

Studies and Notes  
supplementary to  
Stubbs' Constitutional History

Down to the Great Charter

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## PREFACE TO THE ENGLISH TRANSLATION.

THE twelve studies and notes here printed have been translated from the French of Professor Ch. Petit-Dutaillis in order to provide the English student with a supplement to the first volume of Bishop Stubbs' "Constitutional History of England."

The recent appearance of the first volume of a French translation of that classical work, more than thirty years after the publication of the corresponding volume of the original, is good evidence that it still remains the standard treatise on its subject. At the same time, the fact that M. Petit-Dutaillis, the editor of the French edition, has found it necessary to append over 130 closely printed pages by way of addition and correction shows that the early part of the book, at all events, has not escaped the ravages of time. The thirty years which have elapsed since it appeared have seen much fruitful research both in England and abroad upon the period which it covers. Continental scholars such as Fustel de Coulanges and Meitzen and in this country Maitland, Seebohm, Round, Vinogradoff, and others have added greatly to our knowledge of the origin and early history of English institutions. The results of this research so far as it had proceeded in Stubbs' lifetime were very imperfectly incorporated by him in the successive editions of his book. Moreover, as M. Petit-Dutaillis points out in his preface, the study of these institutions is now approached from a standpoint different from that which was taken by Stubbs and his contemporaries. Some portions of the first volume of the "Constitutional

History" have, therefore, become obsolete and others require correction and readjustment.

Teachers and students of English constitutional history have long been embarrassed by a text-book which, while indispensable as a whole, is in many points out of date. Hitherto they have had to go for newer light to a great variety of books and periodicals. English historians were apparently too much engrossed with detailed research to stop and sum up the advances that had been made. It has been left to a French scholar to supply the much-needed survey. M. Petit-Dutaillis, who was, at the time when he brought out the first volume of his edition, Professor of History in the University of Lille, but has quite recently been appointed Rector of the University of Grenoble, had already shown an intimate and scholarly acquaintance with certain periods of English history in his "Etude sur la vie et le règne de Louis VIII." and in his elaborate introduction to the work of his friend André Réville on the Peasants' Revolt of 1381. The twelve "additional studies and notes" in which he brings the first volume of the "Constitutional History" abreast of more recent research meet so obvious a need and, in their French dress, have been so warmly welcomed by English scholars, that it has been thought desirable to make them easily accessible to the many students of history who may not wish to purchase the rather expensive volume of the French edition in which they are included.

M. Petit-Dutaillis willingly acceded to the suggestion and has read the proofs of the translation. The extracts from his preface, given elsewhere, explain more fully than has been done above the reasons for and the nature of the revision of Stubbs' work which he has carried out.

As M. Petit-Dutaillis observes, in speaking of the French version of the "Constitutional History," the translation of books of this kind can only be competently executed by historians. It has in this case been entrusted

to a graduate of the University of Manchester, Mr. W. E. Rhodes, who has himself done good historical work. I have carefully revised it, corrected, with the author's approval, one or two small slips in the French text, substituted for its references to the French translation of the "Constitutional History" direct references to the last edition (1903) of the first volume of the original, and added in square brackets a few references to Professor Vinogradoff's "English Society in the Eleventh Century," which appeared after the publication of the French edition. The index has been adapted by Mr. Rhodes from the one made by M. Lefebvre for that edition.

JAMES TAIT.

THE UNIVERSITY,  
MANCHESTER,  
*September 8th, 1908.*

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## EXTRACTS FROM THE AUTHOR'S PREFACE.

THE French edition of the "Constitutional History" of William Stubbs is intended for the use of the students of our Faculties of Arts and Law . . . The "Constitutional History" is a classic and the readers of the "Bibliothèque internationale de Droit public"<sup>1</sup> have seen it more than once quoted as a book the authority of which is accepted without discussion. It seems desirable, however, to emphasize the exceptional merits of this great work as well as to draw attention to its weak points and, as it is not an adaptation but a translation—complete and reverent—that is given here, to explain why we have thought some additions indispensable . . . All that we know of Stubbs inspires confidence, confidence in the solidity and extent of his knowledge, the honesty of his criticism, the sureness of his judgment, the depth of his practical experience of men and things. Despite the merit of his other works, and especially of the prefaces which he wrote for the *Chronicles* he edited, Stubbs only showed the full measure of his powers in the "Constitutional History." It is the fruit of prodigious labour, of a thorough investigation of the printed sources which a historian could consult at the period when these three bulky volumes successively appeared. It is an admirable storehouse of facts, well chosen, and set forth with scrupulous good faith. The word "Constitution" is taken in its widest sense. How the England of the Renaissance with its strong Monarchy, its House of Lords, its local institutions, its Church, its Nobility, its towns, its freeholders and its villeins was evolved from the old Anglo-Saxon Britain,

1. In which the translation is included.

this is the subject of the author's enquiry. With the exception of diplomatic and military history he touches upon the most diverse subjects. His book is at once a scientific manual of institutions and, at least from the Norman Conquest onwards, a continuous history of every reign. Mr. Maitland has called attention to the advantages of the plan which by combining narrative and analysis allows no detail of importance to escape, and gives a marvellously concrete impression of the development of the nation.<sup>2</sup>

Does this imply that the perusal of the "Constitutional History" leaves us nothing to desire? The French who have kept the "classical" spirit and reserve their full admiration for that which is perfectly clear, will doubtless find that his thought is very often obscure and his conclusions undecided. This is really one result of the vast erudition and the good faith of the author. This honest historian is so careful not to neglect any document, so impressed with the complexity of the phenomena that he does not always succeed in disposing them in an absolutely coherent synthesis . . . .

But inconsistencies of view and the relative obscurity of certain passages are not the only fault which impairs Stubbs' work. There is another, at once more serious and more easily remedied, a fault which is particularly felt in the first volume. The book is no longer up to date. The chapters dealing with the Anglo-Saxon period, especially, have become obsolete on many points. The revisions effected by Stubbs in the successive editions which he published down to his death, are insufficient. They do not always give an accurate idea of the progress made by research, and they are not even executed with all the attention to details which is desirable. Although the author had not ceased to be interested in history the task of revision obviously repelled him. The "Constitutional History" has grown

2. Maitland, *Eng. Hist. Rev.*, xvi., 1901, p. 422.

out of date in yet another way. Stubbs wrote history on lines on which it is no longer written by the great mediævalists of to-day. He belonged to the liberal generation which had seen and assisted in the attainment of electoral reforms in England and of revolutionary and nationalist movements on the Continent. He had formed himself, in his youth, under the discipline of the patriotic German scholars who saw in the primitive German institutions the source of all human dignity and of all political independence. He thought he saw in the development of the English Constitution the magnificent and unique expansion of these first germs of self-government, and England was for him "the messenger of liberty to the world." The degree to which this optimistic and patriotic conception of English history could falsify, despite the author's scrupulous conscientiousness, his interpretation of the sources, is manifest in the pages which he devoted to the Great Charter. Nowadays when so many illusions have been dissipated, when parliamentary institutions, set up by almost every civilized nation, have more openly revealed, as they developed, their inevitable littlenesses and when the formation of nationalities has turned Europe into a camp, history is written with less enthusiasm. The motive of the deeds accomplished by our forefathers are scrutinized with cold impartiality, minute care is taken to grasp the precise significance which they had at the time when they were done, and lastly the economic conception of history exercises a certain influence even over those who do not admit its principles. Open the "History of English Law" of Sir Frederick Pollock and Mr. Maitland, the masterpiece of contemporary English learning, written twenty years after the "Constitutional History" and note the difference of tone.

This French edition being intended for the use of students and persons little versed in mediæval history, it was necessary to let them know that the work is not

## PREFACE

always abreast of the progress of research and we have thought it possible to furnish them, although in a very modest measure, with the means of acquiring supplementary information . . . <sup>3</sup>

I have specially written for this publication a dozen studies and additional notes. Some of these lay claim to no originality, and their only purpose is to summarize celebrated controversies or to call attention to recent discoveries. In others a study of English history of some duration has allowed me to express a personal opinion on certain questions. The problems most discussed by the scholars who are now investigating the Anglo-Saxon, Norman, and Angevin periods have thus been restated with a bibliography which may be useful . . .

M. Bémont, the Frenchman who has the best knowledge of mediæval England, has been good enough to read the proofs of the additional studies.

CH. PETIT-DUTAILLIS.

3. M. Petit-Dutaillis proceeds to state that he has added to Stubbs' notes references to works and editions by French scholars "which he was unacquainted with, or at least treated as non-existent," and has referred the reader to better editions of English Chronicles and other sources where Stubbs was content to use inferior ones, or where critical editions have appeared since his death.

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I.

THE EVOLUTION OF THE RURAL CLASSES  
IN ENGLAND AND THE ORIGIN OF THE  
MANOR.

AT the end of the Middle Ages, rural England was divided into estates, which were known by the Norman name of *manors*.<sup>1</sup> The manor, a purely private division,<sup>2</sup> a unit in the eyes of its lord, did not necessarily coincide with the township or village, a legal division of the hundred and a unit in the eyes of the king; but, except in certain counties,<sup>3</sup> the two areas were normally identical. In each of his manors, the lord of the manor retained some lands in demesne, which he cultivated with the aid of labour services, and he let the remainder in return for fixed dues, to the tenants, free or villein, who formed the village community.<sup>4</sup> Agriculture and cattle-rearing

1. The term is not absolutely general. At the end of the 12th century it is not used in the Boldon Book, the land-book of the Bishop of Durham; the rural unit, in this document, is the *villa*, though in reality the manorial organisation existed. (Lapsley, in *Victoria History of the Counties of England, Durham*, i, 1905, pp. 262, 268.)

2. Maitland, *Select Pleas in Manorial Courts*, 1889, i, p. xxxix.

3. In the counties of Cambridge, Essex, Suffolk, Norfolk, Lincoln, Nottingham and Derby, and in some parts of Yorkshire, the village was frequently divided between three or four Norman lords, at least at the date of *Domesday Book* (Maitland, *Domesday Book and Beyond*, 1897, pp. 22-23). The co-existence of several manors in the territory of one village sometimes brought about the partition of the village; or on the other hand it persisted, and was the cause of frequent disputes; see on this subject Vinogradoff, *The Growth of the Manor*, 1905, pp. 304 sqq.; *Villainage in England*, 1892, pp. 393 sqq.; Maitland, *Domesday Book and Beyond*, pp. 129 sqq.

4. See the description of the manorial organisation in Vinogradoff, *Growth of the Manor*, pp. 307 sqq., and *Villainage*, pp. 223 sqq. [Cf. also his *English Society in the Eleventh Century*, 1908, pp. 353 sqq.] Mr. Maitland has published an excellent monograph on the Manor of Wilburton in the *English Historical Review*, 1894, pp. 417 sqq. Numerous monographs of this kind would be very useful.

were carried on according to the system of the un-enclosed field, the open field.<sup>1</sup> In the manor there were several fields alternatively left fallow or sown with different crops.<sup>2</sup> Each of these fields, instead of belonging as a whole to a single tenant, was divided, by means of balks of turf, into narrow strips of land, whose length represented the traditional length of furrow made by the plough before it was turned round. The normal holding of a peasant was made up of strips of arable land scattered in the different fields, customary rights in the common lands, and a part of the fodder produced by the meadows of the village. Once the harvest had been reaped in the fields and the hay got in in the meadows, the beasts were sent there for common pasture. Every one had to conform to the same rules, to the same method of rotation of crops; even the lord of the manor, who often had a part of his private demesne situated in the open field.

Whatever progress individualism had made in the 13th century, the inhabitant of a village was a member of a community whose rights and interests restricted his own, and which, in its relation to the lord of the manor, still remained powerful.<sup>3</sup> Common business was discussed periodically in the *hall* of the manor, and the villeins, the English term for the serfs, attended the *halimot* just as much as the free tenants; although the villeins were in a majority, the free tenants were amenable to this court in which we see the peasants themselves "presenting" the members of

1. The English open-field system has been often studied. The starting point is Nasse's essay *Zur Geschichte der mittelalterlichen Feldgemeinschaft in England*, 1869. F. Seebohm revived the subject in his celebrated book, to which we shall have to refer again: *The English Village Community*, 1883, pp. 1 sqq. See *ibid.*, pp. 2 and 4, the map and sketch made from nature—for there still exist some relics of these methods of cultivation. Cf. Mr. Vinogradoff's chapter on the Open-field System, in *The Growth of the Manor*, pp. 165 sqq.; Stubbs, i, pp. 52 sqq., 89 sqq.

2. For example: corn—barley or oats,—fallow.

3. See Vinogradoff, *Growth of the Manor*, pp. 318 sqq., 361 sqq. and passim; *Villainage*, pp. 354 sqq.

the community who had done their work ill. The reason is that the community as a whole was answerable to its lord. Sometimes, moreover, the village, like the free towns, farmed the dues and paid a fixed lump sum to its lord. It was, then, a juridical person.<sup>1</sup> Finally, the village had its share in local government, police and the royal courts of justice.<sup>2</sup>

Thus the English manor, like a French rural domain of the same period, was dependent on a lord; and the lord claimed dues from his tenants and day-work to till the land which he cultivated himself. But the customs to which the exercise of the right of ownership had to defer, the methods of husbandry and pasturage, the importance of the interests of all kinds entrusted to the peasants themselves, showed the singular strength of the English rural community.

What was the origin of this manorial organization, of the usages of the open field, of the condition of the freeman and villeins, of this village community which had the rights of a juridical person and formed the primordial unit of local government?

The question of the origin of the seignorial and manorial system, which, in the history of the whole of the West, is a subject of controversy, is particularly obscure and complex in England, because England underwent only a partial Romanisation which is imperfectly known, and the exact extent and character of which it is impossible to estimate.

The "Romanists" and "Germanists" of the other side of the Channel engage in battles in which analogy and hypothesis are the principal weapons; and the projectiles are not mortal to either of the two armies.

The Germanists deny any importance in the develop-

1. We adopt on this point the views of Mr. Vinogradoff, *Growth of the Manor*, pp. 322 sqq.

2. Stubbs, *Const. Hist.*, i, pp. 88 sqq., 102, 115, 128, etc.













































































































































