1 The Office of Magistrate

The roots of the magistracy in England and Wales can be traced to the early Middle Ages where the origins of the present Justices of the Peace are to be found. The office of Stipendiary Magistrate is a comparatively modern institution dating from the eighteenth century and will be described in Chapter 13.

Justices of the Peace are a peculiarly English institution and for some 700 years they have been deeply rooted in the way of life of the English people. Invented by the Plantagenets, justices were introduced into Wales by Henry VIII in 1536 and into Scotland by James VI in 1609. They subsequently arrived in the wake of colonisation in many British territories overseas.

The two centuries following the Norman Conquest marked a struggle between the King and the feudal barons, and the Crown was constantly striving to gain control over local affairs. An experiment in extending the Crown’s influence was made in 1195 when Richard I’s Justiciar and Archbishop of Canterbury, William Walter, issued a proclamation for the preservation of the peace whereby four knights in every hundred were to take an oath from all men over fifteen years of age to aid in keeping the peace. This may be regarded as the origin of the Justices of the Peace, though the term Custodes Pacis was introduced seventy years later, in 1264, when Simon de Montfort appointed Keepers of the Peace in every county. In 1327 a crisis arose when Queen Isabella secured the abdication of her husband, Edward II, and the proclamation of her son as King Edward III. Steps had to be taken to ensure that supporters of the old King did not raise rebellion or cause disturbances in local areas and, with this in view, the Statute I Edward III, 52.C16 required the appointment in every county of good and lawful men to keep the peace. The keepers were answerable direct to the new King. They constituted a police force rather than a branch of the justiciary, but two further developments soon resulted in their also acquiring judicial and administrative functions.
The Black Death, which first came to Britain in 1348, reduced the population from about 4 million to 2¼ million in under two years, with unprecedented economic consequences. The value of labour was doubled and the work force sought to take advantage of the situation by demanding higher pay and by moving to where the best wages could be obtained, with the result that half the land was left untilled. The Statutes of Labourers, of which the first was passed in 1349, gave the keepers power to determine the place of work, the rates of wages and the prices of commodities. They were therefore the precursors of the Industrial Tribunals and Prices and Incomes Boards of modern times, but with far more drastic powers.

Another feature of this period was the lawlessness caused by the large numbers of soldiers returning from the wars in France, who became predators in their own land. There was a need to deal with the criminals rapidly on the spot without waiting for the periodical visits from the Justices of Assize. The keepers were therefore given power to hear cases of felony and so they acquired judicial as well as police and local government functions. A point which deserves notice is that this wide extension of the royal power to officers in local areas was in marked contrast to the policy of centralisation adopted by most medieval monarchs and it was probably a contributing factor to the divergent paths taken by the English and the Continental countries in constitutional development.

In 1361 the term 'Justice of the Peace' appears for the first time in a Statute which ordained that three or four of the most worthy in each county should be assigned to keep the peace and arrest and punish offenders. The office of Justice of the Peace is thus the first of our public institutions to have a statutory origin, although the Commissions of the Peace, under which the justices and the earlier keepers were appointed, were issued by the Crown under the royal prerogative without statutory backing. From the fifteenth century the Crown also began to grant royal charters to certain boroughs in return for favours rendered. These usually authorised the mayor and certain other office holders to administer justice within the borough to the exclusion of the county justices.

In 1362 justices were required to meet four times a year, from which the term Quarter Sessions is derived, and from then onwards their duties were constantly augmented.