformed joint-government of the king and the barons. The King himself could also have remedied the problems. Nevertheless, it was the case that there was much

complaining about the central and local officials' reluctant attitude to deal with these problems. The king's government had not succeeded in solving these problems before 1258. Viewed from within the political context, one reason might have been the king's partial distribution of royal patronage among his favourites, the Lusignans, while viewed from within a constitutional context, the functioning of the cooperative government of the King and the leading magnates in the administration of the realm had failed to work well because of Henry's complacent attitude in European policy. I will come back to this later. (See section four of this chapter)

Next I will consider the friction between lords and tenants in the reform movement. The king's government seems not to have acknowledged how serious the tenurial problems had become for the lords as well as for the tenants prior to 1258. Because it did nothing about the problems, even though the king's justices had been faced with many cases of this kind in eyres. But the reformists had noticed the problems. In the *Petitio Baronum* in May or June 1258, there was a clause of complaint against royal officials who did not follow the necessary procedures against lords of upper layers.<sup>29</sup> The clause says that 'if a petitioner has proved the default of the court of his chief lord and then goes to the county court, the next highest chief lord of the said fee could intervene in the case, demanding his jurisdiction in the matter, and will get it'. The petitioner demanded that the remedy should be made through the sheriff's power (i.e. royal authority).

In the same text, beaupleader or Englishery, the age-old problems or troublesome action against lesser holders in the eyre or at a county court by some royal judicial officials were

repeated.<sup>30</sup> So, although the king's government was burdened with many problems, from poor administrative structure of government to abuse of feudal jurisdiction, all in need of being solved before common aid would be granted, it did not succeed in fulfilling the local people's demand.

How then did the reformist barons plan to remedy the problems? In the *Petitio Baronum* further tenurial problems than those mentioned above were also listed, for example, feudal incidents which were owed by tenants-in-chief to the king, such as, wardship, marriage, donation of fees to monasteries, and barons' duty of suit of court to many county courts. The reformists may also have known about the lesser landholders' grievances against the nobles who got credit from Jewish moneylenders to gain the lesser men's holdings. That the first clause of the Provisions of Oxford ordered an inquiry into local and feudal problems can be interpreted as the reformists' attempt to try and solve these problems.

In August 1258 the reformists ordered four knights and the sheriff of each county to record all excesses, trespasses and acts of injustice, using local jurors. When these reports were collected at the Oxford parliament in October, the reformists began to draft a reform plan and publicised part of it.<sup>31</sup> Since there were some critical issues included in the reports, i.e. suit of court, the drafts underwent various adjustments till the magnates reached a final agreement or compromise in March 1259. The *Ordinationes Magnatum* (1259) contains amendments put forth by magnates. Finally, in the legal section of the Provisions of Westminster the tenurial problems mentioned above were redressed by the reformists. The reform plan concerning tenurial problems was also made through discussion in the king's council

and then publicised in the name of the king as in the case of the administrative reform plan mentioned earlier.

Since such issues as suit of court and distraint were concerned, reformist barons as superior lords could not easily make concessions to their tenants or the lesser holders in general. So whether they became altruists and gave way to their tenants or not, depends on how we interpret the contents of the legal section of the Provisions of Westminster. As Dr. Brand has done a great deal of research on this issue, I will depend on his palaeographic study and interpretation of documents here. He examined many cases in the rolls of the King's Bench and concluded that in 106 cases out of 115, prior to the Provisions being established, tenants complained about their lords' unjustifiable distraint. This conclusion coincides with that of Professor Jacob.<sup>32</sup> So it is not a new finding. But the following interpretation is quite new.

It has been said that the clauses of the legal section of the Provisions of Westminster were written for the benefit of the tenants or lesser holders.<sup>33</sup> A number of history textbooks have written about the bellicose activities of the *Communitas Bachele-riæ Angliæ* in October 1259 concerning the publication of the Provisions, when the earl of Gloucester opposed it from a conservative standpoint. Dr. Brand explicitly argues against this type of explanation,<sup>34</sup> writing that the earl of Gloucester had no reason to oppose it in October since he and the earl of Leicester had already agreed with the basic contents of the provision earlier in 1259. In February some of the clauses of the *Petitio Baronum Angliæ* were rewritten by magnates to protect the rights and the interests of lords. For example, the first clause stated that a lord had the right to distraint his tenant and enforce that he should pay duty, i.e. by suit of court, while at the same

time it provided that 'no one enfeoffed by charter shall henceforth be distrained to do suit at the court of his lord unless he is specially required by the words of the charter to do suit'.<sup>35</sup> So what was prohibited by this clause was distraint without charter or sanction of prescription. And while the third clause provided a procedure for a tenant to recover his distrained beasts or chattels, this procedure, replevin, had already been used in the eyre before 1258, and was not new to the Provisions. Moreover the latter half of the same clause confirmed the lord's right of distraint. Therefore the Provisions of Westminster was not a unilateral guardian of tenants at all.

Dr. Brand, in another article, elucidates the history of replevin in 13th-century England. The following is an outline of his article. Replevin existed before the thirteenth century, and in the days of *Bracton* in the early thirteenth century tenants readily made use of this procedure. At first glance clause 17 of the Provisions and clause 21 of the Statute of Marlborough, too, can be read as beneficial to tenants. But the rights offered by these clauses can be found in the records of eyre before 1259 as well. It is, therefore, not right to say that the rights of tenants suddenly began to be protected by the Provisions. In addition the relevant clause did not completely protect tenants.<sup>36</sup>

In the long part of the second clause of the Statute of Westminster II in 1285, during the reign of Edward I, lords were again ensured that they would not be forced to return distrained beasts to tenants, their owners, before they had secured their purpose. Then why was a clause specifying the procedure by which tenants could recover their beasts provided in the statute? Dr. Brand explains that when a tenant became a plaintiff by bringing a writ of replevin against a lord before the royal court,



it was easy for the lord to show an example of recent suit to his court and to defeat the plaintiff. Otherwise lords had to show evidence of duty of suit in their charters or evidence of a tenant's fulfilment of suit since the king's first visit to Brittany, and this procedure was more difficult for the lords. Thus the second clause of the statute gives the lords an easier way to win at court. Consequently replevin, in fact, did not offer tenants exclusive protection.<sup>37</sup>

This is an explanation of the statute during Edward I's reign. As mentioned above, the same ideas can be found in the clauses of the Provisions of Westminster in 1259. Certainly tenants complained about extra-judicial enforcement of suit of court by the lords before 1259. And the reformists wanted these feudal problems between lords and tenants solved legally. But in the end what the reformist barons did was mainly to protect lords' rights further. Priority was given to the rights of magnates. The altruism of the magnates did not benefit the tenants much in general. In this sense the magnates' interest coincided with that of the crown in making statutes.

It is more important to note that they decided that the final settlement to be made by the royal courts, eyre or court of *coram rege*. They did not intend to consolidate the power of the lord's court and to neglect the rights of the tenants, but it was provided that settlement should be reached at royal courts with royal writs abiding by common law. The difference between 1258 and 1285 lies in the fact that in 1258 the initiative was taken by the reformist barons and by the authority of the itinerant reformed chief justiciar, while in 1285 the king took the initiative. The king and most of the magnates discussed the rights of lords and the settlement of tenurial problems in the

king's council, and made a draft, which was later approved in the presence of barons of the community of the realm in parliament. The reform movement consequently established a cooperative government in which the king and most of the magnates worked together in the legal and administrative fields of the realm.<sup>38</sup>

As I have shown, the reformist barons changed the institution of the government after they started a movement to represent the community of the realm. Then why had not Henry's government provided any change, such as a reform of legal procedure, before 1258? By that time almost the only forum where he could negotiate with the magnates about the administration of the realm was the king's council. But it was uncertain if the king, even there, was able to come to agreement with each of the magnates and consequently to manage better the realm. For example, to change a legal procedure as mentioned above, he needed the agreement of as many magnates as possible. Prior to 1258 there was no such cooperative group of magnates for Henry to negotiate state affairs with. The implicit agreement among the magnates in the king's council had been broken before 1258. Henry failed to cooperate with even some of the magnates in the king's council, especially after 1255. I will examine how this happened in the next section.

### 3. King and Magnates

Poor relations between the king and some of the magnates began about ten years before the reform movement started in 1258. This was due to various issues. One of which was the debts these magnates supposedly owed to Henry, and another was distribution of administrative duties as leading members of

the community of the realm.<sup>39</sup>

It is said that Henry's personal rule in the 1250s caused a lot of discontent among the English lesser landholders as well as the magnates. Having invited his Lusignan half-brothers from Poitou to England, he endowed them with land, titles and money. In 1254, Henry announced that he had accepted a papal offer of the Sicilian throne on behalf of his second son, Edmund, while he had taken the cross to set out on crusade. Under this agreement, Pope Alexander insisted on receiving ninety thousand pounds that Henry had promised. Consequently, the English church had to raise over forty thousand pounds in taxation for the papacy between 1254 and 1259.<sup>40</sup> The Sicilian business provoked the bitter criticism of lay magnates as well as churchmen. Henry pursued an extravagant financial policy of granting patronage away, though he had asked for aid from the English people. In fact he needed large sums of money to send an army to Sicily, to grant money to his favourites, and to appease the discontented barons. The source of his revenue consisted of the resources of lordship, royal demesne and regalia. The money, which the magnates owed to him, was mainly created from his lordship, that is, from feudal incidents of relief, marriage, and wardship, as well as scutage. According to Professor Carpenter, Henry appeased them by decreasing the amount of their debt to him to gain their faith in him.<sup>41</sup> The magnates did not decline to receive money nor any other grants from the king, but his patronage did not guarantee their cooperation in abiding by his policy in the council. Faithfulness as a tenant to the King was one thing but endorsement of royal policy was another. Spending English money on the continent and employing English armed force in the Gascony campaign, or becoming indebted to

the pope in return for the throne for Henry's son may have been to the benefit of the Plantagenet family, but could not have been of benefit to the most people in England. The magnates did advise the king to be more deliberate and serious before deciding these affairs. But Henry did not make the most of their advice, and a huge debt to the pope remained as a result. The magnates in the council were unable to use their status as natural advisers of the king.

Earls and barons also contributed to the management of the realm by supporting the king in the area of local administration. Some of them were nominated as sheriffs, justices, or other types of officials by the king. In other cases their household members were nominated to these offices by recommendation of them. One of the more important royal rights delegated was the franchise of return of writs. The king's order was transmitted to localities through a writ to a sheriff, who had his bailiff execute the writ. 'The return of a writ is evidently the copy of it sent to the liberty-holder. To return a writ is to rehearse it for a liberty-holder'. Return of writs entitled liberty-holders to exclude the sheriff and hence to execute royal writs through their own bailiffs, as explained by Dr. Clanchy.<sup>42</sup> Lords had held this franchise through a royal charter or prescription. But Henry, suddenly in 1250, ordered sheriffs to demand each franchise-holder to warrant their privileges by charter. 'In 1250-58, Henry III had attempted to replace customary right by a reasoned theory of the Crown's supremacy.' 'No magnates, however, obtained new charters in this period.' But was it Henry's aim to 'curtail a liberty-holder's privileges'? In 1255 Bridgenorth and Shrewsbury made no attempt to warrant return of writs by their privilege of excluding the sheriff. But some 'boroughs obtained

charters allowing them return of writ, the money being payable into the wardrobe instead of the exchequer by the king's order'.<sup>43</sup> As the baronial movement of reform in 1258 overtook the king, his attempt failed. Whether he was able to curtail the privileges or not, at least in the liberties of the franchise-holders, executing the king's orders were carried out by the bailiffs of the liberty-holders.

Another important issue of delegated royal rights was a view of frankpledge, or court leet. The holder of this privilege could quit attendance at the sheriff's tourn twice a year and hold 'tourn' at his own court. Helen Cam found that a lot of lords held this privilege.<sup>44</sup> So far some research has been done in this area<sup>45</sup>, and I have found an example of the court leet of the earl of Gloucester in Cambridgeshire in the thirteenth and the fourteenth centuries. The steward of the earl held court leet at five parishes in Armingford Hundred beginning in 1250, and this court seems to have continued to be held until the end of the house of Clare in the fourteenth century. The court rolls of the fourteenth century, kept in the Public Record Office (National Archives), are quite similar in form and style to those of the royal eyre rolls. Not only the tenants of the earl but also the parish people attended the earl's court instead of the sheriff's tourn. The hundred jury of the eyre in 1261 presented this fact, but they did not regard it as an encroachment on royal rights.<sup>46</sup> So in this hundred responsibility of holding tourn was shared between the sheriff and the earl's steward. According to Professor Carpenter, the earl of Gloucester held a unique network of local courts as a liberty holder.<sup>47</sup> This is not an isolated example only of Cambridgeshire.

Local administration under Henry III's personal rule was

not only performed by the officials nominated by the king or those who belonged to him, but also by the local bailiffs of earls and barons. Moreover in the area of judicature the king's justice did not have a long arm. While royal itinerant justices moved through the counties, delivering judgements on local problems, in most cases they confirmed the hundred jurors' verdicts already prepared. These verdicts often reflected local opinion. (See chapter seven.) They were often influenced by the magnates who had large holdings and kept many tenants in the area, and by royal favourites, as well as, by members of the royal family. These attempts of royal influence sometimes became topics of judicial disputes observed in the eyre rolls. Not only lesser holders of courts but also magnates hated royal interference.<sup>48</sup> From the standpoint of the magnates, in order to settle the problems between lords and tenants, royal jurisdiction, as the authority of the realm, was expected to be consistent in delivering justice. Judicial consistency was beneficial to lesser holders, too. It was also in the interest of the crown, as the 'public' authority of the realm, to have a hold upon 'his subjects' mind'.

As long as the cooperation of the king and the magnates in the governance of the realm was maintained, Henry's 'our realm' (*regnum nostrum*) could coincide with what the reformist barons meant by 'community of the realm' in 1258. What impeded the coincidence in 1258 were Henry's personal affairs: his European dynastic policy and his placement of the Lusignans in his scheme in the late 1250s. Henry did not follow the advice of some magnates in his council when deciding some of the governmental affairs. The reason is that he had invited his half-brothers from Poitou into his council, and he made use of

their readiness in giving him a favourable advice.

We can see how Henry utilised their presence in the council by reading the witness lists of Charter rolls and other rolls in the Public Record Office (N.A.) between 1250 and 1258. Witnesses or attestors testified that they were present at the time of issue and that they recognised the contents of a charter. But not everyone present there witnessed or attested a charter by signing his name on it. Only those who had any interest in its issuance did so. However important a person he was in the council, he might not sign if he had no interest in its contents.

There is an example in which we can see Henry's secret mind. A charter was issued to Aymer de Lusignan on December 1257 at Westminster by the king, licensing him to fortify the island of Portland with stone and lime and to crenellate it. The witnesses to this charter were Lord Edward, Henry of Almaine, William de Valence, John Mansel, Hugh Bigod, Philip Lovel, Robert Wareland and others. And the name of Peter de Montfort was additionally written. This is curious. Among them Hugh Bigod and Peter de Montfort would later become reformists, but the others were all people of the king's side, namely royal family, the Lusignans and of the royal household. And isn't it strange to have Peter de Montfort sign his name separately? The reformists later complained about this licence in *Petitio Baronum* in 1258.<sup>49</sup>

In some cases charters issued on the same day and at the same place were attested to by groups of different individuals in the council. A charter of October 27, 1257, issued to John fitz Geoffrey, a reformist baron, bore the names of Simon de Montfort and those barons as witnesses who would be called reformists six months later. Another charter was issued on the

same day and at the same place to Philip de Grey, a household member of the Lusignan brothers, bearing the names of the Lusignans and of the royal household as witnesses.<sup>50</sup> The witness lists of these two charters reflect Henry's policies. He would have avoided asking the discontented earls to witness a charter to the Lusignan *familia*. Henry's hidden agenda is also revealed by the witness list of the memorandum concerning the Sicilian affairs in 1255. The list contains the names of Peter d'Aigueblance (Poitevin), Aymer de Valence, William de Valence, Geoffrey de Lusignan, Richard of Gloucester, John de Warenne, John Mansel, Philip Lovel, Ralph fitz Nicholas and others. Except Richard of Gloucester, a future reformist, all others were on the king's side. Bémont calls this group of people 'a kind of secret council'.<sup>51</sup> The Sicilian business was so crucial to Henry's European policy that he wished to decide it without intervention from the discontented magnates.

The more frequently and conveniently Henry used the Lusignans in making important decisions in the council, the more the magnates were ignored and alienated from the council. They noticed their advice had no effect on the king's mind. Whether their feelings count as xenophobia or not, it is noticeable that the Lusignans began to be hated by the king's natural advisers.

The split of the king's advisers in the council in 1255 into two sections, the king's side and the others, led to the emergence of the community of the realm in 1258. Why did Henry pursue Sicilian affairs so eagerly?

#### 4. The Community of the Realm divided

Seven magnates, who had been alienated from the king in



the council, when summoned in April 1258, appeared in London with arms urging Henry to reform the state of the realm. In May they were assured of the king's agreement to the reform, and in June at the Oxford parliament twenty-four men, magnates and royal *familia*, swore on the Holy Gospels that 'they would reform and redress of the state of the realm in loyally acting in accordance with the tenor of the letter which the king has given'.<sup>52</sup>

The Lusignans, however, fled from the Oxford parliament and confined themselves in the castles of William de Valence. After some negotiations all of the four brothers left the country for France in July. According to the Burton annals, they were regarded by the reformists as 'traitors to the king and the community'. The reformist barons regarded themselves as representatives of the community of the realm and charged that the Lusignans 'opposed the barons' articles and provisions' in spite of their previous oath to 'provide for the reform and utility of the Lord king and the realm'.<sup>53</sup> What did the reformists mean by 'reform and utility' that the Lusignans had failed to provide?

Dr. Ridgeway has studied extensively the career of William de Valence, the eldest of the four Lusignan brothers invited to England by Henry III. William was granted marriage with Joan de Munchensy, one of the co-heiresses of the Marshal estates by the king, though William was not entitled to be earl until his death. The King did not give him any important office in government. William left most of the management of the earldom to his steward, while he himself mainly stayed at the King's court and witnessed an exceeding number of charters. Valence's retinue was based on money fees, least preserving an element of tenurial ties. He visited his own estates very rarely.<sup>54</sup>

William's younger brother, Aymer de Lusignan, was young but educated at Oxford, and became the bishop elect of Winchester through Henry's favour. He inherited a well-established system of suffragan bishops and continued it, intensifying Episcopal rights. The Winchester Annals talk about his post-humous miracle cult. His estate administration was not burdensome. He was eventually quite generous towards the monks of St Swithun's. Aymer recruited his *familia* partly from the royal court, and in return he presented several servants of Henry III to churches in his gift. The other two Lusignan brothers, Guy and Geoffrey, did not receive important offices in England and later returned to France.<sup>55</sup>

In his articles Dr. Ridgeway seems to want to show how little harm William and Aymer did to the government of England before 1258. But many of the facts he presents seem to indicate that the brothers did not contribute to the good governance of the realm. On the one hand, as he writes, 'Henry did not use aliens in exchequer or judiciary at all. Few, apart from members of royal family, are known to have participated formally in council and they were rarely prominent in parliament. Nor were they active in local administration in England proper'.<sup>56</sup>

On the other hand, as we have seen before, Henry made full use of them as attestors in his council before 1258. As they were of foreign origin, it might not have been suitable for them to hold government offices, and it is easily understood that they were more fitted to the private sector of the king's household as speakers of French. While Henry made none of them an earl, William's marriage to one of the co-heiresses to an earldom might have created future earls. The reformist barons were probably conscious of this possibility.

Moreover, in spite of the fact that they were invited from Poitou, granted a lot of money, lands and titles, they contributed very little, from the viewpoint of the reformists, to the good administration of the realm. After Henry's Gascon campaign had failed in 1254, their military contribution to Henry's army became less than before. Their hostile relation to the Capetian monarch probably prevented any of them from being an envoy to France to take up negotiations about the Plantagenet's remaining estates and titles in France. So the number of ways in which they could possibly contribute to the realm declined as time went on. Nevertheless Henry kept making them generous grants.

Next we turn to the contribution of the reformist barons to the good governance of the realm. Richard de Clare, earl of Gloucester, seems to have been a frequent attestor in Henry's curia in the 1250s. He was also an active warrior fighting for Henry's army in France and Wales. As we have seen before, he held a network of local courts, sharing the local administration with a sheriff. Roger Bigod, Earl of Norfolk and the Earl Marshal of England, had a unique position among the reformists since he had presented a reforming plan before 1258. He had been one of delegates to the Lyon Council, presenting the pope with England's opinion against taxation. He had been sent to France about land negotiations between the two monarchs, too. Simon de Montfort, Earl of Leicester, who had married Henry III's sister Eleanor in 1238, had been an active *curialis* advising Henry. He once took the cross. He was sent to France to negotiate with Louis IX. His most important contribution was in Gascony as seneschal between 1248–52. As one of the English earls he raised a network of his tenants and retainers in the

Midlands, holding the franchise of return of writs and exemptions from sheriff's tourn. Peter of Savoy, uncle of Queen Eleanor, and Savoyard, held a network of acquaintances in Europe and the papal curia, thus being an indispensable figure in Henry's European policy. John fitz Geoffrey's wife was a sister of Hugh Bigod. He served as sheriff of various counties, and also as Justiciar of Ireland, and belonged to Edward's household. Peter de Montfort was not related to Simon de Montfort, but was of a baronial family in the West Midlands. He began to work under Simon de Montfort in the earl's early days in France. More studies are necessary about the careers of the reformists.<sup>57</sup>

Except for Hugh Bigod, of whose early career little is known, the other six reformists held various positions in Henry's government in April 1258. Once they felt excluded by Henry from the decision-making process concerning the governance of the realm, it seems likely that they determined to protest against Henry's patronage of his half-brothers and to argue that they served him and the realm far better. The word 'realm' in their understanding did not mean monarch or the house of Plantagenet, but the state or the common interests for which they served.

At this point, in April 1258, the main purpose of the reforming plan, common to these magnates, was not the expulsion of the Lusignans from the country, but the reconstruction of the former and close cooperation between the king and them. Henry's own ideas of placement and promotion of the house of Plantagenet in Europe's dynastic society had collided with the interests of the community of England, which should have been a priority for reformists.

Dr. Lloyd has studied the historical significance of Henry's commitment to the crusades in detail.<sup>58</sup> Henry took the cross for the second time in 1250, and in 1252 he declared publicly that he would sail to the Holy Land on 24 June 1256. But after various negotiations, on 12 February 1254 Henry appointed proctors to receive the kingdom of Sicily on behalf of his son, Edmund, and in May Innocent IV confirmed the grant. In May his successor, Alexander IV, empowered his nuncio Rostand and Archbishop Boniface of Canterbury to commute Henry's vow to Sicily, and in October Edmund was solemnly invested as king of Sicily. April and May of 1254 were a crucial time in this matter.

After Louis IX's departure for France from the East in April and the death of Conrad in May, 'Sicily was put on the market by Innocent IV and Henry seems to have decided to grasp the opportunity'. When in October the treaty between Manfred, the next Hohenstauffer, and Innocent collapsed, and in December the latter died, the Sicilian crown could have been handed to either Charles of Anjou of France or Alfonso X of Castile. Under these circumstances in Europe Henry sought to grasp the Hohenstauffer inheritance for members of the Plantagenet line with the help of the pope. He thought that 'if he could not recover his position in France, then he would go further afield in the hope of compensation'.<sup>59</sup> In 1256 his brother, Richard of Cornwall, was elected candidate to the throne of the Empire. This could be understood in the same context.

For Henry the promotion of the Plantagenets, meant the elevation in status of the English kingdom in European dynastic society. The inhabitants of England should welcome his policy and aid his project. This might have been what Henry meant by the phrase 'community of our realm'.

Accordingly the Sicilian business was not decided as a 'national' project for the people of England, but as especially for Henry, part of dynastic politics for the benefit of the Plantagenets in Europe. In order to attain his goal, Henry needed his English subjects to grant him aids, the English clergy to be taxed and his knights to go to the Mediterranean world. These aids, taxes and scutage could be a widespread burden to the king's subjects. As a matter of fact the Pope's military action soon failed, and his debt to an Italian merchant was transferred to Henry's obligation to be repayed. Those who were to pay these aids, tax and scutage might have come to view Henry's Sicilian policy as a failure, whether or not they were able to understand its significance as European policy. In this circumstances some of the magnates whose status as natural advisers were not utilised by Henry in the council, emerged as representatives of the community of the realm, acting in the baronial or common interest of the realm.

There are two basic reasons why in April 1258 the seven reformist barons were conscious of representing the community of the realm. One is the fact that they had kept some share in the administration of the realm. The other is the particular circumstances in which the interest of the community of the realm came to the surface in the council in deciding whether Henry's European policy should be taken or not, and at that time, in which there were no other persons other than them being ready to represent it. Private interests or adventurism of particular magnates could have been root causes in creating turbulence after May 1258. This explanation is not impossible. But if we think so, then we fail to recognise the constitutional significance of the baronial reform movement in 1258-60 in the long per-

spective.

For example, Dr. Brand explains how the problems of alienation of land from laymen to religious houses, though controlled several times in the thirteenth century, both by lords and the Crown, never ceased. He concludes that, after discussion at the Michaelmas Parliament of 1279, a compromise was reached, establishing a system of licensing to safeguard the interests of both mesne lords and the king, while a complete prohibition was abandoned. He writes, 'in practice, despite the statute, there was not a complete ban of alienation in mortmain after 1279. Within six months of passing of the statute the king began to grant licenses allowing alienation in mortmain notwithstanding the statutes'. According to Brand's words, transactions of this nature always required the active cooperation of the lords in order to become effective.<sup>60</sup> If there was active cooperation among the king, mesne lords and the Church, the alienation in mortmain could have benefited all three parties. The king's licensing was crucial in the system. His attitude after the passing of the statute represents his affirmative answer to the problem of cooperating with the magnates concerning their liberty. This statute was enacted during the reign of Edward I, but its 1258 predecessor, *Petitio Baronum*, already contained a clause of prohibition without licence. Clause fourteen of the Provisions of Westminster, in the following year, also contained the prohibition. In other words, the baronial reform movement in 1258 and 1259 set a precedent in which the consultation between the king and an organized group of the magnates, the community of the realm, decided on a policy concerning the realm, which profited both of them.

In the constitutional perspective the baronial reform move-

ment in 1258–60 was a turning point. The reformist barons did not base their goal of restructuring cooperation with the king simply on an oral agreement or imaginary convention, but tried to institutionalise the advisory system in the government of the realm, i.e. with the council of fifteen in 1258, by making a common oath at the beginning of the movement. Since the cooperation among the barons had been caused by the temporary misrule of Henry III, it was not easily sustained as time went by. The revolutionary council split off from the inside and the community of the realm faded out. The system soon broke down, but the idea of government based on the cooperative relationship between the king and the leading magnates lasted longer.<sup>61</sup>

### Conclusion

Professor Prestwich states that 'Edward I's reign was spectacularly successful in providing the stability, particularly in his first two decades on the throne'. But as he also says, 'the achievements were not the work of individuals alone'.<sup>62</sup> What was achieved during his reign, for example the development of parliament, bureaucracy and a judicial system, was not brought about by the sole genius of the king. The cooperation between the king and magnates was indispensable to the stability of the state of the realm. Rudimentary cooperation seems to have formed gradually due to the circumstances of English politics in the 1250s. Evidence of the witness lists of the king's various documents in 1250s reveal how regularly the king was advised by various people, and how seriously each of the magnates advised the king concerning the state's interests. After 1250, however, Henry changed the way to decide his policy. And he



began to use his half-brothers to promote his own European dynastic interests. As a result some magnates were shunned by the king, and the cooperative relationship was endangered. At that time there were no political parties nor were the magnates united in their interests. Each of the magnates often had to face the king individually. As Henry devoted himself to his European dynastic policy, he taxed burgesses, ecclesiastics and various other inhabitants of England to finance his endeavour.

Then in 1258 certain magnates conceived of an assemblage of barons of England, the community of the realm, and appointed themselves as the representatives of the community. In fact, at the same time, they used their influence over their own affinities or followers. Though the community had been recognised as a conception of unity of the whole nation, the representatives of the 'community' were very keen about maintaining their own interest as tenurial lords. At the same time they acted as a sworn organization, discussing governmental affairs with the king in the council. Yet the institution of cooperative council lasted only two years. The community of the realm in its 'revolutionary' meaning collapsed soon after 1260. And on the battlefield of Evesham the movement lost its leader. Nevertheless Henry had been given cause to reflect, and after the Battle of Evesham royal patronage was granted more widely than before.<sup>63</sup> The decision-making pattern, based on common consent in the council or in a parliament, also affected later governments. During Edward I's reign magnates were summoned to parliament regularly, and statutes were modified according to their requirement. Furthermore, in addition to magnates, representatives of boroughs and counties began to be summoned to parliament. As a consequence the assemblage began to repre-

sent the land-holding inhabitants of the realm better than before. While the community of the realm lost its revolutionary meaning, it became a convenient phrase for Edward to use when he demanded money in parliament.

#### Notes

- 1 Prestwich, M., *English Politics in the Thirteenth Century*, 1990, London, pp.144–5.
- 2 *Ibid.* pp.129, 132, 133, 147.
- 3 *Documents of the Baronial Movement of Reform and Rebellion, 1258–1267*, ed. by Treharne, R.F. and Sanders, I.J., 1973, Oxford, pp.72–75. (hereafter cited as *DBM*)
- 4 *DBM*, pp.76–77; Treharne, R.F., *The Baronial Plan of Reform, 1258–1263*, 1932, Manchester, pp.70–71.
- 5 *DBM*, pp.80–81.
- 6 *DBM*, pp.74–75
- 7 *DBM*, pp.74–75.
- 8 *DBM*, pp.96–97.
- 9 *DBM*, pp.116–117.
- 10 *DBM*, pp.82–83.
- 11 *DBM*, pp.148–157.
- 12 *DBM*, pp.156–157. Cf., pp.110–101, 230–231.
- 13 Treharne, *The Baronial Plan of Reform*, pp.6, 70–72.
- 14 *DBM*, pp.230–231.
- 15 *DBM*, pp.226–7.
- 16 *DBM*, p.226–9.
- 17 Alan Hindley et al., *Old French-English Dictionary*, Cambridge, 2000.
- 18 *DBM*, pp.254–5.
- 19 *DBM*, p.258–259.
- 20 *DBM*, doc.37C.
- 21 *DBM*, pp.268–9, 308–9. Cf., pp.298–9.
- 22 *DBM*, pp.212–19, 252–7.
- 23 Treharne, *The Baronial Plan of Reform*, pp.67, 84; Prestwich, *op. cit.*, p. 131.
- 24 *DBM*, p.10. Bémont, *Simon de Montfort*, Paris, 1884, pp.327–8.

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- 25 *Ibid.* pp.131–2; Clanchy, M., *England and Its Rulers, 1066–1272*, 1983, Glasgow, p.267–70.
- 26 Brand, *Making of the Common Law, London*, 1992, ch.16, esp. pp.325–333.
- 27 *DBM*, pp.156–7. Cf., pp.110–1, 116–7.
- 28 *Ibid.*
- 29 *DBM*, pp.88–91.
- 30 *DBM*, pp.82–3, 84–5.
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## The Community of the Realm and the Baronial Reform Movement, 1258–1265

The phrase ‘the community of the realm’ appears in various documents written in the period of the baronial reform movement, 1258–65, and has long been regarded as a key term in the constitutional history of medieval England. However, there are no detailed investigations of the meaning of the phrase in the context of contemporary political movements. I will undertake a detailed examination of the meaning of the phrase, as used by the king, the barons, and the justices in the official documents of the period in this chapter.<sup>1</sup>

More than a century ago William Stubbs wrote that, in the Provisions of Oxford, ‘*le Commnum de la terre* can only be the governing body of the nation, which was not yet represented by chosen deputies.’<sup>2</sup> The phrase ‘was not yet’ signals that in his discussion the issue of the origin or prehistory of the thirteenth century democracy, is based on the assumption that real democracy only started from the fourteenth century parliament, with the creation of an elected Commons. In Stubbs’ opinion the nation unquestionably existed as early as the thirteenth century.<sup>3</sup> Was there a general body of the nation in thirteenth century English society? Was there a general assembly of a united nation of England? Was the king of thirteenth-century England regarded as an ideal ruler by something that can be called a ‘nation’? If the magnates in king’s *curia* or in the council of fifteen represented the general body of the nation, how did they do so? In order to answer the questions raised above, and to thereby arrive at a fuller understanding of the historical signifi-

cance of the phrase ‘the community of the realm’, in this chapter I will trace the changes in the meaning of the phrase in the documents published in the name of the king, barons and justices during the baronial reform movement, that is between May 1258 and August 1265, when Simon de Montfort died at the battle of Evesham. The course of the baronial reform movement can be divided into three phases. In the first phase, from May 1258 to the end of 1259, baronial reformers succeeded in governing the realm in cooperation with Henry III, and also in introducing important reforms in the area of law and government. In the second phase, between early 1260 and July 1263, the reformers lost their cohesion and the king gradually recovered the initiative of government. In the third phase, between July 1263 and August 1265, Simon de Montfort held the reins of the government but lost the cooperation of most of the magnates.

## 1. The Community of the Realm between 1258 and 1260

### (1) May and June, 1258

The first document in the reforming period in which the phrase ‘community of the realm’, *communitas regni*, appears, is the king’s letter ‘to all men’ dated 2 May, 1258. By the letter the king agreed to reform the state of the realm through the counsel of his loyal subjects. According to the king’s words, in return for this agreement, the great men who had been summoned to the parliament in London had promised the king to use their influence with the community of the realm so that the common aid should be granted to him.<sup>4</sup> Hitherto there have been two ways of interpreting the phrase, ‘the community of the realm’, in the king’s letter. The first one can be represented by Stubbs’

theory as described above: the community of the realm as including the 'collective nation', all the inhabitants of England headed by the king<sup>5</sup>. In the 1930s R. F. Treharne set forth a second interpretation. According to his opinion, 'the community of the realm' of 1258 was the rather narrow group of tenants-in-chief who had been summoned to the April parliament in London. This interpretation was supported by Dr. M.T. Clanchy in the 1970s.<sup>6</sup>

Professor David Carpenter, building on Stubbs' and Powicke's theory<sup>7</sup>, writes that 'the day was passing when the barons could answer for the rest of the kingdom in granting of taxation.' He regards 'the great men' in the king's letter as the general body of the people of the realm. If we follow his interpretation the community of the realm, influenced by the great men, was not a particular group of individuals or an existing body of people, but an ambiguous term referring to taxpayers in general. But there was no guarantee that the magnates would be able to obtain aid from the community of the realm.<sup>8</sup>

If the great men were the magnates among the assembled tenants-in-chief, i.e. barons in parliament, who negotiated with the king about taxation, it is easy to see how they could ask those who gathered at the parliament for their position as representatives to talk with the king. In that case the barons there could give the magnates their affirmative or negative answer on the spot. Using that procedure the magnates could give a promise to the king about the grant, because tenants-in-chief usually held lands of the magnates as well as of the king. As Treharne writes, those barons talking about tax in the parliament might well be called the 'community'. But because we are not sure that all the tenants-in-chief participated in the parlia-



ment, the 'community' in this sense may not automatically comprehend all the barons.

The second document to employ the phrase is another of the king's letter of the same date, 2 May. This is also an open letter, and according to its wording, 'the state of the realm shall be put in order, corrected, and reformed by the twelve loyal men of our council, already chosen, and by twelve other of our loyal subjects, chosen by these leading men.' The letter ends: 'The earls and barons have promised that when the business stated above has been completed, they will do their best, in good faith, to ensure that a common aid shall be granted to us by the community of our realm.'<sup>9</sup> If we compare the expression 'the earls and barons' in this letter with the wording of the first document, with its 'the great men', it is possible to conclude that what the king meant by the phrase was the several earls and barons who asked him to reform the state of the realm in early April, as Bémont mentioned in his work<sup>10</sup>.

In any case the king did not force the community to pay the aid directly, but rather asked the earls and barons to use their influence on the community. It would seem, then, that the king was not considered to be the director of the community of the realm. Incidentally the king addressed his letter not to the community of the realm but to 'all men'. Does this mean that the community of the realm is different from the collected inhabitants of the realm as a nation? If so, Stubbs' theory will fade away.

The second document seems to support Treharne's theory. The document says the great men chose twelve men who would plan reform together with twelve men of the king's council. The choice was made before the document was issued on 2 May.

The great men chose them among the earls and barons present at the parliament and also from among their supporters. The 'community of the realm' which was to be influenced by the great men to pay aid could, then, be no other than the earls and barons present in the parliament and the subjects of the great men. The great men's influence may have extended to the whole body of tenants-in-chief but could not extend to the general people beyond their lord-tenant relationship. If so, 'community of the realm' in these two documents is intended to comprehend a main body of the tenants-in-chief at the parliament and their supporters.<sup>11</sup>

The next document in which we find the phrase is the *Petitio Baronum* released in the latter half of May or early June, 1258.<sup>12</sup> The document contains many complaints of earls, barons, clergy and boroughs. According to Dr. Brand's investigation the document is not the manifesto of a particular class or sect of reformers but an exhibition of judicial and administrative problems to which, they thought, redress had not been given by the king's government.<sup>13</sup> In clause nine the following complaint is brought forward. 'Whereas the forests were disafforested by royal charter and by a fine made between the lord king and the community of the whole realm, in order that everyone might be able to hunt freely everywhere, the lord king arbitrarily grants rights of warren to many persons from this liberty, which grants infringe the grant of the liberty.'<sup>14</sup> Three points may be taken from the passage. First, the community of the realm is regarded as a body which pays fines to the king. Second, that the forests were disafforested by royal charter is regarded as a liberty granted to the community of the realm.<sup>15</sup> Third, if, after disafforestation, the king granted rights of warren to an individual

within the disafforested area, the grants were complained of as an infringement of the liberty. Judging from the first point, the community of the realm is the group of fine-payers regardless of their status or title<sup>16</sup>. But from the second and third points, it appears that the community of the realm here means the group of liberty holders, i.e. a privileged class<sup>17</sup>. Moreover between the king and the liberty holders, there seems to have been a common agreement that the king should not infringe their privileges by granting another right to a particular individual<sup>18</sup>. Concerning the liberty problem, those who were qualified to make complaints to the king were, in fact, the liberty holders i.e. privileged persons or groups. Therefore the 'everyone' in the phrase 'everyone might be able to hunt freely' may refer only to a certain privileged group.<sup>19</sup>

Next we should examine the usage of the meaning of 'community of the realm' in the most important reform plan, i.e. the Provisions of Oxford made in June 1258.<sup>20</sup> This document is, according to the *Burton Annals*, based on a draft of the reformist barons for the Oxford parliament.<sup>21</sup> The king's submittance to the reform of the state of the realm is seen in its preamble. The third clause contains the names of the reformist twelve barons of the committee of the twenty-four members who were to plan the reforms. Reformist barons were given the right to substitute reforming committee members on the barons' side.<sup>22</sup> In the fourth clause the reformist barons called themselves *nus* (we), and determined that they are bound together by oath to reform the state of the realm. We may take it that by this oath the reformist barons founded the community of England, as the title of this clause indicates.<sup>23</sup> Was this community the same as the community of the realm in the king's letter of 2 May? The

same clause reads, 'each of us and all together help each other and our people.' Judging from this wording, the members of the community of England belonged to the superior class who led their followers, i.e. the tenants-in-chief gathered at the Oxford parliament, because they must be at the same place in order to make an oath.<sup>24</sup> In the light of these circumstances we must regard the members of the community of England of clause four as the same persons comprising the community of the realm in the king's letter of 2 May.<sup>25</sup> In clause nine the new king's council was formed: 'The twelve on the king's side have chosen from the twelve on the community's side ...the earl Roger the Marshal, Hugh Bigod. And the community's side has chosen from the twelve on the king's side — the earl of Warwick, John Mansel. And these four have power to choose the king's council, and when they have chosen them, they shall report to the twenty-four; and whatever names receive the assent of the majority of the twenty four shall stand.'<sup>26</sup> Before the reform movement began, all the councillors had been chosen by the king alone. The king had received his councillor's advice when necessary, but determined by himself. With the Provisions of Oxford the new king's council got executive powers as stated in clause twenty three: 'they shall have power to advise the king in good faith on the government of the kingdom and on all things touching the king and the kingdom, and to amend and redress everything that they shall consider to need redress and amendment.'<sup>27</sup>

In clause ten a new phrase, 'the whole community of the land', appears. 'These are the twelve who are chosen by the barons to negotiate at the three parliaments each year with the king's council on behalf of the whole community of the land in

the common business.’<sup>28</sup> In this case, I think, we can regard the community of the land as identical with the community of the realm of 2 May. This community, as a matter of fact, does not include the general public. If we regard the community of the land as the general public, we can not explain how the twelve chosen by the barons could represent the interests of such a wide range of people.

In clause eleven, the names of ‘the twenty four who are appointed by the community to negotiate for the aid for the king’ are listed.<sup>29</sup> Some of the names overlap with the names of the eleven of clause two and the twelve of clause three.<sup>30</sup> Those who had been asked to pay Sicilian aid were prelates, barons and other tenants-in-chief.<sup>31</sup> So the community in this clause must consist of these people.

Clause twenty two states that: ‘The community should choose twelve sound men who shall come to the parliaments, and the other times when need shall be, when the king and the council shall summon them, to deal with the business of the king and of the realm; and that the community will accept as settled whatever these twelve shall do. And this shall be done to spare the cost to the community.’ The business of the king and of the kingdom mentioned in this clause means the collection of aid, appointment of justiciars, treasurers, and chancellors, sheriffs, custodians of royal castles and other officials, parliamentary business, the mint, church business, and the investigation of the misconduct of officials, all of which are mentioned in the Provisions of Oxford.<sup>32</sup> Before the reform movement began, the king alone had executive authority in these matters, but after the Provisions were enacted, the new king’s council got the power to advise the king concerning them. In clause twenty three, nine

of the reforming barons were newly appointed to the new king's council. The community in clause twenty two had the power to choose the twelve for parliaments. It is not a community of the common people. Those summoned to parliaments were limited to the king's tenants-in-chief. Those appointed as qualified executive officers were also limited to persons experienced in the relevant business. So the community in this clause must be that of earls and barons, i.e. tenants-in-chief. In the light of these clauses the phrases, 'the community of the realm', or 'of England', or 'of the land', can be interpreted as the body of tenants-in-chief, or a corps of participants in parliament, or an aggregate of liberty holders. We can not find any example of a community of common people or a general public in the Provisions of Oxford.

Why, then, did the reformist barons use the phrase? What is the historical significance of the new usage of the phrase in this period of the thirteenth century? Why did they make an oath to bind themselves together into a community? As can be seen from clause twenty three the reformers tried to preserve their power as advisors to the king, who had been trying to establish himself as sole leader of the realm since 1250, according to Dr. Clanchy. Earls and barons had been granted liberty by prescription or by charters in a limited area or lordship over limited numbers of people. When some of the liberty holders came to believe that a reform of the way in which king's power functioned was necessary, and that persuading the king to reform was necessary, they might very well strive to establish a community of liberty holders.<sup>33</sup> The executive power was kept by the small number of earls and barons, i.e. the magnates, but they needed the support of as many tenants-in-chief as possible

in order to be strong enough to match the king's authority. As can be seen from clause eleven, both tenants-in-chief and clergy were asked to pay Sicilian aid by the king. In clause eighteen all the tenants-in-chief and liberty holders expressed annoyance at the king's escheators in inheritance. Tenants-in-chief, liberty holders and clergy shared common problems as sufferers from the king's misgovernment. Each of the magnates, earls, and barons, might have domanial power to lead their own subordinates, tenants or followers in political action. But they could not force the tenants of other lords to pay aid to the king. The reforming barons needed the cooperation of people of their own social rank.<sup>34</sup> Each of the earls or barons was a rival. In order to have a cooperative government with the king, they needed to make an oath to organize their own community.<sup>35</sup>

#### (2) August 1258 to November 1259

Once the community of the reformist barons was established, it seems to have worked very hard for the first sixteen months, till November 1259.<sup>36</sup> In a letter of 4 August, 1258, the king wrote: '*houz hommes e prodeshommes e du comun de nostre reaumes otreyames qe vintequarte de nos hommes eusent poer qe qe tout ce qil ordeneraient del estat de nostre reaume fust ferm e estable e ce feimes jurrer en nostre alme e donames de ce nos lettres overttes. ... Par le rei e sun conseil.*' In another letter of the same date the king recognized again that he had agreed with the community of the barons to reform the state of the realm.<sup>37</sup> On October 8, at the beginning of the parliament in London, the king reiterated: 'Henry to all his subjects. Know that we will and grant that whether our council which has been elected by us and by the community of the realm, or the majority thereof, has done and shall do for the honour of God, our

own faith, and the property of the realm, in the form in which they shall decree it, shall be confirmed and established in all things for ever.’<sup>38</sup> Judging from the wording of the letter — ‘the community of the realm or the majority thereof’, ‘community’ here means the body of the tenants-in-chief summoned to the parliament at Oxford in June.<sup>39</sup>

Once the reformist barons had joined the new king’s council, the next task for them was to draw up a scheme to redress the complaints which emerged from the investigations in each county during the summer of 1258. One of the drafts of such a scheme is the *Providentia Baronum Angliae*, made in autumn 1258.<sup>40</sup> The draft was not recorded in public or royal archives but in a private document now kept in Cambridge University Library. Clause twenty pronounces, ‘by counsel and consent of the great nobles and chief men, that henceforward the action or writ of entry shall not be confined to the degrees but that it may be brought at whatever degree the disseised land is transferred.’<sup>41</sup> Though the phrase ‘the community of the realm’ is not used here, the tenor of the legislation is to protect or maintain the vested rights of lords, i.e. the great nobles and chief men. Another draft of reforming legislation concerning lord-tenant relationship is the *Ordinationes Maganatum*, released in February 1259 and ratified in following March.<sup>42</sup> This document was published under the king’s name and summarised in the *Patent Rolls*. In its preamble ‘the king’s council and the twelve elected by the community of England’, ‘greet all men.’ Therefore the community of the realm is evidently a body distinct from ‘all of the king’s subjects.’ We also find the following passage. ‘All wrongs which we and our bailiffs have done to our subjects or to our neighbours shall be corrected by the king and his justi-



ciars ... without hindrance or opposition from us and ours.’<sup>43</sup> The same tone can be found elsewhere in the document: ‘The same oath which the king caused his sheriffs and other officers to take, we will make our officers swear both those of our demesne and those of our liberties.’<sup>44</sup> In March 1259, then, the community of the realm, as a legislators’ electoral foundation, meant in March 1259 the body of liberty holders or lords and those associated with them.

According to Dr. Brand the last draft of legislation concerning lord-tenant relationship was probably made by the end of March, and was finally enacted in parliament in October 1259, as the Provisions of Westminster. The Provisions can be divided into two sections: legal and administrative. The legal section begins: ‘By the common counsel and consent of the king and his magnates, the Provisions written below were made by the king and the magnates, and were published in this manner.’ The first clause of the administrative section commands that: ‘Justices be appointed to go throughout the land. And there shall be with them one of the twelve or the rest of the community to see that justice is done to the plaintiffs and to all others.’<sup>45</sup> Before the reform movement began, the itinerant justices appointed by the king delivered justice to people in the localities. There had been no monitors to supervise the process, and we may imagine that there must have been various problems about actual deliverance of justice. So the reformist barons might think it was necessary to appoint colleagues to watch if justice was rightly done in the eyre. The same type of legislation can be found in clauses twenty six and twenty eight.<sup>46</sup> The last clause of the administrative section reads as follows: ‘These are the provisions and establishments made at Westminster at the Michaelmas parlia-

ment by the king and his council and the twelve elected by the common counsel, in the presence of the community of England, which was then at Westminster.<sup>47</sup> Therefore the community of England must consist of those who were summoned to the parliament. We can, therefore, conclude that the community of the realm between May 1258 and November 1259 was a body of liberty holders, and many of them were tenants-in-chief. The phrase did not denote the general public or the commons.

## 2. The Community of the Realm between 1260 and 1263

In late November 1259 Henry III and a major part of the magnates left England for Paris where they stayed for some time. Henry sealed the treaty of Paris, a tenurial arrangement between the Angevin and the Capetian dynasties, but his sister Eleanor and her husband, Simon de Montfort, hesitated to sign for fear of losing their potential rights. Parliament, which had been supposed to meet in February 1260, was cancelled by the king because he was absent from England. Around this time the unity of the reforming barons suffered a crack. Simon, earl of Leicester, in particular, was isolated from the other magnates. Aware of this situation, the king gradually recovered the initiative in government. In January he had re-opened negotiations with the papacy about the Sicilian crusade. In July 1260 he accused Simon of disloyalty and disobeying a royal command. De Montfort denied the charge. The council, with a major part of the magnates, tried to heal the conflict between the king and the earl. De Montfort was acquitted by parliament. The document concerning this investigation has survived, but there is no mention of the community of the realm.<sup>48</sup>

In March 1261 the king complained against the council.

Two documents containing these complaints have survived. In one of them the phrase, 'community of the realm' is used three times. In clause nineteen the king complained as follows: 'Whereas fifteen councillors were given to the king by the community, now, by their advice, the king is more heavily burdened with the cost of the justices than he formerly was, and yet, if any complaint is made against them, no justice is done, but only against poor men.'<sup>49</sup> In the first half of this complaint the king criticizes the cost of delivering justice. After the reform movement began in 1258 the reforming barons introduced the eyre of the new justiciar Hugh Bigod to inquire into the problems local gentry faced. The king's complaint may indicate that he was rather reluctant to do justice to complaints brought by local gentry.<sup>50</sup> In the second half of the king's complaint he raises the problem of the justices who did not work as he commanded, but rather were obedient to some members of the council. He doubted if the council's attitude towards justice was impartial. He even challenged the council about the right of appointing justices which was given to the council by the Provisions of Oxford. His high-handed attitude seems to have arisen from the fact that the cooperation between the community of the realm had begun to crack by 1261.

Another example of the use of the concept of a community of the realm occurs in the same document in connection with the king's discontent: 'He placed himself under the counsel of his subjects and ... he granted that he would carry out the reform of his realm by the decree of his council elected by the community of the kingdom. But he is bound not to keep that which is contrary to the honour of God, his own faith, and the profit of his realm.'<sup>51</sup> By these words, citing the honour of God,

the king insisted that he was not satisfied with the status conferred on him by his oath at the beginning of the reform movement and by the Provisions of Oxford. His former right to appoint councillors and justices had been placed under the advice of the council.<sup>52</sup> Though the unity of the baronial community had weakened by October, 1260, when Hugh Bigod resigned from his office of Justiciar, the council still exercised the right to appoint Hugh Despenser in his place. The king must have felt discontented with the weakness of his authority over the appointment of royal officers.<sup>53</sup> The council took note of the king's discontent, and in its answer to him reminded him of his original agreement and oath. In fact Henry was more anxious about his oath at this period than before, because he had been negotiating with the pope to absolve himself from that oath.<sup>54</sup> While waiting for the papal answer he made complaints to the council in March 1261. As a matter of fact the papal letter releasing him from the oath reached him by May 1261.<sup>55</sup>

In any case the phrase, 'the community of the realm', gradually disappeared from the *Close Rolls* or *Patent Rolls* from December 1260. The community, as the foundation of the council, had lost its political validity by that time.

### 3. The Community of the Realm between July 1263 and August 1265

#### (1) July 1263 to January 1264

In November 1262 the Welsh seized some land of Roger Mortimer, a prominent Marcher lord. This event increased the Marcher lords' enmity towards the king. On 20 December, 1262, Henry returned from the Continent to England. The Lord Edward was sent to France to collect a military force. But Simon

de Montfort returned from France in April, 1263, and met Gilbert de Clare, son of Richard, late earl of Gloucester at Oxford. The Marchers joined them. The Welsh leader, Llewellyn, reached agreement with the two earls for cooperation against the king. The king's opponents occupied Bridgenorth and Worcester in June; meanwhile the earl of Leicester moved into the south east of England and gained control of the area. On 12 July, 1263, Henry was forced to seek peace with the earl. Some days later Henry recognized the Provisions of Oxford of 1258 for the second time. In fact, Simon kept control of the government from this time till his death at the battle of Evesham, August 1265, though he partly lost it between October, 1263, and May, 1264<sup>56</sup>. In this period the phrase 'the community of the realm' appeared again in the king's and in magnates' letters. On 9 September, 1263, the king and Simon de Montfort reached an agreement and in late September they met Louis IX, King of France, at Boulogne in order to settle their differences.<sup>57</sup> In December both sides agreed to ask Louis IX to arbitrate and each prepared a statement of his case.<sup>58</sup> The king of France announced his decision, known as the Mise of Amiens, on 23 January, 1264.

In the king's statement he did not use 'the community of the realm'.<sup>59</sup> He called the reformers simply 'barons', without mentioning the council of fifteen. The core of his complaint was that the reformers robbed him of the power to govern the realm, and he asked Louis to cancel all provisions, statutes and obligations, while restoring the royal power to its former status.<sup>60</sup> Henry was confident of victory, because he had obtained a letter of absolution from his oath from the pope, Urban IV, in September 1263<sup>61</sup>. He even added on the dorse of the parchment, the following sentences: 'The king's subjects cannot take the afore-

said matters upon themselves, or interfere with them against the oath of fealty which they made to the lord king.'<sup>62</sup> Judging from these words he tried to insist that even the sworn community of his subjects should not match the king in status, power or dignity. The king aimed to deny the council's authority, entrusted by the sworn community of the realm at the parliament at Oxford in June 1258. The community in such a sense was no longer alive. How could de Montfort and his supporters re-establish their initiative?

We can find a clue in two of the statements by Simon and the council presented for Louis' arbitration at Amiens. The phrase is used in both statements, but it is important to notice that the meaning of the phrase here is very different from what it had been in 1258. In the first statement the council answered the king's complaints about the governmental reform one by one. In the first clause the reformers blamed the king for breaking the oath that he had made in 1258. They insisted that the king himself had sworn to reform the state of the realm at the beginning of the movement. They added that the community of the realm had been ordered to swear to be subject to the Provisions by the king.<sup>63</sup> However, although the king had ordered all subjects to swear to hold the Provisions, it was in the letter of August, 1258, while before that date the new council of the barons had already grasped the real power of the government, and the king's half brothers fled from England to France. Henry had no option but to recognise the reform movement.<sup>64</sup> Therefore in this statement the earl of Leicester and his supporters did not attribute the legitimacy of their political status in 1263 and 1264 to the Provisions of Oxford nor to the oath they had made in the Oxford parliament.

In the second clause their usage of the phrase changed further. The chosen committee of twenty four recalled that the king had received subsidies from the community, promising to observe the charter of liberties of England, and then speedily and specifically broke his promise.<sup>65</sup> The subsidy in this case meant a thirteenth on movables in 1237, when barons, after much discussion, voted a subsidy in return for the confirmation of the *Magna Carta* at the great council. Therefore in this clause the reformers used the phrase 'the community' to mean the body of barons whose rights were confirmed by the king in return for paying a thirteenth on movables. Consequently 'the community' in this clause lost the reference to a common oath but kept the character as a baronial association.<sup>66</sup> In the third clause we are faced with quite a new usage of the phrase by the reformers. It reads as follows: 'The barons and the community of the realm of England and their proctors in their name, ask should be approved by your award, illustrious Lord King of France.'<sup>67</sup> In the same sentence the phrase 'the community of the realm' and the barons are mentioned as separate entities. Thus, the writer of the letter thought that there was a separate body called the community of the realm existing apart from that of the barons. As mentioned above, in the Provisions of Oxford of 1258, barons, i.e. tenants-in-chief, or liberty holders were included in the community of the realm. Therefore the usage of the phrase had changed by the end of 1263. Moreover, the new community of the realm had proctors, who were listed after the barons. The earl of Leicester and his supporters had decided to change the meaning of the phrase from that in the Provisions of Oxford.

In the second statement rendered to Louis IX by the re-

formers, the same type of complaints is listed one by one. The first clause runs as follows: 'The lord king of England had granted the liberties which are contained in his charters formerly granted to the community of the land, to be inviolably observed, in return for which the community of the realm first of all gave him a fifteenth, and then both the clergy and the people gave him a thirteenth, out of all their movables, and on top of that a subsidy for marrying his sister to the emperor, at the rate of twenty shillings from each knight's fee.'<sup>68</sup> The 'charters formerly granted to the community' refers to the *Magna Carta* of 1215. In the sixty first clause of *Magna Carta* the phrase, 'illi viginti quinque barones cum *communa totium terre*', can be found. The *communa* here may indicate the community of tenants-in-chief and their followers who gathered in Runymede and were granted *Magna Carta*. The two taxes mentioned in the clause, a fifteenth and a thirteenth, mean those of 1225 and 1237 respectively. Yet we can find the phrase in neither of these taxation records.<sup>69</sup> In the statement of 1263, Simon and the council combined the usage of the barons' community of 1215 with the meaning of taxpayers of 1225 and 1237.<sup>70</sup> Why did they do so? The common characteristic of the former case and the latter two cases is that in each one the mentioned society is not established by an oath. Did Simon and the council avoid the model of the sworn community of 1258, and adopt an example of non-sworn society? They seem to have admitted that the sworn community had disappeared by 1263, and they needed a new group of supporters. In clause eight of the statement the phrase appears as follows. 'The churches and the whole land by enforced redemption of the vows, were impoverished, many thousand of marks having been collected in spoils of this kind, with enormous



harm to the churches and the whole community, only to be thrown away in vain.<sup>71</sup> What the reformers were complaining about is the charge following upon the Henry's crusading vow in 1250. But the reforming barons refused to aid the king financially at that period. As a matter of fact, Henry borrowed money from Italian merchants and tallaged royal boroughs.<sup>72</sup> Therefore the community in this case was not confined to that of the barons. We can, therefore, surmise that the 'community' in the statement means the group of sufferers from the king's policy, which would mean supporters of Simon's initiative.

After the dissolution of the sworn community of the barons, Simon and his supporters tried to maintain the reform movement under their initiative with the support of the new groups of the society. When they did so, they used the phrase in a new way.

#### (2) May 1264 to August 1265

In January 1264 the Mise of Amiens was announced by Louis IX. All provisions were cancelled. Royal privileges were judged to be completely restored. The award swept away all the work of the reformers. Simon remained to oppose the Mise till early April. After the battle of Lewes on 14 May, 1264, where Simon's army won and Henry was captured with his brother and son, an agreement was made between the king and Simon. Queen Eleanor and other royalists fled to France. A copy of this agreement was sent to the king of France. On 4 June, 1264 a letter from the king summoning a parliament in London was sent out, probably to each county.<sup>73</sup> In late June the parliament decided a new form of establishment: *Forma Pacis*. A new council was formed by *Forma Pacis*. The three faithful subjects, earls of Leicester and Gloucester, and the bishop of Chichester,

were to nominate a council of nine. This council were to choose all officials and advise the king in all matters of government. In *Forma Pacis* the phrase 'the community of the realm' is used, but the meaning has changed.

The preamble states: 'This is the form of peace commonly agreed upon and approved by the lord king and the lord Edward his son, by the prelates and all the great men and the community of the whole realm of England.'<sup>74</sup> Here we see that 'all the great men' and 'the community of the whole realm of England' are written separately side by side, as was the case in the Provisions of Oxford. But we should note that it is written not as *communitas nostri* but as *communitate tote regni anglie*. Councilors could not be dismissed by the king, but only on the advice of the three who had nominated them. Moreover, officials who erred could be removed on the advice of the nine members of the council. We may understand from this that the initiative of government was not in the hands of the king.<sup>75</sup> This document is now in the *Patent Rolls* : it was not released in the name of the king, but rather as an *ordinatio* agreed at the parliament in London. We should read the wording of the closing sentence carefully: 'This ordinance was made at London, with the consent, will and precept of the lord king, and of the prelates, barons and also of the community at that time present.'<sup>76</sup> It is noticeable that, though at the top of this ordinance the great men, *proceribus*, and the community of the realm are written in parallel,<sup>77</sup> at the end of the same ordinance the great men are not mentioned, and, instead, barons are listed separately from the community of the realm. Consequently the community of the realm in this part was not the community of the barons, i.e. tenants-in-chief. Instead it referred to a group of knights from each county.<sup>78</sup> By

the king's writ four knights were summoned from each county to the parliament in London. This was the first example in the earl of Leicester's government of calling a group of shire knights 'the community'. The ordinance does not use the word 'community' to refer to a unified society of shire knights, nor to the general body of all the inhabitants of England, nor to a sworn community of barons. There is no evidence to show that the shire knights swore to be unified in the parliament. But Simon de Montfort's government nevertheless called the group a community. He had changed the meaning of the word drastically by June 1264.

Summons was issued on the fourteenth and the twenty fourth of December 1264 to a parliament to meet in London in January 1265. Besides nobles and clergy, two knights were summoned from each county and two burgesses from each borough. We are not sure whether the writ of summons was addressed to all the counties or all the boroughs. (This is the first parliament to which borough representatives were called.) The writ issued to Sandwich, one of the Cinque Ports, is the only known extant full text of the writ that was sent to a borough.<sup>79</sup> The writ was issued on the twentieth of January, when parliament was meant to be already meeting. The subjects for discussion listed in the writ are the release of Lord Edward from prison, the complete security of tranquillity and peace, and some other matters touching the community of the realm.<sup>80</sup> However important may have been the release of Edward for de Montfort to regain the support of his former colleagues, who were then away from his party, the most decisive issue at this period for Simon's party was the establishment of military security in order to cope with a possible plan to bring French

mercenaries to fight against Simon's army. These issues were practical measures for maintaining Simon's initiative, but they were not necessarily indispensable issues for shire knights or burgesses who were summoned to a parliament for the first time. Though representatives were asked to meet and to treat with the magnates of the realm, no official record of the discussion in the parliament is extant. What Simon's government counted on the representatives for at this moment may have been an increase in number of their supporters, especially of military powers; here is the use of the phrase, 'the community of the realm' in the writ of summons to them.<sup>81</sup> The same type of wording can be seen in the writ to the sheriff of Shropshire and Staffordshire on 23 February, 1265.<sup>82</sup> According to the writ to the sheriff of Yorkshire on February 15, such representatives were expected to leave the parliament by that day<sup>83</sup>. However, it is evident that a parliament consisting exclusively of nobles continued till mid-March, when another writ, concerning the release of Edward, was issued to 'all of the county of York'. It seems that for Simon the shire and borough representatives were regarded as an additional section in his party.<sup>84</sup>

Judging from the wording of these documents, we can see that between 1263 and 1265 Simon meant by the phrase the group of his supporters, including representatives of rural and urban communities. The 'community of the realm' in this period, then, was a political group of Simon's supporters.<sup>85</sup> Its life ended on 4 August, 1265 when Simon de Montfort was killed at the battle of Evesham.

## Conclusion

The phrase, 'community of the realm' disappeared from the

king's documents after the battle of Evesham. There was no need for the king to use the phrase either with the meaning of the body of barons between 1258 and 1260, or with the meaning of supporters of Simon's government after the battle of Lewes. Neither in the *Dictum of Kenilworth* in 1266 nor in the *Statute of Marlborough* in 1267, two important documents in constitutional history, is there any mention of the phrase. But the phrase can still be found in royal letters and writs during this period.<sup>86</sup> It can be found, for example, in the grant of aid made by the *communam* of England to the king and his son in 1269, to fulfil Edward's crusade vow.<sup>87</sup> What kinds of people comprise this *communam*? S.K. Mitchell surveyed many chronicles and concluded that the consent to the aid was given by the barons' assembly, since there was no evidence of knights or burgesses participating in the assembly.<sup>88</sup> Mitchell presumed the king used the word *communam* in order to collect money from as many of his subjects as possible.<sup>89</sup>

The next important example of the phrase in royal documents is the *Statute of Westminster I* enacted in the parliament of 1275. Its preamble states: 'These are the establishments of the king Edward made at Westminster ... by his council and by the assent of archbishops, bishops, abbots, priors, earls, barons and the community of the land thereto summoned.'<sup>90</sup> Because representative knights of the shires had been summoned to this parliament, 'the community of the land' in this statute means a group of representative knights of the shires.<sup>91</sup> Though the usage of the phrase is quite like the example from Simon's parliament of 1264 and 1265, we should note the difference between the two occasions. In the case of the parliaments in 1264 and 1265, even if the phrase was used to mean a group of shire

representatives, the group was not regarded as part of the *Forma Pacis* regime, but as an association of Simon de Montfort's supporters. Therefore it was a subordinate corporation in Simon's regime. But when King Edward made an establishment and statute with the assent of the community of shire knights, the community of the land had its constitutional status recognized by the parliament. The difference between mobilized subordinate supporters and proper members of the legislatures is important in the constitutional history of thirteenth century England.

Concerning the cooperation between the king and the barons, Dr. Paul Brand has recently concluded that 'The end result of the co-operative efforts of barons, justices and the king in the legislative process between 1259 and 1267 was to produce genuinely innovative legislation and to create an impressive model of large scale legislative improvement in common law. This clearly influenced Edward I and his advisers when they began their programme of legislation in 1275.'<sup>92</sup>

The community of the realm between 1258 and 1260 was, as we have seen, established by baronial reformers as a body of tenants-in-chief to govern the realm jointly with the king and provide new rules to redress the troubles between lords and tenants. Henry III's existing council had not been able to understand how troublesome the issue was and had failed to devise any necessary measures before 1258. On the other hand, for barons as liberty holders, the necessity to secure their vested interests was crucial in the 1250s. They even needed to establish a cooperative government of the king and liberty holders in order to provide appropriate legislation. Therefore they planned to make a community of tenants-in-chief by oath, and to create, by the Provisions of Oxford, a committee of fifteen magnates to

govern the realm jointly with the king. Under their initiative the Provisions of Westminster were enacted in parliament, with the intention of decreeing over judicial procedure to solve lord-tenant problems. The programme went well for the first two years. Their original demand for the protection of their vested interest was satisfied and the complaints rendered from local gentry were also being adjusted by the new justiciar's eyre. This experience became a model of legislative cooperation between the king and the community of barons.

But in 1260, because of differences of opinion between magnates, the stability of the community was weakened and the cooperation between the king and the community also vanished. When Simon de Montfort grasped the control of government in July 1263, the barons' community disappeared. Simon's government tried to arrange a new community of the realm utilising the representatives from county and urban communities in order to secure his power. Later in Edward I's reign they were summoned semi-regularly to parliament like joint legislators of magnates. The policy resulted in the augmentation of the ruling class. With regards to the political significance of the baronial reform movement between 1258 and 1265, it is properly said that the example of legislation by the king and the community of liberty holders, as a sworn body of barons, was a necessary precedent for the formation of a legislative cooperation between the king, barons, and representatives of rural and urban communities in the reign of Edward I.

However, Edward I's new establishment in the 1270s and 1280s should not be discussed in the same terms as the parliamentary government of the reign of Edward III in the fourteenth century. After the battle of Evesham the king confiscated his

opponents' liberties and inheritances.<sup>93</sup> In 1268 the king began to return some of the inheritances and liberties to the reforming barons in return for their faithfulness to the king. After Edward I returned from the crusade in 1274, barons were customarily summoned to parliaments to talk with the king and be involved in legislation. Governmental power came to be shared between the king and the barons.

Though the community of the realm between 1258 and 1265 was created by barons in the course of their rebellion against the king, it was not necessarily anti-monarchical, for during the first two years the king and the community cooperated with each other to issue orders and grant patronage under a joint signature. Even after Simon's army defeated the king's in the battle of Lewes in 1264, orders were issued in the name of the king advised by the council of nine magnates. Magnates did not try to exclude the king from the political scene. After Simon died at the battle of Evesham and the king regained full power over the government, the *Dictum of Kenilworth* in 1266 and the *Statute of Marlborough* in 1267 included some clauses outlining what the king's role was in the government of the realm.<sup>94</sup> In those clauses the king was supposed to assume the leadership of government, but also to take into account the barons' liberties.

In the light of our reading of royal and baronial documents from the period of the baronial reform movement, it is safe to assert that such a community as Stubbs imagined—a nation, or a general body of all the inhabitants of the realm whose leader was the king—is hard to be found.<sup>95</sup>

\* I am grateful for the comments of Professor David Carpenter who read



an earlier version of this chapter.

### Notes

- 1 Keizo Asaji, *The Community of the Realm and the Baronial Reform Movement, 1258–1267*, Kyoto University Press, 2003. especially chapter 13 (in Japanese), considers the community of the realm in the context of Henry's European policy. See chapter three above.
- 2 W. Stubbs, *The Constitutional History of England*, third edition, 1887, ii, p.175; Do., *Select Charters and the other Illustrations of English Constitutional History*, ninth edition, Oxford, 1913, p.381.
- 3 *Select Charters*, p.385. Stubbs translated *commun* in the Provisions of Oxford into 'commonalty' ; B. Wilkinson, *The Constitutional History of England, 1216–1399*, vol. 1, 1948, pp.13, 61 ; R. Wickson, *The Community of the Realm in the Thirteenth Century England*, 1970, pp.77, 85.
- 4 R. F. Treharne, and I. J. Sanders, *Documents of the Baronial Movement of Reform and Rebellion, 1258–1267*, Oxford, 1973, Doc. 1, pp.72–75. (hereafter *DBM*)
- 5 Stubbs, *Constitutional History*, ii, p.175; S. Reynolds, *Kingdoms and Communities in Western Europe, 900–1300*, Oxford, 1984, pp.271–2, 308–9; F. M. Powicke, *King Henry III and the Lord Edward*, Oxford, 1947, p.148; D. A. Carpenter, 'What happened in 1258?', in J. Gillingham, and J. C. Holt, eds., *War and Government in Middle Ages*, Woodbridge, 1984, reissued in Carpenter, *The reign of Henry III*, Hambledon, 1996, p.186; Do., 'English Peasants and Politics 1258–1267', *Past and Present*, 136, 1992, p.3; Claire Valente, *The Theory and Practice of Revolt in Medieval England*, Ashgate Publishing, Burlington, 2003, Ch. 4, pp.78, 90, 96–7, 106. Concerning the taxation in 1234 and the baronial opposition to it, Powicke writes, 'A feudal assembly which legislates for the community in this way is already a national assembly.' *King Henry III*, p.148. However, Holt criticizes this opinion: 'The letters established that the magnates were consulted, but does not in any way imply that the concern for the poor which it expressed originated with them. The roll does not record that it was sent to any county other than Lincolnshire.' J. Holt, *Magna Carta*, 2nd ed., Cambridge, 1992, p.396n.

- 6 R. F. Treharne, *Baronial Plan of Reform*, Manchester, 1932, p.67; M. T. Clanchy, *England and its Rulers, 1066-1272*, Glasgow, 1983, pp.267-70.
- 7 Michael Powicke, *The Community of the Realm 1154-1485*, New York, 1973, pp.26, 52; G. P. Cuttino, 'King's Clerk and the Community of the Realm', *Speculum*, vol.29, 1954, pp.404, 406-7; W. Morris, 'Magnates and the Community of the Realm in Parliament', *Medievalia et Humanistica*, I, 1943, pp.58-9, 61; F. M. Powicke, *King Henry III*, pp.36, 38.
- 8 Carpenter, 'What happened', p.186.
- 9 *DBM*, Doc.2, pp.76-77.
- 10 Ch. Bémont, *Simon de Montfort*, Paris, 1884, p.327; translated by E.F. Jacob, *Simon de Montfort*, Oxford, 1930, p.152.
- 11 Are 'the chief men and the magnates' in the second document of May 2 identical to 'the earls and barons' who promised the king a common aid in the same document? (*DBM*, pp.74-77) Powicke wrote that those who forced the king to reform the state of the realm in the document of April 30 were not only the seven magnates who asked for the reform in early April but also the knights all armed. (*King Henry III and the Lord Edward*, p.377; *Annales Monastici*, i, pp.163-4) However, if so, then those who asked the king in the April parliament were too many people, to have been negotiating with the king. Therefore the seven magnates seem to be distinct from the general body of earls and barons. (Ch. Bémont, *Simon de Montfort*, French version, pp.327-8)
- 'The earls and barons' in the second document called their fellow earls and barons, who were summoned to the parliament, 'the community of the realm', and promised the king that they would do their best to ensure that a common aid should be paid to him. The fellow earls and barons were present at the parliament, so they could answer yes or no to their leaders on the spot. The leaders could not force the people not summoned there.
- 12 *DBM*, Doc.3, pp.76-77. Treharne and Sanders thought the document was made in May. But in the Burton Annals it is written that the document was made (*prolati*) when the king was in Woodstock near Oxford in June. P. Brand, 'Drafting of Legislation in Mid Thirteenth Century England', in *Making of the Common Law*, Hambledon, 1992, p.326; *Annales Monastici*, i, Rolls Series, pp.438, 444.
- 13 Brand, *Making of the Common Law*, pp.331-33.

- 14 *DBM*, Doc.3, pp.80–81.
- 15 Cf., Ch. Young, *The Royal Forests of Medieval England*, Univ. Pennsylvania Press, 1979, pp.135–6. As the forests were not identified with a particular liberty, but included various liberties in a single forest, the king's permission for disafforestation would have to be given to a group of liberty holders.
- 16 The 'fine' mentioned here means the tax granted in 1225, and 'the community of the realm' here could mean those who consented to and in a wider sense paid the tax of 1225. Concerning the difference of situations in 1258 and in 1225, see Ch. Petit-Dutaillis and G. Lefebvre, *Studies and Notes Supplementary to Stubbs' Constitutional History*, Manchester, 1930, rev. ed., 1968, pp.214–15.
- 17 Grant wrote as follows. Henry 'made frequent grants of the rights of free warren in disafforested areas, thereby restricting the free rights of hunting which ought to have been enjoyed by landowners in such districts.' R. Grant, *The Royal Forests of England*, Alan Sutton, 1991, p.152. Henry granted William fitz William de Beauchamp of Bedford a charter of warren in June, 1257. *Close Rolls, 1256–59*, p.67.
- 18 Dr. David Crook wrote an article about some examples of forest problems in Nottinghamshire in the thirteenth century. D. Crook, 'The Struggle over Forest Boundaries in Nottinghamshire, 1218–1227', *Transactions of the Thornton Society of Nottinghamshire*, 83, 1979 (1980), pp.34–45. M. Bailey, 'The Rabbit and the East Anglian Economy', *Agricultural History Review*, 36, p.88.
- 19 Ch. Young, *The Royal Forests of Medieval England*, p.101; Cf., *English Historical Documents*, iii, ed. by H. Rothwell, London, 1975, p.349. The Charter of the Forest, 1225, cl.17, reads as follows. 'These liberties concerning the forests we have granted to everybody, saving to archbishops, bishops, abbots, priors, earls, barons, knights, and other persons, ecclesiastical and secular, Templers and Hospitallers, the liberties and free customs in forest and outside, in warrens and other things, which they had previously.'
- 20 *DBM*, Doc.5, pp.96–113.
- 21 The document was not included in the official records of the government, but found only in the *Burton Annales*. Just the first clause is translated into Latin, the others in French.

- 22 Stubbs regarded this passage as proof that the baronial community represented the nation. *Constitutional History*, ii, p.175,n.
- 23 'Ceo iura le commun de Engleterre a Oxenford'
- 24 M. Prestwich regards the community in clause four as the general people of England. But, if so, it seems to be difficult for those people to be present making an oath in the parliament. Prestwich, *English Politics in the Thirteenth Century*, 1990, London, p.132.
- 25 Though the earls and barons were summoned by the king, the Provisions call them a community gathering by their own will. See the passage, 'by that oath they are bound together', and 'if anyone oppose this, we will treat him as a mortal enemy'.
- 26 *DBM*, pp.104-05.
- 27 *DBM*, pp.110-111.
- 28 Stubbs regarded the community of the land as a nation, while Treharne thought it meant a body of tenants-in-chief. *Constitutional History*, ii, p.175n; *Baronial Plan*, p.86.
- 29 In 1257 king Henry III made his son, Edmund, wear Apulian vestment in *curia* and asked the barons for aid (or subsidy). But the barons refused on that occasion. Powicke, *King Henry III*, pp.371-374. As for subsidies, see pp.375, 376, 377-8; W.E. Lunt, *Financial Relations of the Papacy with England to 1327*, Cambridge, Mass., 1939, pp.278-80; *Close Rolls, Supplementary*, Public Record Office, London, 1975, pp.29-30 (nos.284, 285, 289, 290); *Matthew Paris, Chron. Major*, v, p.623.
- 30 Though, in the May 2 letter, the king refers the committee of twenty four, only twenty three names are written in the Provisions of Oxford.
- 31 The king had taken tallages from the royal boroughs on various occasions. He also received money from the boroughs when he granted them a new charter. Those boroughs could be regarded as being like feudal tenants of the king.
- 32 *DBM*, pp.102-3, 106-7, 110-111.
- 33 M. Clanchy, 'Inventing Thirteenth Century England: Stubbs, Tout, Powicke—Now What?', in P. R. Coss, and S. L. Lloyd, eds., *Thirteenth Century England*, v, Woodbridge, 1995, p.12; *DBM*, pp.100-101.
- 34 There is no mention of cooperative responsibility concerning aid. An example mentioning privileges of the church; *DBM*, pp106-107; About

- London, pp.111–112.
- 35 Prestwich calls the community on this occasion a *revolutionary* community. *English Politics*, pp.144–45.
- 36 K. Asaji, 'Governmental formation by the king and the community of the barons in 1258', (in Japanese) *Essays and Studies, Bulletin of Faculty of Letters, Kansai University*, 53–4, 2004, pp.3–33.
- 37 *Calendar of the Patent Rolls, 1247–58*, pp.644–45.
- 38 *DBM*, pp.116–117.
- 39 This supposition is supported by the king's words in the letter of 20 October, 1258, where he says that the contents of the provisions were made 'par le conseil de nos hanz hommes'. *DBM*, p.120.
- 40 *DBM*, pp.122–23n; P. Brand, *Making of the Common Law*, pp.333–46.
- 41 The magnates seem to have usually been unanimous in drafting the reforming plan. But sometimes some of them disagreed with a part of the plan. For example, there seems to have been an objection concerning the jurors' exemption from jury service. See the words, 'proceribus contradictum est', in the document. *DBM*, pp.128–29.
- 42 *DBM*, Doc.10.
- 43 *DBM*, pp.132–33, 134–35.
- 44 *DBM*, pp.132–33; See K. Asaji, 'Regalia, lordship and tithings in the Thriplow hundred in the thirteenth century', (in Japanese) in *The Community of the Realm and the Baronial Reform Movement*, 2003, Kyoto University Press, pp.263–287. The liberty of the bishop of Ely was analysed in the cartulary of the estates of the bishop there.
- 45 *DBM*, pp.138–39, 148–49.
- 46 *DBM*, pp.156–57.
- 47 *DBM*, pp.156–57.
- 48 *DBM*, pp.28–29; Doc. 29. Henry cancelled the scheduled eyre in 1261. *Records of the General Eyre*, ed., by Crook, D., Public Record Office, 1982, pp.126–28, 189–91.
- 49 *DBM*, Doc. 31, cl.19.
- 50 *DBM*, pp.230–31; Powicke, *op. cit.*, p.422. 'In particular he urged that the new local officials, drawn from the lower ranks of the gentry, were less reliable and competent than their more exalted predecessors.'
- 51 *DBM*, pp.236–237.
- 52 Pope Alexander's letter absolving Henry from his former oath arrived

in England in May 1261. Counting on this letter Henry might as well dare to complain about the situation. But Alexander died at the end of May 1261.

- 53 Treharne, *Baronial Plan*, p.245.
- 54 *DBM*, pp.226–229.
- 55 In March 1261 Henry used the phrase, community of the realm, in his own way. ‘quod magnates et comunitatem regni nostri sincere diligimus’. *Close Rolls, 1259–61*, pp.461–62. Powicke regarded the meaning of this ‘community’ as all the people in England, without supporting evidence. Powicke, *King Henry III and the Lord Edward*, p.421.
- 56 *DBM*, pp.42–43.
- 57 *DBM*, p.43, *C.R., 1261–64*, p.312.
- 58 Powicke, *The Thirteenth Century*, p.179n. Cf., *DBM*, p.252n.
- 59 *DBM*, Doc.37A. Originals of the manuscripts are now in the Archives Nationales, Paris.
- 60 ‘Per constitutiones baronum fit capitalis iusticiarius per electionem consiliariorum quos posuerunt barones in consilio regis, cum tamen dominus rex et eius antecessores capitalem iusticiarium cum opus esset pro sua voluntate preficere consuerunt et amouere, et etiam cum opus non sit huiusmodi iusticiario dum rex egerit in regno’. *DBM*, p.252.
- 61 *DBM*, pp.43–44.
- 62 ‘sui subditi vice versa contra iuramentum fidelitatis quod eidem domino regi prefecerunt predicta in se suscipere vel de illis intromittere’. *DBM*, p.256.
- 63 *DBM*, p.252.
- 64 *DBM*, pp.256–59. ‘Hoc idem etiam a tota communitate regni iurari mandavit’. *CPR.*, 1247–58, pp.644–45, 649; *DBM*, p.254, n6.
- 65 *DBM*, pp.258–59.
- 66 Powicke, *King Henry III*, pp.349–50, 364; Treharne, *Baronial Plan*, pp.52, 53. J. Maddicott stressed the fact that knights participated there. ‘An Infinite Multitude of Nobles: Quality, Quantity and Politics in the Pre-reform Parliament of Henry III’, *Thirteenth Century England*, vii, 1999, p.33.
- 67 ‘Petunt barones et communitas regni Anglie et eorum procuratores eorum nomine per dictum uestrum, domine rex Francie illustris, ap-

- probari et eidem domino nostro regi Anglie firmiter iniungi et caucionem congruam interponi quod easdem in posterum bona fide obseruet et faciat a subditis firmiter obseruari.' *DBM*, p.258.
- 68 'cum dominus rex Anglie libertas que in cartis suis dudum comunitati terre concessis continenter concessisset inuiolabiliter obseruandas, propter quod communitas regni primo quindecimam et postea tam clerus quam populus tricesimam partem omnium mobilium suorum sibi dederunt, et insuper subsidium ad sororem suam imperatori maritandam, uidelicet de quolibet feudo militis xx. solidos idem dominus recepta omni huiusmodi pecunia paulisper eos libertatibus predictis uti permisit, et postea peruerso quorundam ductus consilio contra tenorem cartarum ipsarum veniens libertates ipsas paulatim infringere atemptauit'. *DBM*, p.268.
- 69 *DBM*, pp.268–69, 269n; *P.R.*, 1216–25, pp.560–61; *C.R.*, 1234–37, pp.545–46; Mitchell, *Studies in Taxation under John and Henry III*, New Haven, 1914, pp.161–63, 214–19. Isabella, the king's sister, married the Emperor in 1235.
- 70 In the above mentioned first clause the word *populus* is used, but Mitchell noted that it should not be regarded as the general body of the common people of the kingdom. Mitchell, p.216. Many of the monasteries were exempt from taxation. The explanation by the chroniclers varies widely. Matthew Paris, for example, did not mention 'people' when referring to this taxation. Mitchell, p.214n; *Chron. Major*, iii, p.380.
- 71 'ad maiorem regni confusionem decimal ecclesiasticorum proventuum ad eorundem impugnationem per quinquennium sibi concessa ecclesiis in decimarum huiusmodi solucione, et terra tota per coactam uotorum redemptionem de pauperatis et multis milibus marcarum ex huiusmodi preda cum ecclesiarum ac tocus communitatis lesione enormi collectis et in uanum persolutis'. *DBM*, p.278.
- 72 Mitchell, *op. cit.*, pp.282–86.
- 73 *DBM*, Doc.39, pp.290–91.
- 74 *DBM*, pp.294–95.
- 75 'communitati prelatorum et baronum'. *DBM*, p.296.
- 76 *Feodera*, Record Commission, I, i, 1816, p.443; *DBM*, Doc.40, pp.294–95, 296–97, 298–99.

- 77 Attestors to this document are two bishops, two earls, two barons and the mayor of London. *DBM*, pp.298–99.
- 78 *DBM*, pp.298–99.
- 79 In the writ to the cinque ports the phrase ‘community of the realm’ is used. *DBM*, pp.304–05.
- 80 *DBM*, pp.304–05.
- 81 Maddicott, J., *Simon de Montfort*, 1994, pp.316–17.
- 82 ‘quam pro aliis communitatem regni nostri tangentibus’. *DBM*, p.306.
- 83 *DBM*, p.306.
- 84 ‘de unanimi assensu et uoluntate nostra et Edwardi filii nostri primogeniti, prelatorum, comitum, baronum et communitatis regni nostri, pro regni ipsius pace pro cuius securitate ... concorditer sit prouisum, quod quedam ordiatio de unanimi assensu nostro, prelaorum, comitum ac baronum predictorum super nostro et regni nostri ... inuolabiliter obseruetur’. *DBM*, p.308. ‘quod carte antique communium libertatum et foreste, communitati regni nostri per nos dudum concessa’. *DBM*, pp.312–13.
- 85 *DBM*, p.53.
- 86 Prestwich, *English Politics*, p.137. For example, in the royal writ summoning twenty seven boroughs before the magnates’ council in Westminster, 22 April 1268, the phrase ‘community of the realm’ is used. Cf. Richardson, H.G., ‘Representation of cities and boroughs in 1268’, *EHR*, XL, 1925, pp.583–5. ‘negotiis nos et regnum statum et communitatem regni nostri et vos tangentibus’. This writ was addressed to ‘dilectis et fidelibus et maiori et civibus suis Eboraci’.
- 87 *CPR*, 1266–72, pp.508–09.
- 88 Mitchell, *Taxation in Medieval England*, p.224; Do., *Studies in Taxation*, pp.295–96. For a different opinion, see Maddicott, J., ‘The Crusade Taxation’, in *Thirteenth Century England*, II, 1988, pp.96–97.
- 89 Mitchell surveyed most of the chronicles, and concluded that this tax was collected from all the lay tenants-in-chief and all of the clergy holding from the king. *Studies in Taxation*, p.296. The king himself resumed using the phrase again four years after Simon’s death.
- 90 *Statutes of the Realm*, I, p.26; Prestwich, *English Politics*, p.137.
- 91 Prestwich, p.139.
- 92 P. Brand, *Kings, Barons and Justices*, Cambridge, 2003, pp.406, 410.



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Concerning this clause Brand says that the clause was meant to protect the interests of the tenants. pp.250, 251, 272, 277, 392.

- 93 The earl of Leicester, after the battle of Lewes, gained the lands of the king's friends and granted them to his supporters. Maddicott, *Simon de Montfort*, p.309. Immediately after the battle of Evesham Henry ordered the disinheritance of the Simon's supporters and adherents, and also gave a tacit permission to his own supporters' private depredations from the disinherited. Asaji, 'The Baron' War and the Hundred jury in Cambridgeshire', *Journal of Medieval History*, 21(2), Amsterdam, 1995. (See chapter eight.) Edward I also systematically escheated the barons and granted the land to his *familiares*. K. B. McFarlane, , 'Had Edward I a policy towards the earls', in *The Nobility of Later Medieval England*, 1973, Oxford, pp.248–67.
- 94 *DBM*, pp.316–325; *EHD*, iii, pp.384–85.
- 95 Stubbs, *Constitutional History*, ii, pp.175–76, 203. For usage of the phrase 'community' to refer to a group of taxpayers consult Mitchell, *Studies in Taxation*, pp.369–371; J. Baker, *History of Common Law*, third edition, p.273; M. Jurkowski, et al., ed., *Lay Taxes in England and Wales 1188–1688*, PRO, 1998, pp.xxiv–xxvi, 16.