

The Governace of England:

OTHERWISE CALLED

The Difference between an Absolute and a Limited Monarchy

BY SIR JOHN FORTESCUE, K.T.

SOMETIME CHIEF JUSTICE OF THE KING'S BENCH

Second Impression 1926

First Edition 1885

*This impression has been produced photographically by the
MUSTON COMPANY, from sheets of the First Edition*

A Revised Text

EDITED

WITH INTRODUCTION, NOTES, AND APPENDICES

BY

CHARLES PLUMMER, M.A.

Fellow and Chaplain of Corpus Christi College, Oxford

*Printed wholly in England for the MUSTON COMPANY
By LOWE & BRYDONE, PRINTERS. LTD.
PARK STREET, CAMDEN TOWN, LONDON, N.W. 1*

OXFORD UNIVERSITY PRESS
LONDON : HUMPHREY MILFORD

Table of Contents.

	PAGE
PREFACE	v
LIST OF AUTHORITIES	xiii
CHRONOLOGICAL TABLE	xv
INTRODUCTION :	
Part I. Constitutional Sketch of the Lancastrian and Yorkist Period (1399-1483)1
Part II. Life of Sir John Fortescue	40
Part III. Writings, Opinions, and Character of Sir John For- tescue	74
SIR JOHN FORTESCUE ON THE GOVERNANCE OF ENGLAND	107
CRITICAL NOTES	159
GENERAL NOTES	169
APPENDIX A. 'Example what Good Counseill helpith and avantageth, and of the contrare what folowith. Secundum S ^r . J. Ffortescu, Knighte'	347
APPENDIX B. 'Articles sente fro the Prince, to therle of Warrewic his fadir-in-lawe'	348
APPENDIX C. 'The Replicacion agenst the clayme and title of the Duc off Yorke'.	353
APPENDIX D. Fragment of the treatise 'On the Title of the House of York'	355
GLOSSARIAL INDEX	357
GENERAL INDEX	363

Φαντασία πολιτείας ἰσονόμου, κατ' ἰσότητα καὶ ἰσηγορίαν διοικουμένης, καὶ βασιλείας τιμώσης πάντων μάλιστα τὴν ἐλευθερίαν τῶν ἀρχομένων.—MARCUS AURELIUS ANTONINUS.

'The idea of a polity in which there is the same law for all, a polity administered with regard to equal rights and equal freedom of speech, and the idea of a kingly government which respects most of all the liberty of the governed.'—LONG'S TRANSLATION.

Preface.

THE work here presented to the reader has been three times previously printed ; twice, in 1714 and 1719 by Mr.. afterwards Sir John, Fortescue-Aland, who ultimately became Lord Fortescue of Credan, and once by Lord Clermont in his edition of the collected works of Fortescue¹. Of these editions the two first have become very scarce. while the third is only printed for private circulation. Of all three the value is very much impaired by the fact that the text is based on a comparatively late manuscript ; while no attempt has ever been made to bring out the historical significance and relations of the treatise. It is hoped therefore that the appearance of the present edition, which aims at supplying these deficiencies, will not be considered to be without justification.

Had the treatise 'On the Governance of England' no other claims on our attention, it would deserve consideration as the earliest treatise on the English Constitution written in the English language. But as a matter of fact, its historical interest is very high indeed ; far higher, I venture to think, than that of the author's better-known Latin treatise *De Laudibus Legum Angliæ*. We here see that

¹ From two notices in Heame's Collections (ed. Doble, i. 46, 154) it would appear that Lord Fortescue of Credan at one time entertained the idea, ultimately carried out by Lord Clermont, of printing a collected edition of the works of their ancestor.

Fortescue, while remaining true to those liberal principles of government which he had previously enunciated, was yet keenly sensible of the evils of Lancastrian rule, and that in the various remedies suggested by him, which have for their object the strengthening of the powers of the Crown and the reduction of the influence of the nobles, he was, consciously or unconsciously, helping to prepare the way for the New Monarchy.

This connexion of the work with the history of the time I have endeavoured to draw out, by bringing together from contemporary authorities whatever seemed to illustrate the meaning of the author. The closeness of the connexion is shown by the fact, more than once pointed out in the notes to the present edition, that the language of Fortescue is often identical with that of the public documents of the period. And this in turn illustrates another point of some importance to which I have also drawn attention; the fact namely that Fortescue, first of mediæval political philosophers, based his reasonings mainly on observation of existing constitutions, instead of merely copying or commenting on Aristotle.

It follows from this that the inspiration which Fortescue derived from literary sources is subordinate in importance to that which he drew from the practical lessons of history and politics. But I have endeavoured to illustrate this point also. The four works of which Fortescue seems to have made most use are: the *De Regimine Principum* which goes under the name of St. Thomas Aquinas, though only a portion of it is by him; the treatise with the same title by Ægidius Romanus; the *De Morali Principum Institutione* of Vincent of Beauvais; and the *Compendium Morale* of Roger of Waltham. The first two works have been often printed, and are more or less well known; the two last exist only in manuscript. It has added interest to my study of Vincent of Beauvais' treatise that I have been

able to read it in the very manuscript used by Fortescue himself. The *Compendium Morale* of Roger of Waltham I think I may almost claim to have discovered; for though it is mentioned by Leland and his copyists, it is clear that they cannot have had much acquaintance with its contents, otherwise they would not have fixed the author's *floruit* as they have done. Of Aristotle, except so far as Aristotelian doctrines are embodied in the above-named works, I have shown that Fortescue knew nothing beyond the collection of quotations which goes by the name of the *Auctoritates Aristotelis*.

One of the most important sources from which an author can be illustrated is himself. From this point of view I am under the greatest obligations to the collection of Fortescue's Works printed—I wish I could have added, published—by his descendant, Lord Clermont. It is I trust in no captious spirit that I have occasionally pointed out what seem to me omissions and mistakes on the part of the noble editor. If all representatives of historic houses would imitate the example set by Lord Clermont, light would be thrown on many a dark corner of English history. I have also derived much assistance from the scholarly notes on Fortescue's longest work, the '*De Naturâ Legis Naturæ*, with which Lord Carlingford, then Mr. Chichester Fortescue, enriched his brother's edition of that treatise.

In regard to the Appendices, the first and third are merely reprints from older and completer MSS. of documents already given by Lord Clermont; the second and fourth are new, though I have given reasons for believing that the last is a fragment of a treatise of which other fragments have been printed by Lord Clermont. From the second a brief extract was printed by Sir Henry Ellis in his Historical Letters, though without recognising either its author or its importance. It is however, as I have shown, closely connected with the present work, the

historical bearing and significance of which it illustrates in a very striking manner.

In reference to the life and times of Fortescue I have been able to glean some facts which have escaped previous biographers. These are derived chiefly from French and Burgundian sources. I cannot help thinking that the value of these authorities for English history, though long ago pointed out by Mr. Kirk in his History of Charles the Bold, has hardly been sufficiently appreciated by English historians; while if the archives of France contain many more documents bearing on English history equal in importance to those printed by Mdlle. Dupont in her edition of Waurin and by M. Quicherat in his edition of Basin (both published under the auspices of the Société de l'Histoire de France), much light may be hoped for from that quarter. A visit to the Record Office enabled me to clear up some mistakes and obscurities in regard to Fortescue's landed property.

It will be seen that I have edited this work from a historical and not from a philological point of view. Of the MSS. employed in the formation of the text a sufficient account will be found in the Introduction. A few words may here be said as to the manner in which I have dealt with them. I have, I believe, noted all cases in which I have departed from the reading of the MS. on which I have based my text. In other instances I have only given such various readings as seemed to me to have some historical or philological interest, or to be of importance as illustrating the relations of the MSS. to one another. *Forms* of words which appeared to me worthy of notice I have frequently included in the Glossary, with an indication of the MS. from which they are taken. Stops and capitals are introduced in conformity with modern usage; quotations have been indicated, as in MS. Y, by the use of Gothic letters. I have not attempted to distinguish between Early English þ and Middle-English *y*, as they are sometimes called;

they are used promiscuously, they fade imperceptibly into one another, and after all the *y* is only þ badly written. I have printed þ throughout. In regard to the junction and separation of words the MS. has been closely followed. The only exception is in the case of the indefinite article *a* or *an*, which in the MS. is sometimes joined with and sometimes separated from the word to which it belongs; I have always separated it. In the case of words just hovering on the verge of becoming compounds, and neither completely joined nor completely separated in the MS., I have followed the example of Professor Earle and divided the elements by a half-space, objecting with him to the use of hyphens as a purely modern invention. In the MS. the word *and* is sometimes abbreviated, sometimes written in full; it is here always printed in full. With these exceptions the peculiarities of the MS. followed are, I believe, faithfully reproduced, extended contractions being marked in the usual way by italics.

The Glossarial Index is merely intended to give help to those who, reading the text for historical purposes, may be puzzled by Middle-English forms or meanings. It makes no pretensions to any philological value.

I trust that this work may prove useful both to teachers and students of history in Oxford and elsewhere. But my main object has been to illustrate my author, and that is the point of view from which I would desire to be judged.

In a body of notes ranging over so many subjects, some of them lying far outside the sphere of my ordinary studies, it is hardly possible that there should not be slips and blunders. For the correction of these, whether publicly or privately, I shall always be grateful; and I should wish to adopt as my own the words of one of the most unselfish labourers in the field of learning, Hermann Ebel: 'opprobret nobis, qui volet, modo corrigat.'

It only remains for me to pay the tribute of my hearty

thanks in the many quarters where that tribute is due. I have to thank the Delegates of the Clarendon Press for the generous confidence with which they accepted the work of an untried hand, and for the liberality with which they permitted an extension of its scope much beyond what was originally contemplated. To the Lord Bishop of Chester I am under special obligations; who not only encouraged me to undertake the work, but both as a Delegate of the Press and in his private capacity helped it forward at a great expenditure of trouble to himself; to his published writings I, in common with all students of history, owe a debt of gratitude which can never be adequately expressed. To the Rev. C. W. Boase, Fellow of Exeter College, I am indebted for constant encouragement and assistance; nor am I the first who has profited by his wealth of historical learning; while Professor Skeat gave me much kind help and advice with reference to points of philology. Mr. Edward Edwards, the well-known and accomplished author of the *Life of Raleigh*, took more trouble than I like to think of, in the endeavour to clear up some points in which I was interested. That his researches were not always crowned with success does not diminish my sense of gratitude. The help which I have received in regard to special points is acknowledged in the book itself. I am indebted to Lord Calthorpe for the facilities which he afforded me in consulting the Yelverton MS., to Mr. Henry Bradshaw for similar favours in regard to the Cambridge MS., and to the Master and Fellows of Trinity College, Cambridge, for the loan of their MS. containing the *Epitome*; while to the Provost and Fellows of Queen's College, Oxford, my thanks are due for allowing me even a larger use of their valuable library than that which they so liberally accord to all Graduates. I have to thank Mr. W. D. Selby, who directed my researches at the Record Office; and Mr. E. J. L. Scott, of the Department of MSS., who did me the like service at the British

Museum. At the Bodleian I received constant help from Mr. Madan the Sub-Librarian, while Mr. Macray was an unflinching oracle on all points of palæography. I should like also to thank generally the officials of all the three institutions which I have named, for their unflinching courtesy, attention, and helpfulness. To the many friends who have helped me, if indirectly, yet very really by their sympathy and the interest they have taken in my work, I would also here return my grateful thanks. To one of them this work would probably have been dedicated, were it not that dedications are said to be somewhat out of date in this enlightened age.

C. C. C., OXON.,
July 29, 1885.

List of Authorities.

NOTE.—As a general rule the authorities referred to will be easily identified; only those are given here as to which any doubt might be likely to arise.—[C.S. = Camden Society. R.S. = Rolls Series.]

ERRATA.

- p. 41, l. 13, *for* Chief Justice of England, *read* Chief Justice of the King's Bench.
p. 64, note 5; p. 65, note 2; p. 215, l. 13 from bottom, *for* Ormond, *read* Ormonde.
p. 81, l. 22, *for* trace, *read* tract.
p. 84, l. 10, *for* 1464, *read* 1463.
p. 249, l. 6 from bottom, *for* de, *read* le.
p. 263, l. 7 from bottom, *for* sports, *read* spots.
p. 349, margin, insert *his* after *Warrewic*.

Ægidius Romanus, *De Regimine Principum*. English translation in MS. Digby 233.

Blakman, in Hearne's Otterbourne.

Burton, History of Scotland. Cabinet edition.

Chastellain, ed. Kervyn de Lettenhove.

Continuator of Croyland, in Fulman's *Scriptores Veteres*, vol. i. fol. 1684.

De Coussy, ed. Buchon.

English Chronicle, ed. Davies. C.S.

Fabyan, ed. Ellis, 4to.

Fortescue's Works, etc., ed. Clermont.

The writings of Fortescue occupy the first volume of a work in two volumes by Lord Clermont, with the title 'Sir John Fortescue and his Descendants;'; the Family History forming the second volume. The latter was however subsequently reprinted as a substantive work, and it is always this second edition which is cited under the title 'Family History.' The Legal Judgements of Sir John Fortescue will be found at the end of his Works, with a separate pagination. Of his works, the *De Naturâ Legis Naturæ* is cited for shortness as N. L. N., the 'Governance of England' as the *Monarchia*.

Froude, History of England. Cabinet Edition.

Gregory's Chronicle, in Gairdner's 'Collections of a London Citizen.' C.S.

Hall's Chronicle, 4to., ed. 1809.

List of Authorities.

- Hallam, Constitutional History. Library Edition, 1854.
 „ Literature of Europe. Cabinet Edition.
 „ Middle Ages. Cabinet Edition, 1872.
 Hardyng, ed. Ellis. 4to.
 Hearne's Fragment, in Hearne's 'Sprotti Chronica.'
 Household, Ordinances of the Royal, published by the Society of Antiquaries. (Cited as 'Ordinances, &c.')
- Martineau, History of the Peace. 4 vols. 8vo., 1877-8.
 Monstrelet. 3 vols. fol., 1595.
 Paston Letters, ed. Gairdner.
 Political Songs, ed. Wright. C.S.
 „ „ R.S.
 Proceedings and Ordinances of the Privy Council, ed. Sir Harris Nicolas. (Cited as P. P. C.)
 Pseudo-Aquinas. Under this title is cited that part of the *De Regimine Principum* which is not by St. Thomas Aquinas.
 Rede's Chronicle, in MS. Rawl. C. 398.
 Rymer's *Fœdera*. Original Edition, 1704-1735.
 Stowe's Annals, ed. 1631, fol.
 Stubbs' Constitutional History. Cabinet Edition. (Cited as S. C. H.)
 Turner, Sharon, History of England during the Middle Ages. 8vo. Edition.
 Vincent of Beauvais, *De Morali Principum Institutione*, in MS. Rawl. C. 398.
 Waltham, Roger of, *Compendium Morale*, in MS. Laud. Misc. 616.
 Wars of the English in France, Letters and Papers illustrative of the, ed. Stevenson. R. S. (Cited as 'English in France.')
- Waurin, *Anchiennes Chroniques*, ed. Mdle. Dupont. (Société de l'Histoire de France.)
 Whethamstede. R.S.
 Worcester, William, Collections, and Annals, in Wars of the English in France, q. v.

Chronological Table of the Life, Times, and Writings of Sir John Fortescue.

- ? 1390-1400. Birth of Fortescue.
 1399. *Oct.* Accession of Henry IV.
 1413. *March.* Accession of Henry V.
 1422. *Sept.* Accession of Henry VI.
 1425, 1426, and 1429. Fortescue Governor of Lincoln's Inn.
 1429 or 1430. Fortescue becomes a Sergeant-at-Law.
 1429. *Nov.* 6. Coronation of Henry VI at Westminster.
 1431. *Dec.* 17. „ „ at Paris.
 1435. *Aug.* Conference of Arras.
 ? 1435-6. Fortescue marries Elizabeth or Isabella Jamyss.
 1435-6. Fortescue acquires lands in Devonshire by grant of his brother Henry.
 1439. Conference of Calais.
 1440. *June.* Gloucester's manifesto on the release of the Duke of Orleans.
 1440 and 1441. Fortescue acts as Judge of Assize on the Norfolk circuit.
 1441. *Easter Term.* Fortescue made a King's Sergeant.
 — Grant to Fortescue and his wife of lands at Philip's Norton.
 1442. *Jan.* Fortescue made Chief Justice of the King's Bench.
 Feb. Grant to Fortescue of a tun of wine annually.
 Oct. Fortescue ordered to certify the Council as to certain indictments brought against the Abbot of Tower Hill.
 Fortescue ordered to commit to bail certain adherents of Sir William Boneville.
 1442 or 1443. Fortescue knighted.

1443. *Jan. or Feb.* Fortescue sent on a special commission into Norfolk.
March 4. Letter of thanks from the Council to Fortescue.
 — 14. Fortescue ordered to send to the Council a list of persons eligible for the offices of J.P. and Sheriff in Norfolk.
 — 23. Fortescue makes his report to the Council on the affairs of Norfolk.
April 3 and May 3. Fortescue attends the Privy Council.
May 8. Warrant ordered for the payment of 50 marks to Fortescue.
May 10. Fortescue summoned to advise the Council with reference to the attacks on Cardinal Kemp's estates.
 — 11. Fortescue makes his report to the Council.
 — 18. Fortescue sent on a special commission into Yorkshire.
May. Grant to Fortescue of a tun of wine annually.
July 11. Fortescue attends the Privy Council.
 Confirmation to Fortescue and his wife of the lands at Philip's Norton.
1444. *Jan.* Fortescue ill of sciatica, and unable to go on circuit.
1445. *Feb.-1455. July.* Fortescue a trier of petitions in Parliament.
1445. *April 22.* Marriage of Henry VI with Margaret of Anjou.
1447. *Feb. 23.* Death of Gloucester.
March. Fortescue receives an addition of £40 to his salary.
April 11. Death of Cardinal Beaufort.
Oct. Fortescue and his wife receive letters of confraternity from Christ Church, Canterbury.
 Fortescue refuses to deliver Thomas Kerver out of Wallingford Castle.
- 1447-8. Fortescue arbitrates between the Chapter and Corporation of Exeter.
1450. *Jan.-March.* Fortescue acts as spokesman of the Judges in relation to the trial of Suffolk.
May. Murder of Suffolk. Rising of Cade.
Aug. Fortescue sent on a special commission into Kent.
Sept. The Duke of York comes over from Ireland.

1451. *May-June.* Fortescue expecting to be attacked in his house.
1452. *Oct.* Fortescue acquires the manor of Geddynghall, and other lands in Suffolk.
1453. *July 6.* The King falls ill at Clarendon.
Oct. 13. Birth of Prince Edward of Lancaster.
1454. *Feb.* Fortescue delivers the opinion of the Judges on the case of Thorpe.
March 22. Death of Kemp.
April 3. York appointed Protector.
June 9. Edward of Lancaster created Prince of Wales.
Dec. 25. Recovery of the King.
 Fortescue divests himself of his lands in Devonshire in favour of his son Martin.
1455. *May 22.* First battle of St. Alban's. Death of Fortescue's younger brother, Sir Richard Fortescue.
Oct. The King falls ill again at Hertford.
Nov. 19. York reappointed Protector.
1456. *Feb.* The King recovers.
Feb. 25. York dismissed from the Protectorship.
Feb. Fortescue arbitrates between Sir John Fastolf and Sir Philip Wentworth.
March. Fortescue consulted by the Council with reference to the Sheriffdom of Lincolnshire.
May. Fortescue sits on a special commission at the Guildhall.
 Fortescue acquires the reversion of the manor of Ebrington.
1457. *May.* Fortescue acquires lands at Holbeton, Devon.
1458. *March 25.* Peace made between the Lancastrians and Yorkists. Margaret of Anjou instigates Charles VII to send French troops to England.
1459. *Sept. 23.* Battle of Bloreheath.
Oct. 12. Dispersal of the Yorkists at Ludlow.
Nov. Parliament of Coventry. Activity of Fortescue.
Dec. 7. Attainder of the Yorkists.
 Fortescue appointed a feoffee for executing the King's will.
1460. *Feb.* Negotiations of Margaret of Anjou with France.
July 10. Battle of Northampton.
Oct. The Duke of York claims the crown.

Chronological Table.

- Oct.* Margaret and the Prince in Wales.
Dec. 31. Battle of Wakefield.
1461. *Jan.* Negotiations of Margaret and the Dowager Queen of Scotland at Lincluden.
Jan. 20. Bond of Lancastrian lords to induce Henry VI to accept the terms agreed upon.
Feb. 3. Battle of Mortimer's Cross.
 — 17. Second battle of St. Alban's.
 ? Fortescue joins the Lancastrian forces.
March 4. Edward IV proclaimed.
 — 29. Fortescue present at the battle of Towton.
 The Lancastrians take refuge in Scotland.
April 25. Agreement of the Lancastrians to surrender Berwick to the Scots.
May. Berwick full of Scots. Carlisle besieged by the Scots. The siege raised by Montague.
June 26. Fortescue and others 'rear war' against Edward IV at Ryton and Brancepeth.
 — 28. Coronation of Edward IV.
July 22. Death of Charles VII of France.
1462. *Feb.* Lancastrian plots for invading England.
Feb. 20. Execution of the Earl of Oxford.
June 1461–*March* 1462. Somerset and Hungerford negotiate on the Continent in behalf of the Lancastrian cause.
1462. *March.* Somerset and Hungerford return to Scotland. A fleet for invading England assembles in the Seine.
April. Margaret and Prince Edward go to the Continent.
June 28. Treaty signed between Margaret and Louis XI.
Summer. Negotiations of the Scots with Edward IV.
 — The Northern castles lost by the Lancastrians.
Sept. Warwick defeats the invading fleet.
Oct. Margaret returns from France and recovers the Northern castles; is joined by Henry VI in Northumberland.
Nov. Henry VI and Margaret retire to Scotland.
Dec. 24. Bamburgh and Dunstanburgh surrender, and Somerset submits to Edward IV.
1463. *Jan.* 6. Alnwick falls.

Chronological Table.

- Before *Apr.* 29. Bamburgh and two other castles recovered by the Lancastrians.
May. Alnwick goes over to the Lancastrian side.
June. Henry VI and Margaret at Bamburgh. The Lancastrians dispersed by Warwick. Henry and Margaret retire to Scotland.
July. Margaret, Prince Edward, and Fortescue go to the Continent.
Sept. 1–2. Interview of Margaret with Philip the Good at St. Pol.
 The Lancastrian exiles retire to St. Mighel in Barrois. Negotiations with foreign courts.
Dec. Somerset returns to the Lancastrian allegiance.
- 1461–1463. Fortescue writes the 'De Naturâ Legis Naturæ,' and various tracts on the succession question.
1464. *Jan.* Henry VI at Edinburgh.
Spring. Norham and Skipton in Craven captured by the Lancastrians. Lancastrian rising in Lancashire and Cheshire.
March. Henry VI at Bamburgh.
April 25. Battle of Hedgeley Moor.
May 1. Edward IV privately married to Elizabeth Wydvile.
 — 8. Battle of Hexham.
 — 15. Execution of Somerset.
 — 27. Execution of Hungerford.
 Henry VI retires to Scotland.
June. Surrender of Alnwick and Dunstanburgh. Capture of Bamburgh.
 Before *Dec.* Fortescue goes to Paris.
Dec. Letter of Fortescue to Ormonde. Henry is safe and out of the hands of his rebels.
1465. *March.* ? Henry VI at Edinburgh.
July. Henry VI captured in Lancashire and sent to the Tower.
Summer. Fortescue goes to Paris.
 War of the Public Weal in France.

INTRODUCTION.

PART I.

CONSTITUTIONAL SKETCH OF THE LANCASTRIAN AND YORKIST PERIOD. (1399-1483.)

THE fifteenth century opens in two of the principal countries of Europe with a revolution. On September 29, 1399, Richard II of England resigned the crown; the next day he was deposed on charges, which were taken as proved by common notoriety, and Henry IV was accepted in his place. On August 20, 1400, a section of the electors of the Holy Roman Empire by an equally summary process deposed their head, Wenzel king of Bohemia, and on the following day elected Rupert of the Palatinate in his stead. The fortunes of the two deposed monarchs had not been unconnected. Richard's first wife, Anne of Bohemia, was Wenzel's half-sister: and there is extant a letter from Wenzel to Richard, dated Sept. 24, 1397, in which he offers Richard help against his rebellious nobles, in return for similar offers made by Richard to himself¹. The comparison is further worth making, because of the similarity of the charges which served to overthrow the two brothers-in-law.

Contemporary Revolution in England and the Empire.

Another comparison, which to students of English History is even better worth making, is the comparison between the revolution of 1399 and that of 1688. In both cases a great effort was made by the lawyers to preserve the formalities of the constitution, and to disguise by legal fictions

Comparison of the Revolutions of 1399 and 1688.

¹ Bekynton's Correspondence, I. lxi. 287-9.

Legal fic-
tions.

what was in reality a breach of continuity: in both it was found necessary to pass over the immediate heir, so that Parliament had not merely, as in the case of Edward II, to claim the right of setting aside an unworthy king, but had implicitly to make the further claim to regulate the succession. So on both occasions probably many were carried by the course of events further along the path of revolution than they had intended. There were many who would gladly have seen Henry restored to his Duchy of Lancaster, and who were prepared heartily to support him in insisting that Richard should abandon his recent unconstitutional proceedings and return to his former mode of government, who yet felt themselves duped, when they found that he used the opportunity which they had given him to seat himself on the throne. So too there were many who were truly anxious that by means of the coming of the Prince of Orange the religion, laws, and liberties of England should be securely established in a free parliament, but who were disappointed when James II's pusillanimity paved the way for the elevation of his son-in-law to the crown. Both Henry and William came as the deliverers of a church which was threatened alike in doctrine and in property by a hostile form of religion, and of a nation perplexed and unsettled by a feverish attempt at arbitrary rule. In both cases questions of foreign policy had much to do with the result. But whereas at the close of the seventeenth century it was absolutely necessary for the salvation of Europe that England should be rescued from her subservience to France, at the close of the fourteenth century, on the other hand, France was by no means a dangerous power. It was her very weakness which tempted the unscrupulous and hypocritical aggression of Henry V. In both cases one of the chief advantages secured by the change of dynasty was that the royal authority was placed upon a proper footing, and seen to rest upon the consent of the nation. Richard II, like James II, had imbibed an entirely baseless view of English monarchy. The assertion that he had declared the laws to be in his own mouth and

Many were
led further
than they
had in-
tended.

Henry and
William
came as
deliverers
of Church
and Na-
tion.
Foreign
policy.

Theory of
royalty.

breast, is perhaps an exaggeration of his enemies: but if true, such language is no worse than James II's prattle about 'his sovereign authority, prerogative royal, and absolute power, which all his subjects were to obey without reserve¹.' By the change of dynasty theories of this kind were got rid of. Whether from choice or from necessity, the Lancastrians always professed to rule as constitutional kings.

The Lancastrian period must always be of importance, as the period in which political liberty, at any rate in theory, reached its highest point during the middle ages. In fact the people acquired a larger measure of liberty than they were able to use: and the Commons, though bold in stating their grievances, were often helpless in devising remedies. In the words of Dr. Stubbs, 'Constitutional progress had outrun administrative order².' And this, combined with other causes which will be noticed later, made possible those disturbances which culminated in the civil war, and which wearied out the national patience, until even Tudor despotism seemed more tolerable than confusion.

The advantages of Lancastrian rule were mainly prospective, and its chief claim on our gratitude is the fact that it supplied the precedents on which the constitutional party in the seventeenth century based their resistance to that caricature of Tudor despotism which the Stuarts attempted to perpetuate³. Viewed in relation to contemporary history it was premature; and it combines with the fruitless rising of the Hussites in Bohemia, with the abortive attempts of the Church to reform itself in the Councils of Pisa, Constance, and Basle, and with the equally abortive attempts to restore administrative and constitutional unity to the disintegrated German Empire, to stamp upon the fifteenth century that character of futility which has been so justly ascribed to it⁴.

¹ Hallam, Const. Hist. iii. 71.

² Stubbs, Const. Hist. iii. 269.

³ S. C. H. iii. 2-5; cf. Rogers' Gascoigne, pp. lviii. ff.

⁴ 'Weak as is the fourteenth century, the fifteenth is weaker still; more *futile*, more bloody, more immoral.' S. C. H. ii. 624.

Key-note of Lancastrian policy, its appeal to national consent.

Privy Council.

Great Council.

Parliament.

Henry IV a Saviour of society.

'The key-note of the Lancastrian policy,' says Dr. Stubbs, 'was struck by Archbishop Arundel in Henry IV's first Parliament, when he declared that Henry would be governed, not by his own "singular opinion, but by common advice, counsel, and consent"¹.' For the tendering of this 'common advice, counsel, and consent,' there were during this period three organs: 1. The Privy Council; 2. The Great Council; 3. The Parliament. On the character and composition of the Privy Council during the Lancastrian period, and the schemes of Fortescue for reorganizing it, I have spoken at length elsewhere². On the Great Council also something will be found in the same place. Fortescue says nothing about it; perhaps, as I have there suggested, he disliked the institution as giving too much influence to the aristocracy. It forms however a characteristic feature of Lancastrian rule: for whereas in former reigns it appears as a mere survival of the old baronial parliaments, it now assumes special functions and a special position of its own, standing midway between the Privy Council and the Parliament, advising on matters which the former did not feel itself competent to settle, and preparing business for the meeting of the latter.

On the composition and powers of Parliament Fortescue is also silent. Probably he considered them to be too firmly settled and too well known to require any commentary. The increase of the power of parliament under the Lancastrians is indeed too obvious to escape notice. 'Never before,' says Dr. Stubbs, 'and never again for more than two hundred years, were the Commons so strong as they were under Henry IV³.'

Henry IV came to the throne as the representative of the 'possessed' classes—to use a contemporary expression⁴. The crude socialism of the Lollards, as the barons saw, and as the Churchmen were careful to point out, threatened the foundations not merely of the Church, but of all property. It was the mission of Henry IV to put

¹ S. C. H. iii. 14.

² Notes to Chap. xv. below.

³ S. C. H. iii. 72.

⁴ Sharon Turner, iii. 105.

down these anarchical tendencies, to maintain vested interests and the existing state of things. He came, in modern phrase, as a saviour of society. Richard II, even in his best days, had not been very favourable to the interests of the propertied classes. He had not been forward in persecuting the Lollard, and he had wished to give freedom to the serf. These errors Henry was expected to correct.

The second great object of Henry's reign was the maintenance of himself on the throne and the continuance of his dynasty. From this point of view his reign was one long struggle against foreign and domestic enemies. His ultimate success is a proof of his great ability, but he was at no time free from anxiety. Hallam¹ speaks as if Henry IV's submission to the demands of the Commons was unaccountable. But the causes of his weakness are plain enough. He was weak through his want of title, weak through the promises by which he had bound himself to those whose aid had enabled him to win the crown, weak most of all through his want of money. It was this which gave the Commons their opportunity, it was this which caused all the disasters of the reign, the rebellion of the Percies, the ill-success of the Welsh campaigns, the wretched state of Ireland, the danger of Calais. The most 'exquisite means'—to use Fortescue's phrase—of raising money were resorted to; the constitutional character of some of them being, to say the least, questionable. This scarcity of money was due partly to the general want of confidence in the stability of the government which succeeded the brief enthusiasm in Henry's favour², and which

¹ Middle Ages, iii. 95.

² The letter of Philip Repington, the King's confessor, afterwards Bishop of Lincoln, dated May 4, 1401, is worthy of careful study in regard to this point. It is no mere rhetorical composition made up of phrases always kept in stock and not intended to fit any thought in particular; but it gives a genuine picture of the unsatisfactory state of the country,

and of the deep disappointment felt at the way in which Henry had belied the (perhaps unreasonably high) expectations that had been formed of him. The author alludes in reference to Henry to Luke xxiv. 21, 'Nos autem sperabamus quia ipse esset redempturus Israel.' Bekynton's Correspondence, i. 151-4; cf. also Engl. Chron., ed. Davies, pp. 23, 28, 31; Hardyng, p. 371.

led people to hoard their gold and silver, so that not only was none forthcoming to meet the demands of the government, but capital, which ought to have been employed productively, was withdrawn from circulation, thus causing for the time a general diminution of the resources of the country. As soon as the accession of Henry V had shown that the dynasty was firmly established, abundant supplies were at once at his command¹. Another cause was the disturbance of commerce, and consequent decline of the customs which followed the accession of Henry IV, owing partly to the unsettled state of the relations between England and France². But the commons could not be got to believe in the poverty of the Government, and Henry did not dare to press for heavier taxation, for fear of increasing the already dangerous amount of discontent.

Disturbance of Commerce.

The unquiet time of Henry IV.

In this way passed what the chronicler Hall has justly called 'the unquiet time of King Henry the Fourth.' Harassed as he was by enemies foreign and domestic, deserted by many of the Lords, worried by the Commons, conscious that he had lost the love of his people, jealous and doubtful of his heir; with a divided court and broken health, which his enemies regarded as a judgement upon him, we can hardly refuse him our sympathy, although we may be of opinion that many of his troubles were self-caused. The interest which he is said to have taken in the solving of casuistical questions³, shows the morbid lines on which his burdened conscience was wearily working. There is psychological if not historical truth in the story that he expired with the sigh that God alone knew by what right he had obtained the crown⁴. It was a curious choice that he should wish to be buried so near the man whose son he had discrowned, if not done to death.

¹ S. C. H. iii. 87.

² On this, and on the general decline of England's maritime power during the reigns of Henry IV and Henry VI, see notes to chaps. vi. xvii. below, and cf.

S. C. H. iii. 65, note 1.

³ Capgrave, III. Henr. pp. xxxiii, 109.

⁴ Monstrelet, ii. f. 164 a, cited by Sharon Turner.

The accession of Henry V was by no means his first appearance either as a statesman or a warrior. He had served with distinction both in council and in the field, and had received in both capacities the thanks of Parliament. He had had his own policy, and his own party, who had urged him to claim the regency on the ground that his father was incapacitated by the disease from which he was suffering, which was said to be leprosy¹.

Accession of Henry V. His previous history.

The words which Shakespeare puts into the mouth of the dying Henry IV represent no more than the literal truth as to the advantages with which Henry V came to the crown:

His advantages.

'To thee it shall descend with better quiet,
Better opinion, better confirmation;
For all the soil of the achievement goes
With me into the earth².'

He reaped the benefit of an usurpation of which he had not shared the guilt. In accordance with these advantages he adopted a policy almost ostentatiously conciliatory. Even the unjustifiable attack on France may have been in part due to the same motive³. Only, if this was his idea, it was singularly falsified by the result. The causes which suspended for a time the outbreak of discord, did but make it the more intense when it came. And it is

¹ I am inclined to think that the above is the true account of a very obscure transaction. Henry Beaufort was said to have 'stired' the prince 'to have take ye governance of yis Reume and (of) ye crowne uppon hym;' (so I would construe the passage,) Rot. Parl. iv. 298 b; cf. Sharon Turner, ii. 362. Leprosy was a bar to the descent of real property; Hardy, Close Rolls, I. xxxi. In Rymer, xi. 635, is a certificate of the king's physicians that a certain person is not a leper, which is very interesting with reference to the nature of mediæval leprosy.

² Second Part of King Henry IV, Act iv. sc. 4.

³ Cf. Ægidius Romanus, De

Regimine Principum, III. ii. 15: 'Guerra enim exterior tollit seditiones et reddit cives magis unanimes et concordēs. Exemplum enim hujus habemus in Romanis, quibus postquam defecerunt exteriora bella intra se ipsos bellare coeperunt.' 'For outward werre aleyþ inward strif, and makeþ citeseyns þe more acorded. Herof we hauen ensample of the Romayns, for whanne hem failede outward werre, thei by gunne to hawe werre among hemself.' MS. Digby, 233, fo. 142 c. To this motive also Basin ascribes the warlike policy of Humphrey of Gloucester. He too cites the example of the Romans; i. 189.

His reign constitutionally unimportant.

only as developing causes, and those evil causes, which hardly began to act until he had passed away, that the reign of Henry V has any place in constitutional history. He did nothing permanent for the good of England, and the legacy which he left her was almost wholly evil: a false ideal of foreign conquest and aggression, a reckless contempt for the rights and feelings of other nations, and a restless incapacity for peace, in spite of exhaustion which had begun to show itself even in his own lifetime¹. The history of the Southampton plot is characteristic of the haste with which the Lancastrians sought to stifle anything which raised the dangerous question of their title. The whole proceedings were so unconstitutional and irregular that they had to be specially legalized in the next Parliament². Even more noteworthy is the fact that 'this conspiracy was the first spark of the flame which in the course of time consumed the two houses of Lancaster and York. Richard Earl of Cambridge was the father of Richard Duke of York, and grandfather of Edward IV³.'

The Southampton Plot.

Beginning of the Wars of the Roses.

Henry VI.

Divisions of his reign.

But it was not till the house of Lancaster had proved in the person of Henry VI its entire incapacity to rule the kingdom, that the claims of the house of York were to be put forward openly. 'The troublous season of King Henry the Sixth,' to use once more the words of Hall, may be divided into three main periods: (1) from 1422 to 1437, the time of the minority proper⁴; (2) from 1437 to 1450, the time of Henry's own attempt at governing with the aid of those who may from time to time have had the ascendancy with him; (3) from Cade's rising in 1450 to 1461, the time of civil war. During the first of these periods the struggle is directly for preponderance in the council, mainly between the adherents of Gloucester and

¹ That Henry's aggression was disapproved by some even of his own subjects, see Gesta Henrici Quinti, p. xxxi; cf. Pecoock, Repressor, p. 516.

² Rot. Parl. iv. 64 ff.: 'ut judicia . . . pro bonis et legalibus judiciis haberentur.'

³ Ellis, Historical Letters, II. i. 44.

⁴ Henry did not legally come of age till 1442, but from 1437 he began to influence the course of government. See Rot. Parl. v. 438-9, which document may be regarded as marking the transition from the first to the second period.

Beaufort. During the second period the struggle is rather for influence with the king, for possession of the royal ear. At first the contest as before is between Gloucester and Beaufort. Then, when they disappear, it is between Suffolk, Somerset, and Margaret on the one side, and York and his adherents on the other. Owing to the unhappy weakness of Henry both in will and intellect, no party could feel sure of maintaining their ascendancy with him, and of enjoying his support, unless they wholly monopolized his ear, and excluded all other influences¹. Hence all the unconstitutional attempts of Margaret and her partizans to keep first Gloucester and then York from the royal presence, which contributed largely to make the civil war inevitable. When that war broke out, the struggle for command of the king's person still continued; only it was no longer carried on merely by intrigue and party tactics, but depended for its issue upon the fate of battles.

The marriage of Henry to Margaret of Anjou in 1445 was a great misfortune not only to England², but also to the house of Lancaster. By degrading the crown into an instrument of party warfare, she involved it in the ruin of the party of her choice³. The death of Gloucester in 1447 was another event which helped to bring matters to a crisis. Little good as he had done the house of Lancaster during his life, his death was a very severe blow to it. It cast an indelible suspicion on the existing government, and

Henry's marriage disastrous.

Death of Gloucester and Beaufort.

¹ 'Pour ce que le roy Henry . . . n'a pas este . . . homme tel que il convenoit pour gouverner ung tel royaulme, chascun quy en a eu povoir s'est voulu enforchier d'en avoir le gouvernement,' &c. Waurin, ed. Dupont, ii. 282.

² Gascoigne is especially strong on this point; e.g. pp. 203 ff., 219 ff.

³ Commynes remarks very justly on the disastrous effect of this partizan attitude of Margaret. She ought, he says, to have acted as mediator between the two parties, and not to have identified herself

with either; Liv. vi. c. 12. Chastellain says of her: 'Tu as esté ennemye trop tost et trop amyë à peu y penser; et sy te a porté grant grief ton hayr, et ton aimer peu de profit;' vii. 129 f. He makes her confess that she has been the ruin of England; ib. 102. Cf. Bacon, *Of Seditions and Troubles*: 'When the Authority of Princes is made but an Accessary to a Cause, and that there be other Bands that tie faster than the Band of Sovereignty, Kings begin to be put almost out of possession.' Cf. id. *Of Faction*.

it transferred the position of heir-presumptive and leader of the opposition to a man whose abilities were far greater than those of Gloucester, while his interests were diametrically opposed to those of the house of Lancaster, instead of being identical with them. A few weeks later died Cardinal Beaufort, and the stage was thus cleared for younger actors. Somerset and York were both absent from England, and Suffolk was omnipotent at court. He showed a rigorous determination to exclude not merely from power, but even from the king's presence, all but those who were prepared to be the subservient ministers of his will¹. The same policy was pursued with reference to the local administration². The reaction caused by this arrogance and partiality, and the ill-success of his foreign policy³, proved his ruin. By 1450 the popular indignation could no longer be restrained, and his impeachment was resolved on by the Commons. The ultimate decision of the question is an instance of a tendency, which appears more than once in this time of weakness and decline of true political life; the tendency, namely, to throw the responsibility for questionable actions upon the crown, and so to shift it from the shoulders of those who constitutionally ought to bear it. At the time of Henry's marriage the Lords protested that the king had been moved to the thought of peace 'onely by oure Lorde,' and not by 'the Lordes, or other of your suggettes⁴.' So now the king, 'by his owne advis, and not reportyng hym to th' advis of his Lordes, nor by wey of judgement,'

Ministry of Suffolk.

His impeachment.

Tendency to shift constitutional responsibility.

¹ Even the sermons preached before the king were subjected to a rigorous censorship; Gascoigne, p. 191; cf. Gregory, pp. xxiii, 203.

² Rot. Parl. v. 181 b, and notes to Chap. xvii. below.

³ Cf. Gascoigne, p. 219: 'Et sic facta est alienacio . . . predictarum terrarum . . . sine aliqua pace finali conclusa . . . inter illa duo regna.' Henry's subsequent protest that the cession of Maine was only made in consideration of a secure peace (Rymer, xi. 204, March 15, 1448) was, in the face

of the actual facts, not worth the parchment it was written on. The same may be said of the declaration of Suffolk's loyalty; Rot. Parl. v. 447 b.

⁴ Rot. Parl. v. 102 b. The same tendency appears in the Privy Council. See the case of Somerset's application for a grant, cited in the notes to Chap. xix. below. In the challenge which Henry V sent to the Dauphin in 1415, it is stated that none of his counsellors had dared to counsel him in so high a matter; Rymer, ix. 313.

banished Suffolk for five years, the Lords protesting that this 'proceeded not by their advis and counsell, but was doon by the kynges owne demeanaunce and rule¹.' In all these cases the Lords ought, if they approved of what was done, to have accepted their share of the responsibility, or, if they disapproved, they should have frankly opposed it. Their actual course was a piece of political cowardice. The whole proceedings in the case of Suffolk were most unconstitutional, a flagrant evasion of the right of the Commons to bring an accused minister to trial before the House of Lords². The idea of Henry was no doubt to find a compromise whereby the Commons might be satisfied, and yet Suffolk might be saved. He failed egregiously in both. Suffolk was murdered at sea, and this gave the signal for all the mischief that followed. The Commons of Kent rose under Cade, complaining, among other things, that 'the fals traytur Pole that was as fals as Fortager (Vortigern) . . . apechyd by all the holl comyns of Ingelond, . . . myght not be suffryd to dye as ye law wolde³.'

The rising of Cade was but the climax of a process which had long been going on. The government had gradually been losing all hold upon the country, and in the general paralysis of the central administration local disorder had increased to a frightful extent⁴. The causes of these 'troubles and debates⁵' are precisely those evils against which Fortescue's proposed reforms are mainly

Rising of Cade.

Causes of governmental weakness.

¹ Rot. Parl. v. 183.

² This right was not in the slightest degree affected by Suffolk's resignation of his privileges as a peer.

³ Three Fifteenth Century Chronicles, p. 95. According to Basin, i. 251-2, Somerset fanned the popular indignation against Suffolk, in order to divert attention from his own military failures.

⁴ The year 1443 e.g. seems to have been specially troublous. There were disputes between the Earl of Northumberland and Kemp the Archbishop of York,

P. P. C. v. 309, cf. ib. 268-9, 273; between Lord Grey of Ruthin and the town of Northampton, ib. 305; between S. Mary's Abbey, York, and the Corporation of that city, ib. 225, 232; between Fountains Abbey and Sir John Neville, ib. 241: there were riots at Salisbury, ib. 247-8; and in London, ib. 277-8. In 1437 the whole country was so disturbed that copies of the Statute of Winchester were sent to all the sheriffs, with orders for its enforcement; ib. 83.

⁵ See below, Chap. xvii.

directed, and they must therefore be investigated somewhat in detail.

Poverty. One great cause of the weakness of the government was no doubt its poverty. The revenue both central and local¹ was hopelessly encumbered, largely by grants of annuities and pensions to persons who were in reality much richer than the crown². The notes to this work will show in detail how every branch of the public service was constantly in arrear³. It was seldom if ever possible to wait until the supplies granted by Parliament were actually collected. Parliament itself generally gave authority to the Council to raise loans on the security of the taxes. Where this parliamentary sanction was given, and the loans were punctually repaid, this system was perhaps constitutionally unobjectionable⁴. But the financial result was disastrous. Fortescue estimates the loss to the king at 'the fourth or fifth penny of his revenues'⁵. Loans were constantly asked for from individuals, corporations, and towns, and sometimes in a way which seems distinctly unconstitutional⁶. Beaufort was the chief lender and loan

¹ On the state of the local revenue, see notes to Chap. xv. below.

² See notes to Chap. vi. below, and cf. Gascoigne, p. 158.

³ See especially notes to Chaps. vi. and vii.

⁴ A list of towns and persons, with the sums which they were expected to lend under Parliamentary authority, is in P. P. C. iv. 316ff. (1436). There are innumerable entries in the Cal. Rot. Pat. 'de mutuo faciendo per totum regnum'; 273 a, 274 b, 275 b, 276 b, 280 b, 284 b, 289 b, 293 b, 295 a, 296 a. Whether all these had parliamentary authority I cannot say. The Lords of the Council and others had frequently to bind themselves not to allow the assignments made for repayment of loans to be tampered with; P. P. C. iv. 145; Rot. Parl. iv. 275 b. This precaution had been taken under

Henry V; ib. 117. That it was not unnecessary is shown by the fact that in 1442 Beaufort alone supported the Treasurer in resisting an attempt to assign revenue that had been already appropriated; P. P. C. v. 216, cf. 220. But in 1443 he agreed to a grant out of the customs of London, 'notwithstanding any assignement maade before, and notwithstanding any estatut act or ordenance'; ib. 227.

⁵ Chap. v. below.

⁶ In 1430 the Pope lent Henry money; P. P. C. iv. 343. In 1437 a special appeal was made to the clergy; ib. v. 42. Dr. Stubbs (C. H. iii. 276 note) has tried to minimize the charge of unconstitutional taxation brought against the Lancastrian kings. One document, he thinks, is wrongly assigned to that period. Other cases 'involve only the sort of loans

contractor to the government¹. The king's jewels were perpetually in pawn². And the government seem not to have been above such petty acts of tyranny as exacting the fines for respite of knighthood twice over³. Fortescue himself admits that the poverty of the king compels him 'to fynde exquysite meanes of geyting of good'⁴. It is hardly likely that in this he is thinking only of the reign of Edward IV. It is obvious that an administration thus starved could not be efficient. The remedies which Fortescue proposes for this state of things are a large increase in the permanent endowment of the crown, and the making of that 'livelod' inalienable, a resumption of grants, the limitation of the king's power of giving by making the consent of the council necessary, and a system

Exquisite means.

Fortescue's remedies.

which were sanctioned by Parliament, though, if they were not actually sanctioned by Parliament, their constitutional character would still be doubtful. But the following instance (which Dr. Stubbs does not cite) seems too clear to be explained away. 'RIGHT trusty, &c. Howe it be that . . . we . . . charged you either to have sende . . . the cc. març, like as ye agreed . . . to lenne us, . . . or elles to have appered personally before us and oure Counsaile; . . . Neverthelessse . . . ye neyther have sende the saide money, nor appered. . . . For so moche we write . . . straite-ly charging you, that as ye wol eschewe to be noted and taken for a letter and breker of tharmee, whiche is appointed to be sende unto our saide duchie (of Guyenne), . . . ye withoute delay . . . either sende by the berer herof the saide cc. març, . . . or comme in alle possible haste personelly before oure saide Counsaile, . . . upon the paine abovesaide.' (July, 1453,) P. P. C. vi. 143, cf. ib. 330. To require a person to send money by the bearer, or to appear before the Council under pain of being 'noted' as a disloyal sub-

ject, is surely as arbitrary a proceeding as can well be imagined. That the man had promised to lend the money does not affect the constitutional question, if the promise was one which the government had no right to exact. Edward IV's financial measures were perhaps only a reduction to system of the hints furnished by his predecessors.

¹ For Beaufort's loans, see P. P. C. iv. and v. passim.

² e.g. P. P. C. iv. 214, vi. 106, &c. Cf. notes to Chap. vii.

³ At least a petition of the Commons that this might not be done was refused in 1439; Rot. Parl. v. 26 b.

⁴ Chap. v. below. According to De Coussy, c. 42, ed. Buchon, p. 83 b, the poverty of the royal household was sometimes so extreme, that the king and queen were in positive want of a dinner. On one occasion the Treasurer had to redeem a robe which the king had given to St. Alban's, because it was the only decent one which he possessed; Whethamstede, i. 323. That this poverty was one great cause of the unpopularity of the government of Henry VI, see Eng. Chron., p. 79.

of ready money payments, whereby a saving of twenty or twenty-five per cent. on the ordinary expenditure may be effected¹.

Power and insubordination of the nobles.

Another main cause of the paralysis of the government was the overgrown power and insubordination of the nobles. 'The two cankers of the time were the total corruption of the Church, and the utter lawlessness of the aristocracy².' The condition of the English Church and the policy and relations of the Lancastrian kings towards it are subjects which, however interesting, cannot be discussed here. They did not come within the scope of Fortescue's writings, and if they had, his orthodoxy and optimism³ would probably have made him averse to discussing them. But the reduction of the power and influence of the nobles is one of the chief objects which he has in view, and is the end to which most of his reforms are directed. The danger to the crown from 'over-mighty subjects' is one that is never absent from his mind. This therefore is a question which must be carefully discussed.

Origin of the evil under Edward III.

For the origin of the evil, in the form in which it appears during our period, we must go back to the time of Edward III. The evils of the older feudalism had been sternly repressed by William I and Henry I. Henry II had excluded feudal principles from the framework of the government. Edward I had eliminated them from the working of the constitution. The reign of Edward II is a period of transition during which the lords tried for a moment to recover the ground which they had lost; but the Despencers met them by a combination of the Crown and Commons, and for the first time placed upon the Statute Book a declaration of the principles of parliamentary government. The long reign of Edward III completed the work which the Despencers, from whatever motives, had begun; and the Commons steadily won their way to a legal equality with the elder estate of the

¹ See Chaps. vi-xi, xiv, xix, xx, below, and the notes thereto.

² Rogers' Gascoigne, Intro-

tion, p. lviii.
³ See below, Introduction, Part III.

baronage. The latter could no longer dream of monopolizing the government as they had attempted to do under Henry III. The Commons might be led, might be influenced, they could not be ignored. But though the great lords could not hope for a *de jure* monopoly of power, their influence *de facto* was still enormous. And it increased under Edward III, largely owing to the effects of the French wars. The old feudal system of military service being to a great extent obsolete, and being besides wholly unsuited to the carrying on of a prolonged foreign war, Edward III introduced a new method of raising forces, whereby the Crown contracted, or, as it was called, indentured with lords and others for the supply of a certain number of men at a fixed rate of pay. Thus not only did the lords make profits, often very large, out of their contracts with the government, and enrich themselves with prisoners and plunder while the war lasted; but when the war was over, they returned to England at the head of bands of men accustomed to obey their orders, incapacitated by long warfare for the pursuits of settled and peaceful life, and ready to follow their late masters on any turbulent enterprise. These considerations will largely account for the ease with which under Richard II a combination of a few powerful nobles was able to overbear the might of the Crown. The reign of Edward III was more over the period of that pseudo-chivalry, which, under a garb of external splendour and a factitious code of honour, failed to conceal its ingrained lust and cruelty, and its reckless contempt for the rights and feelings of all who were not admitted within the charmed circle; and it saw the beginning of that bastard feudalism, which, in place of the primitive relation of a lord to his tenants, surrounded the great man with a horde of retainers, who wore his livery and fought his battles, and were, in the most literal sense of the words, in the law courts and elsewhere,

Change in the system of military service.

Its results.

Pseudo-chivalry and bastard feudalism.

'Addicti jurare in verba magistri;'

while he in turn maintained their quarrels and shielded their

crimes from punishment¹. This evil, as we shall see, reached its greatest height during the Lancastrian period.

Power of the great lords increased by Henry IV's accession.

The independence of the great lords thus fostered by the tendencies of Edward III's reign and by the events which happened under Richard II, was still further increased by the accession of Henry IV. To some of them, the Percies and Arundels especially, Henry largely owed his crown. It is true that having a great stake in the maintenance of the government which they had set up the lords contributed considerable sums to the support of Henry². But this very feeling that they were necessary to him increased their sense of independence; and in 1404 they showed how they construed their obligations to the Crown, refusing to find Northumberland guilty of treason for his share in the rebellion of the Percies in 1403, and treating the matter as a mere case of private war between him and the Earl of Westmoreland. Even if this had been a colourable view to take of the affair, this sort of quasi-sanction given to private war, a curse from which England had been almost free from the days of Henry II³, was of evil omen. To a private war between these very families of Percy and Neville the annalist William Worcester traces the origin of the civil war⁴. Anyhow one cause of that war was this insubordination of the aristocracy, of which private wars were but one symptom among many. If, as Mr. Bright thinks⁵, the Commons looked to Henry as their champion against baronial disorder, they must have been grievously disappointed. The evil was aggravated by the French wars of Henry V. Causes came into operation similar to those which we have traced under Edward III; only here they acted with worse effect owing to the degeneration in character of the French wars themselves. The stern

The evil aggravated by the French Wars of Henry V.

¹ 'The livery of a great lord was as effective security to a malefactor as was the benefit of clergy to the criminous clerk;' S. C. H. iii. 533.

² P. P. C., I. xxvii, xxxiii, 102 ff.

³ See Allen on the Prerogative,

pp. 120 ff.

⁴ English in France, ii. [770]: 'Initium fuit maximorum dolorum in Anglia.'

⁵ Bright, English History, i. 277.

vindictiveness of Henry V left no room for any of that graceful chivalry which had thrown a glamour, however superficial, over the warfare of Edward III and his greater son. And things became worse, when to other debasing influences was added the fury which is born of failure. The English lords ousted from France returned to England at the head of bands of men brutalized by long warfare, demoralized by the life of camps and garrisons, and ready for any desperate adventure. Even during Henry V's lifetime this evil had begun to show itself¹, and it did not diminish under the weak rule of his successor². And these were the men by whom the battles of the civil wars were fought.

Many of the lords were moreover enormously rich. Their estates were concentrated in fewer hands, and the lands of a man like Warwick represented the accumulations of two or three wealthy families³. They engrossed offices as greedily as lands⁴, their pensions and annuities exhausted the revenues of the crown⁵, they made large fortunes out of the French wars which drained the royal exchequer⁶, and they were among the chief wool-growers and sometimes wool-merchants in the kingdom⁷. And this wealth of the great lords appeared all the more striking when contrasted with the poverty of the crown⁸: and the contrast comes out strongly in the demand made by Fortescue, that the king shall have for his extraordinary expenditure more than the revenues of any lord⁹, and in the exultation with which he declares, that if only the king's offices are really given by the king, 'the grettest lordes lived in Englande mey not suffice to rewarde so

Riches of the lords,

contrasted with the poverty of the Crown.

¹ See Political Songs, II. xxvii. for military service; Paston Letters, i. 358 ff.

² Cf. De Coussy, p. 183.

³ See notes to Chap. ix. below. 274 b; English in France, ii. 443.

⁴ See notes to Chap. xvii. below. ⁷ Cf. Rot. Parl. iii. 497, v. 13 a, 274 b; English in France, ii. 443.

⁵ See notes to Chap. vi. below. 'Nor richere lordes all bydene.'

⁶ Cf. Rogers, Gascoigne, Introduction, p. xxvi, and the list of Fastolf's claims against the crown —Political Songs, ii. 230; cf. Rogers, Work and Wages, p. 20.

many men, though he wolde departe hit every dele amonges is seruauntes¹. The riches of the lords enabled them to maintain their hosts of retainers, while their estates gave them enormous local influence.

Consolidation of the peerage as an Estate of the Realm.

But besides this increase in the general influence of the lords considered as a class, the Lancastrian period saw a sharper definition of their constitutional position as an Estate of the Realm. The idea of hereditary peerage now becomes definitely fixed, the numbers of the temporal peers become smaller and more regular, and the power which the kings had formerly exercised of summoning persons to the Upper House or omitting them at pleasure is practically eliminated. The sense of corporate existence in the Lords grows stronger, and the distance between Lords and Commons wider. Property and influence are concentrated in fewer hands; one result of which is that the spiritual Lords now for the first time acquire a permanent majority in the Upper House². But in interests, and often also in blood³, they were so closely connected with the temporal Lords, that their separate action in parliament is rarely distinguishable. The constitutional functions of the Lords in their corporate capacity acquired strength and definiteness from the events of Henry VI's reign, and they made good their claim to be considered the ultimate depositaries of political authority during the abeyance of the royal power, whether from infancy, as at the beginning of the reign, or from incapacity, as towards its close.

Dissensions among the lords.

But when the Lords had in these various ways gained possession of power, they began to quarrel among themselves for the exercise of it. It was much the same, to recur to a former illustration, after the revolution of 1688; only there the rivalries between the great lords took the milder form of party government. Here the rivalries of Gloucester and Beaufort brought England to

¹ Below, Chap. xvii.

² See the tables in Gneist, *Verwaltungsrecht*, i. 382 ff.

³ S. C. H. iii. 369, and vide

infra, p. 26. They were moreover often guilty of the same abuses, maintenance, &c. Cf. Paston Letters, iii. 478.

the verge of civil war. Suffolk's monopoly of power caused, as we have seen, a popular insurrection, while under Somerset and York the flame finally burst out, though here the personal issue was complicated with dynastic and constitutional questions, in regard to the last of which, York's position was far more defensible than that of Somerset¹. But the struggle was not confined to the central government; it was fought out in every shire and district, rising not unfrequently to the height of private war². That private war was separated by no very wide interval from rebellion we have already seen in the case of the Percies. But even where matters did not reach this height, the evils caused by this struggle for influence were very serious. One great object of the lords was to acquire the control of the local administration, to get into their own hands the nomination of all local officers. Fortescue complains bitterly of the way in which the great lords 'engrossed and broked' the royal offices in their neighbourhoods, in order to distribute them to their servants and dependants³. But whereas Fortescue thinks only of the loss to the crown and gain to the nobles in patronage and influence, the nobles themselves had a further object in

¹ The intensity of the party struggle is illustrated by the fact that the Queen and Somerset wrote to the Duke of Norfolk to dismiss certain of his dependants because they were favourable to the Duke of York; Paston Letters, i. 305. In 1454, at the time of the King's first illness when Somerset was struggling to maintain his power against York, we read: 'The Duke hathe espies goyng in every Lordes hous of this land;' ib. 267. In 1459, during the Parliament of Coventry, Henry wrote to the University of Oxford to dismiss certain Bedels who had spoken disrespectfully of the Queen and Prince. The command was obeyed; Munim. Acad. p. 756.

² For a list of the private wars which went on during the reign

of Henry VI, see S. C. H. iii. 271-2, and the references there given. The struggle between Egremont and Neville is the one to which William Worcester (u. s.) attributes the origin of the civil war. In 1428 it had almost come to a pitched battle between the Duke of Norfolk and the Earl of Huntingdon; Amundesham, i. 25; cf. P. P. C. iii. 36-7, 112. Occasionally the monotony of the proceedings on land was varied by acts of piracy at sea; Paston Letters, i. 268. On the necessity of repressing aristocratic dissensions, cf. *Ægid. Rom. De Regim.* III. ii. 15.

³ Below, Chap. xvii, and the notes thereto. Gascoigne complains of an analogous evil in the case of ecclesiastical offices; pp. 132-3.

Perversion of justice. view, namely, to pervert to their own ends the administration of justice, which was so closely connected with the system of local government. Justices of the Peace might be appointed, who would maintain the quarrels of the party to which they owed their appointments¹; sheriffs might be nominated, who could be trusted to impanel a jury favourable to their patron's views, sometimes consisting of his servants or liveried retainers². Should the sheriff prove less pliable than usual, the lord or his friends at court for him might obtain royal letters directing the sheriff to impanel such a jury³. Failing this, the jury might be intimidated⁴ or bribed, or at the last resort the proceedings might be broken up by force⁵, unless indeed the less heroic plan was resorted to of simply ignoring an unfavourable decision. In addition to whatever claims they might have of their own to assert, the lords bought up the doubtful claims of lesser men, or agreed to maintain them for a consideration⁶, or they obtained grants of lands which were not really in the hands of the crown⁷. And these claims, whether their own or others', were asserted with the

Purchase of doubtful claims

Juries.

Local officers

¹ In 1399 the Commons complained that 'maintainers' were made Justices of the Peace by 'brocage'; Rot. Parl. iii. 444 a. Cf. Political Songs, ii. 235-6:

'Now mayntenerys be made justys, . . .
'Now brocage ys made offycerys.'

² 'le Viscount . . . retourna un Panell des certains persons, dount ascuns furent famuliers, et ascuns tenauntz, et ascuns del fee, et del vesture de Adversaries le dit Suppliant;' Rot. Parl. iv. 288 a.

³ Paston Letters, I. lxiv. 208, 214-5. It was said that such letters could be obtained for a noble (6s. 8d.).

⁴ In one case the intimidation practised on the jury was so notorious and 'horrible,' that even the sufferers 'for pyte and remorse . . . wer lothe' to proceed against them for perjury; Paston Letters, i. 205; cf. ib. 241.

⁵ P. P. C. v. 35-9; Paston Letters, i. 212. In 1435 the Duke of Norfolk and the Earl of Suffolk had to promise in the Council that they would not hinder the investigation and punishment of a case of homicide; P. P. C. iv. 300-1.

⁶ These gifts and scoffments to great personages of lands of doubtful title, and the forcible entries which followed them, were forbidden by St. 8 Hen. VI. c. 9; cf. Rot. Parl. iv. 352 b; ib. iii. 497 a, b; St. 4 Hen. IV. c. 8; Paston Letters, ii. 80. cf. ib. 187, 'the Duck of Suffolk hath bought . . . the ryzt that on Bryghtlylth hath in Haylesdon,' &c. . . Cf. Whethamstede, i. 96, where the holder of lands which were claimed by St. Alban's threatens to enfeoff certain lords with them; ib. 203. This was also one of the subjects of Cade's complaints; Stowe, p. 389 a.

⁷ Paston Letters, ii. 331.

high hand. Forcible entry and disseisin with violence were everyday occurrences, and were almost restored to the position of legal processes which they had held before the invention of the grand assize¹. Houses were regularly garrisoned as for a siege, and small armies were brought into the field to attack them². If the aggrieved person appealed to the law, he might find that no counsel would venture to act for him³, and that no one in the county would dare to say a good word for a man who was known to be out of favour in high quarters⁴. In the numerous petitions which besought the intervention of the council or of parliament, the allegation that there was 'too great might' on the other side for the suppliant to be able to sue at the common law was often true enough. It is idle to worship the form and neglect the substance. Against offenders of this stamp the jury system was powerless to secure justice. Its partial and temporary supersession by the jurisdiction of the council, especially as organized in the later Court of

Forcible entries.

Impotence of the jury system.

¹ Before the invention of the grand assize forcible disseisin was often the only process by which a tenant could be forced by a claimant to show his title to the lands he held. John Paston writes to his wife in 1465: 'As for that it is desyrid I should show my tytill and evydens to the Dewk, me thynkyth he had evyll counsell to entre in opon me, trusting I shuld shew hym evydens. . . . It is not profitabl[le] . . . that any gentilman shuld be compellid be an entre of a lord to shew his . . . tytill to his lond, ner I will not begine that exsample ne thrall-dam of gentilmen;' Paston Letters, ii. 209 f. For instances of forcible entry, cf. Rot. Parl. iii. 488, 512 b, 514 a, etc., and Paston Letters, i. 12 ff., ii. 248 ff., 253.

² The force with which Lord Molyne attacked John Paston's manor of Gresham was 'to the nombre of a thousand persones . . . arrayd in maner of werre;' ib. i. 106; cf. ii. xxvi. ff., xlv. f. The Duke of Norfolk brought

3,000 men to the siege of Caister Castle, which he claimed against Sir John Paston; ib. 1. ff.

³ Justice Paston advises a friend not to go into court against a dependant of the Duke of Norfolk: '3yf thu do, thu xalte hafe the werse, be thi case never so trewe, . . . and also, thu canste [get?] no man of lawe . . . to be with the azens hym;' ib. i. 42; cf. p. 18. Cf. ib. 60, where there is a petition to the Chancellor that he would 'assigne and streytly comaund' certain persons to act as counsel for the petitioner. That the intimidation practised on lawyers was no idle threatening is shown by the fact, that in 1455 a party of men headed by the son of the Earl of Devonshire attacked and murdered an old man named Radford, 'whiche was of counseil with my Lord Bonvylye,' the Earl's great enemy; ib. 350-2.

⁴ 'Here dare no man seyn a gode wurd for 3u in this cuntre, Godde amend it.' Margaret Paston to her husband; ib. 113.

Star Chamber, 'to bridle such stout noblemen or gentlemen,' as Sir Thomas Smith quaintly expresses it¹, was a national blessing.

Corruption
of the
judges.

Even the judges were not always above suspicion. They accepted solicitations and presents, and gave extrajudicial advice on matters which might very possibly come before them in their judicial capacity, in a way which was in direct contravention of the terms of their oath. Even if this did not affect their conduct on the bench, it was bad enough in itself; but they seem sometimes to have acted with the grossest partiality². Occasionally royal letters were sent to justices as to sheriffs ordering them to show favour to a particular person³. Often too the issue of a cause would depend in various ways on the question which party had at the moment the upper hand at Court. In the light of these abuses we can better understand the vigorous words of Cade's proclamation:—'the law servyth of nowght ellys in thes days but for to do wrong, for nothing is sped almost but . . . for mede, drede, and favor, and so no remedy is had . . . in eny wyse⁴.'

Arbitra-
tion.

Amid this general breakdown of law, arbitration was sometimes resorted to, but more often the best hope of an aggrieved person lay either in buying off the opposition

¹ De Republicâ Anglorum, bk. iii. c. 4. pp. 43, 188; and notes to chaps. vi. xv. below. In one case we find

² Cf. Paston Letters, i. 419 f.; ii. 201, 252-3. 'God reforme such parcialte,' writes Sir Thomas Howys to Fastolf after detailing the behaviour of Chief Justice Prisot; ib. i. 211-2; Amundesham, ii. 127, 143, 256. When Fortescue says of the judges (De Laudibus, c. 51), 'Nec unquam compertum est eorum aliquem donis aut muneribus fuisse corruptum,' he must have known that he was writing what was untrue. Ægidius Romanus (III. ii. 20) says, on the other hand, 'Judex de facili obliquatur.' Cf. Rot. Parl. iii. 626 b; Gascoigne,

pp. 43, 188; and notes to chaps. vi. xv. below. In one case we find a justice, Robert Tirwhit, guilty of the grossest turbulence and breach of the peace; Rot. Parl. iv. 649 f.; and cf. the case of Fortescue's own brother; Family History, pp. 46-7.

³ Paston Letters, iii. 428. The judges were sworn to do justice to all, 'etiãmsi rex per literas suas, aut ore tenus, contrarium jusserit;' De Laudibus, c. 51; cf. Rot. Parl. iii. 471 a, where this abuse is complained of, and reference is made to St. 20 Edw. III. c. 1.

⁴ Three Fifteenth Century Chronicles, p. 96.

of the great man who supported his adversary, or in getting some equally powerful nobleman to maintain his own cause¹. And for these services the greatest personages were not above receiving the most vulgar considerations. The transaction might be veiled under the name of a horse for my lord², or a kerchief for my lady³, or a book for a prince of a literary turn like Gloucester⁴. But in reality, if not in name, money was given for money's worth; for, as Sir John Paston cynically remarked, 'men do not lure hawks with empty hands⁵.' Nothing added more to a man's importance than the diffusion of a belief that he 'stood well in conceit,' as the phrase went, with men of influence in his neighbourhood or at court⁶; no greater disservice could be done to a man, than to prejudice a great man's mind against him, or, to use another contemporary phrase, to 'make him his heavy lord⁷.' 'Spende sum what of your good now,' writes an anonymous friend to John Paston, 'and get your lordship, . . . quia ibi pendet tota lex et propheta⁸.' William Paston gives his brother similar advice, adding:—'omnia pro pecuniâ facta sunt⁹.' That great lords should

¹ 'Sondery folks have seyed to me that they thynk verily, but if ye haue my Lord of Suffolks gode-lorchyp (good-lordship), qhyll the werd (world) is as itt is, ye kan never leven in pese;' Paston Letters, ii. 132. 'The frere that cleymyth Oxned . . . seyde pleyntly . . . that he xal have Oxnede, and that . . . my lord of Suffolke . . . wol be his good lord in that mater;' ib. i. 81; cf. i. 96-8, 233, 323; ii. 206, 344-5, 392, &c. This interference with the course of law by 'pursuit to a great lord' is complained of in the petition cited above; Rot. Parl. iii. 471 a.

² Cf. Paston Letters, ii. 97.

³ 'I praye yow fynd the meny that my Lord have some reasonable meane profyrd, so that he and my Lady may undyrstand that ye desyr to have hys good lordship;' ib. ii. 348-9. 'My

Lady must have somewhat of bye hyr kovercheff besyd my Lord;' ib. iii. 55; cf. ib. 64-5, 295.

⁴ Amundesham, II. lxxv. 295.

⁵ Paston Letters, iii. 65.

⁶ 'To th'entente that the cuntre shall thinke . . . that he hathe grete favour amonge the Lordes of the Counsell, and cause men to fere hym the more;' ib. i. 229; cf. ii. 97.

⁷ 'The seyde Walter by hese sotill and ungoodly enformacion caused the seyde Duke to be hevvy lord to the seyde William;' ib. i. 16.

⁸ Ib. i. 156; cf. ii. 72; and Gascoigne, p. 109.

⁹ Ib. i. 516-7. The party opposed to the Pastons in Norfolk offered Sir William Oldhall £2,000 (about £30,000 in our money) for his good lordship; ib. i. 151.

'Good-
lordship'
purchased.

Influence
on parlia-
mentary
elections.

use their local power to influence the parliamentary elections in favour of their own party was natural enough¹. But this again, apart from any political result, reacted on the local administration. The collectors of the tenths and fifteenths granted in parliament were nominated by the knights of the shire, and it is clear that the impartiality of these appointments and of the persons thus appointed was not above suspicion².

Com-
panies.

And this example of lawlessness and insubordination spread downwards through all ranks of society. The provisions of the Livery Statutes against companies maintained at their own charges would seem to show that this curse of continental life was not unknown in England³. Bands of armed men, often commanded by some person of good birth, and favoured secretly perhaps by still greater men, terrorized whole districts, levying black-mail, and committing every kind of outrage with impunity⁴. No age or sex or place was respected. Old

Outrages.

But this was in Oct. 1450, just before the meeting of the Yorkist Parliament of which Oldhall was Speaker, and the favour of so influential a Yorkist was well worth paying for. Norfolk seems however to have been *Warwickist* rather than strictly Yorkist; *ib.* i. 532, 536; *iii.* 478. The Pastons were in high favour during Henry VI's restoration; *ii.* 412. The Commons of Norfolk resisted an attempt of Edward IV to land there in 1471; Warkworth, p. 13.

¹ Paston Letters, i. 160-1. In 1455 the Duchess of Norfolk writes that it is 'necessarie . . . that my Lord have . . . in the Parlement suche persones as longe unto him, and be of his menyall servaunts'; *ib.* 337; *cf.* 339 ff.; *iii.* 53, 55, 431. Yet the Duke of Norfolk complained in 1454 that the election in Suffolk had not been fairly conducted; P.P.C. vi. 183. In 1455 the Sheriff of Kent was ordered to see that the elections were free, because of the

'besy labour made . . . by certaine persones'; *ib.* 246. Five years before Cade had complained that the elections in Kent were not free; Stowe, p. 389 b.

² Paston Letters, I. li.; Gascoigne, p. xxxiii. In one instance we find the Knights of the Shire nominating certain persons as collectors of the tenth and fifteenth, and then falling upon them and attempting to rob them; *Rot. Parl.* iv. 30-1. Cade complained that these nominations were regularly bought and sold; Stowe, p. 389 b.

³ *Rot. Parl.* iii. 600 b, 662 b; *St.* 7 and 8 Hen. IV. c. 14; 13 Hen. IV. c. 3.

⁴ *Rot. Parl.* iii. 445 b. For accounts of the doings of particular bands of ruffians, see *ib.* 630-2; *iv.* 32, 254 a. In Derbyshire certain lawless persons took to the woods, 'like as it hadde be Robynhode and his meyne'; *ib.* v. 16 b; Paston Letters, I. lxxxiii. ff., 231 ff., 276 ff.

men and old women of fourscore years were fallen upon and brutally ill-treated or killed¹; heiresses of tender age were forcibly abducted²; widows who had any property were from their unprotected condition specially exposed to molestation³. The priest was attacked in the chancel, the monk in his cloister⁴, and murders were attempted, Italian fashion, during 'the using of the mass⁵.' Conversely, we find priests and monks engaged in some of the worst of these transactions⁶. Outrage provoked retaliation, and cruel reprisals were taken, often not on those who had done the original harm, but on their innocent tenants and dependants⁷. And these things were done many times in broad daylight and in public places, without any attempt at concealment; the perpetrators calculating, generally correctly, that either by violence or chicanery they would be able to evade the consequences of their misdeeds. So in the same way that system of corrupt influence or 'brokage' which I have described descended from rank to rank of society. The object of every man was to curry favour with those above him, to win influence over those below; so that by a sort of ignoble caricature of the feudal system the whole structure of society from the apex to the base was knit together in a hierarchy of corruption.

Hierarchy
of corrupt
influence.

Nor was the influence of the great confined to the spheres of politics and law. They interfered in the private affairs of families⁸, in the inner economy of monasteries⁹, in the

Ecclesiastical
influ-
ence of the
great lords.

¹ e.g. *Rot. Parl.* iii. 564 a; Paston Letters, i. 239.

² e.g. *Rot. Parl.* iii. 564 b: a child of nine years carried off. And this was done by the Sheriff, 'under colour of his office,' in order to marry her to his son. In 1454 complaint was made that the forcible abduction of women who had any property was becoming common; *Rot. Parl.* v. 270 b. On this petition was founded *St.* 31 and 32 Hen. VI. c. 9; *cf.* Paston Letters, i. 551-3.

³ e.g. *Rot. Parl.* iii. 520 b, 565-6;

iv. 92 b.

⁴ Paston Letters, i. 238-9, 279.

⁵ *Ib.* 237; *cf.* *ii.* 81, 251. On the frequency of robberies from Churches, *cf.* *Rot. Parl.* v. 632 b; Gregory, pp. 234-5.

⁶ *Rot. Parl.* iii. 518 a, 564 a.

⁷ Gascoigne, pp. 133-4.

⁸ Paston Letters, i. 129 f., 258, 294-6.

⁹ Whethamstede, i. 112. On the relations between the aristocracy and the monasteries, *cf.* also Pecock, Repressor, pp. 549 ff.

granting of academical degrees¹; they influenced church appointments from the lowest to the highest²; ecclesiastical patrons were glad enough to gratify them with grants of next presentations for their clerical dependants³, who often were their men of business⁴, and men were made bishops, not for any knowledge or virtue which they possessed, but 'because of the great blood they were of⁵.' The general condition of the English Church lies, as I have said, outside my subject. But it may here at least be recorded how heavily the days of aristocratic ascendancy told against its purity and independence, and how seriously the one great evil of the time, the lawlessness of the nobility, intensified the other, the corruption of the Church.

Semi-legal violence.

But besides all the illegal violence which undoubtedly existed, there was an immense deal of legal or semi-legal force called into play. Forcible ejections were followed by equally forcible recoveries. Violent distraints gave rise to no less violent replevins, and the line which separates legality from illegality was very easily passed⁶. Often too men were brutally attacked, merely because they had ventured to assert their rights by law⁷. Ambushes were laid for John Paston during the time that he had his various lawsuits on hand⁸, even in London he was not secure from attack⁹; while if his wife's fears were not exaggerated, it

¹ *Munimenta Academica*, pp. 206-8, 332.

² On this see Gascoigne, pp. 14, 19, 22, 25, 32, 55, 72, 132, 166, 180-1, 222.

³ *Amundesham*, ii. 370-1; *Whethamstede*, II. xxv. ff., and the references there given.

⁴ e.g. *Thomas Howys for Fastolf, James Gloys for the Pastons*, both priests; v. *Paston Letters passim*, and cf. *ib.* i. 299.

⁵ This phrase occurs with reference to the promotion to the see of Canterbury of Thomas Bourchier; *P. P. C.* vi. 168; cf. *Rymer*, x. 640; *P. P. C.* vi. 266 (with reference to George Neville, the

brother of the King-maker); *Rot. Parl.* iii. 456, 460 a; *Gascoigne*, pp. 16, 22-3. On the increase in the number of noble prelates, see *S. C. H.* ii. 402, 449; iii. 368-9.

⁶ Cf. e.g. *Paston Letters*, II. xxv. ff., 183 ff.

⁷ *ib.* i. 73-4.

⁸ One plot was to waylay him and carry him off to some lord in the North; *ib.* i. 544; cf. ii. 26, 33, 39, 53.

⁹ 'Thow 3e ben at London 3e xul ben met with ther as wele as thow 3e were her; and ther for I pray 3u hertyly . . . have a gode felaschep with 3u qhan 3e xul walk owt'; *ib.* i. 112.

would seem that his enemies were capable even of attempting to poison him¹.

These various abuses were the subject of frequent complaints and enactments in Parliament². In the very first Parliament of Henry IV a statute was passed against livery and maintenance³. In 1401 another statute was made on the same subject⁴. In 1406 the Commons complained that bannerets, knights, and esquires gave liveries of cloth to as many as three hundred men or more to uphold their unjust quarrels, for maintenance, and in order to be able to oppress others at their pleasure. And no remedy could be had against them because of their confederacy and maintenance⁵. On this complaint a fresh statute was founded, and another was passed in 1411⁶. In 1414 a statute was passed against embracery, champerty, and maintenance⁷. In 1427 the Commons complained of the non-observance of the livery statutes⁸. In 1429 fresh provisions were made on the subject because the existing ones could not be carried out owing to maintenance⁹. In 1433 the plan was tried of exacting from the members of both

Statutes against livery and maintenance.

¹ 'For Goddys sake be war what medesyns ye take of any fysissyans of London'; *ib.* ii. 160; cf. iii. 474.

² On the earlier legislation on the subject of livery and maintenance, see *S. C. H.* ii. 485, 608; iii. 530-6.

³ *St. 1 Hen. IV. c. 7*; *Rot. Parl.* iii. 428 b.

⁴ *St. 2 Hen. IV. c. 21*; *Rot. Parl.* iii. 477 b.

⁵ *Rot. Parl.* iii. 600; *St. 7 and 8 Hen. IV. c. 14*. If the retinues of simple knights and esquires were so numerous, we can imagine what those of the greater lords would be.

An adherent of the young Duke of Suffolk boasted that his lord was able to keep daily in his house more men than his adversary had hairs on his head; *Paston Letters*, ii. 184. According to Justice (afterwards Chief Justice) Billing, men often ruined

themselves by keeping up a greater retinue than their means would allow: 'That is the gyse of yowr contre men, to spend alle the goode they have on men and lewery gownys . . . and at the laste they arn but beggars'; *ib.* i. 297.

⁶ *St. 13 Hen. IV. c. 3*; *Rot. Parl.* iii. 662 a.

⁷ *St. 2 Hen. V. c. 3*; *Rot. Parl.* iv. 52 a.

⁸ *Rot. Parl.* iv. 329 b.

⁹ *St. 8 Hen. VI. c. 4*; *Rot. Parl.* iv. 348 a. At the same time a statute was passed against the prevalent murders, homicides, riots, &c.; *ib.* 356 a; *St. 8 Hen. VI. c. 14*. But it was one thing to pass statutes, another to get them observed. Cf. *Political Songs*, ii. 252:

'Many lawys, and lytylle ryght;
'Many actes of parliament,
'And few kept wyth tru entent.'

ch. 8). That Edward IV was possessed by this taste for splendid dress in its full extent is shown by his wardrobe accounts, as the editor, Sir Harris Nicolas, remarks, pp. ii-vii. And Fortescue here contemplates further expenditure beyond that included in 'the yerely charges off his wardrober.' The Croyland Continuator also remarks on Edward's taste for magnificent apparel; but he thinks that the appearance of the English court was 'non alia quam quæ excellentissimum Regnum deceat' (p. 563). For the item of furs, specially mentioned by Fortescue, see Wardrobe Accounts, pp. 129, 133, 134; Issues of the Exchequer, p. 494.

serpes.] This is one of the many forms taken by the word *cypress* (= fine linen) in middle English. For this identification I am indebted to the kindness of Professor Skeat. The origin of the word is French *crêpe*, whence modern English *crape*. *Cresp* was translated *crisp*, which became *crips*, and was then re-cast as *cipres*. In *Piers Plowman* it is spelt as *cypirs*. *Serpes* or *serpis* is therefore for *cirpes*. (See Skeat, *Etymological Dict.*, Ed. 2, or Suppl. to Ed. 1, s.v. *Cypress*). D² not understanding the word, writes *serples*, (*surplice*), and Cb., going still further a-field, has *pearles*!

rich stones . . . and oþer juels.] Under the Lancastrian kings the royal jewels seem to have been chiefly employed as securities for some of the many loans which those monarchs had to raise, or for wages and other payments due; e.g. under Henry IV, P. P. C. ii. 121; under Henry V, ib. iii. 9; Rymer, ix. 284; under Henry VI, P. P. C. v. 132, where the king orders all his royal jewels to be coined, sold, or pledged as quickly as possible for the preservation of his kingdom of France and Duchy of Normandy. This was in 1441. The crown itself was not unfrequently in pawn. In 1430 other jewels had to be pledged to the Abbot of Westminster in order to release the crown which was to be used at the Coronation of Henry as King of France (Rymer, x. 455). In P. P. C. v. 61, and Rymer, xi. 76, we have lists of the jewels given as New Year's gifts by the king in 1437 and 1445. In both these years John Merston was keeper of the royal jewels. The collecting of precious stones seems to have been a perfect passion with Henry VII. Between the seventh and twenty-second years of his reign he spent above £110,000 on them (*Exc. Hist.*, pp. 86-90). The Emperor Frederick III had the same mania. Perhaps they regarded them as a safe investment. The author of the

Royal
jewels in
pawn.

Henry VII
and Fred-
erick III
collectors
of precious
stones.

Epitome, in a marginal note on this passage, asserts that Henry VIII once gave £50,000 for a single jewel.

riche hangynges . . . vessail.] In June 1468, Edward IV pays £397 for plate, some of which was for his chapel; and £984 for various pieces of arras (*Issues of Exchequer*, p. 491). The Croyland Continuator says that none of Edward's predecessors equalled him 'in comparandis vasis aureis et argenteis, tapisseriis, ornamentis tam Regalibus quam Ecclesiarum pretiosissimis' (p. 559).

his chapell.] I have not noticed any other instances of extra-Chapels ordinary expenditure on the royal chapel. The officers of the royal chapels formed part of the household, and their salaries therefore came under the head of ordinary expenditure. For the dean, chaplains, clerks, yeomen, and children of the chapel, serjeant yeoman and groom of the vestry, see *Liber Niger*, Edw. IV, Ordinances of the Household, pp. 49-52. They are frequently mentioned in the documents of the period. In Cal. Rot. Pat. p. 267 b (7 Henry V), there is a commission 'de pueris pro capella Regis capiendis.' In P. P. C. iii. 104 the names of the 'schyldren of the schapel' are given (1423).

horses, &c.] I have found one or two entries illustrating this item of expense. In 1434 four *summarii* (sumpter-horses) cost 20 marks. In 1440 a palfrey costs 13 marks. In 1443 six horses cost £30 (P. P. C. iv. 216; v. 119, 230). In 1454 during Henry's illness an ordinance was issued for the regulation of the royal stables (P. P. C. vi. 210-14). This was probably in connexion with the reform of the household which was made about the same time (see notes to last chapter, p. 220, above). In the *Liber Niger* of Edward IV the annual expense for the purchase of horses and vehicles and repairs is estimated at £520 (Ordinances of the Household, p. 21). In Rot. Parl. v. 154 a, there is a curious petition from the Commons against the proceedings of 'oon William Gerveis . . . cleping hymself the Kyng's Corser' in purveying horses for the king. It was prayed that no one should 'take no Palfrey for the Kyng but of the valu of x. marcs or above; ne Courser but atte valu of x. li. or above; no charie hois, but at the valu of iiiii marcs or above; ne no somer hors, but at the valu of iiiii marcs or above.' The petition was refused. This was in 1449. On the enormous stud kept by Edward III, cf. S. C. H. ii. 553.

The royal
stables.

- Selden, his edition of the *De Laudibus*, p. 85 *note*; owner of MS. Lambeth 262, p. 90; see also *Bracton*.
- Seneca, cited by Fortescue, p. 99.
- Sergeants of the Counting-house, their dress, p. 41 *note*.
- Sergeants-at-law and King's Sergeants, pp. 42, 45 *note*; payment of, p. 222.
- Sergeants' Inn, p. 45 *note*.
- Servus servorum Dei*, pp. 127, 252-253.
- Settlement, Act of, p. 298.
- Sheriffs, partiality and corruption of, pp. 20, 29, 30 *note*, 314, 335; causes of, pp. 314-315; legislation against, p. 28; farm their office, p. 315; illegal appointment of, in Lincolnshire, p. 52; payment of, p. 147; sheriffs and their officers to be annually appointed, pp. 147, 312-313; hereditary, in Westmoreland, p. 313; property qualification of, pp. 313-314; farms of, pp. 211, 213; see also *Lawyers*.
- Sherwynde, Robert, p. 198.
- Shillingford, John, Mayor of Exeter, p. 49 *note*.
- Ships, different classes of, pp. 238-239; arrest of, for the King's service, pp. 210, 234; Clerk of the King's, p. 212.
- Sidney, Algernon, compared with Fortescue, pp. 178, 180.
- Siena, Council of, p. 243.
- Sigismund, the Emperor, his opinion about Dover and Calais, p. 230.
- Silk, import of wrought, forbidden, p. 319.
- Skipton (Shipton) in Craven, captured by the Lancastrians, p. 62.
- Solomon (Salamon), his heavy taxation, p. 133.
- Somerset, Edmund Beaufort, 2nd Duke of, pp. 9, 10, 19 *note*, 275; said to have incited the Commons to impeach Suffolk, p. 11 *note*; rivalry with York, pp. 19, 33; charges against, p. 336; Captain of Calais, p. 228.
- Duchess of, wife of Edmund Beaufort, p. 208.
- Edmund Beaufort, (titular) Duke of, p. 208; takes part in the War of the Public Weal, p. 66; at the Burgundian Court, p. 67; returns to England, p. 70; joins Margaret of Anjou at Cerne Abbas, p. 71.
- Somerset, Henry Beaufort, 3rd Duke of, p. 55 *note*; offers to surrender Guisnes to Charles the Bold, *ib.*; sent on an embassy to France, p. 57; arrested and detained, pp. 57-58; released at the intercession of Charles the Bold, p. 58; present at the interview of Charles and Louis XI, *ib.*; receives money from Louis, *ib.*; retires to Bruges, *ib.*; returns to Scotland, *ib.*; commands at Bamburg, p. 61; surrenders to Edward IV, *ib.*; returns to his Lancastrian allegiance, p. 62; captured and beheaded, *ib.*
- John Beaufort, 1st Earl of, offices held by him under Henry IV, p. 327.
- 1st Duke of, asks for a grant of land, p. 342.
- Southampton Plot, its significance, p. 8.
- Spain, Spaniard, = Castile, Castilian, pp. 199, 261, 264.
- characteristics of Spanish history, p. 261.
- frequency of aristocratic rebellions, pp. 130, 260-262.
- Spencer, Henry, Bishop of Norwich, p. 308.
- Spiritual lords, a majority of, in the Peers, p. 18; close connexion with temporal lords, pp. 18, 26.
- Stables, royal, expense of, p. 247.
- Stafford, Edmund Earl of, p. 272.
- Bishop of Exeter, Chancellor, his address to the Parliament of 1402, p. 325.
- John, Archbishop of Canterbury, Chancellor, pp. 48-49; address to Henry VI, p. 322.
- Stamford, battle of, p. 208.
- Stanley, Sir William, p. 275.
- Staple, Statutes of the, dispensed with, p. 83 *note*.
- Stapleton, Elizabeth, second wife of Sir John Fortescue of Punsbourne, p. 42 *note*.
- Star Chamber, Court of, p. 22.

- Stephen, p. 355.
- Stewards, v. *Lordships*.
- Stillington, Robert, Bishop of Bath and Wells, Chancellor, pp. 202, 207.
- Stowe, John, use made by him of Yelverton MS. No. 35, pp. 72 *note*, 89.
- Stratford, John, Archbishop of Canterbury, Chief Councillor, p. 300.
- Stratton, Thomas, clerk of the king's works, p. 231.
- Sudbury, Simon, Archbishop of Canterbury, his murder, p. 293.
- Suffolk, John de la Pole, 2nd Duke of, pp. 20, 27 *notes*.
- William de la Pole, 1st Duke of, pp. 9, 20 *note*, 33; his monopoly of power, pp. 10, 19; failure of his foreign policy, p. 10; impeached by the Commons, *ib.*; banishment and death, pp. 11, 293; trial, p. 49; satirical dirge on, p. 51; charged with planning to marry his son to Margaret Beaufort, p. 75 *note*; other charges against, pp. 232, 292, 335, 336.
- Sweden, characteristics of Swedish history, p. 262.
- Swiss, origin of the name, p. 199; Swiss mercenaries under Louis XI, p. 198.
- T.
- Taborites, the, p. 285.
- Taille*, v. *France*.
- Taxation, of income derived from land, p. 212; of moveables, p. 288; fifteenths and tenths, history of, *ib.*; how levied, pp. 314-315; granted for five years according to Fortescue, p. 140; ninth sheaf and fleece granted, pp. 288-289; for five years according to Fortescue, p. 140; see also *Parliament*, *Tunnage and Poundage*.
- Taxation, unconstitutional, under the Lancastrians, pp. 5, 12-13.
- Tempest, Sir John, p. 314.
- Tenths and Fifteenths, see *Taxation*.
- Tewkesbury, battle of, pp. 71, 283.
- Thibault, King of Navarre, p. 181.
- Thieves, numbers of in England, as compared with France and Scotland, pp. 141-142; due to poverty, pp. 140, 289.
- Thirning, William, Chief Justice C. P.; address to the Parliament of 1401, p. 307.
- Thomas, St., v. *Aquinas*.
- Thomas, St., v. *Becket*.
- Thorley, Nicolas, Esq., p. 271.
- Thorpe, p. 53 *note*; case of, pp. 45 *note*, 51.
- Throne, influence behind the, pp. 301-302; cf. pp. 325, 348, 350.
- Thurstan, Archbishop of York, p. 308.
- Tirwhit, Robert, a turbulent justice, p. 22 *note*.
- Toulouse, Raymond Count of, p. 265.
- Tower, Constable of the, pp. 212, 214.
- Tower Hill, Abbot of, see *Wells*.
- Towton, battle of, p. 55.
- Trajan, p. 207.
- Treason laws, inequitable enforcement of, pp. 209-210.
- Treasurer, see *Officers*.
- Trevisa, translator of Higden (q. v.), p. 177; cited, pp. 101 *note*, 201.
- Trivet, Nicolas, quoted by Fortescue, p. 97.
- Troyes, treaty of, pp. 198, 264, 266.
- Tudor, Owen, p. 333.
- Tunnage and Poundage, pp. 122-123; appropriated to the keeping of the sea, pp. 231-232; granted for life, pp. 232, 251.
- Turkish conquest of Egypt, see *Egypt*.
- Tutbery, John, owner of 'the Christopher of Hull,' p. 235.
- Tutbury, Honour of, p. 330.
- Tyrannicide, mediæval opinions on, p. 205.
- Tyranny, danger of kings falling into, pp. 110, 178-179; impoverishes its subjects, p. 281; a poor provider, p. 289.
- Tyrant, difference between King and, pp. 182, 203-206, 252; resistance to, justified, pp. 205-206.

