

A NOTE ON THE CRITICISM OF RECORDS.

By C. G. CRUMP, M.A.

LATE AN ASSISTANT KEEPER AT THE PUBLIC RECORD OFFICE.

THE main trend of historical study during the last half century has been towards a particular form of research, of research based upon original documents ; and a result of this trend has been to insist on the use of records in place of chronicles or histories as the proper source of authority. The conflict of the two schools could be traced in the letters of J. R. Green ; but it is only my intention here to note the fact without comment, and to suggest that there is at present a tendency in the academic world to use record sources rather uncritically. And while I venture on this suggestion, I am not unaware that it is vain to tell a student that he must criticize his records before he uses them ; for in all forms of study immersion must precede notation.

But taking it as facts that at present serious historical study is founded upon original documents, and that most students would regard records as of all original documents the most original, there are two main comments to be made. In the first place, the majority of records are not original documents at all, unless the word original is used in a technical and restricted sense. In the second place, nearly all records are deliberately drawn up in such a fashion as to conceal the character, the opinions and the mental equipment of the writer of them and even of the man who caused them to be written. And the result of these two facts is that no record is ever likely to tell the whole truth ; and that the careless enquirer may easily be led astray, if he relies too confidently upon records.

Now it is, of course, easy to say that all that we mean by the word 'original' is that we have got back as near to the original source as we can, and are not going to trouble about the rest ; and if we are right on this point, that is a very reasonable and practical conclusion,

though one not free from danger. A few instances may make the point clearer. A hasty student coming upon Doomsday Book might jump to the conclusion that it was an original document ; it is, of course, a compressed and rearranged abstract of the original returns made by the commissioners. Those rolls are not known to exist even as fragments ; and even those rolls must have been derivative documents founded on materials whose nature we cannot even conjecture. Again, no Pipe Roll is an original document. In part it is copied from materials, orders for payment, tallies, vouchers of all kinds ; in part each Pipe Roll is a copy from the preceding roll, and the filiation of the text presents problems that can hardly be stated in this paper. And so we might proceed to the conclusion that I would draw, that all records of a formal character and many of an informal character are the result of a definite process of manufacture from materials, which are not always now in our possession.

A critical canon should have a double effect ; it should help a student to avoid error, and, what is more important, point the way to new methods of discovery. The first effect I do not propose to discuss here. But there are two cases in which an attempt to get at the materials which lie behind original records has led me to some results worth having. There is a well-known class of records known as *inquisitions post mortem*. On the face of it they seem simple documents, enquiries by sworn juries, setting forth their answers to a series of questions propounded to them by the chancery through the escheator. Physically a specimen will consist of a writ of enquiry, a statement of the lands of which the deceased person died seised, and of the name and age of his heir ; and if it is complete, there will be a list of the fees and advowsons held under him. It will definitely state that it was taken on the oaths of the named jury on a given date. At first it looks a simple matter ; the escheator would get the jury together, read the writ to them, and take down the inquisition from their sworn statements. And yet there are difficulties.

The jury are a collection of twelve respectable land-holders ; and it is, let us say, the middle of the fourteenth century. How many of them knew Latin ? how many of them could read, let alone write ? If the facts were complicated, and they often were, how did such a jury come to know them ? and how did they manage to come to a common conclusion ? A little consideration seems to suggest that

behind the inquisition post mortem there were the materials from which it was prepared in the escheator's office. In point of fact there can have been only two persons in the story who had the information needed, the escheator and the steward or heir of the deceased person. And they had the information because they had the materials on which they could work. And so the process was probably much as follows; the heir, by his steward, made a written statement to the escheator's office, which checked it by the materials kept there. The two parties came to an agreement;¹ the agreed document in proper form was put before this jury and its meaning explained to them in the vulgar tongue; and only in the most exceptional cases did they play more than this formal part. It may be added that on three points an inquisition post mortem is apt to be incorrect, the age of the heir, the nature of a serjeanty, and the list of fees. The first of these blunders may be due to the jury; the others may be the result of carelessness in the escheator's office.

Now if we accept this view that the part played by the jury was comparatively unimportant, we are driven to consider the materials contained in the escheator's office, and the nature of that office. In the first place, it appears that, as escheators held office for short periods, the records of the office must have passed from the retiring escheator to his successor; and as records are not of much use without a staff, which understands them, the staff must also have persisted to some extent; and it is at least a possible hypothesis and almost a necessary one, that there must have been a permanent site for the office, where the growing mass of records could accumulate in safety. But it is not possible to raise these conjectures above the rank of conjectures, because the wasting influence of time has destroyed these archives beyond hope of discovery. A few relics have indeed survived, whose history is so curious as to deserve description. There is in the Public Record Office a series of inquisitions post mortem known as Exchequer inquisitions, copies sent into the Exchequer by escheators as vouchers for their accounts. Among them may be found a few inquisitions for the fifteenth and sixteenth centuries, taken for the Earl of Pembroke by the escheator of the honour. These documents are intruders in the series, added to it by some archivist, whose energy and sense of logic

¹ For fifteenth century cases, see *Cely Papers*, p. 38; *Paston Letters*, vol. i. p. 53, and p. 529.

exceeded his knowledge and discretion. In reality they are part of the papers of the Perrott family ; members of that family had been escheators of the honour. The seizure of the papers of Sir John Perrott in the reign of Elizabeth brought the archives of the family into the Exchequer ; and energetic logic thrust these waifs into their present home, because they were inquisitions post mortem found in the custody of the Exchequer. They are the only relics of the mass of materials, which must have lain in the offices of the various escheators and formed the materials on which all the inquisitions post mortem taken throughout the country must have been based. Everything else, accounts, drafts, writs, lists and the like seem to have perished.

Turning to the other great local official, the sheriff, there is the same story and the same evidence. The sheriff also had to take and return inquisitions. In particular he was called upon at intervals to enquire into knight's fees. Now any one who will study critically the various enquiries into such fees and connected subjects, preserved in the *Book of Fees* and in *Feudal Aids*, is likely to see certain facts. In the first place, the efficiency of the returns varies from county to county ; in the next place, especially in the more elaborate returns, e.g. those for the counties of Lincoln and Lancashire, there is clear evidence that each return is based on a previous return ; and lastly the returns, especially those for the enquiry of 1212, show that the sheriffs often failed to understand the writs sent down to them, and merely did their best, so far as they could understand the matter. Nor can it be said that the writs are so clearly drafted as to leave them without excuse for some bewilderment. But the difficulties of the sheriff must have been a trifle to those of the juries. Indeed if any one will look at the writ for the enquiry into knights' fees in Lancashire for 1242, and consider what sort of men made up the juries who made the returns and if he will then read the return, he will either marvel at the knowledge of these undistinguished men, or hastily begin to consider, who the expert was who drew up the return, and what materials he had at his disposal. The more he reflects on these points, the less importance he will attach to the familiar phrase 'the inquest by sworn recognitors' and the greater will be his belief in the importance of the expert official and his materials. Not all inquests were taken by sheriffs ; the story of enquiries into the competence and misconduct of

officials is outside my subject. But even there the work of the expert and the nature of his materials need consideration.

And therefore, as in the case of the escheator, so in the case of the sheriff, it is necessary to think of a permanent staff, a permanent store of records and a permanent office. The permanent office is in most cases pretty easy to identify. A very large proportion of the sheriffs had a castle under their control, and in that castle the permanent office was established and its archives kept. As the castle fell into decay, the records were scattered and destroyed; and to-day castles and records seem to have perished with equal completeness. Yet something has remained. Here and there may be found in collections of family papers scraps out of the official papers of the sheriff, quittances of recent date, indentures showing the transfer of certain documents from one sheriff to his successor, and the like. One bit of evidence is more important and bears directly upon the problem of the returns of knights' fees. The admirable canon who drew up the *Liber Memorandorum de Barnewell* not only collected in it matter of great interest and importance, but in one case he told us where he found it. He found it in the Castle of Cambridge, and he copied it into his book that the canons might not in the future have to go to the castle to consult the sheriff's rolls in order to discover their rights and liabilities, if unfair demands were made upon them by the king. And for the happiness of posterity he copied out the whole of the documents which he used, and not only the parts which concerned his own house. Among them he found and copied a roll of all the knights' fees in the linked counties of Cambridge and Huntingdon.

In the face of these rolls it is almost impossible to resist the conclusion that the secret of mediæval inquisitions must be sought in the materials used by the experts who drew them up, and not in the institution of the sworn inquest.

Leaving the materials, we may turn to the expert himself; and here we come to the doubtful ground of human character, the problem which the enthusiastic tiro in the new school of historians desires to avoid, knowing in his conscience that he cannot do so without impoverishing his work. It has already been pointed out that it is the virtue of the official scribe to conceal his own character and opinions; and it is but rarely that he will be carried away by temper or excitement into the abandonment of this virtue. It is said, for instance, that

the secretary of a modern society once laid before his committee a list of the members deceased or resigned in the past year. All was in strict official form save that opposite the name of one deceased member appeared only the laconic note 'In Hell.' In the same spirit the scribe who drew the inquest of 1212 for Lincolnshire, having occasion to speak of the bishop of Lincoln, who had left England at the time of the interdict, calls him ironically 'idem Elias,' meaning 'that prophet' with the obvious omission of a forcible epithet. But these are rare intrusions of temper ; and even in the most revolutionary periods of English history such expressions of personal feeling are uncommon in official records, and for that very reason the student of records is bound to keep in his mind this attitude of repression. On the one hand, it is idle to interpret an official document without reference to the political history of the time ; on the other, it is even more dangerous to confer upon the scribe a political philosophy which he neither possessed nor could understand. A scribe knows what is in his own mind when he writes a record ; there is present to his intelligence the constitutional and institutional system in which he lives ; and his contemporaries possess the same equipment. And our danger lies exactly in the fact that this knowledge he can and will suppress ; and then posterity with a whole new constitutional and institutional system in its mind comes along and finds the record and starts out to explain it ; whence comes trouble.

Of the confusion of thought so arising it would be easy to multiply examples. It is only necessary to study any period whose history has been the source of controversy. The origin and nature of the English church, the Norman conquest of England, the relations between England and Ireland, the separation between England and the United States, the wars of religion in France are all ready to hand as instances. Even in less controversial questions the influence of the personal equation can be studied ; and here the error is often hardest to notice. It is so easy to fail to notice that an institution may keep its name and change its nature, may even persist when all force and power have fallen from it. A protean institution like the king's council may be discussed as though it was a permanent and unchanging institution, and the fact obscured that the right of the king to choose his advisers was the point at issue between the king and his opponents in every crisis of history, not only in England but elsewhere. Nor was the opposition

to the king always the same ; it might consist of the great tenants-in-chief, or of the members of the royal family, or of the majority of the house of commons, or of a collection of great families. And in the process of the struggle the council might shift and change, divide and re-unite, assume new powers and lose them. But during all the struggle the men who wrote the records would be carefully endeavouring to conceal that anything of importance had ever occurred. The stages of the struggle, which began with the mise of Amiens and ended with the 'Bed-chamber plot' in the reign of Victoria, will never be proclaimed in the records of the 'council.' The scanty records of the mediæval council can only be made to tell their whole story, if those who read them keep clearly in their minds the character and mental equipment of the men who wrote them.

A curious instance of the results that may be reached by neglect of these precautions came under my eyes while attempting to discover how far the chancellor had power to issue letters under the great seal on his own responsibility. In the course of this attempt, from which I came out with precisely the same amount of knowledge with which I entered upon it, I became aware that the received doctrine rested upon a document of the reign of Henry IV. in the year 1406.¹ It is not the kind of document which can easily be understood ; and it was drawn up at a time of difficulty, among difficulties which were doubtless well known to the man who wrote it, but were not equally known to all of those who have used it. The king was ill ; there was trouble in Wales ; and the House of Commons under an active speaker, John Tiptoft, were engaged in putting forward all manner of suggestions for the more abundant government of the realm. As the inheritor of the Lancastrian tradition Henry had, of course, a ready reply. He was worn out and broken down and must have a council to assist him ; he must be relieved in his royal person of some of the business. Accordingly an order was drawn up, whereby the council was charged with the general duty of preserving the rights of the crown and seeing to the collection of its revenues, in which tasks they might count on the king's support. In carrying out these duties they are to control and authorize all warrants given to the chancellor, the treasurer, or the keeper of the privy seal ; and the chancellor, the

¹ Rolls of Parliament, vol. iii. p. 572.

treasurer, or the keeper of the privy seal, and other officers, are not to act in these matters save by the advice of the council. But in the matters of charters of pardon of crime, grants of benefices actually void, and appointments to offices, the king will do his pleasure.

The men who drafted this order knew what it meant ; they knew also what it was intended to mean, not always quite the same thing. We have to guess, to guess the answers to a good many questions, and even to guess the right questions to ask. It is not, therefore, a matter for wonder that every historian who has examined this order should have interpreted it differently, and that some of them should have mis-translated it. The first scholar, so far as I know, who dealt with it was Sir Harris Nicolas, a man who obtained and deserved a great reputation. Like many scholars of his time, Sir Harris Nicolas enjoyed a style which in its finer sentences recalls the stately periods of the Papal chancery. He saw in the order the political wisdom of the king, and commented on it in the following laudatory passage.¹ 'A still more remarkable instance of Henry IV's adherence to constitutional principles, and which is, perhaps, the first parliamentary record of the responsibility of ministers of the crown, occurred a few years afterwards.' It is not needful to set out all his description of the order, but the last sentence is noteworthy. 'The chancellor, treasurer, and keeper of the privy seal were not to grant any charters of pardon, or collations to benefices except with the advice of the council.' The meaning of this last sentence is not clear ; but the man who drafted the document would most certainly have declared that whatever Sir Harris Nicolas did mean by it, it was not what he meant. And he might have added that the responsibility of ministers of the crown was not dreamed of in his political philosophy. Sir Thomas Hardy, another great name, seems to come next in the chain of doctors. He was less concerned with constitutional doctrine and the responsibility of ministers than Sir Harris Nicolas, but he was interested in the administration of the chancery. He regarded the document as the expression of a permanent rule of chancery practice applicable at any date, and commented on it accordingly. His style, like that of Sir Harris Nicolas, is a little pontifical.

'That² the chancellor had, by virtue of his office, the power of

¹ *Proceedings of the Privy Council*, vol. vj. p. 146.

² *Rotulis Chartarum*. Introduction, p. vj, note 4.

granting certain charters besides those of confirmation, without the immediate direction of the king, is evident from a proceeding of the privy council in the year 1406, wherein it was ordained, that the chancellor, treasurer and keeper of the privy seal were not to grant charters of pardon or collations of benefices except with the advice of the council, thereby implying that these were the exceptions.' It is difficult to suggest that Sir Thomas Hardy had looked at the document and misunderstood it ; it is equally difficult to suppose that in an unlucky moment he copied Sir Harris Nicolas without looking at the original. Let us choose the most charitable hypothesis, whatever that may be. But in any case the use made of the document would scarcely satisfy the man who drafted it. He would probably complain that his words were mistranslated, and add that in any case it was unreasonable to argue that the chancellor could issue charters on his own authority in some cases, because he is forbidden to do so in others ; and he might go on to protest against the process by which conclusions as to the permanent rules of chancery practice were extracted from an order drawn up to meet an emergency.

When Sir Harris Nicolas and Sir Thomas Hardy nod in concert, it is hard to keep awake. Only men with wicked minds could fail to nod in concert. The author¹ of *The Early Years of Edward III* in discussing the ordinances of 1338, found herself compelled to deal with the powers of the chancellor. 'Already,' she says, speaking of the year 1338, 'were charters of confirmation of liberties issued as matters of course . . . but certain other charters were also obtainable from the chancellor.' And then in a note comes the inevitable reference to Sir Thomas Hardy's note already mentioned. Once more an ordinance of 1406 is used as a definite statement of chancery practice nearly a century earlier. And Sir Harris Nicolas and ministerial responsibility have fallen into the background.

But the end of the story is not yet reached. We have still to see what use Mr. Wylie made of it. He has at least one great advantage over Sir Harris Nicolas and Sir Thomas Hardy ; he had read this document carefully, and with one exception he has translated the French quite correctly. It is his imagination that has led him into strange ways ; he has seen in this ordinance the proof of a great consti-

¹ *The Early Years of Edward III*, by Dorothy Hughes, M.A. A very useful piece of work.

tutional victory won by the House of Commons over the king. It would seem that the king was not endeavouring to lighten his own burdens, to get himself discharged (*deporte*) from part of his duties ; rather the Commons had won their battle ; the king gave way, was personally 'removed' (*deporte*) from all power. The heading of the page speaks of the 'abdication' of the king ; and the fact that the king retained in his own hands all pardons for crimes and all appointments to offices is only mentioned as a matter of minor interest. Mr. Wylie's knowledge of his subject is beyond praise or blame. And yet would the man who wrote that document have been content with this strange construction of it ? It is unnecessary to discuss Mr. Baldwin's uses of this document in detail, as he has simply followed Mr. Wylie.

One thing is clear enough. Sir Harris Nicolas, Sir Thomas Hardy and Mr. Wylie cannot all be right. The wise policy of a constitutional king, the tame surrender of a weak ruler to an encroaching house of commons, and a permanent rules of chancery practice cannot all be found in one brief document. Nor, indeed, could any writer have tried to find them there, had he not fixed his eyes so intently on the writing as to completely forget the writer. It may be said that the method of study here suggested is in many cases impossible ; that the writer and his materials evade us, and escape even conjecture. But to say this is to affirm that history cannot be written from documents at all. Now the very importance of records lies in the fact that only from them can we reconstruct the institutional framework in which men work and live. If we limit our observation to this framework, we miss half our subject, and the most inspiring and interesting side. If we take no heed of the framework, we shall never understand the way in which things happen, and shall be always seeing in history a series of catastrophes, a procession of great men on the throne and good men to the scaffold. Until we can fit the men and the framework together, we can never understand the story that history has to tell ; the story of the interaction between men, with their own characters and passions, and the institutions left to them by their forefathers, while the earth and its fullness or emptiness supplies the stage whereon the story is told. Whether the story is of progress or the reverse, those may say who know. At any rate most children can now deal with those vulgar fractions which a skilled mathematician in the 12th century pronounced to be a subject almost passing the wit of man.