A RECONSIDERATION OF THE MODUS TENENDI PARLIAMENTUM

GEORGE P. CUTTINO

As a first-year graduate student casting about for background material in connection with a thesis entitled "Some Aspects of the Conduct of English Diplomacy in the Reign of Edward III, 1327-1339," I was introduced to a book by Egon Friedell. The title of it was A Cultural History of the Modern Age. Friedell was a retired Austrian actor, turned historian, who committed suicide after the Anschluss. His book, like Henry Adams' Mont-Saint-Michel and Chartres, is fascinating, provocative, and provoking—the sort of book a beginning student of the Middle Ages should read once and then try to put away along with other childish things. Friedell was convinced that "modern man" began in the year 1348, the year of the Black Death, and he was almost prepared to name the hour and the day. But like many such imaginative reconstructions of an age, Friedell's interpretation contains a grain of truth. The fourteenth century was one of the great historical crucibles in Western civilization. That is why it has always plagued historians; and that is probably why the volume on the fourteenth century in the Oxford History of England was among the last of that series to appear. It is not because we do not know enough about the fourteenth century. Sir Maurice Powicke remarked that had he waited another ten years he could never have written his volume on thirteenth-century England because of the vastness of the material to hand. We find ourselves in the same position: we know too much about the fourteenth century; we know so much that we despair of making generalizations without immediately having uncomfortable mental reservations.

On the other hand, there is no doubt that when we look at the fourteenth century we find ourselves face to face with ideas that, however deeply they may be rooted in the past or influenced by contemporary events, are essentially new and look toward the future. Marsilius of Padua, for example, as Alan Gewirth has shown us, is, with a bow to the Norman Anonymous, a person
with just such ideas. There is, however, another fourteenth-century document that is in some respects even more remarkable than the *Defensor pacis*, and it is this document that I wish to discuss.

I have called this paper "A Reconsideration of the *Modus tenendi parliamentum*," and this title demands some explanation. The *Modus* is the *Dialogus de scaccario* of parliament, the earliest known treatise we have of that institution. It is extant in twenty-five manuscripts (six are translations) that range in time from the end of the fourteenth to the beginning of the sixteenth century, and it enjoys the distinction of having been exemplified, in its Irish version, under the great seal. But, unfortunately, it has been the stepchild of English parliamentary historians. Coke swallowed it whole, but Prynne, calling it a "modern consarsination [temp. Henry VI] by some unskilled Botcher," castigated Coke for his "supertranscendent credulity to believe and affirm." Stubbs followed Prynne, alluding to its "many misstatements" and to its "proved worthlessness," yet he printed a condensed version of it, based on Hardy's edition of 1846, in his *Select Charters*. Pollard was the first historian of parliament to make use of the *Modus*, and he was taken to task by James Tait for having accepted it without reserve, although he had doubted "if the Modus is more scientific than Tacitus' *Germania*." Pasquet stated flatly that "the doubtful authority of that document is well known," and Tout, puzzled by it, called it "Lancastrian" and dismissed it in a footnote. The late Maude Clarke's exhaustive work on the *Modus* opened a controversy rather than settled an issue. In an article, "The Interpretation of the Statute of York," the late Gaillard Lapsley remarked, in a manner reminiscent of that historical gadfly, J. H. Round:

She [Miss Clarke] had convinced herself that the mysterious tract known as the *Modus Tenendi Parliamentum* could safely be treated as contemporary and official evidence as to the nature and organization of parliament and the political views underlying moderate public opinion in 1322. Accordingly she derived from this *ignis fatuus* of parliamentary history the ideal which inspired the Statute of York.

The latest writer on English constitutional history states:

It has been conjectured, for instance, with some plausibility, that a chancery clerk wrote the *Modus Tenendi Parliamentum* at this time, to constitute what must have been an extremely skilful and understanding manifesto for the Lancastrians in 1321.
Now all this acrimonious discussion arises from three points. The first is the actual date of the Modus, which has been assigned by modern writers to the reigns of Edward II, Edward III, and Richard II. The second is the fact that the ideas in the Modus do not tally with the interpretation of the nature of parliament as Maitland is supposed to have conceived it and as McLlwain elaborated it. Third, these ideas appear to most historians of parliament as being too advanced for the times and consequently as not being a true reflection of the actual climate of opinion as it has been conceived. Let us look at these points in turn.

The date of the Modus has now been established beyond all reasonable doubt. Miss Clarke and the late W. A. Morris, in independent studies, came within a year of each other, the former assigning it to the year 1322 and the latter to 1321. Their arguments were perfectly convincing and should have settled the issue then and there, but Richardson and Sayles thought otherwise and assigned to the English version a later date than the Irish which, all are agreed, belongs to the late fourteenth century. Professor Galbraith has dealt with this view completely and finally, and it can now be stated, without pinpointing the date as precisely as did Miss Clarke and Professor Morris, that it belongs to the period 1316-24. We have to do, then, with a treatise from the reign of Edward II, and we have only to remember Tout's Ford Lectures to know that the place of the reign of Edward II in English constitutional and administrative history was not only large, but even crucial for future developments.

Galbraith has done more than fix the date of the Modus; he has, in a most convincing argument, attributed it to a chancery clerk named William Airmyn (alias Ayreminne or Ayermin). As his argument can be buttressed from other sources, we shall have to review the facts of Airmyn's life and career for whatever light they may cast on the ideas expressed in the Modus.

The Dictionary of National Biography states that he "was descended from an ancient family settled at Osgodby, Lincolnshire," but this is obviously a slip, for Airmyn is in Yorkshire, near Osgodby, Hemingborough, Cliffe, and Barlby, all of which places furnished the loconyms of prominent chancery clerks. He was, to quote the latest scholar who has been concerned with his career, "one of the greatest of the ecclesiastical statesmen of the fourteenth century . . . and one of the most important and influential men in the reign of Edward II. He was one of that large,
close-knit group of clerks from the diocese of York which was
the dominant influence in the royal administration throughout
the reign.” 17 Like so many others, he began his career late in the
reign of Edward I, probably in the chancery, rather than in the
exchequer, as the Dictionary of National Biography states. By
1307, he had sufficiently attracted the attention of his superiors,
and consequently the royal favor, “to have in the forest of Galtres
[co. York] four oaks fit for timber of the king’s gift.” 18 By the
middle of the next reign Bartholomew de Badlesmere, steward of
the king’s household, in a letter to the cardinal priest of St. Ciriac
in Thermis, referred to him as “discretum virum . . . dicti
domini regis clericum specialem et cancellarie sue secretarium,”
and the king himself, writing to the cardinal deacon of St. Adrian,
called him “dilectus clericus et secretarius noster confidentis-
simus” and later extolled his virtues in flowery terms of flattery
to Pope John XXII. 19 To William himself he wrote in 1321:
“Nous vous sauons moit bon gre de la diligence et peniblete qe
vous mettez en noz busoignes deuers vous. . . .” 20 Two weeks
before Airmyn’s death, in the following reign, Edward III, “having
regard to his manifold services . . . and to the great place he has
held for king and realm,” granted that after his death the execu-
tors of his will should have free administration of his goods,
money, jewels, animals, and other things.” 21 Perhaps the sincerest
compliment paid him came from one of his colleagues, John Wal-
wayn, who as a chancery clerk probably knew him well: “uir
prudens et circumspectus et, precipue in hiis que tangunt can-
cellarium domini regis, efficax et expertus.” 22

His career as king’s clerk was more successful than most. “He
was,” Tout tells us, “the man to whom the foremost place was
generally given among the keepers of the great seal, when the cus-
tody of the seal was put into the hands of a commission of chanc-
cery clerks. Moreover, he was the second chancery clerk to com-
bine the offices of keeper of the rolls of chancery and keeper of
the domus conversorum in which these rolls ultimately found
their home.” 23 As such, he was responsible for the transfer of the
rolls of parliament to the custody of chancery. 24 He later (in 1322)
became keeper of the privy seal and, in the reign of Edward III,
treasurer. 25 He died on March 27, 1396, at his house at Charing
near London. Sidney Lee, who wrote the account of him for the
Dictionary of National Biography, remarked at the end: “The
old verdict on his career, which stigmatised him as ‘crafty, covet-
ous, and treasonable, ’ seems substantially just.” But the most recent scholar who has examined the details of his life has finally, after more than six hundred years, successfully acquitted him of these charges.\(^26\)

Two aspects of Airmyn’s career need not concern us except for their implications. He was a notorious pluralist \(^27\) (but then most king’s clerks were) \(^28\) who became bishop of Norwich. As such, he must have been well versed in canon law, although there is no proof that he was a doctor of it, as were quite a few of his colleagues in the king’s service. He was intimately concerned in the negotiations with France growing out of the War of Saint-Sardos, and incurred the king’s displeasure for his part in arranging the terms of the treaty that ended it.\(^29\) The point in this connection is that any English envoy who had to deal with the tangled feudal relationship between the duke of Aquitaine and his overlord had also to know his Roman law, since he was almost inevitably bound to be pitted against the skilled experts of the Parlement de Paris.\(^30\)

As to Airmyn’s economic status there is no doubt. In the thirty-three years covered by entries on the Close Rolls pertaining to his monetary transactions, he borrowed only £366-6/8,\(^31\) which he repaid, and he made 159 loans, the total of which was in excess of £10,000, of which he was able to collect a little less than half before his death. His debtors included the king, clerks, merchants, priors, knights, and citizens of London.\(^32\) This sum, in terms of modern purchasing power amounts, at a conservative estimate, to more than $1,000,000. Airmyn held lands in the counties of Kent, Hertford, Cambridge, Westmoreland, Northampton, York, Essex, Somerset, and Lincoln, some by temporary grants of issues from the king, and others in his own right.\(^33\) He was, to say the least, a wealthy man long before he became bishop of Norwich. He must have been interested in stable government, and the fact that Badlesmere thought highly of him suggests that he had cast his lot with the “middle party,” headed by Pembroke, rather than with the Lancastrians. At any rate, had he lived in a later age and had he not been a cleric, he would surely have been one of the landed gentry.

Airmyn’s activities in parliament are, of course, of especial interest. He first appears in parliamentary records as proctor of the Abbot of St. Augustine’s, Canterbury, at the Hilary Parliament of 1306 held at Carlisle.\(^34\) He was summoned, among justices and others of the council, to the Lenten and November Par-
liaments at Westminster in 1313. He was present in council at Northampton on October 22, 1314, in connection with the hearing of a suit between the abbot of Croyland and Thomas Wake. In the York Michaelmas Parliament of 1318, he received expedited petitions touching the Flemish and Robert Valoines, precentor of York. As keeper of chancery rolls he was present in council in chancery in 1319 on an order being made upon the petition of the abbot of Northampton granting that his name be expunged from the register as a prelate liable to be summoned to parliament. In October, 1326, he was present in the extraordinary council at Bristol and joined in the election of the duke of Aquitaine as regent and custos of the kingdom. In the new reign, he was present in the roles of petitioner, commissioner to treat with the French, trier of petitions from Gascony, Ireland, Wales, and the Isles, and councillor at the parliaments of 1327, 1328, 1331, 1333.

These entries are telling enough evidence of Airmyn's familiarity with parliament, but even more striking is the fact that we have the first day-by-day journal of proceedings in parliament from his own hand:

Memoranda of the parliament of the lord Edward, king of England, son of Edward, king of England, summoned and held at Lincoln on the quindene of Saint Hilary in the ninth year of the reign of the said king [1316], set down by William Airmyn, clerk of the chancery of the aforesaid king, named and especially appointed by the same king to this task.

There is nothing like it again until 1330, after which time, with the exception of two gaps, the practice becomes standard. On the basis of this account and two other pieces of evidence, Richardson and Sayles have concluded that "it is probable that he was clerk of the parliament from 1316 onwards." Surely, few people can have been in so strategic a position for understanding parliament or for knowing what people were thinking and saying about parliament.

Let us pass on to the second point. If we take the argument of the Modus and compare it with Airmyn's actual record of the Hilary Parliament of 1316, we can consider the thesis that the former, as I have said, does not tally with the interpretation of the nature of parliament as Maitland is supposed to have conceived it and as McIlwain elaborated it. Here we have to do with
the question of whether parliament was essentially judicial or political in character, and this is but another way of asking whether it corresponded more to the Parlement de Paris or to the English parliament as we know it in later history.

On this point the Modus leaves little doubt. Its primary concern is with representation of the community of the realm and not with law or justice in any narrow legal sense of those words. Justices as such are mentioned in only eight of its twenty-six articles, and serjeants of the king’s pleas in only one, and the chancellor, who is not yet a legal officer of the crown, is given preference over the chief justice for the task of making the opening speech, a duty that can be discharged by even a simple clerk. Even in the physical arrangement of parliament, justices are placed below the higher clergy and nobility, the chancellor, and officials of the exchequer. Article XV is even more explicit:

. . . Nor is any justice in England a justice in parliament, nor do they have per se a record in parliament, except to the extent that fresh power has been assigned and given to them in parliament by the king and peers of parliament, as when they have been assigned with other suitors of parliament to hear and determine various petitions and plaints delivered in parliament.

Nor in the difficult cases and judgments considered by parliament is their role, or in fact, that of the chancellor, an important one, “because all peers are judges and justices.” Indeed, neither justice nor chancellor is “of parliament.” The crucial article is Article XVIII, where the order of deliberating the affairs of parliament is set forth. These are clearly listed in descending order of importance. The first have to do with a state of war, if such exists, and with the royal family; the second, with “common affairs of the kingdom,” and the most common are those concerned with the implementation of decisions already reached. In the third place are “individual affairs,” by which we must understand “petitions.” Obviously, only the last have to do with justice and a court of law as we would think of them. The second are primarily administrative, and the first are beyond doubt matters of state that are essentially political.

If we turn from theory—if, indeed, the Modus can be called theoretical—to fact, we find that the latter substantiates the former. Let us look at Airmyn’s record of the Lincoln Hilary Parlia-
ment of 1316. In this connection, it may be useful to construct a table of events in the order of their occurrence.

16 October 1315 Writs of summons are issued for a parliament to meet at Lincoln on the quindene of Saint Hilary next [27 January 1316].

28 January 1316 The king opens parliament in a certain chamber in the hospice of the dean of Lincoln where prelates, earls, and others are gathered.

William Inge, one of the justices of Common Pleas, makes the opening pronouncement to parliament, stating that the king's reasons for summoning it were "the various arduous negotiations touching the king himself and his kingdom and especially his land of Scotland." He asks that these be handled with dispatch, since the king is concerned over the long distances some have had to travel and over the scarcity of food. Nevertheless, consideration of these matters is postponed until the arrival of Thomas earl Lancaster and other magnates, whose counsel the king desires. Until then, the prelates, earls, and others are to convene daily and consider other matters.

John Sandall, the chancellor, and others are directed to receive procurations and excuses and to turn over to the king the names of those not coming nor excusing themselves nor sending proctors so that "he may be able to command what he ought."

It is agreed that petitions be received and expedited "as it was formerly accustomed to be done at other parliaments" and that they be received until the morrow of the Purification B. V. M.

[3 February 1316] Receivers are named.

The chancellor, treasurer, and justices of the two benches are instructed to reduce to writing all matters pending before them in pleas that cannot be settled outside parliament, to refer them to parliament so that they may be dealt with there as they ought to be.

29 January 1316 It is agreed to proceed with petitions until the arrival of the earl of Lancaster and the other magnates. Hearer and expeditors are appointed.
31 January 1316  In the king's presence, Humphrey de Bohun, earl Hereford, promises that the king will observe answers already given to petitions of the prelates, will correct insufficient answers, and will deal with those unanswered as it shall seem fitting to the prelates, magnates, and the king's council.

1 February 1316  In the king's chamber the bishops of Norwich, Chichester, Exeter, and Salisbury are sworn of the king's council; and the king names the bishops of Norwich and Exeter, Jean de Bretagne, earl Richmond, and the earl of Pembroke as lieutenants in his absence until the arrival of the earl of Lancaster and the other missing magnates.

12 February 1316  In the hall of the dean of Lincoln, in full parliament, Lancaster and the other absent magnates now being present, the king has the opening pronouncement repeated, "supplicating and enjoining the prelates, magnates, and his other faithful subjects present there that they counsel him on these matters and that they make him suitable aid." It is agreed that the prelates and magnates will deliberate these matters on the following day in the Chapter of the Church.

13 February 1316  The meeting is duly held, and it is agreed, and commanded by the king, that another meeting be held on the morrow at the house of the Brothers of the Order of the Blessed Mary of Mt. Carmel.

14 February 1316  It is agreed that a certain proclamation setting the price of provisions be revoked, and that they be sold at a reasonable price, as had been the custom before. Writs are sent out under the great seal.

A certain statute concerning sheriffs and hundreds is agreed upon. This, we know from another source, was done "by information of his prelates, earls, barons, and other great men of the realm . . . and also by the grievous complaint of the people," and by the assent of prelates, earls, barons, and other great estates.  

17 February 1316  In the presence of the king and prelates and magnates, the bishop of Norwich, by the king's mandate, reviews the previous items and adds that the king will abide by the Ordinances and also by the peram-
butions of the forest made in the time of his father, reserving to the king his reasons against such perambulations. Letters and writs are issued about this.

The bishop also announces that he has spoken to Thomas earl Lancaster "certain words on behalf of the king to remove any doubt the earl is said to have had about the lord king; assuring him that the lord king bore him and the other magnates of his kingdom sincere and complete goodwill, and that he held them as his faithful and liege men in especial royal favour." The king wishes him to become chief of his council; and after some deliberation, Thomas agrees to this and is sworn. The earl had his conditions, which need not concern us, except that they were embodied in the form of a bill handed to Airmyn by the bishop of Norwich and Badlesmere, who on the king's behalf ordered him to enroll it verbatim.

20 February 1316 The magnates and the community of the realm grant the king specific military aid for the Scottish war, the details of which are duly set down. The king agrees to issue letters for himself and his heirs that this aid shall not constitute a precedent. By their advice, military service is to begin on 8 July 1316 at Newcastle-on-Tyne.

The citizens, burgesses, and knights of the shire concede an aid of "a fifteenth on moveable goods of citizens, burgesses, and men of cities, boroughs, and royal demesnes."

Parliament ends.52

Now it may be that the Hilary 1316 Parliament at Lincoln was an extraordinary one. Certainly there were drawn knives, a good deal of profanity, and at least one bloody nose. But those were extraordinary times, and the burden of proof must lie with those who can demonstrate from skeletal records that the meat on the bare bones of parliamentary accounts during this reign was different from that suggested by Airmyn's journal. The conclusion seems to be perfectly obvious: we are dealing only secondarily with a "high court," and most certainly primarily with an institution whose business is above all political, and to a lesser degree, legislative.58 This is exactly what the Modus implies.

We come now to the third and last point, that the basic ideas of the Modus are out of kilter with the times.84 Here we are not primarily concerned with those articles of the Modus that attempt to establish a "standing operating procedure" (to borrow military
MODUS TENENDI PARLIAMENTUM

terminology) for all parliaments. They are doubtless the products of bitter experience on the part of an exasperated clerk with an orderly mind. For the most part they embody measures of reform. Parliament, to the author of the Modus, was obviously a serious business, perhaps the highest and most serious business of the kingdom. Hence he makes elaborate provisions to ensure the presence of the king (doubtless influenced by Edward II’s habit of sleeping late) and of all the component parts of parliament, specifying rather stiff fines for those who do not appear and send no proctors or excuses. It is important that parliament be held in a public place (there is obviously to be no behind-the-scenes skullduggery), that its members speak out and not mumble their words, that it be free of external pressures and disturbances, and that its proceedings be duly recorded and be made available even to a pauper, should any of them concern him. On this last point it may be unkindly remarked that we are possibly dealing with a bureaucrat who, like modern university administrators, is intent on creating more bureaucracy. Finally, parliament is not to be dissolved until all petitions have been answered; indeed, “if the king permit the contrary, he is perjurious.”

It is clear that to this clerk of chancery, parliament is the central institution of the realm and as such must be encompassed by all necessary safeguards. This fact in itself is testimony to the importance, at least in the official eye, of a practice that had become an institution in little more than half a century. It is remarkable that its importance was recognized by men of that time and that its future was a matter of some concern.

These things are interesting and significant enough, but they do not stand at the center of the argument of the Modus. The real core of the Modus is to be found in Article XXIII and, secondarily, in Article XXVI. It is the provisions of these articles that have troubled the “philosophers” of parliament—and I use the word “philosophers” deliberately. We shall have to look at these articles in some detail.

Article XXIII is concerned with aids; that is, with unusual grants for war as well as with the customary feudal ones (knighting of the eldest son, marriage of the eldest daughter). These are to be demanded in full parliament; and “full” parliament clearly means clergy, magnates, and commons. All must consent to them. Then, we are told—and this is the crux of the matter—

... it is to be understood that two knights, who come to parliament for that shire, have a greater voice in parliament in granting
and denying than a greater earl of England, and in like manner the proctors of the clergy of one bishopric have a greater voice in parliament, if all be agreed, than the bishop himself, and this in all things that ought to be granted, refused or done by parliament: and this is obvious because the king can hold parliament with the community of his kingdom, bishops, earls and barons being absent, provided that they have been summoned to parliament, although no bishop, earl or baron come at his summons . . . and thus it is proper that all that ought to be affirmed or annulled, conceded or denied or done by parliament, ought to be conceded by the community of parliament, which exists out of the three grades or kinds of parliament, that is to say out of the proctors of the clergy, the knights of the shires, citizens and burgesses, who represent the whole community of England, and not out of the magnates because each of these is at parliament for his own person and for no other.

This equating of the commons with the community of the realm (and the lower clergy here are essentially “commons of the clergy”) and the granting to them of preponderant importance in parliament appear to smack of Wallace Notestein’s *The Winning of the Initiative by the House of Commons* and consequently are anachronistic in the reign of Edward II. Are they really out of place, or are they the conclusions—or, perhaps, projections—of an acute observer whose point of view has been shaped by actuality and by certain ideas that had been exerting considerable influence in England since the days of Bracton, if not earlier?

It is a sober fact that out of 71 (or possibly 77, depending on how they are defined) parliaments between 1258 and 1300, representatives of the shires and towns attended on only nine occasions, and that out of 158 (or possibly 160) parliaments between 1301 and 1485, the commons were present on all but eight occasions, being invariably present after 1325. The turning point is exactly the period to which the *Modus* belongs, and it is not too much to assume that its author was perspicacious enough to sense the direction in which the wind was blowing. But of far greater consequence is the fact that Article XXIII of the *Modus* might well be an excerpt from one of Gaines Post’s contributions to *Traditio*. It is shot through with Romano-canonical principles, and particularly the maxim “Quod omnes similiter tangit, ab omnibus com-probetur” (C. 5, 59, 5 12—Justinian). Post has explained how this maxim, which originally “meant literally the consent of all indi-
individuals who each had legally established interests or rights in a thing that was common equally or in varying degrees to all," became extended so as to make it possible for governments of communities to be effective even while having to get the consent of all who were touched. In this connection Post remarks—and what he says is particularly pertinent to Articles XXIII and XXVI of the Modus—

... Since the business touched all, all the members must be summoned to the meeting, for all must have the right to discuss and debate. ... Further, by responding to the summons, and giving to their delegates, full powers to consent, the communities had no legal right, after the assembly was held, to pretend that they had not been given due process, and hence were not bound by the will of the king in his assembly. ... But if all must be summoned, it did not follow that the king could do nothing if all did not respond and meet in assembly. For the two laws offered rules on default to the effect that the court (and the king presided over the assembly as the supreme judge presiding over his high court) could decide the case or business in the absence of interested parties who refused to heed the summons. The willfully absent had no legal right later to appeal the sentence or decision.\textsuperscript{59}

These tenets were commonplaces even in the thirteenth century. The author of the Modus knew his two laws probably as well as he knew parliament, and it is not surprising to find him insisting on the principle of \textit{plena potestas},\textsuperscript{60} or to read in Article XXVI "that although any of the said five grades [of parliament] after the king be absent, provided however all have been summoned by reasonable summons, it [parliament] is nonetheless held to be full."\textsuperscript{61} There is in Article XVII even the suggestion of "the subordination of consent, both of individuals and of a majority, to the idea of the end of society, the common good or welfare and public utility."\textsuperscript{62}

The provisions of Article XXIII, while no less in accord with Romano-canonical concepts, go a step further. Whatever the author's feudal and hierarchical leanings—and he could scarcely escape having them—he clearly affords proof that, again to quote Post, "by the late thirteenth century the \textit{maior pars} was numerical rather than \textit{sanior}."\textsuperscript{63} The magnates are individuals, while the representatives of the lower clergy, shires, cities, and boroughs are something more. They are proctors of corporations, and these cor-
corporations add up to “the community of England” by the sheer weight of numbers. We are not concerned here with popular sovereignty, but we are certainly face to face with the idea that representation of a larger community seems inherently to command more respect and greater authority than the individual magnate’s being present in parliament *per se* and *pro se*, for he represents nobody but himself—an idea that was even familiar to men of the thirteenth century.\(^6\)

Historians of the Middle Ages can sometimes “come a cropper,” as the English put it. There is the classic example of the mediaeval chronicler who stated categorically that all the sheriffs of England were changed in the course of a single year. No historian believed him: it was only idle gossip bruited about the scriptorium. But when the records, that is, the official accounts of the central government, came to light, it became evident that this was no idle gossip at all, but the plain truth. Is it too much to suggest that historians have treated the *Modus* in the same fashion? Galbraith is fond of insisting that a mediaevalist—or for that matter, any historian—must go to the documents, live with them and absorb them (by osmosis, if in no other way), if he is not to be “caught off base.” The late Maude Clarke did her work well. She saw the *Modus* for what it was, an extraordinary and perhaps a prescient view of parliament, but one, as I hope that I have demonstrated, that was not entirely foreign to the intellectual current of the times. If this means that we must revise our conception of the early fourteenth century in the light of the *Modus*, then we had better be about it.

**Appendix**

**THE MANNER OF HOLDING PARLIAMENT**\(^6\)

Here is described the manner in which the parliament of the king of England and of his English was held in the times of king Edward, son of Etheldred the king; which manner was recited by the more discrete of the kingdom in the presence of William duke of Normandy the conqueror and king of England, the same conqueror enjoining this, and by him approved, and used in his days and also in the days of his successors the kings of England.\(^6\)
I. Summoning of parliament

The summoning of parliament ought to precede the first day of parliament by forty days.67

II. Concerning the clergy

To parliament ought to be summoned and come the archbishops, bishops, abbots, priors and other greater clerics, who hold by earldom or barony, by reason of such tenure, and no lesser ones unless their presence and coming be required otherwise than on account of their tenures, either that they be of the council of the king, or their presence be deemed necessary or useful to parliament; and the king is required to furnish them their outlay and expenses in coming to and remaining at parliament; nor ought such minor clerics to be summoned to parliament, but the king used to direct his writs to such also asking that they be present at his parliament.

Item, the king used to issue his summons to archbishops, bishops, and other exempt persons, such as abbots, priors, deans, and other ecclesiastical persons, who have jurisdictions by such exemptions and separate privileges, that they cause to be elected for each deanery and archdeaconry of England by those deaneries and archdeaconries two skilled and suitable proctors of that archdeaconry to come and be present at parliament, to answer, accept, depute, and do exactly what all and singular persons of those deaneries and archdeaconries would do if they and all and singular of them were personally present.

And that such proctors come with their warrants in duplicate, sealed with the seals of their superiors, [to the effect] that they have been elected and sent for such procuration, of which letters one will be surrendered to the clerks of parliament to be enrolled and the other will remain in the hands of the proctors themselves. And thus under these two kinds of summons the whole clergy ought to be summoned to the king's parliament.68

III. Concerning the laity

Item, all and singular earls and barons and their peers ought to be summoned and come, that is to say, those who have lands and revenues to the value of a complete earldom, viz., twenty fees of one knight, each fee computed at twenty pounds' worth, which make four hundred pounds' worth in all, or to the value of one complete barony, that is to say, thirteen fees and the third part of one knight's fee, each fee computed at twenty pounds' worth,
which make in all four hundred marks; and no lesser laity ought to be summoned or come to parliament, by reason of his tenure, unless their presence be useful or necessary to parliament for other reasons, and then in their case the same practice ought to be followed as has been prescribed for the lesser clerics, who by reason of their tenure are least obliged to come to parliament.⁶⁹

IV. Concerning barons of the Ports

Item, the king used to send his writs to the guardian of the Cinque Ports that he have elected from each Port by the Port itself two suitable and skilled barons to come and be present at his parliament to answer, accept, depute, and do exactly what his baronies would do just as though all those and singular from those baronies were personally present there; and that such barons come with their warrants in duplicate, sealed with the common seals of his Ports, that they have been duly elected attorneys for this purpose and sent on behalf of those baronies, one of which will be surrendered to the clerks of parliament, and the other will remain in the hands of the barons themselves. And when such barons of the Ports, licence having been obtained, had been about to depart from parliament, they then used to have a writ under the great seal to the guardian of the Cinque Ports that he cause such barons to have their reasonable outlay and expenses from the community of that Port, from the first day on which they came to parliament up to the day on which they returned to their own [homes], mention having been made and expressed in that writ, of the stay that they made at parliament, of the day on which they came and on which they were licensed to depart; and mention once used to be made in the writ of how much such barons ought to receive from their communities per diem, that is to say, some more and others less, according to the abilities and standings of the persons, nor did there used to be fixed for two barons per diem more than twenty shillings, account having been taken of their stays, labours and expenses, nor is it customary for such expenses to be allowed for certain by the court, for any persons thus elected and sent on behalf of the communities unless these persons were honourable and well-behaved in parliament.

V. Concerning knights of the shires

Item, the king used to send his writs to all the sheriffs of England that they cause to be elected each from his county by the county itself two suitable knights, honourable and skilled, to come to his parliament, in the same manner in which it has been said of the
VI. Concerning citizens

In the same manner the mayor and sheriffs of London, the mayor and bailiffs or the mayor and citizens of York and of other cities used to be commanded that they themselves elect on behalf of the community of their city two suitable citizens, honourable and skilled, to come and be present at parliament in the same manner in which it has been said about the barons of the Cinque Ports and knights of the shires; and the citizens used to be the peers and equals of the knights of the shires in the expenses coming, remaining, and returning.

VII. Concerning burgesses

Item, in the same manner the bailiffs and good men of the boroughs used to be and ought to be commanded that they themselves from among themselves and on behalf of themselves elect two suitable burgesses, honourable and skilled, to come and be present at the king's parliament in the same manner in which it has been said about the citizens; but the two burgesses used not to receive per diem for their expenses more than ten shillings and sometimes not more than half a mark, and this used to be assessed by the court according to the size and authority of the borough and according to the standing of the persons sent.70

VIII. Concerning the manner of parliament

Now that the form has first been shown by what right, and how long in advance a parliamentary summons ought to be made to each, and who ought to come by summons and who not; second is to be said who they are who by virtue of their offices ought to come, and are required to be present throughout the entire parliament, without summons; whence it is to be required that the two principal clerks of parliament chosen by the king and his council, and the other secondary clerks about whom and whose offices will be spoken more particularly later, and the chief crier of England with his assistant criers, and the chief usher of England, which two offices, that is to say, the office of crier and usher used to belong to one and the same [person], these two officers are required to be present on the first day; the chancellor of England, the treasurer, the chamberlains and barons of the exchequer, the
justices and all the king's clerks and knights, together with ser­
jeants at king's pleas, who are of the king's council, are required

to be present on the second day, unless they have reasonable
excuses to the effect that they are unable to be present, and then
they ought to send good excuses.

IX. Concerning the opening of parliament

The lord king will sit in the centre of the greater bench, and
he is required to be present at prime on the sixth day of parlia-
ment: and the chancellor, treasurer, barons of the exchequer and
justices used to record defaults made in parliament in the order
that follows. On the first day will be called the burgesses and
citizens of all England, on which day if they do not come, the
borough will be amerced at a hundred marks and the city at a
hundred pounds: on the second day will be called the knights of
the shires of all England, on which day if they do not come, the
county from which they are will be amerced at a hundred pounds:
on the third day of parliament will be called the barons of the
Cinque Ports, and afterwards the barons, and then the earls:
whence if the barons of the Cinque Ports do not come that barony
from which they are will be amerced at one hundred marks; in the
same way a baron \textit{per se} will be amerced at a hundred marks and
an earl at a hundred pounds; and it will be done in the same
manner concerning those who are peers to earls and barons, that
is to say, who have lands and rents to the value of one earldom or
one barony, as it has been said before under the title concerning
summoning: on the fourth day will be called the proctors of the
clergy; if they do not come, their bishops will be amerced for each
archdeaconry that will have made default at a hundred marks:
on the fifth day will be called the deans, priors, abbots, bishops and
at length the archbishops, and if they do not come, each archbishop
will be amerced at a hundred pounds, a bishop holding an entire
barony at a hundred marks, and in the same manner concerning
the abbots, priors, and others. On the first day a proclamation
ought to be made, first in the hall or in the monastery, or in some
other public place where parliament is held, and afterwards
publicly in city or town that all those who will have wished to
present petitions and plaints to parliament shall deliver them from
the first day of parliament through the five days next following.\textsuperscript{11}

X. Concerning the sermon to parliament

One archbishop, or bishop or one great clerk discrete and elo-
quent, chosen by the archbishop in whose province parliament
MODUS TENENDI PARLIAMENTUM

is held, ought to preach on one of those first five days of parliament in full parliament and in the presence of the king, and this when parliament will have been for the most part joined and congregated, and in his sermon in due course enjoin the whole parliament that they with him beseech God, and adore Him for the peace and tranquillity of king and kingdom, as will be said more particularly in the following title concerning the pronouncement to parliament.

XI. Concerning the pronouncement to parliament

After the sermon the chancellor of England or the chief justice of England, that is to say that one who holds pleas coram rege, or another suitable, honourable and eloquent justice, or clerk, chosen by the chancellor and chief justice themselves, ought to announce the reasons for parliament, first in general and afterwards in particular; standing: and thus it is to be known that any members of parliament, whoever he may be, will stand while he speaks, the king excepted, so that all of parliament may be able to hear him who speaks, and if he talk obscurely or speak too low, let him talk a second time, and speak more loudly or let another speak for him.

XII. Concerning the speech of the king after the pronouncement

The king after the pronouncement before parliament ought to ask clergy and laity, naming all their ranks, that is to say archbishops, bishops, abbots, priors, archdeacons, proctors and others of the clergy, earls, barons, knights, citizens, burgesses and other lay [persons], that they diligently, studiously and sincerely work towards treating and deliberating the affairs of parliament just as they might understand and perceive this to be great and important first for the will of God and afterwards to his and their dignities and advantages.

XIII. Concerning the absence of the king in parliament

The king is required absolutely to be personally present at parliament, unless he be detained through physical illness and then he can keep to his chamber so that he do not lodge outside the manor, or at least the town, where parliament is held, and then he ought to send for twelve persons from the greater and better [of those] who have been summoned to parliament, that is to say, two bishops, two earls, two barons, two knights of the shire, two citizens and two burgesses, to see his person and to testify to his condition, and in their presence he ought to commit to the arch-
bishop of the place, the seneschal, and his chief justice, that they
together and separately begin and continue parliament in his
name, express mention having been made in that commission at
that time as to the cause of his absence, which ought to be suffi­
cient, and to advise the other nobles and magnates of parliament
together with the clear testimony of their said twelve peers; the
reason is that there used to be complaint and grumbling in parlia­
ment on account of the absence of the king, because it is a damag­
ing and dangerous thing to the whole community of parliament
and the kingdom when a king would be absent from parliament,
nor ought he nor can he absent himself, except only in the case
aforesaid.

XIV. Concerning the places and sessions of parliament

First, as it has been said above, the king will sit in the middle
place of the greater bench and on his right side will sit the arch­
bishop of Canterbury, the bishops of London and Winchester and
after them in turn the other bishops, abbots, and priors in rows;
and on the left side of the king will sit the archbishop of York,
the bishops of Durham and Carlisle and after them in turn the
earls, barons, and lords; always such a division being observed
among the aforesaid grades and their places that no one sit except
among his peers, and the seneschal of England is required to over­
see this, unless the king wishes to assign another to this. At the
right foot of the king will sit the chancellor of England and the
chief justice of England and his colleagues, and their clerks who
are of parliament; and at his left foot will sit the treasurer, cham­
berlains and barons of the exchequer, justices of the bench and
their clerks who are of parliament.

XV. Concerning the principal clerks of parliament

Item, the two principal clerks of parliament will sit in the midst
of the justices, and will enrol all pleas and affairs of parliament.

And it is to be known that these two clerks are not subject to
any justices, nor is any justice in England a justice in parliament,
nor do they have per se a record in parliament, except to the extent
that fresh power has been assigned and given to them in parlia­
ment by the king and peers of parliament, as when they have been
assigned with other suitors of parliament to hear and determine
various petitions and plaints delivered in parliament; but these
two clerks are immediately subject to the king and his parliament
in common unless perhaps one justice or two be assigned to them
to examine and emend their enrolments. And when the peers
of parliament have been assigned to hear and examine any petitions especially by themselves, when they themselves are unanimous and agreed in rendering their judgments on such petitions, then they will recite such petitions and the process had concerning them and render judgement in full parliament, so that these two clerks primarily enrol all pleas and all judgements on the principal roll of parliament, and deliver those rolls to the treasurer before the dismissal of parliament, so that these rolls absolutely be in the treasury before the recess of parliament, saving nevertheless a transcript therefrom for these clerks, or a counter-roll if they wish to have it. Let these two clerks, unless they be in other offices with the king, and receive fees from him, so that they might live honourably therefrom, receive from the king per diem one mark for their expenses in equal portions, unless they be at the table of the lord king; and if they be at the table of the lord king, then they receive in addition to their table per diem half a mark in equal portions, for the whole parliament.

XVI. Concerning the five clerks of parliament

The lord king will assign five skilled and proven clerks of whom the first will minister to and serve the bishops, the second the proctors of the clergy, the third the earls and barons, the fourth the knights of the shires, the fifth the citizens and burgesses, and each of these, unless he be with the king and draw from him such a fee or such wages that he be able to live honestly therefrom, will draw from the king two shillings per diem, unless he be at the king's table; and if he be at table, then he will draw twelve pence per diem; these clerks will write the queries of those and the answers they make to king and parliament, will be present at their councils wherever they wish to hold them; and when done with them, will assist the principal clerks in enrolling.

XVII. Concerning difficult cases and judgements

When contention, doubt or a difficult case of peace or war emerges in the kingdom or outside, let that case be referred and recited in writings in full parliament, and let it be treated and argued there among the peers of parliament, and if it be necessary, let it be enjoined by the king or on behalf of the king, if the king not be present, to each grade of peers that each grade address itself to it, and that that case be delivered to its clerk in writings, and they cause that case to be recited in a certain place in their presence; in such a way that they themselves order and consider among themselves how better and more justly it could be proceeded in
that case just as they themselves for the person of the king and their own persons, and also for the persons of those whose persons they represent, wish to answer before God, and let them report their answers and advices in writings, and all their answers, counsels and advices hereupon having been heard, let it be proceeded according to better and saner counsel and where at least the greater part of parliament concur. And if through discord between the king and any magnates or perhaps among the magnates themselves, the peace of the kingdom be impaired, or the people or the country be troubled, so that it seem to the king and his council that it be expedient for that affair to be treated and emended by consideration of all the peers of his kingdom or if through war the king and his kingdom be troubled, or if a difficult case emerge before the chancellor of England, or if a difficult judgement might be required to be rendered before the justices, and such as these, and if perhaps in such deliberations all or the greater part are not able to agree, then the earl seneschal, the earl constable, and the earl marshal, or two of them, elect twenty-five persons from all the peers of the kingdom, that is to say two bishops, and three proctors, for the entire clergy, two earls and three barons, five knights of the shires, five citizens and five burgesses, which make twenty-five; and these twenty-five can elect from themselves, if they wish, twelve and condescend to these, and these twelve six and condescend to these, and these six further three and condescend to these, and these three cannot condescend to fewer, unless licence be obtained from the lord king, and if the king consent these three can agree to two, and of these two one can agree to the other and thus at length his ordinance will stand above the whole parliament; and thus having condescended from twenty-five persons down to one single person, unless the greater number are able to agree and ordain, in the end a single person, as it has been said, will ordain for all, who cannot disagree with himself; saving the king and his council that they be able to examine and emend such ordinances after they have been written, if they know how and wish to do this, so that it be done there then in full parliament, and by the consent of parliament, and not behind parliament.72

XVIII. Concerning the order of deliberating the affairs of parliament

The affairs for which parliament has been summoned ought to be deliberated according to the calendar of parliament, and according to the order of petitions delivered and filed, no respect had to the persons of any whatsoever, but who first has proposed
first be brought up. On the calendar of parliament all the affairs of parliament ought to be called up in this order: first concerning war if there be war, and concerning other affairs touching the persons of king, queen and their children; second concerning the common affairs of the kingdom such as concerning making laws against the defects of original laws, [laws] of judgement and of execution, after judgements rendered, which are the most common affairs; third ought to be called up individual affairs, and this according to the order of petitions filed, as has been said before.

XIX. Concerning the days and hours of parliament

Parliament ought not to be held on Sundays, but on all other days, that day always excepted, and three others, that is to say, All Saints, Souls and the Nativity of St John the Baptist, it can be held; and it daily ought to be begun at the hour of mid-prime, at which hour the king is required to be present, and all the peers of the kingdom. Parliament ought to be held in a public place, and not in private, nor in a secret place; on feast days parliament ought to be begun at the hour of prime on account of divine service.73

XX. Concerning the ushers of parliament

The chief usher of parliament will stand within the great house of the monastery, hall or other place where parliament is held, and will guard the house so that no one enter parliament except who owes suit to and has business at parliament, or has been called because of the affair that is being prosecuted in parliament, and it is necessary that this usher have knowledge of the persons who ought to enter in order that entry on no account be refused to anyone who is required to be present at parliament; and this usher can and ought, if it be necessary, to have several ushers under him.

XXI. Concerning the crier of parliament

The crier of parliament will stand outside the house of parliament, and the usher will announce his proclamations; the king used to assign his serjeants-at-arms to stand by the great space outside the house of parliament, to guard the house so that none would make assaults or disturbances around the houses, through which parliament might be impeded, on pain of seizure of their bodies, because by law the house of parliament ought not to be closed, but to be guarded by the ushers and king's serjeants-at-arms.
XXII. Concerning the stations of speakers in parliament

All peers of parliament will sit, and no one will stand except when he speaks, and speak so that anyone in parliament is able to hear him; no one will enter parliament or leave parliament except through one chamber; and whoever speaks to anything that ought to be deliberated by parliament, will stand while speaking; the reason is that they be heard by the peers, because all peers are judges and justices.

XXIII. Concerning aids of the king

The king used not to demand an aid from his kingdom except for immediate war, or making his sons knights, or marrying his daughters, and then such aids ought to be demanded in full parliament, and to be delivered in writings to each grade of peers of parliament, and to be answered in writings; and it is to be known that for such aids to be granted it is necessary that all the peers of parliament consent, and it is to be understood that two knights, who come to parliament for that shire, have a greater voice in parliament in granting and denying than a greater earl of England, and in like manner the proctors of the clergy of one bishopric have a greater voice in parliament, if all be agreed, than the bishop himself, and this in all things that ought to be granted, refused or done by parliament: and this is obvious because the king can hold parliament with the community of his kingdom, bishops, earls and barons being absent, provided that they have been summoned to parliament, although no bishop, earl or baron come at his summons; because formerly there had not been a bishop, or an earl, or a baron, [yet] even then kings held their parliaments, but the contrary is otherwise, granted that the communities, clergy and laity, had been summoned to parliament, just as they ought by law, and on account of some certain reasons they refuse to come, for example if they should pretend that the king did not rule them just as he ought, and should assign specifically in certain articles that he had misruled them, then there would be no parliament at all, although all the archbishops, bishops, earls, barons and all their peers were present with the king; and thus it is proper that all that ought to be affirmed or annulled, conceded or denied or done by parliament, ought to be conceded by the community of parliament, which exists out of the three grades or kinds of parliament, that is to say out of the proctors of the clergy, the knights of the shires, citizens and burgesses, who represent the whole community of England, and not out of the magnates,
because each of these is at parliament for his own person and for no other.

XXIV. Concerning the dissolution of parliament

Parliament ought not to be dissolved so long as any petition remains unheard, or, at least, to which no answer has been determined, and if the king permit the contrary, he is perjurious; no single one of all the peers of parliament can or ought to depart from parliament, unless licence therefor has been obtained from the king and all his peers and this in full parliament, and let a notation of such licence be made on the roll of parliament, and if anyone of the peers, during parliament, should fall ill, so that he be not able to come to parliament, then for three days let him send excusers to parliament, on which day if he should not come, let two of his peers be sent to him to see and testify to such illness, and if there be suspicion, let those two peers be sworn that they speak the truth therein, and if it be discovered that he had mangled, let him be amerced as though for default, and if he had not mangled, then let him depute as attorney someone sufficient in their presence to be present at parliament for him, nor can the healthy be excused if he be of sound mind.

Dissolution of parliament ought to be conducted thus: first ought to be asked and publicly proclaimed in parliament and within the pale of parliament, whether there be anyone, who has delivered a petition to parliament, to whom an answer has not yet been given; then if no one declares, it is to be supposed that each is remedied, at least in so far as can be answered by law, and then first, that is to say, when no one who has exhibited a petition at that time declares, we shall license our parliament.

XXV. Concerning transcripts of records and processes in parliament

Clerks of parliament will not refuse anyone a transcript of his process, but will deliver that to each who has asked for it, and they will always receive a penny for ten lines, unless perchance good claim of penury has been made, in which case they will receive nothing. The rolls of parliament will measure ten inches in width. Parliament will be held in whatever place of the kingdom might be pleasing to the king.

XXVI. Concerning the grades of peers of parliament

The king is the head, the beginning and end of parliament, and thus he has no peer in his grade, and thus out of the king alone
is the first grade. The second grade is composed of the archbishops, bishops, abbots, priors, holding by barony. The third grade is composed of the proctors of the clergy. The fourth grade is composed of the earls, barons and other magnates and nobles holding to the value of an earldom and barony, as it has been said before under the title concerning laity. The fifth grade is composed of knights of the shires. The sixth grade of citizens and burgesses: and thus parliament is composed of six grades. But it is to be known that although any of the said five grades after the king be absent, provided however all have been summoned by reasonable summons, it is nonetheless held to be full.

1. The basic work on the Modus is M. V. Clarke, *Medieval Representation and Consent* (London, 1936), a book which appears not to have been read too carefully by its critics.


11. Sir Maurice Powicke remarks in a letter that "it is now 'unhappily' the fashion to say that McIlwain's book rescued Maitland's great introduction to the Memoranda de Parlamento of 1305 from undeserved obscurity. Mait-
land set himself a definite job—to show how the petitions to the king in council in parliament reveal the relation between various aspects of the administration, and he did this and more very clearly and brilliantly; but, in doing it, I do not think that he committed himself to a view of parliament as a court of justice and that alone."


16. Quite apart from the circumstantial evidence provided below, there is the remarkable coincidence afforded by a comparison of the record of the Hilary Parliament of 1316 at Lincoln (*Rotuli parliamentorum* [London, 1783], I, 350-55), compiled by Airmyn, and the provisions of Article IX of the Modus. On the other hand, it must be made clear that the attribution of the authorship of the *Modus* to Airmyn rests on circumstantial evidence alone, and Professor Galbraith remarks that "such evidence, while it may hang a man, is not enough to prove that he wrote a book" (*op. cit.,* p. 92). Professor Wilkinson hinted, but barely hinted, at the name of another chancery clerk, William Thunnerk, as the possible author (*op. cit.,* II, 106 n. 45).


20. Public Record Office, Ancient Correspondence, XXXVI, No. 209, quoted in J. C. Davies, *The Baronial Opposition to Edward II* (Cambridge, 1918), Appendix No. 112 (p. 591), where the reading is 'pemblece' instead of 'peniblete.' See also *Calendar of Chancery Warrants* (1244-1326), pp. 453, 469.


25. In 1334, he was also appointed to inquire into the causes of disputes between scholars at Oxford and their *familiares* and servants and to restore order there. *Calendar of Patent Rolls (1334-8)* (hereinafter referred to as *C.P.R.)*, p. 66.

27. See, for example, Calendar of Papal Registers (1305-42), pp. 98, 141, 239.


31. This does not include a loan of 180 marks, duly repaid, which he made together with John Hotham, bishop of Ely, and acknowledged on March 2, 1319 (C.C.R. (1318-23), p. 127) and another of £1000, duly repaid, made together with John Stratford, bishop of Winchester, William Clinton, Geoffrey le Scrope, and Richard de Bury, borrowed from Richard Melton, archbishop of York and acknowledged on February 19, 1333 (C.C.R. [1333-7], p. 89).

32. The exact figures are £10,944-12/3/4 lent and £5421-2/9 collected. The precise page references can easily be got by consulting the indexes to the volumes between 1296 and 1337, in addition to C.P.R. (1334-8), p. 46. One delivery to the king of wheat and corn from one of his holdings amounted to £134-18/ (C.C.R. [1313-8], p. 338).


34. Rot. parl., I, 190.


37. H. G. Richardson and G. O. Sayles, eds., Rotuli parliamentorum Anglie hactenus inediti, MCCLXXIX-MCCCLXXIII (Camden Third Series, Vol. LI [London, 1935]), p. 76. He also had in his keeping, as late as December, a petition delivered at this parliament by Auger de Podenx (C.C.W. [1244-1326], p. 495).


39. Ibid., II, 349 (No. 4).

40. Ibid., II, 350 (No. 6); Rot. parl. ined., p. 164; Rot. parl., II, 28, 409, 61, 68, 69.

41. Rot. parl., I, 350 et seq.


43. Arts. VIII, IX, XI, XIII, XIV, XV, XVII, XXII.
44. Art. VIII.
45. Art. XI.
46. Art. XIV.
47. Art. XVII.
48. Art. XXII.
49. Art. XXVI.

52. A detailed account of this parliament, but one containing one important misreading of the rolls, may be found in Davies, *op. cit.*, pp. 408-24. The above summary is from Airmyn's record.

53. There were only thirty-seven petitions in the Hilary Parliament. A good deal of theorizing about the nature of parliament has been based on the rolls and pertinent petitions, but no one has yet undertaken the rather formidable task of examining other records, clearly dated at the times and places of parliaments, for what light they may throw on the vast amount of business transacted in parliaments and never recorded in the official records.


55. Arts. IX, XI, XIII, XV, XVI, XIX, XXI, XXII, XXIV, XXV.
56. London, 1925.

57. I have drawn heavily on Post's articles for what follows regarding the concepts of Roman and canon law as they seem to be implied in the *Modus*. The two most important articles are "Plena Potestas and Consent in Medieval Assemblies," *Traditio*, I (1943), 355-408, and "A Romano-canonical Maxim, 'Quod omnes tangit,' in Bracton," *ibid.*, IV (1946), 197-251. These are highly technical. For the non-specialist, Post has summarized his findings in an admirably lucid article, "A Roman Legal Theory of Consent, *Quod omnes tangit*, in Medieval Representation," *Wisconsin Law Review*, Vol. 1950, pp. 66-78. Quotations are from this.

59. Post, *op. cit.*, pp. 72, 75, 76.
60. Arts. IV-VII.

61. We need not be bothered by the six "grades" of parliament, as was Stubbs. The question of "estates" was fluid until well on in the century.