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British Borough Charters 1307–1660

This volume is a continuation of Adolpus Ballard's study of medieval borough charters, *British Borough Charters 1042–1216*, continued in *British Borough Charters 1216–1307*, edited by Professor James Tait. Martin Weinbaum was an American historian who worked closely with Professor Tait during a stay in Manchester between 1933 and 1938, publishing this further continuation in 1943. Weinbaum discovered that after 1660 borough charters lost the individuality present in the medieval period, and this led him to end his analysis at 1660 instead of at 1835 as Ballard had planned. As a result of this increasing uniformity, Weinbaum also adopted a radically different scheme compared to the previous volumes, discussing the spread of uniformity in a shorter first section. An expanded second part provides a brief description of charter rights for individual boroughs, arranged by county, showing examples of increasing uniformity and listing where these examples can be found.

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British Borough Charters 1307-1660

EDITED BY
MARTIN WEINBAUM

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TO PROFESSOR
JAMES TAIT

PREFACE

A five-year stay in Manchester, from 1933 to 1938, enabled me to devote my full attention to a study of British Municipal History. It was only natural that such a study was undertaken in close co-operation with Professor Tait. Under his guidance I approached its problems and sources and collected numerous materials for a continuation of a work that he himself had once continued: Ballard's *British Borough Charters*. In the first phase of my extensive preparation, I also gathered additional valuable information from Mary Bateson's Collectanea, which are in the custody of the History School of Manchester University and which Professor Jacob, as head of the History Department, kindly put at my disposal.

While I record my profound indebtedness to the above three names and to the Alma Mater Mancuniensis, I can only briefly mention the great number of friends in Manchester and London and elsewhere who gave advice or had suggestions to offer for further investigations. I especially would like to thank the many library officials in Manchester who helped me hunt for the hidden treasures of Local History.

I am particularly grateful to the Syndics of the Cambridge University Press who accepted the manuscript for publication, and to the officials of the Press whose patience must have been tried hard by the delays that long distances, and the war, brought with them.

The book follows the plan of the previous volumes of *British Borough Charters*, but not without some changes, which are explained in the Introduction.

A final word of gratitude goes to Mr Walter Porges, a graduate of the University of Chicago, who undertook the compilation of the Index.

MARTIN WEINBAUM

Chicago
October 1940

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ABBREVIATIONS

(for further identification see Bibliography)

B.B.C. *British Borough Charters.*
C.Ch.R. *Calendar of Charter Rolls.*
C.P.R. *Calendar of Patent Rolls.*
C. St. Pap. Dom. *Calendar of State Papers Domestic.*
Conf. Roll. Confirmation Rolls of the P.R.O. London.
conf. confirmation.
Hist. MSS. Com. Rep. *Historical Manuscripts Commission Reports.*
Ir. Rep. Municipal Corporation Commissioners, *Reports of Ireland.*
J.P. Justice of the Peace.
Lett. & Pap. Henry VIII. *Letters and Papers of Henry VIII.*
Lib. Mun. *Liber Munerum.*
M.P. Member of Parliament.
P.R.O. Public Record Office, London.
Report of 1835. Municipal Corporation Commissioners, *Reports of England.*
Rot. Parl. *Rotuli Parliamentorum.*
R.M.S. *Registrum Magni Sigilli Regum Scotorum.*
Sc. Rep. Municipal Corporation Commissioners, *Reports of Scotland.*

The names of English kings are abbreviated in the traditional manner: Ed. for Edward, Jas. for James, etc.

INTRODUCTION

I. ARRANGEMENT OF MATERIALS

THE TWO VOLUMES of *British Borough Charters* edited by Mr Ballard and Professor Tait and covering more than two and a half centuries, from 1042 to 1307, were inspired by the desire to lay surer foundations for municipal studies than the *Municipal Corporations Reports of* 1835 had been able to provide. They were indeed part of that great work carried out by the generation of Charles Gross, F. W. Maitland and Miss Mary Bateson, which can be regarded as a comprehensive undertaking to retrace the history of British institutions generally and of local self-government in particular. Both volumes accurately fixed the dates and evolution of rights and defined the relations of groups of privileges. By a system of rubrics similar to that adopted by Pollock and Maitland in their *History of English Law* and by Miss Bateson in her *Borough Customs* the contents of the charters were broken up into their constituent parts so that the essential elements of civic organisation became apparent. Consequently, the *British Borough Charters* together with the *Borough Customs* actually furnish a complete survey of the legal and constitutional groundwork of British municipalities.

As they do not go beyond the early stages of urban growth and at the other end there are the *Reports of the Commissioners of* 1835, the greatest merit of which consists in an elaborate description of the status of boroughs on the eve of the Reform period, it seems justifiable to attempt a continuation of the *Charters* in order to link up the story of the beginnings with the much-laboured topic of the "rotten boroughs".

Not that the original volumes had been composed without vision of the close borough as the final result, but a separate volume is obviously needed to reflect the transformation of the extensive diversity reached about 1300, into the concluding stage of a national system which underlies the legislative steps of the nineteenth century.

Those who know the uneven character of the information supplied to the Commissioners of 1835 will welcome a further collection of charters to rectify and amplify the *Reports* with regard to the intervening period. Furthermore, the vast number of the local studies published during the last century calls for such a compilation to render them fruitful for more general purposes.

But, although the incentive to the task may seem convincing, it will be worth our while to consider two objections which might reasonably be raised to such a plan.

The first refers to the value of charters as historical materials; the second arises out of the changed nature of the charters and is less vital, since it only affects methods of treatment.

Charters as historical materials are of undisputed significance during the formative period of civic growth, the argument runs, and the relative scarcity of other materials which, later on, flow from the routine activities of a more developed burghal administration, naturally enhanced the importance of original charters in the eyes of the historical student. But with the growth of other materials the later charters lose weight. Plea rolls of all descriptions and municipal correspondence are adduced to illustrate the waning importance of charters in urban history.

After all, however, the charters of any given borough were the still recognised landmarks of civic history even during the centuries after the heyday of new foundations and the drafting of new clauses had passed. The burgesses valued their charters, and certainly not only the oldest ones, as the most precious proofs of their legal existence. In other words, historical and practical reasons concur in favour of the plan proposed.

There remains the less fundamental doubt whether the later developments in the character of town charters do not call for a different treatment. It is here that we enter the proper area of the subject of this section, "Arrangement of Materials", and the answer must be that it is necessary to revise the scheme applied in the previous volumes. The old arrangement cannot be continued. There is also the question of fixing a time limit.

It has been decided to adopt a complete change of plan. Instead of a classified and verbatim survey of all the clauses contained in the charters of the period there is given a chronological and topographical calendar of digests. An index to, or compendium of, the charters is the aim of the new volume.

It has long been recognised that the reader of the previous volumes was at a loss when he wished to consult them for the coherent story of any particular borough. But for the study of early municipal growth a subject arrangement preserving the actual wording of the charters was more urgently needed. Printing the charters in full was out of the question, and neither that nor summaries would have served the same purpose.

By the beginning of the fourteenth century, however, municipal history has reached a different phase which justifies the abandonment of

verbal quotation, and that consideration forced the editor to revise the old scheme.

It will be admitted that with the irrevocable victory of routine work in all branches of the central government machine there is less need to weigh differences of expression in all utterances of the Chancery; borough charters make no exception to that rule. Thus no particular purpose would be served by clinging to the original plan of noting slight changes in the wording of grants. The logical alternative to the verbatim recital is the modern calendar as it has been successfully adopted in the series of Public Record Office publications. That form at once relieves our collection from the pressure to be experienced if the old arrangement were to be followed, and such calendars of borough charters may be arranged under their respective local headings.

This then is the arrangement chosen for the new volume: to present the reader with a brief, but comprehensive précis of the chartered rights of individual British boroughs during three and a half centuries following the close of the preceding volume, all in their respective chronological order and under counties as their natural setting. But in order not to lose the advantage of the old arrangement (i.e. the chance of readily grasping the evolution of whole groups of rights) a much curtailed analytical index is added which serves as a key to the topographical one and will enable the reader to do for himself what the old volumes were exclusively meant to do for him, namely to throw the system of chartered rights into relief.

One consideration helped the editor to overcome his hesitations before adopting this scheme; this was his decision to extend the collection down to the Restoration of Charles II.

Apart from internal reasons presently to be referred to, the choice of the year 1660 as the final point of investigation was supported by its coincidence with the broadening influence on municipal history of state legislation. Of course, there had been regulating Acts of Parliament before that date; as, for instance, Henry VII's Act of 1489 concerning the municipal elections in Northampton and Leicester, and the comprehensive Scottish Act of 1469 which established the rule of self-continuation in civic bodies. But there was a more sweeping meaning behind the Act of 13 Charles II (1661) which created a binding rule for all town councils by basing membership on the oath of allegiance. Municipal politics from then on were closely and visibly knitted together with the fabric of the general political structure and thereby lost much individuality. Actually much of that had been in existence before the accession of Charles II, but not as an express piece of legislation, and the

above-mentioned statute was only the beginning of a continuous stream of similar enactments.

The final stage of a universal and uniform system of chartered rights was reached after our period in the charters of the last years of Charles II and the reign of James II. The perhaps not spectacular, but quite distinct significance of our period as a long drawn-out phase of a preparatory or transitory nature is accentuated by the observation that it was left to a later period actually to develop an imposing number of big cities which were unthinkable without this previous legal and constitutional co-ordination, but still totally rural or in the germ before 1660, and, incidentally, to allow a great number of boroughs still important about 1660 to fall into obscurity after that date.

The change in 1660 is emphasised by two complementary phenomena throwing light on the contents of borough charters.

The one is the essential likeness of conditions as created through and enjoyed under municipal charters by the end of the period under review. Without undue simplification, the development reflected in these charters can be summarised as the universal tendency towards the goal of self-government under the constitutional form of the legally incorporated borough. The actual results varied all over Britain, as they were bound to do, because population, size and economic importance lent a different meaning to the offices, for instance, of mayor and aldermen in London and in some smaller country town, or to their privileges, although they were granted in identical terms. But the legal substance, conveyed by the charters in increasingly uniform language, had nevertheless achieved a very great degree of unity. Historically there was no breach between the charters before 1660 that express the measure of liberty and state interference in a monotonous sameness, particularly noticeable in the charters of incorporation of the seventeenth century, and the wholesale policy of ordering municipal affairs by statute after 1660. But borough charters as such have reached the true end of their historical career by then.

The other phenomenon referred to clinches, as an argument, the first one. Borough charters after 1660 lost not only all individuality, if one goes by the standards of legal and constitutional diversity applicable before 1300, but, what is particularly noticeable, they lacked the formerly indispensable and circumstantial references to previous charters and rights. They impress the student as purposely negligent of precedent and history. A prolonged perusal of borough charters between 1660 and 1688, especially those granted during and after the Quo Warranto proceedings of the eighties of the seventeenth century, has convinced the editor that the Chancery always and everywhere presupposed the

existence of one only pattern of municipal government, commonly called the free and corporate borough, and deliberately excluded recitals in charters of individual and regional characteristics. Acts of Parliament and charters seem to be neatly co-ordinated.

It is therefore evident that our collection conveniently stops short of that phase of complete uniformity. 1660, probably more than 1688, is a turning-point in British constitutional history.

And we can now resume another argument: as all boroughs travel on the same road to a universally recognised goal, it becomes once more clear that the general decision outlined above (to shift the interest from the system to the individual borough) is here supported by a retrospective view from later conditions, which again favours 1660 as an historical landmark. The Restoration, here as elsewhere, inaugurated a blotting-out of medieval inconsistencies, of which the charter was the very instrument and embodiment. It was not the Reform movement of the nineteenth century which rang the death knell of medievalism, but the constant application of state legislation as such, and, in our field, that happens to be particularly visible after 1660.

The actual preparation of this collection was begun with English and Welsh materials. The quotations in every paragraph will make it clear that, wherever possible, the tradition of charters established by the *Reports of* 1835 has first of all been verified with the help of prints and calendars of an official or semi-official nature (e.g. the publications of the Public Record Office). With the progress of the task to the seventeenth century, as many texts, translations or abstracts in modern monographs as possible have been consulted. But, to make sure, in nearly all cases late Confirmation or Patent Rolls of the Public Record Office, London, have been ransacked in order to protect the work against omissions.

These rules, however, had to be modified when the question arose how to deal with Irish and Scottish charters. The irreparable damage done to Irish records in 1922 forced the editor throughout to have recourse to nineteenth-century compilations, which often meant condensing and rearranging the already trimmed excerpts of modern writers and what there was of occasional abstracts, rare prints or translations in monographs.

Also, we cannot close, for our purposes, the gaps in Scottish materials arising from the editorial technique of the *Registrum Magni Sigilli*. But we may derive some comfort from the fact that the excellent modern editions of Royal Burgh Charters and the occasional prints in local histories tend to confirm Mr Ballard's judgment, in his article on the

"Theory of the Scottish Burgh",[1] that uniformity was the essence of Scottish municipal history from the outset, and we do not seem to lose very much by the stereotyped condensations and omissions of the *Registrum*.

Next there is the question of debatable inclusions and omissions. The old difficulties of distinction between full charters and less formal writs led Messrs Ballard and Tait to adopt the standard of general importance as decisive, thereby excluding temporary grants, as e.g. licences for single purposes. Apart from that, the problem was more or less technical.

During the period under review, however, other sources than charters and writs make occasional claims to inclusion, as e.g. Acts of Parliament, when they overlapped with charters. In practice, doubts arising therefrom did not extend the scope of the preliminary search. But in rare cases it seemed advisable to include a number of parliamentary acts or other sanctions of charters or municipal ordinances when they came to be absorbed by later confirmations. In principle, however, this remains a collection of charters.

The foregoing remarks on the nature and chronological limits of our materials must needs be followed up by some more explicit statements on the method of calendaring the charters. Obviously, there could be no hard-and-fast rules. Neither the Commissioners of the *Reports of* 1835 nor those responsible for the *Calendars of Charter Rolls*, to take one prominent publication, ever thought of standardising their abstracts, and it would indeed be impossible to proceed according to a strict plan.

The aim of our collection, however, is to show the spreading of certain general rights, offices, privileges, constitutional formulae, etc., etc. In other words, there had to be a rule, and so it was thought best to condense every item of a grant into one telling word or phrase which contains the legal and constitutional essence and which can be used again in the analytical index.

As we have had already occasion to point out, the task was begun by compiling lists based on the *Reports of* 1835, and it was continued by working on the charters in the Public Record Office publications. The experience gained during that search then helped in handling full prints, translations or abstracts found in other collections or monographs, and eventually in recapitulating the contents of those charters which are summarised here after an inspection of the sixteenth- and seventeenth-century rolls in the Public Record Office, London.

The actual work of gathering together all these materials naturally

[1] In *Scottish Historical Review*, xiii. 16–29.

stretched over years, and thus involved many corrections and repeated searches, and often enough resulted in going over the same ground several times. Consequently, the collection serves the double purpose of listing the contents of the documents and of enumerating the places where they can be found, either in print or in manuscript. Incidentally, the arrangement chosen here disposes of the necessity of devoting part of the Introduction to critical remarks as in the former volumes; all that matter has been relegated to the digests of individual charters.

It goes without saying that such a search could not in every case be pushed to the ideal goal of manuscript inspection of each and every charter. Throughout, regular use has been made of printed materials first and foremost. That inevitably entailed a certain risk. Mistakes or undue curtailments in older abstracts often could not be checked unless they were indicated by supplementary printed information. But the cumulative effect of handling hundreds of similar documents has lessened the dangers of that procedure as far as the wording of digests is concerned.

The most beneficial results of this long drawn-out hunt for digests or renderings of charters are to be seen in the numberless smaller corrections of dates, and dates are the one chief weakness of the, in many ways, still admirable *Reports of* 1835.

Another consequence of throwing the net widely has been to lay weight on the truly important parts of the charters only, i.e. to emphasise the clauses of constitutional significance.

The local historian is rightly and strongly interested in territorial clauses. He will watch with great care whatever refers to specific customs and habits preserved for election days or the beating of the bounds. He will welcome quotations of names. Incidentally, he cannot afford to isolate the charters of the town he is interested in from other contemporary sources.

Our approach is bound to differ from his in all these points. The paragraphs on officials, on law courts, on legal fundamentals arouse our greatest interest and we relegate purely local peculiarities to a neutral rubric like "boundaries".

It is here that our collection, which actually preserves more local unity and individuality than the two preceding volumes, will ultimately impress the reader in a most convincing manner: slowly and gradually a system of borough organisation spreads over the whole country without destroying diversity in minor matters. But major matters like officers, government, judicature, etc. undergo an imposing process of a nation-wide assimilation.

This knowledge, picked up while working on the charters, has directed

the manner of condensation in a great number of cases, especially of incorporations and re-incorporations. We might say that in those long-winded documents all remaining individuality is eventually contained in the clauses on the composition of the governing body. Scotland, as is well known, actually evolved a completely uniform system of "burghs of barony" and of "royal burghs", and, consequently, our collection could adopt stereotyped entries to that effect. The uncertainty over the Irish charters, created by the Dublin fire of 1922 which destroyed the repositories of the Irish Record Office, has, however, made us doubly cautious, and we felt justified in recording slight differences in the great number of incorporation charters about the year 1613 whenever the *Irish Reports of* 1835 seemed to bear them out, although general evidence certainly tends to underline the prevailing impression of uniformity.

A special word may not be amiss on a technicality. Considerations of space have favoured the staccato style of entries like: "2 M.P.s", "gaol", "assize of victuals", etc., but whenever the meaning of a grant would have been obscured by brevity, deviation from that rule has been deemed advisable.

II. COMMENTARY

A comparative study of late borough charters must start with a fair appreciation of the vast phenomenon of interminable confirmations. The first deterrent effect on the student of their numbers is that of a dead weight. An inspection of the legal implications of an incorporation will, however, redress the balance of such a hasty condemnation. After all, the confirmations were the means of securing perpetuity of rights and status before an adequate clause contained in a formal incorporation made them legally superfluous, and even then tradition cherished them for quite a time after they were virtually superseded. They were apt to enshroud the living substance of claimed rights in a vague mist of verbiage and repetitions, and yet they retained some value. How restricted that value was is not so much our concern here. As we deal with charters exclusively and no other category of historical sources, we have to rest content with the fact that grantors and grantees alike carefully avoided giving up this time-honoured device. In the long run the confirmations were all merged in some great re-constitution, usually an incorporation charter, so that their substance was not lost. In other words, they served a very useful purpose.

But having said this much, we shall not be guilty of undue neglect if we devote our main interest to the non-confirmatory charters. And here again some further preliminary remarks may help to clear our path.

(1) *General political impulses and the closer co-operation between central and local government*

During the whole of our period the towns gain in importance, but although their proportionate weight may increase, they still keep a place of minor importance compared with the forces arrayed behind nobility and church. There is, however, a distinct loss of influence on the side of local lords, lay as well as ecclesiastical. Charters reflect this gradual recession of feudal power by the decrease and final eclipse of seignorial charters generally and by the far-reaching changes embodied in clauses relating to mortmain licences and similar matters after the Reformation.

As a whole, the towns benefit from the process of straightening out England, for the central administration had learnt at an early date to profit from their taste for a measure of independence, and thus partly used them as allies in the battle against disruptive forces. The towns, in their turn, proved their indebtedness by loyalty to the central government. The few attempts occurring during our period to break the predominance of centralisation and unity did not start from towns. And eventually the strong control of the crown made the towns instrumental in the tendency towards a national scheme of local government.

That being so, it deserves to be noticed that our lists of charters record an appreciable increase in numbers of chartered towns. Furthermore, beyond the pale of the chartered borough proper there were a number of communities nearing the privileged position without possessing the legal instrument.

The beginnings of the later revolution which was to turn Britain into an urbanised society, where only a fraction of the population was not in the compass of municipal government, were not, as a rule, marked by a relentless rigidity of municipal privileges. Changes were slowly and gradually effected, and often regardless of the proper boundaries of the boroughs.

There was, however, the notable exception of Scotland, where there was a deliberate exclusivism about burghal privileges. It is an interesting aspect of the development of a new and broader basis of national life that the lines of municipal government become identical and uniform in England as well as in Scotland, when the Stuarts ascended the English throne. That dynasty applied home lessons to the wider field of British local government.

Irish development is more in accordance with the Welsh part of our story, in that the English settlers acted as garrisons and outposts in

dangerous zones. Charters show several peculiarities directly traceable to these abnormal circumstances.

Having thus emphasised the flexibility of conditions, we may now turn to describe the forces that helped to transform the highly graded and diverse communities of the reign of Edward II into the widely harmonised corporate bodies of 1660.

In the first instance we should note a closer linking up of central and local government by way of new offices which were introduced by charters.

It is now recognised that the reign of Edward II marked a turning-point in English administrative history, but this is usually traced in the history of central offices only. It will be seen, however, that the boroughs do not escape consequences of this turn to departmentalisation and ramification.

With a natural time lag, the towns experience the fruit of closer and planned state interference in the course of the fourteenth century, in the shape of the newly introduced office of the Justice of the Peace, himself a standing official.

That the reign of Edward II possibly witnessed a last preparation for such a move might be inferred from a belated application of the unstable and decaying machinery of an eyre in London in 1321. Eyres disappear from the scene about the same time elsewhere and the justices of the peace take over tasks and duties of the old justices itinerant. Justices of the peace make their appearance in borough charters later in the fourteenth century.

The municipal justice of the peace represents a constant link of an executive and judicial character between crown and town, whereas, before his time, and especially once a borough charter had clarified the position, the crown had restricted itself to a general control by interpreting rights and, of course, safeguarding its financial interests.

The very first stage of the erection of the new office is not clearly reflected in charters, but we meet, towards the end of the century, with an increasingly detailed description of it in borough charters, and it is gradually conferred on one or more civic dignitaries in all towns.

This common solution (to constitute mayor and aldermen justices of the peace) was in keeping with the tradition of compromises. Although the boroughs had been granted free elections in most cases, all civic authority and power was ultimately derived from the crown and, most substantial of all achievements of royal policy, the law administered in municipal courts was to a large extent common law, if perhaps under a disguise, and the remainder, proudly claimed as immemorial borough

custom, was gradually worked into this general texture. Here then, by extending this new national office to the boroughs, the crown forged another link between central and local government and, at the same time, strengthened the responsibilities of the municipalities.

It is a fitting continuation of these considerations when we mention the further universal introduction of, or strong emphasis laid on, the office of Recorder in towns which belongs to the latter half of our period. Clauses relating to it are contained in nearly all borough charters of that period.

These examples show perfectly well the nature and extent of a tendency that affects all the charters: the crown secures only a foothold, if an important one, in the ranks of municipal officials. It strengthens the relationship between central and local government, but it does not rob the municipalities of their tasks and responsibilities.

Another impulse to be noted in this connection, is to make, not a standing office like that of the justice of the peace, but the communities as such, the agencies of governmental policy. This, however, is not easily inferred from the charters. It can be better understood if we consult the *Statutes of the Realm*, as the statutes are one great means of influencing the routine work of local authorities.

Although this point is not strictly pertinent here, we have inserted it because it is complementary to what we had to say about the direct contacts fixed in the charters and established through borough justices of the peace and recorders, and it also reinforces the long-standing tradition of regarding the charter as first and foremost a guiding instrument, while the actual activities and the development of a chartered borough depend on more factors than are evidenced in the clauses of the constitutive documents themselves.

The main conclusion to be drawn from these considerations appears to be negative. The government learnt the value of day-to-day administrative work in towns and paid less attention to direct changes in charters. And the ambition, on the side of the towns, to secure the same clauses and offices, effectively contributed to a levelling of conditions.

A more direct impulse determining the trend of borough charters was the growing inclination of town and crown alike to clarify the structure of civic bodies and the methods of elections which grew up in conjunction with elections to Parliament.

Finally, we must not omit one feature pervading all municipal history, and thereby borough charters, long before as well as during our period—an indispensable measure of decentralised finance.

The medieval, more than the modern state, left many administrative

tasks to local authorities without making them dependent on state resources. This was the outcome of a less centralised economy. But it remains nevertheless true that the state expressly did not want to interfere in the sphere covered by one of the "Five Points" of full-blown incorporation charters, the creation of by-laws.

Historical research has so far not systematically investigated the widely ramified subject of medieval borough finance. It must be studied elsewhere than in charters, which leave freedom of action and responsibility to the municipal bodies during the whole of the period under review.

The numerous murage and similar grants are not only no exception to this rule, but they confirm the view that only vitally important matters like defence questions moved the state to allot one particular form of taxation to the boroughs for a limited purpose. A very comprehensive sixteenth-century example of such a measure (*C.P.R.* 1550–53, 423) even combines with it the intention to create work for poor people.

The foregoing remarks are meant to supply a background and will help, it is hoped, to prevent the study of the charters from becoming isolated. We now propose to deal with three particular aspects of decisive importance in the general development of chartered rights.

(2) *The progress of liberties*

A comparison of rubrics as rubrics (see the analytical index of this volume and compare the chapter headings in the preceding ones) will yield a number of interesting results, because the first point to be established must be to discover whether the process of dropping whole categories indicated in the course of the thirteenth century has been continued and how far it has been pushed.

It can be generally stated that, with slight exceptions, the headings of the previous volume whose obsolescence had been indicated by an obelus tend to remain obsolete. As after 1216, there are no more licences to create boroughs, nor is there a late repetition of a disallowance of a borough charter. Furthermore, papal charters never recurred after their solitary appearance in Durham and Beverley during the twelfth century. We meet with no more grants fixing pre-emption of burgages by the lord of a town. And similarly "Watching Services", "Merchet", "Privileges of Sokens", "Grant of Aldermanry in Canterbury", "Power to elect a justiciar" remain empty categories after 1307.

The exceptions to this rule are few: we can arrange one clause of the Reading charter of 1510 under IV D 5, "Assize of Cloth" and might also assign the London charter of 1640 to this same category. There are

occasional "Schedules of Tolls" (VA 5), and the not infrequent erections into counties imply the power to elect sheriffs (VII 1).

But a perusal of the permanent gaps reveals either the temporary nature of such an exceptional rubric or its irrelevance in a general scheme of rights. There is, therefore, no lasting interest in these rare resumptions of categories.

To some extent the pruning process of the thirteenth century had been offset by an increase of new sub-titles. This repeats itself during our period in some form: for minor matters the further specification in subdivision II B 17 ("Suit of Mill and Oven") is typical; for one major group of problems and their new subdivisions we refer the reader to group IVA: Law Courts. But on the whole these extensions are on a limited scale.

Much more remarkable is the further consistent shrinkage evidenced in new grants, because it means wiping out a rough total of over seventy headings.

The main body of continuously granted rights, however, represented the fundamentals of borough status: independent jurisdiction, free and privileged trade, and expanding hierarchy of officials and governing bodies. On the one hand, more and more towns participated in the spreading of such liberties; on the other hand, the happy possessors evolved a more and more detailed and comprehensive pattern of rights.

To sum up: the progress of liberties was not so much a new extension of the scale of rights, but a concentration and intensification, with the universal acceptance in the end of the corporate and free borough as their constitutional framework and the charter of incorporation as the most comprehensive statement of all attainable privileges.

(3) *The amalgamation of rights*

Municipal rights and liberties had a variety of origins. The few charters granted before the middle of the twelfth century make it clear that royal grants were supplementary to, or based on, existing custom. With the wave of charter-giving from John's reign onwards we can discern more precisely a tendency to copy the rights of certain "mother towns". This process of filiation seems to bring out a general differentiation between a class of better privileged towns and another of a somewhat lesser standing, very marked in Irish municipal history. The less fortunate group became the object of much interest through Miss Bateson's study of the "Laws of Breteuil". They were frequently the model of seignorial grants to newly founded communities.

The better equipped group seems to take shape in the type of "free borough", which makes its appearance in royal charters of the early thirteenth century and has an interesting counterpart in Scottish free burghs. The "free borough" unites features of various groups of privileges and thus shows that the desire to combat regionalism and diversity existed at an early date. Moreover, the influence of the most favoured city of the country, London, made itself felt in a similar direction, in spurring others to follow suit and so obliterating the original differences or group characteristics.

It seems probable that during the reign of Edward I there was a temporary lifting of a further class, called "merchant towns" (*ville mercatorie* or *mercatorum*), a process which would have affected the framing of charters had it lasted; at least some new fusion might have been the outcome of this short-lived experiment.

The opening of the fourteenth century presents the student of municipal history with no fundamental changes in chartered rights as against the days of Henry III. Groups and differences continue to exist, and whatever there is of a system laid down in charters is always conditioned on the functioning of (frequently oral) custom. The crown benefits from this gradation in so far as it draws fees whenever a new charter alters the balance of written and unwritten rights or widens the range of privileges, or when a confirmation guarantees perpetuity.

Furthermore, one line of division continues to cut across all groups of rights and always did ever since charters summed up the political, judicial and mercantile status of boroughs. This was the duality of royal and mesne boroughs.

After developing and spreading municipal liberties, the next important task before the crown (as the decisive factor in the history of borough charters) was, therefore, to amalgamate more formally the different types and classes of boroughs and borough charters.

It would be wrong to assume that the monarchy pursued a set policy to put an end to seignorial charters. The activity in the municipal field of the Black Prince and a good many confirmatory charters of the later Henry V when Prince of Wales prevented this type from dying out too suddenly, although these quasi-royal charters would be no real disproof of the assumption that the crown meant to destroy the type as such. The survival of seignorial charters in Ireland can be explained on grounds of abnormal conditions, while the late incorporation charters given by several bishops of Durham represented no new menace to the unity of the kingdom.

The actual method chosen was the same as before 1307. With the help

of confirmations the crown drew the contents of seignorial charters into the orbit of royal rights.

The following list of towns illustrates the fusion of grants of diverse origins during our period: Grampound, Poole, Sherborne, Tewkesbury, Yarmouth (Isle of Wight), Stamford, Abergavenny, Newport (Mon.), Beverley, Aberystwyth, Carmarthen, St Clears, Carnarvon, Criccieth, Nevin, Pwllhelli, Denbigh, Caerwys, Hope, Cardiff, Kenfig and Tenby; in Ireland, Cashel, Kilkenny and Roscommon, and probably also Clonmel and Youghal; in Scotland, Dunfermline and Haddington, and probably Newburgh.

Royal policy followed the same method in a less conspicuous manner when approving of local statutes or ordinances and thus making them parts of royal charters, too. In one case, the London letter patent of 1319, the whole lengthy document drawn up by the city, became one of the startling grants of an already distinguished series. But, as a rule, this field offers no great surprises. The following list will illustrate the scope of that tendency: Carlisle, Chesterfield, Newcastle-upon-Tyne, Shrewsbury and Scarborough.

Apart from cases of this kind, we have to consider the bulk of administrative business as sanctioned by the borough charter.

To sum up: all the three trends of development that we have watched so far in this commentary are a straightforward continuation of historical precedents. They unify British municipalities and thus contribute to national uniformity.

The real innovation of the period 1307–1660 is the incorporation of boroughs.

(4) *Incorporations*

Incorporation is the terminal point of municipal history during the period under review. It requires a more specific treatment as a legal concept, and an outline of its phases will greatly assist the study of the charters.

It is best understood from its classic formulation during the fifteenth century.[1] Incorporation bestows five main gifts on a borough:

(1) perpetual succession,
(2) power of suing and being sued as a whole and by the specific name of the corporation,
(3) power to hold lands,
(4) a common seal,
(5) authority to issue by-laws.

[1] For further information on this subject see my book, *The Incorporation of Boroughs*, Manchester University Press, 1937.

It is a royal grant (there are hardly more than four or five seignorial incorporations) that raises an existing community to the rank of a legal personality. In many cases, it only expressed conditions that already were tantamount to fictitious corporate existence, but lacked this solemn recognition.

Perpetuity, its first point, assured to the burgesses the permanent enjoyment of all previous privileges enjoyed at the date of the charter. It strengthened the impersonal character of alternating town administrations.

Power of suing and being sued as a whole, etc., freed the respective town officials from a threat and a burden. Prior to express recognition by incorporation, any mayor or alderman was liable to be treated like an ordinary party to a cause while representing his co-burgesses in court. His official standing made no difference. He personally bore punishment which rightfully should have hit the community.

But not only did the king's courts hold him personally responsible, his fellow-citizens followed the same rule. In case of financial damage resulting from his conduct of office, his income, property and fortune bore the brunt of reimbursement.

This injustice was removed by the declaration of the community as a legal entity. And another danger, this time to the town as such, was successfully banished. Mistakes of civic officers, pleading on behalf of a town, did no more harm to a civic cause. Municipal status had thus been lifted to a higher plane.

Power to hold lands had long been a much coveted objective of boroughs. To take two outstanding examples: defence and the proper housing of even the most modest administration were placed on a sound basis only after a borough could acquire land for the "corporation". With the landslide in property after the Reformation, the desire to take over church land often proved an incentive to secure incorporation.

A common seal was often the earliest gain from among the five points, long before jurists talked of a fictitious community. It effectively symbolised perpetuity and it bound all the burgesses.

Lastly, the authority to issue by-laws signified greater internal power. British boroughs were more closely controlled by the monarchy than continental towns. But when the crown had established its centralised system, it gladly left local matters to local decisions and even used town governments as royal agencies.

The "Five Points" covered all the important issues between central and local government. They settled uncertainties and they made conditions generally alike. They furthermore systematised borough privileges.

The supreme consequence of this systematisation was that all existing and future rights would be deduced from this fundamental quality of being an incorporated borough. Other consequences were to regard local custom as a subdivision of a national scheme, to derive authority exclusively from royal power and to emphasise oligarchical trends because they readily fulfilled the requirements of offices and corporate bodies as to personnel.

While all this was true after the attainment of incorporation, it is worth inquiry whether incorporation came about in a quick and decisive manner.

Our charters tell us only indirectly of hesitant preparations for such a comprehensive step as the grant of formal incorporation. We would perhaps not expect a reflex of the growth of theory in their preambles, but we might have come across brief reports that described the events immediately leading up to the grant of the charter. All this is lacking. The indirect tale of the progress toward incorporation is contained in the slow gains of all borough charters from 1307 to the time of the above-quoted classic formulation of the "Five Points".

Certain jurisdictional privileges were extended and rounded off to county status. Joint commitments and undertakings accentuated corporate activity. But interestingly enough, the towns that secured these points by charter, were not the first to receive the novel grant of a formal "community" by a subsequent charter. The first two recipients of such a fictitious personality, Coventry and Hedon, were furthermore far from being the greatest boroughs of the kingdom.

Precisely for that reason (i.e. that they reflect average and not exceptional conditions), we have to stress the start from a highly abstract grant of a "community". In the case of Coventry the abstraction revealed the yet distant goal of territorial and administrative unity: local earl and monastic prior seriously disrupted urban life. In Hedon future expansion rested on legal chances as much as on actual growth and commercial importance. In both cases theory would pave the way for more specific and practical demands later on.

Both these charters (they date from 1345 and 1348) precede by about a hundred years the well rounded-off grants of Henry VI and Edward IV. They contain the simplest formula of an incorporation. How then are we to account for the intermediate development?

In the first place, it takes a long time before one really great municipality is allowed to translate into practice the tendency towards territorial unity to be perceived behind the more obvious motives of the Coventry townspeople. In 1373, Bristol leaves its double position within two

counties, Gloucestershire and Somerset, and gains the status of a separate county. The language in the charter of that year does not yet use the word "community" or the metaphor of one newly created "body". But the results of the grant need such a sanction by abstraction more manifestly than the size of Coventry and Hedon would have justified.

Such a theoretical clarification was, however, under way and particularly favoured by the crown.[1] In 1392, a statute casually mentioned the status of a "commune perpetuel" as a desirable accomplishment and a prerequisite to preferential treatment when towns sought a lenient interpretation of the statute of mortmain.

Lawyers must of necessity have thought of towns as corporate bodies by historical evolution, if not on the strength of legal definition. To make the abstract notion of incorporation an indispensable element of municipal government, there was needed not only the further elevation of the leading boroughs and an all-round prosperity, but also more specific interest in towns for a modernised theoretical basis.

The growth of this interest was presumably retarded by general political unrest through another half century, particularly through foreign entanglements. Prosperity, however, grew in spite of, and with, wars.

The example of York, Newcastle-upon-Tyne, Norwich and Lincoln must have impressed the smaller towns. All four secured county status before Henry VI's accession to the throne. The charter of York used the metaphor of a "corpus" and that of Norwich did pioneer service in another direction: it declared that the change of nomenclature inherent in a grant of county status would not affect the city privileges. Thus prospective petitioners for incorporation needed no longer fear the legal niceties always possible when a change of name and status occurred.

We have thus far detailed the early history and original meaning of incorporation. We finally turn to an evaluation of its rôle from the middle of the fifteenth century down to 1660.

Up to 1440 incorporation had been evolved as a legal principle. Its contents were fully detailed in the Hull charter of that year and the theoretical implications remained the same ever after.

It is a different story with incorporation as a process of organisation. Legal abstraction, centring in fictitious personality, needed a long period of experimenting thought and education. Nor did it matter, in a way, that theory took its time to come abreast with practice. Not so in the case of the body or "corpus" of burgesses. They had existed and acted as a corporate entity from the origin of any settlement, whether recorded or not. Therefore, the legal perfection of corporateness came along at a

[1] C. Gross, *The Gild Merchant*, i. 94, n. 3.