HENRY HALLAM
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THE CONSTITUTIONAL HISTORY OF ENGLAND

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The Constitutional History of England

Enriched edition. Henry VII to George II

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At the heart of Henry Hallam's The Constitutional History of England lies the long, intricate contest by which a monarchy and a people, through parliaments, courts, and public debate, negotiated the moving frontier between prerogative and liberty from the accession of Henry VII to the death of George II, a contest in which legal forms, religious settlements, and administrative practices alternately narrowed and widened that frontier, preserving enough continuity to claim the authority of precedent while admitting sufficient change to prevent the ossification of power and to sustain a political community capable of reform without dissolving its historic foundations.

First appearing in the early nineteenth century, this three-volume work belongs to the tradition of historical and legal scholarship, focusing on the constitutional development of England across the early modern period. Hallam addresses the structures and principles that shaped government between the late fifteenth and mid-eighteenth centuries, attending to institutions rather than biographies and to rules more than episodes. Its setting is the realm of statutes, jurisdictions, and political practice within the English state. Readers encounter a study that stands between legal history and political narrative, composed with a scholar's restraint and designed to clarify how public power was organized and limited.

The premise is straightforward yet demanding: trace, with precision and balance, the gradual formation of constitutional norms as they appear in legislation, judicial

reasoning, and administrative custom across successive reigns. Hallam’s voice is measured and analytic, favoring careful distinctions over dramatic effect. Chapters move deliberately, assembling patterns from dispersed evidence and pausing to weigh competing interpretations. The tone remains formal and reflective, neither polemical nor antiquarian, and the prose pursues clarity more than ornament. The reading experience is cumulative, inviting patience as arguments unfold and encouraging attention to the ways small legal adjustments can transform the texture of public life.

Central themes recur with steady emphasis: the limits of royal prerogative, the authority of Parliament, and the security of the subject in person and property. Hallam examines how institutional checks develop, how jurisdictional boundaries are contested and clarified, and how religious change reshapes political obligation and toleration. He attends to the machinery of governance—councils, courts, and local administration—and to the fiscal and military pressures that test constitutional arrangements. Throughout, the idea of precedent anchors argument, while change is traced in the interpretation of established forms. The book’s themes cohere around the problem of maintaining liberty without disabling effective government.

Hallam’s method prizes documentation and sustained comparison. He brings legislative acts into conversation with judicial practice and administrative usage, noting convergences and departures without forcing uniform conclusions. Patterns are established cautiously, with frequent reminders of local variation and historical contingency. The narrative observes the continuity of institutions while acknowledging moments when pressure,

persuasion, or necessity pushed them toward new purposes. Rather than seeking heroes or culprits, the analysis foregrounds processes—deliberation, petition, adjudication, and reform—and shows how they gradually altered the equilibrium of the state. The result is a study that favors reasoned inference over assertion and structure over anecdote.

For contemporary readers, the book's value lies in its account of how durable constitutional constraints emerge from contested practice rather than abstract design. Debates about executive discretion, legislative supremacy, judicial independence, and the rights of individuals remain familiar, and Hallam's analysis clarifies the institutional conditions under which such debates can be productive. The study illuminates how crises invite expansions of power and how law can channel or resist them, a lesson pertinent to discussions of emergency authority and administrative reach. It also demonstrates the civic importance of procedure and publicity, showing how transparency and accountability sustain confidence in government.

To approach these volumes is to enter a careful conversation about continuity and reform that rewards attentive reading. Hallam does not promise spectacle; he offers a map of institutions in motion, drawn with patience and an eye for consequential detail. The work remains a resource for those who seek to understand how constitutional orders evolve and how the claims of power are moderated by law. Read today, it strengthens historical perspective, refines civic judgment, and supplies a vocabulary for discussing governance with rigor. It invites the reader to consider how inherited frameworks can be adapted without surrendering their animating principles.

Synopsis

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Henry Hallam's three-volume The Constitutional History of England, from the Accession of Henry VII to the Death of George II, first published in 1827, traces the evolution of English public law and institutions between 1485 and 1760. Organizing his analysis chronologically, he examines the Crown, Parliament, the courts, and the established church, and how their relations shaped liberty and authority. Drawing on statutes, state trials, and contemporary political writings, he distinguishes legal forms from political practice, asking how rules were enforced and by whom. The work foregrounds continuity amid conflict, treating crises as moments that redefined jurisdiction, accountability, and the limits of prerogative.

Beginning with the Tudors, Hallam assesses how Henry VII consolidated royal authority after civil strife, using council courts and fiscal expedients to discipline magnates and secure revenue. Under Henry VIII, the break with Rome and royal supremacy over the church transformed ecclesiastical jurisdiction and property, while parliamentary statute became the principal instrument for sweeping change. He evaluates the reach of prerogative courts, the use of treason law, and the countervailing role of the common law. Across Edward VI, Mary, and Elizabeth, shifting religious settlements intersected with questions of obedience, conscience, and uniformity, as administrative centralization advanced and parliamentary sessions grew more frequent.

The early Stuart reigns sharpen Hallam’s central inquiry into prerogative and consent. Under James I, disputes over impositions, proclamations, and the limits of royal authority brought common-law principles into open debate, with judicial assertions of the supremacy of statute over executive will. With Charles I, forced loans, billeting, and emergency claims prompted the Petition of Right, while ship money and the revived activity of the Star Chamber and High Commission tested the boundaries of legality. Hallam follows how parliamentary grievances coalesced into constitutional claims about taxation, arrest, and due process, setting the stage for a confrontation that redefined sovereignty.

Addressing the mid-century upheavals, Hallam treats the abolition of certain prerogative jurisdictions and the rise of parliamentary committees as turning points in institutional control. He surveys the outbreak of war, the extraordinary proceedings against the monarchy, and the constitutional experiments of the Interregnum, including written instruments that articulated executive and legislative powers. The influence of the army, the scope of religious toleration, and the stability of judicial processes receive careful attention. The Restoration, in his account, reestablished monarchy while preserving some statutory gains and administrative practices, leaving open questions about standing forces, taxation, and the independence of the courts.

In the later Stuart era, Hallam considers how legal safeguards and partisan organization matured under renewed kingship. He emphasizes the Habeas Corpus Act as a procedural milestone, the rise of Whig and Tory alignments in the Exclusion debates, and the wider enforcement of religious tests in officeholding. Controversies

over dispensing and suspending powers, together with ecclesiastical prosecutions, press the issue of whether law or prerogative rules emergencies. The settlement following 1688–89 recalibrates authority through statutory declarations of rights, regularized parliaments, and constraints on the military and finance. The lapse of prepublication licensing entrenches a freer press, altering political communication and accountability.

Turning to the eighteenth century, Hallam traces consolidation under the Act of Settlement, notably provisions for judicial tenure and the succession, and explores how annual Mutiny Acts, appropriation of supplies, and national credit strengthened parliamentary control. The Union with Scotland reshaped representation while preserving distinct legal systems, testing principles of sovereignty and uniformity. He follows the emergence of cabinet coordination, ministerial responsibility, and the influence of patronage, with the Septennial Act altering electoral rhythms. Under the first two Hanoverians, questions raised by Jacobite challenges, a standing army, and the reach of treason law illuminate the tensions of stability and liberty.

Across its three volumes, the study advances a sustained argument for understanding English liberty as the product of institutional balance, legal restraint, and contested practice rather than abstract theory alone. By parsing statutes, precedents, and administrative routines, Hallam shows how authority was divided, supervised, and gradually rendered answerable to representative bodies and independent courts. Without reducing events to a single cause, he emphasizes durable procedures—regular parliaments, jury trial, tenure of judges—that moderated power. The book's enduring resonance lies in its method and scope, offering a

framework for assessing constitutional change that continues to inform debates about law, governance, and rights.

Historical Context

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Henry Hallam's three-volume Constitutional History of England traces the evolution of English governance from the accession of Henry VII in 1485 to the death of George II in 1760. The setting is the realm of England (later Great Britain), its Crown, Parliament, common law courts, and established church. Henry VII consolidated royal authority after civil strife, using the Council and prerogative courts such as Star Chamber to enforce order. Fiscal expedients, including bonds and recognizances, strengthened the monarchy. Statute-making revived, and the House of Commons began to matter more in taxation. Hallam situates later controversies within this Tudor framework of centralized, legalistic monarchy.

Under Henry VIII, a constitutional rupture redefined church and state. The Acts of Supremacy and Succession (1534) asserted royal headship of the Church of England, enforced by a new Treasons Act. The Dissolution of the Monasteries redirected wealth and jurisdiction from ecclesiastical to lay hands, while royal ecclesiastical commissions policed conformity. Parliament's cooperation supplied statutory legitimacy for sweeping changes, even amid resistance like the Pilgrimage of Grace. Monopolies and proclamations tested limits of prerogative. Hallam emphasizes how statute and common law grappled with expanded sovereignty, laying foundations for later assertions of parliamentary authority over religion, property, and obedience.

Religious settlement became the constitutional axis under the later Tudors. Edward VI’s regime advanced Protestant reform; Mary I restored papal allegiance and persecuted heresy; Elizabeth I’s Acts of Supremacy and Uniformity (1559) created a via media Anglican establishment. The High Commission, censorship, and royal injunctions regulated belief, while Puritans pressed for further change inside Parliament. Conflicts over purveyance and monopolies exposed friction between fiscal necessity and consent. Council, courts, and counties integrated governance. Hallam reads Elizabethan politics as a disciplined balance favoring order, yet he marks the emergent Commons’ insistence on privileges—speech, elections, and freedom from arbitrary arrest.

The early Stuarts dramatized theory against practice. James I promoted divine-right monarchy and sought union with Scotland, while judges led by Edward Coke curtailed proclamations and upheld common law jurisdiction. Fiscal expedients such as impositions (Bates’s Case, 1606) and benevolences stirred opposition. Charles I’s forced loans, billeting, and martial law precipitated the Petition of Right (1628), affirming due process and parliamentary control over taxation. The Five Knights’ Case and struggles over privilege revealed incompatible claims. After a stormy session, Charles dissolved Parliament in 1629. Hallam presents this period as a contest between inherited prerogative and nascent constitutionalism.

Charles I’s Personal Rule deepened the crisis. Ship money, justified without parliamentary grant, was tested in Hampden’s Case (1637). Religious changes under Archbishop Laud and conflicts with Scotland triggered the Short and Long Parliaments. Statutes in 1641 abolished Star Chamber and High Commission and limited prerogative

taxation. Civil war followed, ending in the king's trial and execution. The Commonwealth and Cromwell's Protectorate experimented with written constitutions, including the Instrument of Government (1653). The Restoration reinstated monarchy in 1660, yet statutes and memory of conflict constrained it. The Clarendon Code reimposed uniformity; the Habeas Corpus Act (1679) secured personal liberty.

Late Stuart politics forged enduring structures. Fears of Catholic absolutism under James II culminated in the Revolution of 1688–89, bringing William and Mary and a redefinition of sovereignty. The Bill of Rights (1689), Toleration Act, Mutiny Act, and Triennial Act (1694) entrenched parliamentary supremacy, regular sessions, and limits on standing armies. The lapse of printing controls in 1695 expanded public debate. The financial revolution—Bank of England (1694), funded debt, excise administration—underwrote a fiscal-military state. The Act of Settlement (1701) secured Protestant succession and judicial tenure; the Union with Scotland (1707) created a single Parliament for Great Britain.

The eighteenth century consolidated party, cabinet, and electoral practice. With the Hanoverian succession (1714), ministers needed sustained Commons majorities, aided by the Septennial Act (1716). Robert Walpole's long tenure exemplified cabinet responsibility amid patronage and contested borough representation. Jacobite risings in 1715 and 1745 tested allegiance to the settlement. Annual Mutiny Acts and appropriation kept the army under parliamentary control. Judicial independence, guaranteed by the Act of Settlement, matured in practice. Religious dissenters gained limited toleration but remained excluded from office by Test and Corporation Acts. Hallam tracks how liberty advanced

through institutions rather than sudden democratic transformation.

Published in 1827, Hallam's study draws on statutes, state trials, parliamentary journals, and contemporary writers to narrate the measured growth of constitutional liberty from Tudor consolidation to early Hanoverian stability. Writing in post-Napoleonic Britain amid debates over parliamentary reform and civil rights, he adopts a cautious Whig lens: wary of arbitrary prerogative and ecclesiastical coercion, respectful of common law, and convinced that balanced institutions check power. His appraisal of party, finance, and judicature implicitly critiques unreformed representation while defending the Revolution Settlement. The work reflects its era's faith in legal continuity as the surest safeguard of freedom.

Constitutional History of England, Henry VII to George II (Vol. 1-3)

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INTRODUCTION

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Few historical works have stood the test of time better than Hallam's *Constitutional History*. It was written nearly a century ago—the first edition was published in 1827—and at a time when historians were nothing if not stout party men. The science of history, as we now know it, was in its infancy; apologetics were preferred to exegesis; the study of "sources," the editing of texts, the classification of authorities were almost unknown. History was regarded as the handmaid of politics, and the duty of the historian was conceived as being, in the language of Macaulay, the impression of "general truths" upon his generation as to the art of government and the progress of society. Whig and Tory, Erastian**[1]** and High Churchman, debated on the field of history. The characters of Laud and Cromwell excited as much passion and recrimination as if they were contemporary politicians. That a history written in such times, and by a writer who was proud to call himself a Whig, should still hold its place is not a little remarkable. The reason for its vitality is to be found in the temperament and training of the author. Hallam was a lawyer in the sense in which that term is used at the Bar; that is to say, not so much a seductive advocate as a man deeply versed in the law, accurate, judicious, and impartial. Macaulay, who was as much the advocate as Hallam is the judge, described the *Constitutional History* as "the most impartial book we ever read," and the tribute was not undeserved. Hallam is often didactic, but he is never partisan. Although a Whig he was by no means concerned, like Macaulay, to prove that the

Whigs were never in the wrong, and, as he shrewdly remarks, in his examination of the tenets of the two great parties in the eighteenth century: "It is one thing to prefer the Whig principles, another to justify, as an advocate, the party which bore that name." No better illustration of his attitude of mind can be found than the passage in which, treating of the outbreak of hostilities between Charles I. and the Long Parliament, he sets himself to consider "whether *a thoroughly upright and enlightened man* would rather have listed under the royal or the parliamentary standard." In these days when, as the distinguished occupant of the chair of Modern History at Cambridge tells us, "history has nothing to do with morality," Hallam's grave anxiety to solve this problem may sound quaint and, indeed, irrelevant; but there is no denying the high purpose, the sincerity, and the passion for truth which characterise the passage in question. To-day the historian's conception of truth is purely objective: his aim is to discover what former generations thought rather than to concern himself with what we should think of them. The late Lord Acton[1] stood almost alone among the modern school of historians in insisting that it is the duty of the historian to uphold "the authority of conscience" and "that moral standard which the powers of earth and religion itself tend constantly to depress." It is more fashionable to contend that the moral standard is relative; that we cannot judge the men of the past by the ethical rules of the present; that conscience itself is the product of historical development. It may be questioned whether this scepticism has not been carried too far. Hallam had no such doubts. For him "the thoroughly upright and enlightened man" of the seventeenth century was not intrinsically different from the thoroughly upright and enlightened man of the nineteenth; the one concession he

makes to time is that the historian is probably in a better, not a worse, position to judge than the men of whom he writes—if only because he is more detached. He condemns the obsequiousness of Cranmer, the bigotry of Laud, the tortuousness of Charles I., the ambition of Strafford, with the same reprobation as he would have extended to similar obliquities in a contemporary. Unless we are to exclude conduct altogether from our consideration and to deny the personal factor in history, we shall find it hard to say he is wrong. Gardiner, the latest historian of the Stuarts, does not hesitate to pronounce similar judgments, though he expresses himself more mildly. Sorel, perhaps the most illustrious of the modern school of French historians and a scholar who spent his life among the archives, has not hesitated—in writing on the Partition of Poland—to speak of the Nemesis which always waits upon such "public crimes."

Hallam's predilection for moral judgments is the more intelligible if we remember that his conception of "constitutional" history is somewhat wider than ours is to-day. He included in it much that would now be called "political" history. One has only to compare his work with the latest of our authorities—the posthumous book of F. W. Maitland—to realise how the term has become specialised. Maitland confines his treatment to the results of political action as they are represented in the growth of institutions; with political action itself he is, unlike Hallam, not concerned. The rise and fall of parties, the issues of Parliamentary debate, the progress of political speculation interest him but little and disturb him not at all. But to Hallam these things were hardly less important than the statute book and the law reports. This liberal view of his subject is not a thing to be regretted. It enables the reader to appreciate the large part played in the development of

the English constitution by those "conventions" which are a gloss upon the law and without which the constitution itself is unintelligible. As Bagehot has pointed out, the legal powers of the king are as large as his actual authority is small. In strict legal theory the cabinet is merely an informal group of ministers of the crown who hold office during the king's pleasure. In fact and in practice it is a committee of the House of Commons dependent upon the support of the majority of the members. The fact is the outcome of a conventional modification of the theory, and this convention is due to the political changes of the eighteenth century and the growth of the party system. In the pages of Hallam these changes receive their due recognition, and without it the development of the English constitution is unintelligible. It was a favourite doctrine of Hallam that so far as the law was concerned the constitution was developed very early and that all that later generations contributed to it was better administration of the law and a more vigilant public opinion. He even goes so far as to say in his chapter in the *Middle Ages* that he doubts "whether there are any essential privileges of our countrymen, any fundamental securities against arbitrary power, so far as they depend upon positive institutions, which may not be traced to the time of the Plantagenets." This is something of an anachronism, but it represents a not unjustifiable reaction against the high prerogative doctrines of writers of his own day. What Hallam, however, was really concerned to prove was that constitutional law in this country rests upon the common law—upon the rules laid down by mediæval judges as to the right of the subject to trial by jury, his immunity from arbitrary arrest, his claim not to be arbitrarily dispossessed of his property, and his right of action against the servants of the crown when he has suffered wrong. In this conception

Hallam was undoubtedly right, and he urged it at a time when no one had made it as familiar as it has now become in the classic pages of Professor Dicey. But Hallam was perfectly well aware that these securities for the liberty of the subject were often abused, that the sheriffs who empanelled the jury were often corrupt and the judges who directed it were not infrequently servile; also that so long as the Star Chamber existed no jury could venture to give a verdict of "not guilty" in a prosecution by the crown without running the risk of being heavily punished. He is not insensible to these abuses and to the length of time it took to correct them, as the reader of the following pages will discover for himself, and he attaches due weight to the constitutional importance of the Act for the Abolition of the Star Chamber. But the truth of his main contention (as expressed in his chapter on "The English Constitution" in an earlier work[2]), that what chiefly distinguished our constitution from that of other countries was the "security for personal freedom and property" enjoyed by the subject, is undeniable. It was not so much the possession of representative institutions as the enjoyment of equal rights at common law that constituted the Englishman's advantage. Maitland[3] has recently pointed this out in language almost identical with that of Hallam when he insists that "Parliaments" or "Estates" were in no way peculiar to England; every country in Western Europe possessed them in the Middle Ages, but what those countries did not possess was a great school of law like the Inns of Court determined to uphold at all costs the claims of the customary law of the nation against the despotic doctrines of the civil law of Rome.

Hallam's attitude towards the constitution was that of Burke—he regarded it with a veneration little short of

superstition. He has expressed himself in his earlier works in words which can hardly fail to provoke a smile to-day:—

> "No unbiassed observer, who derives pleasure from the welfare of his species, can fail to consider the long and uninterruptedly increasing prosperity of England as the most beautiful phenomenon in the history of mankind. Climates more propitious may impart more largely the mere enjoyments of existence; but in no other region have the benefits that political institutions can confer been diffused over so extended a population; nor have any people so well reconciled the discordant elements of wealth, order, and liberty. These advantages are surely not owing to the soil of this island, nor to the latitude in which it is placed; but to the spirit of its laws, from which, through various means, the characteristic independence and industriousness of our nation have been derived. The constitution, therefore, of England must be to inquisitive men of all countries, far more to ourselves, an object of superior interest; distinguished especially as it is from all free governments of powerful nations which history has recorded by its manifesting, after the lapse of several centuries, not merely no symptom of irretrievable decay, but a more expansive energy."[4]

If his language seems extravagant, I may remind the reader that there would have been few in Hallam's day who were prepared to dispute it. England, almost alone among

312 Likely Robert Spencer, 2nd Earl of Sunderland (1640–1702), a prominent English statesman who served in several administrations and was closely involved in court politics under Charles II and James II.

313 The title of a pamphlet mentioned here arguing for repeal of the Test Acts; the Test Acts were laws from the 17th century that required holders of public office to take Anglican communion and effectively excluded Catholics and many dissenters from office.

314 A Latin legal phrase in the text (printed here as 'quo warrantos') referring to writs of 'quo warranto', which were royal writs used to challenge by what authority a corporation or individual exercised certain public rights or offices.

315 Clergy who refused to take the oaths of allegiance to William and Mary after the Glorious Revolution (circa 1689) and were consequently deprived of their benefices; they are commonly called the 'non-jurors.'

316 Abbreviation for The Parliamentary History (often cited as 'Parl. Hist.'), a multi-volume compilation of parliamentary proceedings and debates used by historians in the 18th and 19th centuries.

317 Prince George of Denmark (1653–1708) was the husband and consort of Queen Anne of Great Britain, holding ceremonial naval and court offices though exercising limited political power.

318 A published collection of letters and papers associated with the Duke of Shrewsbury (Charles Talbot, 1660–1718), used by historians as a primary source for late 17th- and early 18th-century government affairs.

319 Refers to the 'Stop of the Exchequer' (1672) when Charles II suspended payments on the Crown's debts, effectively halting interest and damaging public creditors' claims.

320 The Treaty of Ryswick (1697) ended the Nine Years' War between France and the Grand Alliance, restoring several territorial arrangements and bringing a temporary cessation of hostilities in Europe.

321 In the phrase 'carried the broom,' 'broom' is a naval metaphor for sweeping the seas and signifies maritime dominance; the image derives from a 17th-century custom (notably Dutch) of displaying a broom as a victory emblem.

322 The abjuration oath (early 18th century) required individuals to renounce and deny the Stuart claim (King James II and his heirs) and was used to exclude suspected Jacobites from public office and Parliament.

323 A multi-volume set of memoirs by Jean-Baptiste Colbert, Marquis de Torcy (1665–1746), who served as France's foreign minister; these memoirs record French diplomacy and negotiations around the War of the Spanish Succession.

324 Marie Anne de la Trémoille, Princesse des Ursins (1653–1722), a French-born courtier who became an influential adviser at the Spanish court and correspondent in early 18th-century diplomatic affairs.

325 A reference to a specific clause under negotiation in the peace talks during the War of the Spanish Succession (c.1708–1710); contemporaries debated acceptance of this article as part of proposed terms for ending the war.

326 An engagement near the city of Zaragoza (often spelled Saragossa or Saragosa in older sources) during the War of the Spanish Succession; fought in the early 18th century, it influenced the military and diplomatic balance in Spain.

327 A book published in 1717 claiming to record negotiations by a French agent (Mesnager) with English officials about the Stuart claimant; its provenance and authenticity were disputed by contemporaries and later historians.

328 A contemporary term for James Francis Edward Stuart (1688–1766), the Jacobite claimant to the British throne after the Glorious Revolution, whose supporters sought his restoration in the early 18th century.

329 The Riot Act was a statute passed in the reign of George I (commonly dated 1714–1715) that authorised a magistrate to order unlawfully assembled crowds to disperse and made remaining after a one-hour proclamation a felony.

330 Refers to Arthur Onslow (1691–1768), the long-serving Speaker of the House of Commons (in office c.1728–1761) who was respected for his authority over parliamentary procedure in the mid-18th century.

331 A pseudonym used in the mid-18th century for the publication 'Letters on the English Nation'; the essays are attributed in the text to Dr. Shebbeare (John Shebbeare, c.1709–1788), a controversial political pamphleteer of that period.

332 An archaic term (here paired with 'fostering') meaning compaternity or spiritual kinship—a bond like godparenthood that in early-modern Irish society created obligations and alliances sometimes regarded as stronger than blood relationships.

333 A historical term for the area around Dublin that remained under direct English administrative and legal control from the late medieval period into the early modern era; it had special privileges and was often contrasted with the surrounding Gaelic-controlled lands.

334 In ecclesiastical context, describes a parish or church whose revenues (rectory or tithes) had been granted to a lay or non-resident holder (an impropriator), leaving only a paid curate to perform services.

335 Latin shorthand for the two common prayers ‘Pater Noster’ (the Lord’s Prayer, often called ‘Our Father’) and ‘Ave Maria’ (the Hail Mary); here it indicates that people