

KINGS, BARONS AND
JUSTICES

*The Making and Enforcement of Legislation in
Thirteenth-Century England*

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Chapter 1

THE MAKING OF THE PROVISIONS OF WESTMINSTER: THE PROCESS OF DRAFTING AND THEIR POLITICAL CONTEXT

On 24 October 1259, towards the end of a session of parliament, the Provisions of Westminster were read out in Westminster Hall in the presence of King Henry III, many of his earls and barons and a large number of other people.¹ The Provisions of Westminster were, by any reckoning, a major piece of legislation. No contemporary text of the Provisions numbers its clauses, but in the conventional modern enumeration first devised by William Stubbs and still used by scholars the Provisions consist of twenty-four clauses.² The final text of the Provisions, as subsequently copied and sent out to the counties, and probably also as initially read out at Westminster, makes no direct mention of the session of parliament. It does, however, ascribe the making of the legislation to a meeting of the king and his magnates at Westminster (meaning a parliament) held a fortnight after Michaelmas (the week beginning 13 October) in the year of grace 1259 and in Henry III's forty-third regnal year.³ The date is probably the date parliament opened.

The Provisions directly reflect the exceptional political situation which existed at the time of their enactment, and the degree to which the king had agreed, or been compelled, to surrender the control of his administration to a group of his opponents, drawn from the baronage. They do this by speaking (in the preamble) of this legislation as having been 'made' and 'published' not just by the king but also by his magnates, and by ascribing them not just to the 'common counsel' but also to the common 'consent' of both king and magnates.⁴ This language does more than just reflect the political and administrative situation at the time of the enactment of the Provisions. It is also a faithful reflexion of the

¹ *De Antiquis Legibus Liber: Cronica Maiorum et Vicecomitum Londoniarum*, ed. Thomas Stapleton (Camden Society original series vol. 34, 1846), p. 42.

² SSC, pp. 390–4. This is the enumeration used in the text of the Provisions edited and translated below in Appendix I at pp. 413–27.

³ See the preamble to the text of the Provisions in Appendix I at pp. 414–15. The quindene of Michaelmas (13 October and perhaps the following week) was when the parliamentary session opened.

⁴ Appendix I, preamble, at pp. 414–15.

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circumstances which underlay their genesis and the prolonged process of drafting and revising successive versions of the legislation prior to their eventual official promulgation in October 1259. The Provisions of Westminster were, as will be seen, the end product of a process which had begun over a year and half earlier, in May 1258, when the king had agreed to the reform of his realm by a Committee of Twenty-four. This chapter locates the Provisions of Westminster within their immediate political context as part of the reform process and tracks the process by which the final text of the Provisions of Westminster as published in October 1259 emerged. The following two chapters will then look at the content of the individual clauses of the Provisions and place them in their wider social and legal context and also trace the way in which the texts of the individual clauses changed and developed during the course of the drafting process.

THE ESTABLISHMENT OF THE COMMITTEE OF TWENTY-FOUR

On 2 May 1258 Henry III had issued letters patent announcing that he had promised the magnates of England by means of an oath taken on his behalf by Robert Walerand that

the state of our kingdom shall be put in order, corrected and reformed by twelve of our subjects belonging to our council who have already been chosen and by twelve other of our subjects, chosen by the magnates . . . as seems to them to be most fitting to the honour of God, our faith and the benefit of our kingdom . . . and that whatever shall be decided by the twenty-four chosen by both sides and sworn for this purpose, or by a majority of them, we will observe inviolably, wishing and ordering that their decisions be observed inviolably by all others.⁵

It was this concession made by Henry III to his magnates which marks the beginning of the process that was to lead some eighteen months later to the enactment of the Provisions of Westminster of 1259. A second set of letters patent issued on the same day appears to explain its context.⁶ Henry had summoned his magnates to a parliament in London in early April and

⁵ *DBM*, pp. 74–6 (I have modified their translation at various points). The Tewkesbury annalist suggests that the oath had been taken on 31 April: *Annales Monastici*, ed. H.R. Luard (5 vols., Rolls Series, London, 1864–9), 1, 164. For a suggestion that this part of the Tewkesbury annals was written from a news-letter received from an eye-witness and as to the possible identity of this eye-witness see D.A. Carpenter, 'What Happened in 1258?' in *War and Government in the Middle Ages: Essays in Honour of J.O. Prestwich* (Woodbridge, 1984), pp. 106–19 at pp. 110–12. It is Matthew Paris' account of the parliament which provides the additional detail that the oath was sworn at the altar and on the bones of Henry III's favourite saint, St Edward: *Matthaei Parisiensis Chronica Majora*, ed. H.R. Luard (7 vols., Rolls Series, London, 1872–84), v, 689.

⁶ *DBM*, pp. 72–5.

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had asked them for their assistance in furthering the *negocium Sicilie*, the papally sponsored plan to displace the Hohenstaufen and place Henry's younger son, Edmund, on the throne of Sicily. For this Henry needed both money and soldiers.⁷ The magnates had eventually promised that they would indeed support a royal request for financial aid to be submitted to the 'community of the realm' (*communitas regni*), an expression which apparently refers here to a body including representatives of the counties, but they had imposed two conditions which had to be met before they would do so. The pope would have to agree to some modification of the agreement he had made with Henry for the *negocium Sicilie*. The king would have to agree to the establishment of a Committee of Twenty-four to make necessary reforms in the 'state of the kingdom' (*status regni*) and would have to wait until this Committee had completed its work before making his request.⁸ This second set of letters patent also makes it plain that it was envisaged that the work of the Committee would be completed no later than Christmas 1258.⁹ Until recently, historians have generally accepted the picture presented by these letters patent at face value. They have explained the king's capitulation in terms of his desperate need for money to avoid the personal excommunication and the interdict of his kingdom threatened by Pope Alexander IV for failure to meet the financial terms agreed for the *negocium Sicilie* in 1254.¹⁰ It has, however, recently been suggested that Henry may well have known that Alexander was likely in practice to be more flexible than he sounded. The papal threats were, it is argued, aimed not so much at the king as at his subjects and were intended primarily to loosen their purse-strings.¹¹ If this really was the case, then it is unlikely that it was the papal threats which forced the king's agreement to the Committee of Twenty-four and it is much more likely to have been something else. It was really force, or at least the threat of force, it is argued, that brought about the king's surrender.¹² This reading of the evidence relating to the three-cornered relationship between king, pope and barons is by no means implausible. It also seems quite possible that the threat of force did play some part in

⁷ For the literature on the *negocium Sicilie* see Carpenter, 'What Happened in 1258?', p. 107. The Tewkesbury annalist mentions a royal request for a third of both movables and immovables and suggests that this demand was put to the magnates on around 28 April: *Annales Monastici*, I, 163.

⁸ This latter condition is only spelled out in the first set of letters patent: *DBM*, pp. 76–7.

⁹ They also make it clear that if a papal legate came to England during this period he was to play a part in the Committee's deliberations.

¹⁰ Treharne, *Baronial Plan*, pp. 59–65; Powicke, *Henry III and the Lord Edward*, pp. 371–7.

¹¹ Carpenter, 'What Happened in 1258?', pp. 107–9. Carpenter also suggests that Henry must have known that the conditional nature of the magnates' agreement to support the king's request for a subsidy made it unlikely that any subsidy would in fact be granted, so that the king obtained little, if anything, in return for his concession: p. 109.

¹² *Ibid.*, pp. 109–12.

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securing the king's agreement to the Committee of Twenty-four. But it is also difficult, in view of the letters patent of 3 May, not to believe that the king's wish to place his second son on the throne of Sicily also played at least as important a part in that decision. Henry knew that he needed the financial and military support of his subjects if the kingdom of Sicily was to be conquered for Edmund. He may even have been willing to pay the high price of agreeing to the Committee of Twenty-four in the hope that, if he did so, that support would indeed be forthcoming.

There is also a puzzle about the magnate demand for the reforming Committee of Twenty-four. It has been suggested that it was intense magnate dislike of the king's Poitevin half-brothers that was the real motor driving the demand for a reforming Committee. During the years prior to 1258 they had monopolised royal patronage and had behaved in a manner both arrogant and violent and had relied on the king's tacit support in doing so.¹³ There can be little doubt that dislike of the Lusignans was a major factor in creating a united magnate opposition that included many *curiales* in April and May 1258. Yet the demand for a reforming Committee and the supposed reason for it seem ill-matched. A general reform of the *status regni* was hardly required if all that was needed was the downfall, and perhaps the exile, of the Lusignans. It seems rather more likely that the demand is to be explained by something else. There was perhaps already some kind of commonly understood linkage between reform of the *status regni*, through the remedying of general grievances and abuses, and the granting of taxation by the *communitas regni*, of a kind that is certainly observable in later medieval parliamentary practice. The magnates may have warned the king that there was no chance of getting the *communitas regni* to agree to the subsidy he was seeking unless he agreed to some such arrangement. If that is so, then the magnates may well not themselves have had any particular grievances or abuses in mind when they made the demand but may simply have been pointing out to the king that the remedying of grievances was a *sine qua non* for getting the county representatives to agree to taxation.

THE WORK OF THE COMMITTEE OF TWENTY-FOUR

The Committee of Twenty-four did not set to work immediately. The first set of royal letters patent issued on 2 May make it clear that their first meeting had by then already been arranged. It was not, however, to take place until the second week of June and in Oxford.¹⁴ It was also arranged

¹³ *Ibid.*, pp. 112–17.

¹⁴ The date fixed for the meeting was one month after Whitsunday (9 June) but this should not perhaps be taken too literally.

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either then or soon afterwards that the session of parliament meeting in London should also be adjourned to Oxford to resume at about the same date.¹⁵ Once it had met, the Committee of Twenty-four quickly agreed to a number of significant changes in the machinery of central royal administration.¹⁶ First in time (by the third week of June) came the revival of the office of justiciar, albeit in a significantly altered form and with rather different responsibilities from those which the holder of the post had previously possessed. Hugh Bigod was appointed the first holder of the newly revived post and was probably appointed by the Committee of Twenty-four itself. Then came the replacement (by the end of the first week of July) of the existing members of the king's council who had been chosen by the king himself with a fifteen-man royal council whose members were chosen by four electors nominated by the Committee of Twenty-four,¹⁷ and the establishment of the responsibility not just of the justiciar but also of the chancellor and of the treasurer to this new council. There was also a new limitation on the period during which each of these major office-holders could hold their offices and the imposition of additional restrictions on the chancellor's power of independent initiative. The Committee of Twenty-four also provided for the holding of regular parliaments at three fixed times each year and for the attendance at those parliaments not just of the new royal councillors but also of a group of twelve men apparently chosen on the spot by those attending the Oxford parliament and who were henceforth to represent the wider *communitas regni* at these regular meetings of parliament.

The Committee of Twenty-four also began the process of reform of local government and administration and the creation of a machinery to remedy grievances against local officials. The sheriffs of individual counties were in future, they decided, to be drawn solely from the 'vavassours' of those counties; they were to hold office for no longer than a year; and they were to be paid expenses by the king. The existing castellans of royal castles were replaced by new men chosen by the Twenty-four. To ensure continuing conciliar control of castles for the next twelve years, these

¹⁵ *Matthaei Parisiensis Chronica Majora*, v, 688–9, 695–6. The adjournment was from 5 May to the feast of St Barnabas (11 June).

¹⁶ The most detailed account of these decisions is still that given by Treharne in *Baronial Plan* at pp. 72–6. For the text of these decisions (with cross-references to some of the other relevant documents) see *DBM*, pp. 97–113.

¹⁷ Two of these electors were chosen from among the twelve members of the Committee of Twenty-four who had been nominated by the magnates but they were to be chosen by the twelve members of the Committee of Twenty-four who had been chosen from the existing king's council. The other two electors were similarly chosen from the twelve nominated by the king's council but by the twelve chosen by the magnates. Their choices had to be approved by a majority of the Twenty-four.

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men were only to surrender their castles to men whose appointment had been approved by a majority of the new council. The Twenty-four also decided to appoint four knights in each county to receive and enrol complaints against sheriffs, bailiffs and others and to make all the necessary preparations for these to be heard and determined by the justiciar when he visited their county.

The Committee of Twenty-four seems also to have noted down a number of areas where reform was clearly needed but which required further investigation and thought before specific measures could be put in place. These were the affairs of the Church, the running of the Exchequer (and the management of royal finances more generally), the affairs of the Jewish community and the Exchequer of the Jews, the running of the London mint, the city of London and other towns and cities, the household of the king and of the queen. In almost all these areas what was required was administrative reform, not a change in legal rules, and none of the accounts of decisions made at Oxford mentions even a general decision in favour of making necessary or desirable reforms in the common law.¹⁸

THE 'PETITION OF THE BARONS'

There is, however, other evidence to suggest that reform of the law was among the matters considered, or at least among the matters on the agenda for consideration, by the Committee of Twenty-four under the general rubric of reform of the *status regni* at the parliament of Oxford and that the absence of any mention of law reform in accounts of the decisions reached at Oxford may merely indicate that the Committee knew that such matters needed detailed and careful consideration before any specific reforms could be introduced. This is the so-called 'Petition of the Barons' of which three independent, but related, texts survive.¹⁹ It

¹⁸ The so-called 'Coke' roll mentions a 'remembrance that Religious persons purchase not so much': H.G. Richardson and G.O. Sayles, 'The Provisions of Oxford: a Forgotten Document and Some Comments', *Bulletin of the John Rylands Library* 17 (1933), 291–321 at 317. This decision can be seen as a foreshadowing of what eventually became clause 14 of the Provisions of Westminster which required the religious to obtain the assent of lords before acquiring property from their tenants. It is, however, reasonably clear from the note that no specific decision was taken to enact legislation along the lines eventually adopted and not even clear that the Twenty-four were even agreed that it was legislation that was needed to cope with the perceived problem. See further below, pp. 58–62.

¹⁹ Brand, *MCL*, pp. 327–9, 354–5. Each version has a different number of clauses. The 'standard' text taken from a version of the Burton Annals has the largest number and in citing individual clauses in the following discussion I will refer to them by the numbers assigned to individual clauses by Stubbs (in *SSC* at pp. 373–8) which were also followed by Treharne and Sanders in their edition and translation of the Petition (*DBM*, pp. 76–91).

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was apparently drawn up for the meeting of the Committee of Twenty-four at Oxford in June and in some sense ‘published’ at their meeting. What exactly ‘publication’ means here and elsewhere is not entirely clear. It almost certainly means, as a minimum, read out publicly; it may also imply making available for copying.²⁰

By no means all of the clauses of the Petition seem to be asking, whether explicitly or implicitly, for changes in the law. Some seem only to be looking for a change in government policy, either changes in the way in which the king exercised his rights,²¹ or acceptance by him of restraints on the kinds of claim he made,²² or in the way he granted rights to others.²³ Others seek only the proper enforcement of what are claimed to be the existing law or pre-existing rules.²⁴ A number of clauses describe grievances but do not suggest any specific remedy for them. It is reasonable, for example, to suppose that the framers of clauses 10, 17 and 18 had some kind of legislative remedy in mind when they complained of the religious acquiring lands without the consent of the lords of whom those lands were held (clause 10) and of sheriffs demanding the personal attendance of earls and barons and of the tenants of small parcels of land at the sheriff’s tourn (clauses 17 and 18), even though they do not specifically ask for legislation. It is less clear, but still quite possible, that this was the case with several other clauses of the Petition. Clause 13, for example, complained of the amercement of earls and barons for default of the common summons (failing to appear when a general summons was issued) at sessions of the general and forest eyres when several such eyres were taking place simultaneously in different parts of the country. The complaint might have been answered either by a standing royal instruction to the justices concerned to excuse the absence of those attending eyres elsewhere or by more formal legislation to the same effect.²⁵ Other clauses, however, leave no room for doubt that they are calling for changes in the law which could be achieved only through legislation. This is clearly the case with clause 1 which asked that the law be amended to prevent lords from taking seisin of their tenants’ holdings after their deaths unless they were entitled to wardship and to punish any waste they committed if they did so. Clause 3 was likewise clearly asking for a change in the law to reduce the king’s right of prerogative wardship to a right to wardship over the person of the heir and the lands held by him in chief but not over his other lands. A change in the law

²⁰ Brand, *MCL*, p. 326. ²¹ E.g. clauses 4 and 5, clause 6, clause 16 (part) and clause 23.

²² E.g. clauses 2 and 11. ²³ E.g. clauses 9 and 15.

²⁴ E.g. that part of clause 1 relating to the exaction of queen’s gold on the reliefs paid by tenants-in-chief, and clauses 7, 12, 16 (part), 20, 24, 25 and 29.

²⁵ Other similar clauses are clauses 14, 19, 21, 22 and 28.

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was also what was requested by clause 27. Here the grievance was that when land had been granted in *maritagium* to a husband and wife and the heirs of their bodies the wife was able after the death of her husband to validly grant away the land even when no such issue had been born. The suggestion was to provide the grantor or his heir with a suitable remedy through either a new form of writ of entry or some other kind of writ to secure the reversion after her death. For these reasons it is difficult to estimate with absolute certainty the number of clauses of the Petition of the Barons which either directly or indirectly sought legislation. There were at least six and perhaps as many as twelve. Even if these are less than half the total number of clauses contained in the Petition they do clearly indicate that legal reform was on the agenda almost from the beginning of the reform process in 1258.

Who placed it there? Treharne thought that the Petition as a whole was the work of the twelve baronial members of the Committee of Twenty-four or at least of those members of the twelve who had been in England during the interval between the king's agreement to the Committee of Twenty-four and the beginning of the Committee's work at Oxford in June, and that it was intended as a 'memorandum of definite grievances in administrative and legal matters and in judicial procedure, noted for correction when the barons should have set up the necessary machinery of governmental control'.²⁶ There is, however, no evidence to support this suggestion and it seems inherently improbable. The baronial twelve had not yet been chosen when the king issued his letters patent agreeing to abide by the decisions of the Committee of Twenty-four on 2 May and it seems quite likely that they were only chosen after parliament met in Oxford in the second week of June. They can hardly have drawn up the Petition in advance of being chosen. Even if the twelve were chosen before the Oxford parliament there is still no evidence to suggest that they were holding meetings in advance of the session at Oxford. There is also the negative evidence of what the otherwise well-informed Burton analyst says, and does not say, about the Petition. If it had been the work of the baronial twelve he might have been expected to mention this. He does not do so. Stubbs believed that the Petition was compiled by an undefined group of 'barons' as a 'list of grievances' for redress by the Committee of Twenty-four.²⁷ There is rather more support for this hypothesis. Several clauses of the Petition do indeed state that they are the complaints or suggestions of the 'earls and barons'²⁸ or just of the 'barons'.²⁹ With the

²⁶ Treharne, *Baronial Plan*, pp. 69–70. By 1973 he sounded less confident about this ascription: *DBM*, pp. 4–5.

²⁷ Stubbs, *Constitutional History*, II, 74–5. ²⁸ See clauses 1, 10, 11, 13, 17 and 20.

²⁹ See clause 3.

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exception of clause 1, these clauses do indeed seem to represent specifically magnate grievances and might suggest that the Petition was indeed the work of the magnates present at the Oxford parliament, perhaps much the same group as those who chose the twelve 'baronial' members of the Committee of Twenty-four.³⁰ However, most of the clauses are not put forward specifically in the name of the 'earls and barons' and a number of them seem most unlikely to have been the work of members of this group. Clause 19, for example, is clearly stating a grievance of the 'knights and free tenants', not of the barons or earls, about ameracements for non-attendance at sessions of assize justices. Clause 25 is a complaint about the misconduct of certain magnates and potentates (*magnates et potentiores regni*) in acquiring Jewish debts and then refusing to accept payment from creditors who are described as 'lesser men' (*minores*) and is clearly voicing a grievance of the latter group against some of the earls and barons. It was evidently also such lesser men who were behind clause 18 relating to demands for attendance at the sheriff's tourn from those who held small parcels of land without houses on them, for the earls and barons had their own more general grievance about demands for their attendance at the tourn which was voiced in clause 17. Nor were lesser rural landowners the only non-magnate group to find a voice in the Petition. Clause 26 reads like a complaint of the native merchants of the city of London against the Cahorsins. The co-existence within the Petition of these several different voices, especially when taken in conjunction with the heterogeneity in form of the individual clauses,³¹ suggests that the Petition is probably a general collection of complaints assembled from a variety of sources, which expresses the interests and grievances of a number of different groups. It looks, however, as though the 'earls and barons', perhaps at their meeting in the parliament at Oxford, may have added some kind of collective *imprimatur* to this collection of petitions. This might explain why the demand for legislation to punish the commission of waste during primer seisin, the main demand of clause 1, is presented as having been made in the name of the 'earls and barons', despite the fact that (as drafted) it was of no significance to them other than as a threat to their existing rights.³² The scribe charged with bringing the various complaints together may have begun by making this

³⁰ The Burton Annals text of the Provisions of Oxford records the names of eleven of the twelve men so chosen under the heading 'Chosen on behalf of the earls and barons' (*Electi ex parte comitum et baronum*): *DBM*, p. 100.

³¹ Brand, *MCL*, pp. 328–9.

³² The suggested punishment of such waste by amercement and the awarding of damages was clearly irrelevant to the commission of such waste by the king (the 'chief lord' of all 'earls and barons') and his officials, for neither would be a deterrent in their case.

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demand conform to the overall format of a demand by the 'earls and barons', the group formally submitting the Petition. But he clearly tired of his work and thus failed to disguise the heterogeneous origins of the constituent elements of the final document. The general point, however, is a significant one. The Petition of the Barons is not the work of the small, politically involved group who comprised the baronial members of the Committee of Twenty-four. It expresses the grievances of a number of different, and in some cases much less powerful, groups and their desire for legislative and other changes.

THE CONTINUATION OF THE REFORM PROCESS AFTER THE PARLIAMENT OF OXFORD

The first stage: up to the Michaelmas parliament of 1258

The session at Oxford was the last, as well as the first, meeting of the Committee of Twenty-four.³³ This did not, however, mean a premature end to the process of central and local administrative reform, legal reform and the remedying of grievances, merely that they were to be continued after early July 1258 by other means and by other agencies.

From the first it had been envisaged that it would be part of the role of the new justiciar to go round the country, county by county, hearing individual complaints against sheriffs and other local officials.³⁴ The four knights who were to be appointed in each county to receive such complaints do not, however, seem to have been appointed until late July or early August and by then there had been a change of plan. They were now required actively to conduct enquiries in their counties rather than just passively to receive complaints. They were also now to bring a record of what they had discovered to Westminster for delivery to the council at the octaves of Michaelmas (early October) 1258, in time for the first session of parliament to be held under the new arrangements made at Oxford.³⁵ Even before their work had been completed, Bigod had begun hearing some individual local complaints, though not in any kind of systematic fashion.³⁶

³³ Treharne, *Baronial Plan*, pp. 75–6. ³⁴ *DBM*, p. 98.

³⁵ *DBM*, pp. 112–15. The articles of enquiry given to the four knights are to be found in *Matthaei Parisiensis Chronica Majora*, vi, 397–400. It is not, however, clear whether they were meant to be exhaustive or whether the four knights still had (as their commission suggests) a wider power to enquire into 'all excesses, trespasses and wrongs... done to whatever persons by anyone'.

³⁶ Andrew N. Hershey, 'Success or Failure? Hugh Bigod and Judicial Reform during the Baronial Movement, June 1258–February 1259' in *Thirteenth Century England V*, ed. P.R. Coss and S.D. Lloyd (Woodbridge, 1995), pp. 65–87.

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Administrative and legal reform became the responsibility of the new king's council.³⁷ Some preparatory work on legal reform may well have been done in advance of the Michaelmas parliament. The London chronicle of Arnulf fitzThedmar mentions the Earl Marshal, Simon de Montfort, John fitz Geoffrey (all members of the new council) and unspecified others who had been part of the baronial twelve on the Committee of Twenty-four visiting the Guildhall on 22 July to demand the adherence of the city to the Provisions. He then goes on to speak of the 'said barons' (*predicti barones*) – possibly, but not certainly, the same men as had visited the Guildhall earlier – subsequently conducting daily discussions, sometimes at the New Temple and sometimes elsewhere, 'on the reform of the usages and customs of the realm' (*super usibus et consuetudinibus regni in melius conformandis*).³⁸ Further work was probably also done in advance of the parliament on the reforms proposed at Oxford in the office of sheriff. A detailed code of conduct was drawn up to govern the behaviour of sheriffs while in office and the decision taken that all sheriffs should be required on appointment to promise on oath to observe it.³⁹ The council may also have done some work on the reform of the Jewry. A royal mandate of 8 July talks of their intention to make some such reform on the following 28 July, though no enactment of any kind now survives.⁴⁰

Little is known to have been achieved at the Michaelmas parliament of 1258 itself. The baronial council meeting in parliament did take care to draw up for publication in each county in both French and English a document in the king's name dated 18 October confirming the transfer of responsibility for reform of the *status regni* from the Committee of Twenty-four to the new king's council. The same document also ordered all the king's subjects to take a promise on oath to observe and maintain all the provisions (*établissements*) already made and to be made by the council.⁴¹ The document suggests that the council was already aware of

³⁷ The memoranda of the decisions made by the Committee of Twenty-four at Oxford (the so-called 'Provisions of Oxford') specifically note that the new council was to have the power not just to advise the king 'on the government of the realm and all things touching the king and kingdom' but also 'to amend and redress all matters that seem to them to need redress and amendment': *DBM*, pp. 110–11.

³⁸ *De Antiquis Legibus Liber*, pp. 38–9. It is worth noting that the chronicler uses similar terms when describing the Provisions of Westminster themselves: they were, he says, 'compositionem factam per barones . . . super usibus et legibus regni emendandis': p. 42. John Maddicott doubts whether the reference is to the same group and suggests that the reference is to the whole of the baronial twelve during an afterlife extending beyond the appointment of the council of fifteen: J.R. Maddicott, *Simon de Montfort* (Cambridge, 1994), p. 166, note 41.

³⁹ The wording of the oath is given in the so-called 'Ordinance of Sheriffs': *DBM*, pp. 120–3. The form of the oath is also given in PRO E 159/32, m. 2 and in BL MS. Additional 15668 at f. 32r.

⁴⁰ *CR 1256–1259*, p. 318.

⁴¹ *DBM*, pp. 116–17. The document was issued in French and English and possibly also in Latin.

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the need to manipulate public opinion in the counties in support of the baronial council. That this was indeed the case is suggested even more strongly by a second document also clearly a product of the same session and misleadingly known as the ‘Ordinance of Sheriffs’. This was issued in the king’s name to the men of each county on 20 October.⁴² It apologised for the failure of the reformers to redress grievances as quickly as they would have liked and excused their not having done so. It also held out the promise that from the ‘first amendments which will be made in the first counties to which we will send our justiciar and other wise men’, the men of the county being addressed would be able to derive the ‘certain hope that you will have the like done for you as soon as possible’. They were also told of the new form of oath that the sheriffs were being made to swear and the punishment which awaited those who broke their oath, that sheriffs were now being allowed their reasonable expenses by the king and that none was to remain in office for more than a year. The changes in local administration were thus not just being made but also being publicised, evidently in an attempt to gain favour with lesser men in the localities.

It may also have been at this parliament that a decision was reached which is recorded in the ‘Coke’ roll, that ‘The Justices *et autres sages homes* (and other wise men) are summoned that between that and the next Parlement they should consider of what ill Lawes and need of reformation there were, and that they meet eight days before the Parlement beginne againe, at the place where it shall be appointed to treat etc.’⁴³ Unfortunately, this item comes from a portion of the roll which contains material of various dates between 10 July 1258 and February 1259. The material is in no particular order and the item is itself undated.⁴⁴ The parliament referred to could have been this parliament and the decision one taken at the parliament of Oxford or at its continuation at Winchester, as Treharne and Sanders suggest.⁴⁵ But Powicke is probably right in thinking that this was a decision reached at the October parliament.⁴⁶

⁴² *DBM*, pp. 118–23. ⁴³ Richardson and Sayles, ‘The Provisions of Oxford’, 321.

⁴⁴ For the dating of items 23–33 on the roll see *ibid.*, 6–12 (and note that item 24 belongs to 22 February 1259; item 25 to 28 July 1258 (and succeeding days); item 28 to 4 August 1258).

⁴⁵ *DBM*, p. 12. They attempt to link this with the fact that the parliament actually opened (according to the Winchester annalist) only on the feast of the Translation of St Edward (13 October), suggesting that the opening of parliament was delayed so that the information on abuses brought by the knights to Westminster on 6 October could be ‘analysed by “the judges and wise men” to prepare the way for reforms to be enacted in the coming parliament’: *DBM*, p. 14. But the clause as reported by the Coke roll says nothing of the use of such information. Richardson and Sayles also seem to hint at a similar date for this clause: ‘The Provisions of Oxford’, 295–6 and note 1 on 296.

⁴⁶ Powicke, *Henry III and the Lord Edward*, p. 397. It is, perhaps, relevant that the three justices of the Common Bench (Thirkleby, Preston and Hadlow) were only confirmed in office or appointed

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This shows that from a fairly early stage not only were legal experts involved in the technical business of drafting the future legislation to be promulgated in the king's name by the baronial council but also that they were being given an input into the content of that legislation as well. Although the 'Coke' roll does not say this, it may also from the first have been intended that the justices and others should draw not just on their own experience but also on the written enrolments of complaints collected in the counties and brought to the Michaelmas parliament. It is difficult to see why arrangements should have been made to bring the complaints to the meeting of parliament unless it was envisaged that some such use would be made of them. In practice less than half the counties of England sent returns.⁴⁷ Even so these may have supplied useful material for the reforming legislators.⁴⁸

The second stage: from the Michaelmas parliament of 1258 to the Candlemas parliament of 1259

During the period between the Michaelmas parliament of October 1258 and the Candlemas parliament of February 1259 (more specifically, during the period between the end of Michaelmas term 1258 and the beginning of Hilary term 1259),⁴⁹ Hugh Bigod dealt with presentments from Surrey and Kent and also held sessions in London to deal with individual complaints.⁵⁰ It was also probably during this period that the main work was done on the drafting of the initial, French-language, version of the '*Providencia Baronum*'. This survives only in a single MS. now in Philadelphia.⁵¹ It consists of some eleven clauses. Nine represent initial

just prior to the October parliament: *CPR 1247-58*, p. 652. The council is more likely to have trusted the advice of the men whom it had itself just appointed or confirmed than the men appointed by the previous regime.

⁴⁷ Hershey, 'Success or Failure?', p. 79 and note 90.

⁴⁸ It is unfortunate that only a fragment of one return survives, that published by Jacob in *Studies* at pp. 337-44, but we also know of some of the material contained in the returns for Kent and Surrey from the records of the justiciar's visitations of those counties. There are also some individual entries on Bigod's rolls which deal with presentments made in other counties: Hershey, 'Success or Failure?', pp. 79-81 and note 91 on p. 79.

⁴⁹ Bigod seems to have presided in the court *coram rege* during term time as the court dealt with its normal term-time business.

⁵⁰ Hershey, 'Success or Failure?', pp. 66, 69-70, 83-4.

⁵¹ Philadelphia Free Library, Hampton L. Carson Collection, MS. LC 14.3, fols. 202r-v. For descriptions of this MS. see J.H. Baker, *English Legal Manuscripts in the United States of America, part 1: Medieval and Renaissance* (Selden Society, 1985), no. 162, pp. 57-8 and Brand, *MCL*, p. 337. The text itself is undated, but for the arguments for supposing that it is a preliminary draft of the Latin version of the *Providencia Baronum* published in March 1259 and therefore most probably produced for discussion at the February 1259 session of parliament see Brand, *MCL*, pp. 337-44. The text is printed in Brand, *MCL*, pp. 359-61.

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drafts of nine of the twenty-four clauses which were to constitute the Provisions of Westminster as eventually enacted in October 1259. There is also a draft of a clause on the extension of writs of entry omitted from that enactment but included in the Provisions as reissued in 1263 and 1264 and of a clause on the extension of the availability of the assize of mort d'ancestor which was likewise omitted from the Provisions as eventually enacted but not subsequently revived.⁵²

The Petition of the Barons was plainly the most important single source of inspiration for this draft legislation. It is, however, clear that the drafters saw their task as being much more than simply turning the grievances and demands for remedies contained in the various clauses of the Petition of the Barons into legislation. In most cases they took them as no more than a starting-point for the legislation they drafted. Clause 5 of the draft legislation, for example, on exemptions from attendance at the sheriff's tourn, while clearly related to clauses 17 and 18 of the Petition of the Barons, is much more than simply a translation of those complaints into draft legislation. Clause 17 had complained only about demands for attendance at the tourn by earls and barons. Clause 5 proposed the exemption from attendance not just of members of these two groups but also of abbots and priors and more generally of the tenants of all other sizeable holdings. Where clause 18 of the Petition had complained only of demands for attendance at the tourn by those who possessed small holdings without any residence attached, clause 5 of the draft proposed a much wider exemption. The proposed clause covered not just all of those not resident in the hundred when the sheriff's tourn was held but also those who were resident but who were prevented by sickness or other good cause from attending it. A different kind of change is observable between clause 14 of the Petition and clause 6 of the draft legislation. Clause 14 had complained only about the exaction of beaupleder fines by the justices in eyre. Clause 6 of the draft legislation transformed this into a proposal to prohibit the exaction of beaupleder fines by 'any bailiff', an expression which seems not to cover the fines against which the original complaint had been directed but vastly extends it in other directions. The closest correspondence is between clause 28 of the Petition and clause 8

⁵² Clauses 1 and 2 are preliminary drafts of clauses 1 and 2 of the Provisions; clauses 3 and 4 of clause 3; clauses 5 and 6 of clauses 4 and 5; clause 7 of clauses 6 and 7; clause 8 of clause 8; clause 9 of the clause on writs of entry in the *post* only included in the reissued Provisions; clause 10 of clause 15; clause 11 of a proposal to allow the use of the assize of mort d'ancestor against the alienees of guardians which was not in the end carried out. Thus the draft text has clauses corresponding to each of the first eight clauses of the Provisions as eventually enacted plus clause 15, the additional clause on writs of entry in the *post* and the clause on the extension of mort d'ancestor eventually abandoned.

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of the draft legislation. Clause 28 had asked for a remedy for the difficulties posed for the choice of knights for the grand assize by the king's granting of charters of exemption from jury service. Clause 8 proposed the overriding of such charters and again specifically only in the case of grand assizes. It is also just possible that there is also some connexion between clauses 1–4 of the draft legislation and clause 24 of the Petition. Clause 24 had asked for some remedy against suits newly demanded to county, hundred and liberty courts (*tam ad comitatus et hundreda quam ad curias libertatis*). Clauses 1–4 of the draft legislation were likewise concerned with demands for suit of court. However, they said nothing about suit to county or hundred courts and their concern was with non-franchisal seignorial courts rather than franchisal ones, the type of court apparently singled out in the Petition.⁵³ There is also another and much more plausible source of inspiration for these same clauses. One of the complaints made by the clergy at their council held in the summer of 1258 just prior to the parliament of Oxford had been that ecclesiastics who had been granted land to hold in free alms were being forced to perform suit of court to the courts of the king, of magnates and other lords for the lands they had been given, contrary to the terms of such gifts, unless they could produce evidence of the original gifts and the charters concerned. The council established that if distraints were made in future by the donors or founders concerned or by their heirs or successors they were to face ecclesiastical censures. Similar measures were also to be taken if such suits were demanded by superior lords which had not customarily been performed.⁵⁴ Here we find the same concern with the exaction of suit of court to ordinary seignorial courts and also specifically with the use of distraint to secure its performance. We also find a concern with the rules governing the obligation, and the relationship between the obligation and the terms of the tenant's charter of feoffment. The draft legislation is certainly not a direct borrowing from the ecclesiastical legislation, but the latter makes a more intelligible starting-point for the development of these clauses than does the Petition of the Barons. They were probably intended to provide a secular counterpart to the spiritual remedies that had been proposed by the church council and one that was available to laymen as well as clerics.

⁵³ The term *curias libertatis* is a curious one (one might have expected *curias libertatum*) but the reading is supported by all three texts of the Petition. Were it not for the unanimity it would have been tempting to amend the text to *curias liberas*, which might indeed refer to seignorial courts. Dr Carpenter (personal communication) suggests that the clause may just have been badly drafted and have been intended to refer to seignorial courts.

⁵⁴ *Councils and Synods with Other Documents Relating to the English Church*, vol. II (in two parts) (1205–1313), ed. F.M. Powicke and C.R. Cheney (Oxford, 1964), I, p. 584. A similar complaint had been made in the previous year: *ibid.*, p. 546.

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Of the remaining four clauses, two (clauses 7 and 9) relate to technical legal improvements of precisely the kind we might expect to have been suggested by the judges and other legal experts consulted on matters in need of reform.⁵⁵ Legal experts may also have suggested clause 11 on the extension of the availability of the assize of mort d'ancestor. Clause 10 about the warranting of essoins was, however, concerned with a problem which only arose in local courts and seems unlikely to have been suggested by the legal experts. It looks like a response to a grievance similar to some of the grievances expressed in the Petition of the Barons. Perhaps it was one of the matters brought to the attention of the drafters by the presentments brought to parliament in October 1258.

The third stage: the Candlemas parliament of 1259 and its aftermath

It seems likely that there was a detailed discussion of this draft legislation at the Candlemas parliament of February 1259 and probable that we can ascribe to this parliament a number of the detailed substantive changes which are observable in the revised draft text of the same eleven clauses published in Latin as the *Providencia Baronum* in March 1259.⁵⁶ The most radical amendment and reshaping went into clause 5. As redrafted, it included two additional provisions at the end. One emphasized that even at the tourn ameracements were only to be imposed in accordance with Magna Carta. The other stipulated that no more men were to be required to attend the tourn from among the unfree of each village than was necessary for the holding of inquisitions into the articles of the tourn. There were also significant changes in the portion of clause 5 inherited from the earlier draft. There had clearly been an inconclusive discussion about the position of those who possessed large holdings but did not belong to one of the status categories exempted from attendance at the tourn. Some thought, with the framers of the earlier draft, that they should also gain automatic exemption from attendance unless specially needed. Others thought they should only be exempt if absent from the area where the tourn was being held or prevented by illness or other good cause from attendance. The more general exemption for those with these excuses for non-attendance was also omitted from this revised draft. Two

⁵⁵ These are clause 7 on the shortening of the length of adjournments in cases of dower *unde nichil habet*, darrein presentment and *quare impedit*, and clause 9 on the extension of the writ of entry outside the degrees.

⁵⁶ For the two related MSS. which contain a text of the *Providencia Baronum* and the two other MSS. which contain incomplete copies of the same document see Brand, *MCL*, pp. 335–7, 355–9. Other changes were, however, probably only made in connexion with that process of publication itself: see below, p. 33.

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other significant changes made were those to clause 6, turning it into a general prohibition of beaupleder fines (where the earlier draft apparently only applied to beaupleder fines in local courts), and to clause 8, to allow the overriding of royal charters of exemption from jury service more widely than for grand assizes alone. Most other clauses remained much the same in substance in the revised draft even where the wording had been radically revised.⁵⁷

It is only from an unrelated document coming from the same parliamentary session that we learn that other matters were also already under consideration for legislation as well. Letters patent sealed by the members of the king's council and the twelve representatives of the community at parliament dated 22 February 1259 mention legislation already contemplated not just on suit of court (clearly corresponding to clauses 1–4 of the *Providencia Baronum*) but also on ameracements (too imprecise to identify), socage wardship (*gardes socages*) (probably a reference to what was to become clause 12 of the Provisions of Westminster) and '*ses fermes et autre manere de franchises*' (also too imprecise to identify).⁵⁸ Evidently there was as yet no draft of all of the relevant clauses to place before parliament but the letters patent also indicate that there was some kind of commitment to finalise the process of drafting and enact the legislation by All Saints' Day following (1 November 1259).

The context of these letters patent seems to have been the first real attempt by the king, or by others acting on his behalf, to put the council, which he had been forced to accept, on the defensive, to appeal over their heads to the wider world of the *communitas regni* for support against the magnates. The document clearly sets out each of the reforming commitments which the king had himself already made: that any wrongs committed by his bailiffs should be redressed; that he and his bailiffs would observe Magna Carta; that he would accept the legislation already enacted and the other legislation yet to be promulgated on the subjects already mentioned; that his sheriffs and other bailiffs would take an oath promising to observe the new standards of conduct promulgated at the Michaelmas parliament of 1258. Side by side with these it places parallel commitments which the king's council and the representatives of the community were only now themselves making, and implicitly only

⁵⁷ Clause 1 was revised to make it clear that tenants without charters of feoffment because they had been enfeoffed at or soon after the Conquest could benefit from subsequent quitclaims of any suit they or their ancestors had once performed. In clause 9 the specimen writ of entry in the *post* was revised to make use of three actual names in place of the *cely*, B. and *celuy* of the earlier draft. These were Roger de Mortimer, Peter de Montfort and Roger de St John. It is probably not a coincidence that the first two were themselves members of the king's council.

⁵⁸ *DBM*, pp. 132–3.

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at the king's prompting: that wrongs done by them and their bailiffs both to their own tenants and to their neighbours should similarly be redressed by the justiciar or others and by plaintiffs unless they involved title to free tenement and they would not attempt to obstruct the process in any way or take any revenge for it subsequently; that they would accept the limitations imposed by Magna Carta both in their relationships with their tenants and with their neighbours and in their franchises as well as in their own demesnes; that they too would accept both the legislation already enacted and that yet to come into force; that they would make their bailiffs take a similar oath to that sworn by sheriffs and other royal bailiffs setting out the rules of their conduct while in office and agree that those bailiffs should be liable to similar punishment if they broke the rules.⁵⁹ The reformers were being made to live up to the standards they had imposed on the king. They were also (and perhaps at least as significantly) being cast in an unfavourable light for not having done so already.

Although these letters patent had been sealed on 22 February, it was not until 28 March that they were issued with a covering letter from the king ordering that they were to be read out in every county and hundred court.⁶⁰ It is just possible that the Candlemas parliament of 1259 continued until late March and that a decision to circulate and publicise the letters patent of the council and the twelve was made at the very end of the parliament. The evidence of the king's movements during February and March 1259, however, suggests that the meeting of parliament was probably over by 26 February, for it was then that the king left Westminster for Windsor, travelling on to Wallingford and Reading and only returning to Westminster by way of Windsor, Chertsey and Merton on 20 March.⁶¹ The Latin text of the *Providencia Baronum*, in the form we now have, probably also belongs to the end of March. There is also the contemporary testimony of Matthew Paris in the heading to his incomplete copy of the *Providencia Baronum* in his *Liber Additamentorum* to indicate that the text was 'published' with the king's consent at the New Temple in London in March 1259 and late March (when the king returned to Westminster and when other business done in the Candlemas parliament was also deliberately publicised) seems the most likely time for this to have occurred.⁶² The text had probably been translated during

⁵⁹ They were even made to agree on oath not to promise to support any man who was not their tenant against their lord or their neighbours or others.

⁶⁰ *DBM*, pp. 130–7.

⁶¹ The information about Henry's movements is derived from the published calendars of Chancery enrolments.

⁶² On the dating of the Latin text of the *Providencia Baronum* see Brand, *MCL*, pp. 340–1.

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the interval between the ending of the Candlemas parliament and publication. It was also probably during this period that care was taken to insert into the text a number of separate phrases making it clear that this was only draft legislation, not legislation that was intended to come into immediate effect, and removing other phrases in the French draft which might have appeared to imply the opposite.⁶³ What does ‘publication’ mean here?⁶⁴ Treharne thought it meant no more than ‘read out for discussion’.⁶⁵ This seems unlikely for, as we have seen, the text had probably been discussed a month earlier and translation from French into Latin was a positive impediment to easy discussion of the text. There was probably some formal reading of the Latin text at the New Temple and perhaps a formal announcement that the text was available for copying to anyone who wished to have copies of it or informal arrangements made to allow access to it. It is just possible that there was some formal circulation of the text to the counties. The wording of Matthew Paris’ heading to his copy of the text certainly sounds as if it could be repeating in part the wording of a writ sent out with such a text, though there is no other evidence for this.⁶⁶ The purpose of publication was presumably to show that real progress had been made with the drafting of legislation, even if the legislation was not yet quite ready for promulgation. If we can trust Matthew Paris’ heading, it may also have been intended to associate the king, and not just his council, with the drafting of the reforming legislation. Thus publication of the *Providencia Baronum* in March 1259 may also fit the context of a king determined to reassert himself against his baronial council: the same context which also explains his publication in late March of the letters patent committing the council and the twelve representatives of the community to abiding by similar standards to those they had already imposed on the king.

The fourth stage: from March to October 1259

As has been seen, the French draft text prepared for the Candlemas parliament of 1259 contained draft versions of only nine of the twenty-four clauses which were to constitute the Provisions of Westminster as eventually enacted in October 1259. It seems probable that a similar draft was also prepared of the remaining clauses and of the two other clauses which appear in the penultimate French draft of the Provisions but were dropped from the final Latin text. This was probably prepared for, and discussed

⁶³ *Ibid.*, pp. 337–8, 342.

⁶⁴ For previous discussions of this point see Jacob, *Studies*, p. 80; Treharne, *Baronial Plan*, pp. 133, 135; *DBM*, p. 17.

⁶⁵ Treharne, *Baronial Plan*, p. 135. ⁶⁶ Brand, *MCL*, p. 357.

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at, the June parliament of 1259.⁶⁷ However, no text of this draft is known to survive and there is no evidence this time of any second attempt to translate and publish the amended draft. Nor is there any other surviving evidence to suggest significant reform activity at this parliament.⁶⁸

The next stage in the process of legislative drafting that is represented by surviving evidence is the production of a penultimate French draft of the whole of the Provisions. This seems to have been produced for discussion, amendment and approval at the Michaelmas parliament of 1259 and thus in time for a production of a final text of the legislation in time to meet the promised deadline of All Saints' Day, 1259.⁶⁹ Four independent copies of this penultimate French draft survive plus one crude related translation of the French text into Latin.⁷⁰ Of the sixteen 'new' clauses of which no prior draft survives,⁷¹ six are clearly related to grievances or demands voiced in the Petition of the Barons. Only one (clause 13 requiring seignorial assent for mortmain acquisitions by the religious) is a direct response to a clause in the Petition (clause 10), simply translating the request for legislation into actual legislation. The other five clauses all go some way beyond the suggestions or requests made in the Petition, in a way already familiar from the *Providencia Baronum*.⁷² Clause 10, for example, was clearly in some sense a response to the main part of clause 1 of the Petition. However, the legislation proposed allowed a general remedy (through the awarding of damages in the assize of mort d'ancestor) against any lord who ejected or refused to admit an heir of full age as to whose identity there was no question, not just if that lord committed waste. It also extended the same remedy to the case of the underage heir who had been in wardship to a lord if that heir was then refused entry into his lands by his former guardian, a situation that goes unmentioned in the Petition.⁷³ Two other clauses (clauses 23 and 25) may also be linked to the general complaint in clause 14 of the Petition about the 'many

⁶⁷ This seems more plausible than my earlier suggestion that it was prepared for a 'parliament' said by two chroniclers to have been held in April 1259: Brand, *MCL*, p. 353.

⁶⁸ The only business known to have been discussed at this parliament was the arrangements for peace with France: Treharne, *Baronial Plan*, p. 141. However, for the possible survival of part of the draft prepared for this parliament see below, chapter 5, p. 159.

⁶⁹ The draft probably took the form of a roll: see the reference forward in clause 1 to a later clause 'sicum il est purveu en est roule' in one MS. of this draft: Brand, *MCL*, p. 361.

⁷⁰ Brand, *MCL*, pp. 349–51, 361–7.

⁷¹ Clauses 9–13, 15–25 in the composite text printed in *MCL* at pp. 361–7.

⁷² This was also the case, as has been seen, with most other clauses related to the Petition of which we do have earlier draft versions: above, pp. 28–9.

⁷³ Brand, *MCL*, p. 364; *SSC*, p. 373. Other examples are clause 12 of the draft text which is clearly a response to clause 19 of the Petition (protesting at the summoning and amercing for non-attendance of all the free men of a locality for sessions before justices of assize) but also covered the summoning of jurors for sessions held by escheators, holders of enquiries, justices of oyer and terminer and all others other than the justiciar and the justices of the general eyre; clauses