

Clarendon Press Series

THE CONSTITUTIONAL HISTORY
OF ENGLAND

IN ITS ORIGIN AND DEVELOPMENT

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PUBLISHER TO THE UNIVERSITY OF OXFORD
LONDON, EDINBURGH
NEW YORK

BY

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BISHOP OF OXFORD

VOL. III

FIFTH EDITION

OXFORD
AT THE CLARENDON PRESS

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The fifteenth century not a period of constitutional development.

299. If the only object of Constitutional History were the investigation of the origin and powers of Parliament, the study of the subject might be suspended at the deposition of Richard II, to be resumed under the Tudors. During a good portion of the intervening period the history of England contains little else than the details of foreign wars and domestic struggles, in which parliamentary institutions play no prominent part; and, upon a superficial view, their continued existence may seem to be a result of their insignificance among the ruder expedients of arms, the more stormy and spontaneous forces of personal, political, and religious passion. Yet the parliament has a history of its own throughout the period of turmoil. It does not indeed develop any new powers, or invent any new mechanism; its special history is either a monotonous detail of formal proceedings, or a record of asserted privilege. Under the monotonous detail there is going on a process of hardening and sharpening, a second almost imperceptible stage of definition, which, when new life is infused into the mechanism, will have no small effect in determining the ways in which that new life will work. In the record of asserted privilege may be traced the flashes of a consciousness that show the forms of national action to be no mere forms, and illustrate the continuity of a sense of earlier greatness and of an instinctive looking towards a greater destiny. And this is nearly all. The parliamentary constitution lives through the epoch, but its machinery and its functions do not much expand; the weapons which are used by the politicians of the sixteenth and seventeenth centuries are taken, with little attempt at improvement or adaptation, from the armoury of the fourteenth. The intervening age has rather conserved than multiplied them or extended their usefulness.

Yet the interval witnessed a series of changes in national life, mind, and character, in the relations of classes, and in the balance of political forces, far greater than the English race has gone through since the Norman conquest, greater in some respects than it has experienced since it became a consolidated, Christian nation. Of these changes the Reformation, with its attendant measures, was the greatest; but there were others which led to and resulted from the religious change. Such was that recovered strength of the monarchic principle, which, in England as on the Continent, marked the opening of a new era, and which, although in England it resulted from causes peculiar to England, from the exhaustion of all energies except those of the crown, whilst abroad it resulted from the concentration of great territorial possessions in the hands of a few great kings, seemed almost a necessary antecedent to the new conformation of European politics, and to the share which England was to take in them. Such again was the liberation of internal forces, political as well as religious, which followed the disruption of ecclesiastical unity, and which is perhaps the most important of all the phenomena which distinguish modern from medieval history. Such was the transformation of the baronage of early England into the nobility of later times, a transformation attended by changes in personal and political relations which make it more difficult to trace the identity of the peerage than the continuous life of clergy or commons. The altered position of the church, apart from Reformation influences, is another mark of a new period; the estate of the clergy, deprived of the help of the older baronage, which is now almost extinguished, and set in antagonism to the new nobility that is founded upon the spoils of the church, tends ever more and more to lean upon the royal power, which tends ever more and more to use the church for its own ends, and to weaken the hold of the church upon the commons, whenever the interests of the commons and of the crown are seen to be in opposition. Partly parallel to these, partly resulting from them, partly also arising from a fresh impulse of its own liberated and directed by these causes, is the changed position

Vast historical importance of the period of transition.

Change in
the position
of the Com-
mons.

of the commons: the third estate now crushed, now flattered; now consolidated, now divided; now encouraged, now repressed; but escaping the internecine enmities that destroy the baronage, learning wisdom by their mistakes and gaining freedom when it is rid of their leadership; rising by its own growing strength from the prostration in which it has lain, with the other two estates, at the feet of the Tudors, all the stronger because it has itself only to rely upon and has springs of independence in itself, which are not in either clergy or baronage;—the estate of the commons is prepared to enter on the inheritance, towards which the two elder estates have led it on. The crisis to which these changes tend is to determine in that struggle between the crown and the commons which the last two centuries have decided.

Workings of
modern life
in the
fifteenth
century.

The causes which worked these changes begin from the opening of the sixteenth century to display themselves upon a lighter and broader stage, in more direct and evident connexion with their greater results. But they had been working long and deeply in the fifteenth century; and our task, one object of which is to trace the continuity of national life through this age of obscurity and disturbance, necessarily includes some examination into their action, into the relations of church and state, of the crown and the three estates, the balance of forces in the corporate body, and the growth in the several estates by which that balance was made to vary without breaking up the unity or destroying the identity of the whole. Having traced this working up to the time at which the new struggles of constitutional life begin, the point at which modern and medieval history seem to divide, we shall have accomplished, or done our best to accomplish, the promise of our title, and have told the origin and development of the Constitutional History of England.

Plan of the
chapter.

Parliamentary institutions during the fourteenth century are the main if not the sole subject of Constitutional History. From this point, at which parliamentary institutions seem to have, to a great extent, moulded themselves, and parliamentary ideas have ripened, we shall have to recur to our earlier plan,

and endeavour to trace more generally the workings of national life that gave substance and reality to those forms, that lay quiet under them when they seemed to be dormant, and that fought in them when the time came for it to arise and go down to the battle.

300. The object of the present chapter will be to trace the history of internal politics in England from the accession of Henry IV to the fall of Richard III: not that the period possesses a distinct political plot corresponding with its drama of dynastic history, but that from its close begins the more prominent action of the new influences that colour later history. A more distinct political plot, a more definite constitutional period, would be found by extending the scope of the chapter to the beginning of the assumed dictatorship of Henry VIII. But to attempt that would be to trench upon the domain of later history, which must be written or read from a new standing-point. The battle of Bosworth field is the last act of a long tragedy or series of tragedies, a trilogy of unequal interest and varied proportions, the unity of which lies in the struggle of the great houses for the crown. The embers of the strife are not indeed extinguished then, but they survive only in the region of personal enmities and political cruelties. The strife of York and Lancaster is then allayed; the particular forces that have roused the national energies have exhausted themselves. From that point new agencies begin to work, the origin of which we may trace, but the growth and mature action of which must be left to other hands.

Plot of the
History.

The history of the three Lancastrian reigns has a double interest; it contains not only the foundation, consolidation, and destruction of a fabric of dynastic power, but, parallel with it, the trial and failure of a great constitutional experiment; a premature testing of the strength of the parliamentary system. The system does not indeed break under the strain, but it bends and warps so as to show itself unequal to the burden; and, instead of arbitrating between the other forces of the time, the parliamentary constitution finds itself either

Importance
of the
Lancastrian
period.

superseded altogether, or reduced to the position of a mere engine which those forces can manipulate at will. The sounder and stronger elements of English life seem to be exhausted, and the dangerous forces avail themselves of all weapons with equal disregard to the result. It is strange that the machinery of state suffers after all so little. But it is useless to anticipate now the inferences that will repeat themselves at every stage of the story.

Good auguries for the constitution at the accession of Henry IV.

301. Although, as we have seen, the deposition of Richard II and the accession of Henry IV were not the pure and legitimate result of a series of constitutional workings, there were many reasons for regarding the revolution of which they were a part as only slightly premature; the constitutional forces appeared ripe, although the particular occasion of their exertion was to a certain extent accidental, and to a certain extent the result of private rather than public causes¹. Richard's tyranny deserved deposition had there been no Henry to revenge a private wrong; Henry's qualifications for sovereign power were adequate, even if he had not had a great injury to avenge, and a great cause to defend. The experiment of governing England constitutionally seemed likely to be fairly tried. Henry could not, without discarding all the principles that he had ever professed, even attempt to rule as Richard II and Edward III had ruled. He had great personal advantages; if he was not spontaneously chosen by the nation, he was enthusiastically welcomed by them; he was in the closest alliance with the clergy; and of the greater baronage there

¹ 'kyngge Henry was admytte
Unto the crowne of Englande, that did amounte
Not for desert nor yet for any witte,
Or might of him selfe in otherwyse yct,
But only for the castigation
Of king Richardes wicked perversacion,
Of which the realme then yrked everychone
And full glad were of his deposicion,
And glad to crowne kyng Henry so anone,
With all theyr hertes and whole affeccion
For hatred more of kyng Richardes defeccion
Then for the love of kyng Henry that daye:
So chaunged then the people on hym aye.'—Hardyng, p. 439.

was scarcely one who could not count cousinship with him. He was reputed to be rich, not only on the strength of his great inheritance, but in the possession of the treasure which Richard had amassed to his own ruin. He was a man of high reputation for all the virtues of chivalry and morality, and possessed, in his four young sons, a pledge to assure the nation that it would not soon be troubled with a question of succession, or endangered by a policy that would risk the fortunes of so noble a posterity. Yet the seeds of future difficulties were contained in every one of the advantages of Henry's position; difficulties that would increase with the growth and consolidation of his rule, grow stronger as the dynasty grew older, and in the end prove too great for both the men and the system.

Position of Henry.

The character of Henry IV has been drawn by later historians with a definiteness of outline altogether disproportioned to the details furnished by contemporaries. Like the whole period on which we are entering, the portrait has been affected by controversial views and political analogies. If the struggle between Lancaster and York obscured the lineaments of the man in the view of partisans of the fifteenth century, the questions of legitimacy, usurpation, divine right and indefeasible royalty, obscured them in the minds of later writers. There is scarcely one in the whole line of our kings of whose personality it is so difficult to get a definite idea. The impression produced by his earlier career is so inconsistent with that derived from his later life and from his conduct as king, that they seem scarcely reconcilable as parts of one life. We are tempted to think that, like other men who have taken part in great crises, or in whose life a great crisis has taken place, he underwent some deep change of character at the critical point. As Henry of Derby he is the adventurous, chivalrous crusader; prompt, energetic, laborious; the man of impulse rather than of judgment; led sometimes by his uncle Gloucester, sometimes by his father; yet independent in action, averse to bloodshed, strong in constitutional beliefs. If with Gloucester and Arundel he is an appellant in 1388, it is against the unconstitutional position of the favourites; if, against Gloucester and

Difficulty of reading his character.

His character before his accession.

Arundel in 1397, he takes part with John of Gaunt and Richard, it is because he believes his old allies to have crossed the line which separates legal opposition from treason and conspiracy. On both these critical occasions he shows good faith and honest intent rather than policy or foresight. As king we find him suspicious, cold-blooded, and politic, undecided in action, cautious and jealous in private and public relations, and, if not personally cruel, willing to sanction and profit by the cruelty of others. Throughout his career he is consistently devout, pure in life, temperate and careful to avoid offence, faithful to the church and clergy, unwavering in orthodoxy, keeping always before his eyes the design with which he began his active life, hoping to die as a crusader. Throughout his career too he is consistent in political faith: the house of Lancaster had risen by advocating constitutional principles, and on constitutional principles they governed. Henry IV ruled his kingdom with the aid of a council such as he had tried to force on Richard II, and yielded to his parliaments all the power, place, and privilege that had been claimed for them by the great houses which he represented. It is only after six years of sad experience have proved to him that he can trust none of his old friends, when one by one the men that stood by him at his coronation have fallen victims to their own treasons or to the dire necessity of his policy, that he becomes vindictive¹, suspicious, and irresolute, and tries to justify, on the plea of necessity, the cruelties at which as a younger man he would have shuddered. It may be that the disease which made his later years miserable, and which his enemies declared to be God's judgment upon him, affected both the balance of his mind and the strength of his ruling hand. That love of casuistical argument, which is almost the only marked characteristic that his biographer² notes in him, may have been

His character in later life.

Critical period.

¹ One stage of the transition may be seen in Arundel's speech of 1407, in which he declares that Henry has never exacted the penalties of treason from any who were willing to submit and promise to be faithful; Rot. Parl. iii. 608.

² 'Novi temporibus meis litteratissimos viros, qui colloquio suo fruebantur, dixisse ipsum valde capacis fuisse ingenii et tenacis memoriae ut multum

a sign of the morbid consciousness that he had placed himself in a false position, and conscience may have urged that it was not by honest means that he had availed himself of his great opportunity. We can hardly think that he was so far in advance of his age as to believe fully in the validity of the plea on which, as the chosen of the nation, he claimed the throne. If the formal defiance issued by the Percies contains any germ of truth, he had acted with more than lawful craft when he gained their assent to his supplanting of Richard; if the French chronicle of the time is to be credited, he had not refrained from gross perjury. Neither the one nor the other is trustworthy, but both represent current beliefs. If Henry were guiltless of Richard's death in fact, he was not guiltless of being the direct cause of it, and the person who directly profited by it. Although he was a great king and the founder of a dynasty, the labour and sorrow of his task were ever more present to him than the solid success which his son was to inherit. Always in deep debt, always kept on the alert by the Scots and Welsh; wavering between two opposite lines of policy with regard to France; teased by the parliament, which interfered with his household and grudged him supplies; worried by the clergy and others, to whom he had promised more than he could perform; continually alarmed by attempts on his life, disappointed in his second marriage, bereft by treason of the aid of those whom he had trusted in his youth, and dreading to be supplanted by his own son; ever in danger of becoming the sport of the court factions which he had failed to extinguish or to reconcile, he seems to us a man whose life was embittered by the knowledge that he had taken on himself a task for which he was unequal, whose conscience, ill-informed as it may have been, had soured him, and who felt that the judgments of men, at least, would deal hardly with him when he was dead.

Questions of conscience.

His constant difficulties and disappointments.

diei expenderet in quaestionibus solvendis et enodandis . . . Etsi sapiens fuerat, ad cumulum tamen sapientiae qui in Salomone fuerat non pervenit. Sufficiat posteriori saeculo scire quod vir iste in moralibus dubiis enodandis studiosus fuerit scrutator, et quantum regale otium a turbinibus causarum eum permisit liberum in his semper sollicitum fuisse; Capgr. Ill. Henr. pp. 108, 109. He was 'sage et imaginatif;' Wavrin, p. 108.

Great council on the war, August, 1401.

very large number of knights and esquires severally summoned by letters of privy seal. In this assembly the king is said to have resolved on going to war with France and Scotland. In the winter the king ordered the collection of an aid on the marriage of his daughter Blanche to the count palatine Lewis, son of the king of the Romans¹.

Henry's popularity was on the wane; he had not been successful in Wales; the exactions of his purveyors were a bitter source of complaint among the people²; an exaction on the sale of cloth produced loud complaints and riots in Somersetshire, where the king was regarded as having broken his promise about taxation³; an attempt was made upon his life. The next year, 1402, was one of still worse omen. In Lent the lord Grey of Ruthyn was captured by Owen Glendower. In June, Edmund Mortimer, the brother of the late earl Roger of March who had been declared heir-presumptive by Richard, fell into the hands of the rebel chief, and after a short imprisonment married his daughter, proclaimed himself his ally, and declared that he was in arms to maintain the right of his nephew to the throne⁴. The king's invasion of Wales, now become an annual event, was more than ever unsuccessful and calamitous; it lasted for three weeks, during which the army was nearly starved and nearly drowned⁵, nothing being done against the foe. As Henry's failures lessened his popularity, a mysterious

In 1402 Edmund Mortimer joins Owen Glendower.

¹ The letters for collecting the aid were issued Dec. 1, 1401, and Feb. 16, 1402; Rymer, viii. 232, 242; Dep. Keeper's Rep. ii. App. ii. p. 181; the amount was 20s. on the knight's fee held immediately of the king, and the same on every twenty pounds rental of land held of the king in socage, according to Stat. 25 Edw. III. But the grant of the aid was not yet made; it was to be discussed in a great council in January 1402. See p. 37, note 4, below.

² Ann. Henr. p. 337; Eulog. iii. 387; Rot. Parl. iii. 473.

³ Adam of Usk, p. 61.

⁴ Ord. i. 185; Chron. Henr. ed. Giles, pp. 27, 30. In a letter to his tenants dated Dec. 13, 1402, Mortimer announces that he has joined Glendower in a scheme to restore Richard if he is alive, or if he is dead to place the earl of March on the throne; Ellis, Original Letters, 2nd series, i. 24; Tyler, Henry of Monmouth, i. 135. On the 28th of Feb. 1405 is dated the agreement between Glendower, Mortimer, and Northumberland, for a division of England and Wales between the three; ib. p. 150; Chron. Henr. ed. Giles, pp. 39 sq.; Hall, p. 28.

⁵ Ann. Henr. p. 343.

reaction in favour of Richard began to set in. It was currently reported that he was alive in Scotland. Franciscan friars went up and down the country organising conspiracy. In May Henry had to charge the bishop of Carlisle and the earl of Northumberland to arrest all who were spreading the false news¹; and a number of executions followed², showing that the king's patience was exhausted and his temper embittered. Walter Baldock, an Augustinian canon, and another priest who had engaged in conspiracy, were hanged. Eight Franciscans underwent the same fate, without any show of ecclesiastical remonstrance. Sir Roger Clarendon, a son of the Black Prince, with his esquire and page, perished in the same way and for the same cause. A popular rising was expected in London; Owen Glendower and the Scots were believed to hold the strings of a secret league, and the sorceries of the friars were supposed to be the causes of the ill success of the king³. In one quarter only there was light. The earl of Northumberland and Hotspur defeated the Scots at Homildon in September, and in that victory crowned the series of their services to Henry with a success which seems to have led to a final breach with him. The victory of Homildon was the one piece of good news which could be reported to the next parliament.

Rumour that Richard is alive, 1402.

Executions.

Battle of Homildon Hill, September, 1402.

308. The last instalment of the tenth and fifteenth granted in March 1401 was due in the following November, and, as a renewal of the grant would be immediately required, the parliament was summoned for January 30, 1402; but if such an assembly was ever held it left no traces whatever of its action⁴; there are no statutes, no rolls of proceedings, no

Parliamentary history of 1402.

¹ Rymer, viii. 255; cf. pp. 261, 262, 268.

² Ann. Henr. pp. 309, 340; Wals. ii. 249; Eulog. iii. 389-394; Chr. Giles, p. 28.

³ 'Arte magica,' Otterb. p. 236; 'mala arte fratrum minorum,' Ann. Henr. p. 343; Wals. ii. 251. 'All men trowed witches it were that made that stounde;' Hardyng, p. 360.

⁴ The writs for such a parliament at Westminster were issued on the 2nd of December; Lords' Report, iv. 776; and for convocation to be held the first Monday in Lent; ib. p. 778. The Rolls of Parliament contain a few petitions of the third year of Henry which might be referred to such a parliament if it were really held; but one of them speaks of the parliament as sitting at Coventry, so that probably they belong to 1404. The bishop

stood; notwithstanding extreme distress for money, and in spite of much treachery and disaffection. All the intelligent knowledge of the needs of the nation, all the real belief in the king's title, is centered in the knights of the shire; there is much treason outside, but none within the walls of the house of commons. The highest intelligence, on the whole, however, is plainly seen to be Arundel's, and next to his, although in opposition for the time, that of the prince of Wales. The archbishop knows how to rule the commons and how to guide the king; he believes in the right of the dynasty, and, apart from his treatment of the heretics, realises the true relation of king and people. If his views of the relation of Church and State, as seen in his leading of the convocation, are open to exception, he cannot be charged with truckling to the court of Rome.

Power of
archbishop
Arundel.

321. The reign of Henry IV had exemplified the truth that a king acting in constitutional relations with his parliament may withstand and overcome any amount of domestic difficulty. He had known when to yield and when to insist, and thus, in spite of the questionable character of his title, much ill-success, harassing poverty, unwearied and unsuspected treasons, bad seasons, and bad health, he had laid the foundations of a strong national dynasty. His parliamentary action was one long struggle, but it was a struggle fairly conducted, and he, as well as the parliament, stood by the constitutional compromise, maintained the constitutional balance. The history of Henry V exhibits to us a king acting throughout his reign in the closest harmony with his parliament, putting himself forward as the first man of a nation fairly at one with itself on all political questions, a leader in heart and soul worthy of England, and crowning his leadership with ample signal successes. Henry IV, striving lawfully, had made his own house strong; Henry V, leading the forces with which his father had striven, made England the first power in Europe. There were deep and fatal sources of weakness in his great designs, but that weakness was not in his position at home; it was not constitutional weakness, although the result which it precipitated went a long way towards destroying the constitution itself.

Character of
the reign of
Henry IV.

in relation
to that of
Henry V.

It is one of the penalties which great men must pay for their greatness, that they have to be judged by posterity according to a standard which they themselves could not have recognised, because it was by their greatness that the standard itself was created. Henry V may be judged and condemned on moral principles which have emerged from the age in which he was a great actor, but which that age neither knew nor practised. He renewed a great war, which according to modern ideas was without justification in its origin and continuance, and which resulted in an exhaustion from which the nation did not recover for a century. To modern minds war seems a terrible evil, to be incurred only on dire necessity where honour or existence is at stake; to be justified only by the clearest demonstration of right; to be continued not a moment longer than the moral necessity continues. Perhaps no war ancient or modern has been so waged, justified, or concluded; men both spoke and thought otherwise in earlier times, and in times not so very far distant from our own. For medieval warfare it might be pleaded, that its legal justifications were as a rule far more complete than were the excuses with which Louis XIV and Frederick II defended their aggressive designs; for the kings of the middle ages went to war for rights, not for interests, much less for ideas. But it must be further remembered, that until comparatively late times, although the shedding of Christian blood was constantly deplored, war was regarded as the highest and noblest work of kings; and that in England, the history of which must have been Henry's guide, the only three unwarlike kings who had reigned since the Conquest had been despised and set aside by their subjects. The war with France was not to him a new war; it had lasted far beyond the memory of any living man, and the nation had been educated into the belief that the struggle was one condition of its normal existence. The royal house, we may be sure, had been thoroughly instructed in all the minutiae of their claims; the parliament insists as strongly on the royal rights as on its own privileges; and the fall of Henry VI shows how fatal to any dynasty must have been the renunciation of those rights. The

Henry V as
a warrior.

Changes in
the estimate
of war.

War with
France an
hereditary
doctrine.

Parliament
of 1431.

was chiefly occupied with the financial difficulties. The country was becoming more convinced of its own exhaustion, and debt was annually increasing¹. New methods of taxation were tried and failed. This year, besides fifteenths and tenths, tannage and poundage, and the continued subsidy, a grant was made of twenty shillings on the knight's fee or twenty pounds rental²; and security authorised for a loan of £50,000³. The payments for Beaufort's services were a large item in the national account; Gloucester was still more rapacious, and he did not, like his uncle, hold his stores at the disposal of the state.

Grants of
money.Discussions
in council
on Beau-
fort's posi-
tion;

On the 6th of November the duke again mooted in council the removal of the cardinal⁴, this time directly. The king's serjeant and attorney laid before the lords in general council a series of precedents by which it was shown that every English bishop who had accepted a cardinal's hat had vacated his see; the duke of Gloucester asked the bishop of Worcester whether it was not true that the cardinal had bought for himself an exemption from the jurisdiction of his metropolitan; and the bishop, when pressed to speak, allowed that he had heard this stated by the bishop of Lichfield who had acted as Beaufort's proctor. The bishops and other lords present professed that their first object was the good of the kingdom, and said that, considering the cardinal's great services and near relationship to the king, they wished justice to be done on a fair trial, and ancient records to be searched. The bishop of Carlisle voted that nothing should be done until the cardinal's return⁵. Notwithstanding this, on the 28th of November the council ordered letters of praemunire and attachment upon the statute to be drawn up, the execution of them being deferred until the king's return. The same day there was a brisk debate on the

held Oct. 6, 1430, opened Jan. 12, 1431; Rot. Parl. iv. 367; Amund. i. 57; Ordinances, iv. 67. John Tyrell was again speaker. The grants were made on the 20th of March.

¹ In a great council, Oct. 9, 1430, the bishops and abbots lent large sums, and soon after a fifteenth was levied; Amund. i. 55. On the 12th of July, 1430, orders were issued for constraint of knighthood; Ord. iv. 54.

² Rot. Parl. iv. 368, 369; Amund. i. 58. ³ Rot. Parl. iv. 374.

⁴ Ordinances, iv. 100. ⁵ Ib. iv. 103; Rymer, x. 497.

question of the protector's salary, in which the chancellor and treasurer, supported by the bishop of Carlisle, lords Harington, De la Warr, Lovell, and Botreaux, were outvoted by Gloucester's friends¹ led by the lord le Scrope. Before the king's return additional offence was given by the seizure of the cardinal's plate and jewels when they were landed at Dover. Beaufort himself was still abroad², and Gloucester took the opportunity which his absence offered, and which perhaps an increasing personal influence over the king helped him to seize, to remove the ministers and make a great alteration in his nephew's surroundings. The king landed on the 9th of February, 1432; on the 26th Hungerford had to resign the treasurership to John lord le Scrope of Masham; on the 1st of March lord Cromwell the chamberlain was dismissed, and lord Tiptoft was relieved from the stewardship of the household³; on the 4th of March, the great seal, which the archbishop of York had resigned on February 25, was confided to John Stafford, bishop of Bath⁴; other minor changes followed. As might be expected, the cardinal speedily returned home and the next parliament was a stormy one.

and on the
protector's
salary,Beaufort's
jewels
seized.Change of
ministers
on the king's
return, 1432.

337. It met on the 12th of May at Westminster before the king in person⁵, and was opened by the new chancellor with a speech on the text 'Fear God, honour the King;' the three points of application being the defence of religion, the maintenance of law, and the relief of the national poverty; the last a new feature in such addresses, but probably introduced now in consequence of a real pressure. On the second day Gloucester spoke, in the idea, he said, of assuring the commons that the

Parliament
of 1432.

¹ Ordinances, iv. 103.

² Beaufort had returned to England Dec. 21, 1430, and attended the parliament of 1431, but went back to France after Easter; Amund. i. 56, 58, 62; Rymer, x. 491.

³ Rymer, x. 402; Ordinances, iv. 109. Hardyng speaks highly of lord Cromwell's wisdom, perhaps referring to his money-getting craft, p. 395.

⁴ Rymer, x. 500, 501.

⁵ Rot. Parl. iv. 388. John Russell was speaker; the grants were reported July 17. The council had on the 7th addressed writs to the duke of Norfolk, the earls of Suffolk, Huntingdon, Stafford, Northumberland, and lord Cromwell, forbidding them to bring up more than their ordinary retinues; Ordinances, iv. 112.

confession, made shortly before his death, he stated some matters which Suffolk had to disavow, although the name of duke Humfrey was not mentioned. Yet there is nothing in the history of either of these men that would give the least probability to such a charge as this. The commons, when in 1451¹ they petitioned for sentence of forfeiture against Suffolk, did not go beyond terming him the cause and labourer of the arrest, imprisonment, and final destruction of the duke; the accusation in its complete form was the work of the triumphant Yorkists long after. On the whole, the evidence, both of direct statement and silence among contemporary writers, tends to the belief that Gloucester's death was owing to natural causes, probably to a stroke of paralysis; his arrest to some design in which all the leading lords were partakers. The charges made against his servants, who were arrested at the same time, were definite enough; they had conspired to make the duke king of England and Eleanor Cobham queen; they had falsely and traitorously imagined the death and destruction of the king, and had conspired together for the purpose; they had raised an armed force and set out for Bury S. Edmund's to kill the king². On the 8th of July Thomas Herbert and four others were tried by a special commission, of which Suffolk was the head, and convicted by a Kentish jury at Deptford; but a week later they were pardoned by the king; and in the month of October their reputed accomplices received a similar pardon. We may infer from this that Henry could scarcely have believed the story of his uncle's treason; but the favours which were afterwards showered on both Suffolk and Moleyns show

Yet Suffolk was never legally charged with murder.

The death probably natural.

Charges brought against Gloucester's servants.

They are pardoned.

¹ Rot. Parl. v. 226.

² Rymer, xi. 178. Thirty-eight of the duke's servants were arrested. On Friday, July 14, five were condemned to the penalties of treason and brought to the gallows. At the last moment Suffolk produced the pardon and they were released; Gregory, p. 188. A list of forty-two is given by Ellis, Original Letters, 2nd Series, i. 108, 109; cf. Leland, Coll. ii. 49+. Gregory says that the arrested persons never 'ymagenyd no falseness of the that they were put upon of.' The pardon is granted in consideration of the approaching festival of the Assumption, on which day the pope had granted indulgences to those visiting the king's college at Eton: it is dated July 14, and was no doubt the king's independent act. See Blakman, p. 301.

equally clearly that he did not believe them responsible for the duke's murder.

On the 11th of April, six weeks after the death of Gloucester, the cardinal of England passed away; not, as the great poet has described him, in the pangs of a melodramatic despair¹, but with the same business-like dignity in which for so long he had lived and ruled. As he lay dying in the Wolvesey palace at Winchester he had the funeral service and the mass of requiem solemnised in his presence; in the evening of the same day he had his will read in the presence of his household, and the following morning confirmed it in an audible voice; after which he bade farewell to all, and so died; leaving, after large legacies, the residue of his great wealth to charity². He had been indeed too rich for his own fame; Henry, when the bishop's executors offered him a sum of £2000 from the residue, put them aside, saying, 'My uncle was very dear to me and did much kindness to me whilst he lived; the Lord reward him. But do ye with his goods as ye are bounden; I will not take them³.' Henry spoke the truth; Beaufort had been the mainstay of his house; for fifty years he had held the strings of English policy, and done his best to maintain the welfare and honour of the nation. That he was ambitious, secular, little troubled with scruples, apt to make religious persecution a substitute for religious life and conversation; that he was imperious, impatient of control, ostentatious and greedy of honour,—these are faults which weigh very lightly against a great politician, if they be all that can be said against him. It must be remembered in favour of Beaufort that he guided the helm of state during the period in which the English nation

Death of cardinal Beaufort, April 1447.

His wealth.

His political skill.

¹ Hall, Chr. p. 210, on the authority of John Baker, a counsellor of the cardinal, gives a last speech, which contains nothing positively unnatural, but much that is improbable. It is asserted that the bulk of the cardinal's wealth fell to Edmund Beaufort, the marquess of Dorset, his nephew, who was one of his executors. This does not appear from the will; £4000 is left to the bastard John of Somerset, and to the king the jewels pledged by the parliament to the cardinal and in his hands at his death. His last loan to the king seems to be one of 2000 marks in 1444; Rymer, xi. 55: but he had provided £20,000 in 1443.

² Cont. Croyland, ap. Gale, p. 582.

³ Blakman, de Virtutibus Henrici VI, p. 294.

Character of his administration.

tried first the great experiment of self-government with any approach to success; that he was merciful in his political enmities, enlightened in his foreign policy; that he was devotedly faithful and ready to sacrifice his wealth and labour for the king; that from the moment of his death everything began to go wrong and went worse and worse until all was lost¹. If this result seems to involve a condemnation of his policy, it only serves to enhance the greatness of his powers and fidelity. But his policy, so far as it was a policy of peace and reconciliation, is not condemned by the result. It was not the peace, but the reopening of the strife that led directly to ruin. It is probable that he foresaw some part of the mischief that followed; certainly the words on his tomb, 'tribularer si nescirem misericordias Tuas²,' may be read as expressing a feeling that, humanly speaking, there was little hope for his country under Henry VI.

Suffolk left chief minister.

The death of Gloucester, followed so closely by the death of the cardinal, left Suffolk, the queen's minister, without a rival; Edmund Beaufort was ordered to undertake the lieutenancy in France and Normandy, thereby increasing the jealousy between him and York³; and under their joint misfortune and mismanagement all that remained to England in France, save Calais, was lost.

344. Suffolk was an old and experienced soldier, and, if it were not for the cloud that rests on him in relation to

¹ There are among the ordinances of the privy council some good illustrations of Beaufort's character. On one occasion it was proposed to appropriate for the payment of debt some fund that was already assigned to a similar purpose; the whole council approved, but the cardinal protested against the deception; 'so by this mean no man hereafter should trust none assignment, whereto he wol in no wyse consent.' The treasurer agreed with the cardinal; Ordinances, v. 216.

² Godwin de Praesulibus, p. 232.

³ The duke of York had left Normandy in the autumn of 1445, and the country was governed by commissioners appointed during his absence, until 1447. According to Whethamstede (i. 160) Henry had reappointed him for five years more, but had at Somerset's instigation cancelled the nomination. In July, 1447, York was appointed lieutenant of Ireland (Wars, &c. i. 478), but he still retained the title of lieutenant-governor of France in November, 1447. In December, 1447, it had been determined to appoint Edmund Beaufort, and he was acting as full lieutenant in May, 1448. See Appendix D to Foedera, pp. 509-538; Ordin. vi. 90.

Gloucester's death, might seem entitled to the praise of being a patriotic and sensible politician. The grandson of the minister of Richard II, born in 1396¹, he had been since 1431² a member of the royal council; by his marriage he was connected with the Beauforts; his wife was Alice, widow of the earl of Salisbury and daughter of Thomas Chaucer of Ewelme, whose mother was sister to Katharine Swinford. The policy of peace which Beaufort had nursed, had been carried into effect by him; and it was pursued by him when he became the most powerful man at court. It was a bold policy, for it was sure in the long run to ruin its supporter even in the estimation of the class which was to gain most by the result. Suffolk saw that England could not retain her hold on France, and he tried, by surrendering a part of the conquest to maintain possession of Normandy and Guienne. He knew well how dangerous a part he had undertaken, and openly warned the council of the results which really followed. He had promised, probably by word of mouth, that, on the completion of the marriage scheme, the remaining places which the English held in Maine and Anjou should be surrendered to king René. If by such a sacrifice peace could be obtained it would be cheaply purchased; and it might be, for Charles VII had more than once offered terms that would leave Henry in possession of more than he now retained. But affairs had materially changed; Charles was gaining strength, England was more and more feeling her exhaustion. Anjou and Maine were now the keys of Normandy, no longer the gate by which England could march on France. The project of peace languished, the surrender of Maine was urged more imperiously. The cessation of warfare was maintained only by renewal of short truces, until in March 1448³ the coveted province was actually given up, and then a truce for only two years was granted. The high spirit of Edmund Beaufort chafed against the delays and irritations of diplomacy, and unfortunately his strength, whether of mind

Surrender of Maine and Anjou.

Policy and impolicy of the surrender.

¹ Dugd. Bar. p. 186.

² Ordin. iv. 108.

³ The negotiations may be traced in the collections of William of Worcester, published by Stevenson, Wars in France, vol. ii. pp. [634] sq. The final surrender took place March 11; Rymer, xi. 210, 214.

equivalent to 'parliamentum:' the word 'parliamentum' is however used most frequently from the latter years of Edward I, and exclusively after the first year of Edward III.

419. The writs to the sheriffs, ordering the election of representatives of the commons, correspond with the writs of the lords only so far as concerns the recital of the cause of summons, and in earlier writs this is frequently abbreviated. After declaring the occasion of meeting and the king's intention of treating with the prelates, magnates, and 'proceres,' no share in the deliberative function being assigned to any other persons, the writ proceeds to order the election of knights, citizens, and burgesses, who are to have full and sufficient power, on behalf of their constituencies, to consent to and to do what by God's favour may be determined by the common counsel of the kingdom, on the matter premised¹. The sheriff is himself to bring up the names of the persons chosen and the writ, until by the statute of Henry IV in 1406 the indenture tacked to the writ is declared to be the sheriff's return, and is ordered to be sent into chancery. Such is the essential form of the writ; the many important variations in detail, touching the status of the persons to be chosen and the process of election, are valuable indications of political and social history. They must be taken in chronological order.

The changes in the clauses which describe the character of the persons eligible as knights of the shire begin very early. The writ of 1275 describes the knights to be elected as 'de discretioribus et legalioribus².' The form used in 1290, 1294, and 1295³, prescribes the election to be made 'de discretioribus et ad laborandum potentioribus⁴;' the form is varied in 1302,

¹ 'Ita quod iidem milites plenam et sufficientem potestatem pro se et communitate comitatus praedicti, et dicti cives et burgenses pro se et communitatibus civitatum et burgorum praedictorum, divisim ab ipsis habeant ad faciendum et consentiendum hiis quae tunc ibidem de communi consilio regni nostri favente Domino ordinari contigerit super negotiis antedictis;' Lords' Report, iv. 786.

² Vol. ii. p. 235.

³ Parl. Writs, i. 21, 25, 29, 48, &c.

⁴ In 1297 the description is 'de probioribus et legalioribus;' this meeting however was not, strictly speaking, a parliament, but the council to which the knights were called to receive the copies of the confirmed charters. Parl. Writs, i. 56.

Writs addressed to the sheriffs.

How the return was to be made.

Variations in the form describing the persons to be elected as knights of the shire.

the words being 'de discretioribus ipsius comitatus¹,' and in 1306 the clause directing the election of burgesses runs 'et de quolibet burgo duos burgenses vel unum secundum quod burgus fuerit major vel minor².' Both these variations were temporary; the older form is resumed and observed down to 1324, when Edward II, apparently despairing of getting a parliament together, and, having in 1322 been obliged to receive valetti or esquires instead of knights of the shire for several counties, dispensed with the demand for discreet and able knights by adding 'seu aliis, de comitatu tuo, assensu et arbitrio hominum ejusdem comitatus nominandos³.' As however he omitted the summons for the clergy and borough members altogether, this writ cannot be regarded as a writ of parliament. In the next parliament, that of 1325, only twenty-seven of the knights of the shire were belted knights. The writs for the parliament of Northampton in 1328 forbade the attendance of members with a multitude of armed retainers⁴; and an additional writ in 1330 enjoined on the sheriff to obtain the election of persons not suspected of legal malpractices: 'deux des plus leaux et plus suffisauns chivalers ou serjauntz de meisme le countee qui soient mie suspiciousous de male coveigne, ne communes meintenours des parties⁵.' This was with a view to the next parliament, in which Mortimer was condemned. Although the result was satisfactory for the moment, and no change in the writ was required for some years, abuses had already begun to creep in, and in 1339 the commons, declaring that they could not assent

¹ Parl. Writs, i. 115: in 1305, 'de discretioribus et ad laborandum potentioribus;' ib. p. 138.

² Parl. Writs, i. 182, 183. This is not counted as a regular parliament.

³ In 1311 the sheriff of Rutland sends two 'homines,' having no knights; Parl. Writs, ii. 1, 51. In 1322 Worcestershire returned a valetus, who received only 2s. for his expenses; ib. ii. 1, 277: Devon returned one, Middlesex, Hereford and Leicester two; ib. 278. In 1324 all are called milites; ib. 313. In 1324 the summons to the barons is 'in fide et dilectione,' and 'seu aliis' is in the Sheriffs' Writs, II. i. 317; in the returns for Herefordshire it is specified that the persons elected are not knights; Lincolnshire returns a 'serjaunt;' the number of belted knights made out by Prynne belongs to the parliament of 1325; ib. pp. 346, 347; when the persons not knighted have only 3s. a day.

⁴ Lords' Report, iv. 383; Prynne, Reg. ii. 79, 80.

⁵ Prynne, Reg. ii. 85, 86; Rot. Parl. ii. 443.

Attempts to secure the election of real knights.

at work in the county courts; and to have a general intention of urging the election of men of knightly rank and education, to the exclusion of professional lawyers and the maintainers of private suits. The mischief of faction and the danger of sacrificing public interest to private emolument were sufficient reasons for the restrictions inserted. The fact that the king could insert them without remonstrance does not prove that by dealing with the sheriffs he could procure their enforcement: the number of variations implies some power of resistance; the lawyers were not excluded and belted knights were not always chosen. Yet the king no doubt felt that his power, even thus liable to be thwarted, was safer as it was than it would be if it were hampered with any constitutional change in the body of electors. He maintained accordingly the customary right of the county courts. The changes introduced under the Lancaster kings have already been noticed: they possibly imply a more important change in the constitution of the country society, and claim a more distinct place in social history. We cannot question that the act of 1430 was demanded by the disorderly condition of the county courts, or that that of 1445 was the result of the choice of unfit and incompetent members. The lack of governance common to the whole Lancaster period is exemplified in both the complaints. The tenour of the history is enough, without a statutory rehearsal, to prove that there were riots even in the most solemn shiremoots, and that unworthy members sat in the fickle and subservient parliaments.

The writs to the sheriffs did not quite complete the composition of the lower house. Those cities and towns which were made counties by themselves, or had sheriffs of their own, London, Bristol, York, Norwich, Lincoln, Newcastle-on-Tyne, Hull, Southampton, Nottingham, Coventry, Canterbury, had writs addressed to their sheriffs; the constable of Dover and warden of the Cinque Ports had the writ for the election of the barons of the Cinque Ports; the duke of Lancaster, or more generally the chancellor of the duchy or county palatine of Lancaster, had the writ for Lancashire and its towns. None of these writs exhibit any important differences.

The king's power to alter the writs.

His wish to maintain custom;

and to enforce order.

Writs to the sheriffs of cities,

to the Cinque Ports and Lancashire.

420. The abbots, barons, and judges, on the receipt of their writs, had little to do except to obey: the bishops had besides this to order the election of the clerical proctors, which they did by forwarding the writ with a precept of their own to the archdeacons to enforce it¹; and, where the process was transacted at all, it was transacted in much the same way as the elections to convocation, by summoning the whole body of the beneficed clergy in the several archdeaconries. The work of the sheriffs was much more critical and complicated. The method of election to the house of commons, the questions of qualification and suffrage, and the theory as compared with the practice of the county court, open a wide field for discordant conjectures.

The writ was returnable, as we have seen, in about forty days, and the election was to be made in the county court: and this is nearly all that can be certainly affirmed of the early elections. It would be a waste of ingenuity to speculate on the different courses that a sheriff, unguided by custom, may have adopted; and, for the sake of a definite view, we must advance at once to the period which was affected by the statute of 1406. This statute orders that proceedings shall begin in the first county court holden after the receipt of the writ, and that the election shall be made in full county court by the persons present; it specifies further the form of the return².

¹ Forms of electing clerical proctors under the 'præmunientes' clause will be found, in the case of cathedrals, Parl. Writs, I. 31, 34, 140, II. i. 293-296; and in the case of the diocesan clergy, one of A.D. 1304, Wake, State of the Church, app. p. 31. A list of the clerical proctors in the parliament of Carlisle is given, Parl. Writs, I. 184-186. Atterbury gives a long series of instances in which proctors were elected under this clause, coming down to the year 1678; Rights, Powers, and Privileges of Convocation, Additions to the first edition, addenda, pp. 81-93.

² 7 Hen. IV, c. 15, Statutes, ii. p. 156: 'Item nostre seigneur le roy al grevousse complaint de sa commune del non dewe eleccion des chivalers des countees pur le parlement, queux aucune foitz sont faitz de affection des viscountz et autrement encountre la forme des briefs as ditz viscountz directe, a grand esclandre des countees et retardacion des busoignes del communalte du dit countee, nostre sovereign seigneur le roy vuillant a ces purveier de remedie, de l'assent des seigneurs esprituelx et temporelx et de tout la commune en cest present parlement, ad ordeignez, et establiz que desore enavant les eleccions des tielx chivalers soient faitz en la forme queuseite; cest a saver que al proschein countee a tenir apres la livre du brief du parlement, proclamacion soit fait en plein countee de le jour et lieu de parlement, et que toutz ceux qui illeques sont presentz sibien

Proceedings on the receipt of writs.

County elections.

Proceedings under the statute of 1406.

drance or odium in the discharge of his duties. The king granted the petition: thereupon the accounts were read before the lords: subsequently the treasurer was by advice of the lords charged to lay the state of the kingdom, in the same way, before the commons in their common house on the following day: and this was done¹. Although the occasion was exceptional, the manner of proceeding was probably customary.

438. The result of the conferences with the lords and with the treasurer on financial questions was the grant of money. On this point we have circumstantial documentary evidence from the very first; both in the writs by which the king, whilst ordering the collection of the taxes, carefully explains the occasion of the grant and states by whom and in what proportions it is granted; and very frequently in the 'form of grant,' the schedule of directions for collection, which the grantors have drawn up and presented, sometimes as a condition, sometimes as an appendage to the grant. After the date at which the two houses began to make their grants on one plan, ceasing to vote their money independently, and clothing the gift in the form of tenths and fifteenths, wool, tunnage and poundage, and other imposts which affected all classes alike, the money grant took a more definite form; and from the end of the reign of Richard II all grants were made by the commons with the advice and assent of the lords in a documentary form which may be termed an act of the parliament. Of these we have had many examples; we know them to have been the result of a conference between the lords and commons, but, with the exception of the discussions on the poll-tax in 1377 and 1380², we have very seldom any details of debate upon them, or of the exact steps of the process by which they became law. The practice of three readings in each house, the possible speaking, suggestion of alterations and amendments, all the later etiquette of procedure on money bills, will be sought in vain in the rolls of the medieval parliaments. The practice of thrice reading the bills appears however in the journals of the two houses so early, and is from the very first parliament of Henry VIII regarded

¹ Rot. Parl. iv. 432-439.

² See above, vol. ii. pp. 459, 470.

so clearly as an established rule, that it must have full credit for antiquity: it was a matter of course¹.

439. Scarcely more light is shed on the details of legislative procedure. On this point we have already concluded that both the king and the several members of both houses and the houses themselves had the right of initiation²: Edward III of his own good will proposed to remedy the evils of purveyance³; the lords proposed the legislation by which peers are entitled to be tried by their peers in parliament⁴, and on the petition of the commons most of the legislation of the middle ages is founded. The king's projects for the alteration of the law would be laid by the chancellor before the house of lords, and after discussion they would go down to the commons: a similar course was adopted in all cases in which the legislation began in the house of lords or on petition addressed to them. When the act, petition, or bill had reached the requisite stage, that is, as it must be supposed, had been read three times, it was endorsed by the clerk of the parliament 'soit baille⁵ aux commons; ' it was then sent down to the lower house by the hands of some of the judges or legal advisers of the parliament, with the message informing the commons of the subject of the bill and asking their advice⁶.

¹ In the first parliament of Henry VIII, on the 23rd day of the session 'adducta est a domo inferiori' 'billa de concessione subsidii quae lecta fuit semel cum proviso adjungendo pro mercatoribus de ly hansa Theutonorum.' On the 24th day the proviso was read and expedited; on the 27th it was sent down to the commons; on the 29th the bill of the subsidy was delivered to Sir Thomas Lovel and his companions. The plan was thus in full working. Lords' Journals, i. pp. 7, 8.

² See above, vol. ii. pp. 619 sq.

³ Above, vol. ii. p. 435.

⁴ Above, vol. ii. p. 408.

⁵ See Rot. Parl. Hen. VIII, pp. cxcvii, ccvi, ccix, &c.

⁶ See below, p. 489. The form in the Lords' Journals of 1510 was this: 'Jan. 24 Receptae sunt quatuor billae legendae, una pro libertatibus ecclesiae Anglicanae, una pro retornis falsis, &c. Billa pro reformatione ecclesiasticae libertatis bis lecta tradita fuit attornato et sollicitatori regis reformanda et emendanda,' &c. 'Die 5^o Lecta est Billa concernens ecclesiasticas libertates et jam bis lecta; Item,' &c. 'Die 7^o Item eodem die lecta est tunc tertia vice billa concernens libertates ecclesiae Anglicanae quae unanimi omnium dominorum tunc praesentium fuit approbata et admissa;' 'Item per dominos datae erat in mandatis clerico parlamenti et attornato et sollicitatori regis quod crastino in mane deferrent ad domum inferiorem billam de ecclesiasticis libertatibus,' &c. 'Die 8^o Billa de

Legislative proceedings.

Initiation of legislation.

Bills sent down from the lords to the commons.

Forms of grants of money.

Grants made by the two houses together: by the commons with the consent of the lords.

Money bills thrice read.

be more, then the clerk writeth underneath "Soit baillé aux commons." And so when they see time they send such bills as they have approved, by two or three of those which do sit on the woollsacks¹, to the commons; who asking licence and coming into the house with due reverence, saith to the speaker, "Master Speaker, my lords of the upper house have passed among them and think good that there should be enacted by parliament" such an act, and such an act, and so readeth the titles of that act or acts; "they pray you to consider of them and show them your advice:" which done they go their way. They being gone and the door again shut, the speaker rehearseth to the house what they said. And if they be not busy disputing at that time in another bill, he asketh them straightway if they will have that bill, or, if there be more, one of them.

'In like manner in the lower house; the speaker, sitting in a seat or chair for that purpose somewhat higher than he may see and be seen of them all, hath before him, in a lower seat, his clerk who readeth such bills as be first propounded in the lower house, or be sent down from the lords. For in that point each house hath equal authority to propound what they think meet, either for the abrogating of some law made before, or for making of a new. All bills be thrice, in three divers days, read and disputed upon, before they come to the question. In the disputing is a marvellous good order used in the lower house. He that standeth up bare headed is understood that he will speak to the bill. If more stand up, who that is first judged to arise is first heard; though the one do praise the law, the other dissuade it, yet there is no altercation. For every man speaketh as to the speaker², not as one to another, for this is against the order of the house. It is also taken against the order to name him whom ye do confute but by circumlocution, as he that speaketh with the bill or he that spake against the bill and gave this and this reason. And so with perpetual oration not with altercation he goeth through till he do make an end. He that once hath spoken in a bill, though he be confuted straight, that day may not reply, no

¹ See above, p. 476.

² Lex Parliamentaria, p. 150.

though he would change his opinion; so that to one bill in one day one may not in that house speak twice, for else one or two with altercation would spend all the time. The next day he may, but then also but once¹. No reviling or nipping words must be used; for then all the house will cry "it is against the order;" and if any speak unreverently or seditiously against the prince or the privy council, I have seen them not only interrupted, but it hath been moved after to the house and they have sent them to the Tower. So that in such multitude and in such diversity of minds and opinions there is the greatest modesty and temperance of speech that can be used. Nevertheless with much doulce² and gentle terms they make their reasons as violent and as vehement one against the other as they may ordinarily, except it be for urgent causes and hastening of time. At the afternoon they keep no parliament. The speaker hath no voice in the house, nor they will not suffer him to speak in any bill to move or dissuade it. But when any bill is read, the speaker's office is as briefly and as plainly as he may to declare the effect thereof to the house. If the commons do assent to such bills as be sent to them first agreed upon from the lords [they send them back to the lords] thus subscribed "les commons ont assentus;" so if the lords do agree to such bills as be first agreed upon by the commons, they send them down to the speaker thus subscribed "les seigneurs ont assentus." If they cannot agree, the two houses, for every bill from whencesoever it doth come is thrice read in each of the houses, if it be understood that there is any sticking, sometimes the lords to the commons, sometimes the commons to the lords, do require that a certain of each house may meet together and so each part to be informed of other's meaning; and this is always granted. After which meeting for the most part, not always, either part agrees to other's bills.

'In the upper house they give their assent and dissent, each man severally and by himself, first for himself, and then for so

¹ Lex Parliamentaria, p. 186.

² So in the reign of Richard II, the commons urged that the petitions should be 'par amyable manere debatez;' Rot. Parl. iii. 14.

Bills sent down to the commons.

Maintenance of order.

Office of speaker.

Cases of difference between the two houses.

Procedure in the house of commons.

Practice in debates.

Standing orders.

the kitchen, the napery, the chandlery and the like; every inmate had his fixed allowance for every day, and his livery of clothing at fixed times of the year or intervals of years. The same custom was practised in the reception of guests; the king of Scots, when he came to do homage to the king of England, had his allowance of wax and tallow candles, of fine and common bread, measured out like that of any servant, and the due delivery of all was secured by a formal treaty¹. The term livery was however gradually restricted to the gift of clothing, the gift of food and provisions being known as allowances or corrodies: the clothing took the character of uniform or badge of service; as it was a proof of power to have a large attendance of servants and dependents, the lords liberally granted their livery to all who wished to wear it, and the wearing of the livery became a sign of clientship or general dependence. It was thus a bond between the great men, who indulged their vanity, and the poorer, who had need of their protection, sometimes by force of arms, but generally in the courts of law: it was a revival, or possibly a survival, of the ancient practice, by which every man was bound to have a lord, and every lord had to represent his men or be answerable for them in the courts.

The English of the middle ages were an extremely litigious people; it was one of the few qualities which their forefathers had shared with their Norman masters; and it was that side of the national character which was most mischievously developed by the judicial institutions of Henry I and Henry II. Litigation was costly, at least to the poor; and it was far easier for a man who wished to maintain his own right, or to attack his neighbour's, to secure the advocacy of a baron who could and would maintain his cause for him on the understanding that he had the rights of a patron over his client, than to pay the fees of a lawyer. This practice of maintenance, the usage of the strong man upholding the cause of the weak, was liable to gross perversion; and the maintainers of false causes, whether they were barons or lawyers, became very early the object of severe legislation. Edward I, in the statute of Westminster the First, forbid

¹ See Hoveden, iii. 245.

Practical mischief of livery.

The mischief of maintenance.

the sheriffs and other officers of his courts to take any part in quarrels depending in the courts¹. By a statute of 1327 it is forbidden that any member of the king's household, or any great man of the realm, by himself or by another, by sending letters or otherwise, or any other in the land, great or small, shall take upon him to maintain quarrels or parties in the country to the let and disturbance of the common law²; in 1346, in an act which marks by its wording the growth of the practice in the higher classes, prelates, earls, barons, the great and small of the land, are all alike forbidden to take in hand or maintain openly or privately, for gift, promise, amity, favour, doubt or fear, any other quarrels than their own³. The long list of statutes in which the evil practice is condemned shows how strong it had become; the sheriffs are forbidden to return to parliament the maintainers of false suits⁴; the lawyers and the barons are alike struck at in petition and statute; and the climax is reached when Alice Perrers, the king's mistress, takes her seat in the law courts and urges the quarrels of her clients⁵. In the condemnation of maintainers pronounced by the Good Parliament, ladies as well as lords come in for general reprobation⁶. The support given by John of Gaunt and Henry Percy to Wycliffe at St. Paul's was a gross act of maintenance⁷.

The abuse of maintenance for the purpose of increasing the estates of the maintainer, by a compact in which the nominal plaintiff shared the profits of victory with his patron, or the patron secured the whole, was one very repulsive aspect of the custom. Another, and that more directly connected with the giving of liveries, was the gathering round the lord's household of a swarm of armed retainers whom the lord could not control, and whom he conceived himself bound to protect. In the former aspect the law regarded maintenance as a description of conspiracy; in the latter as an organisation of robbers and rioters; but the difficulty of restraining the abuse was

¹ Stat. Westm. I. cc. 25, 28, 33; Statutes, i. 33, 35.

² 1 Edw. III, st. 2. c. 14; Statutes, i. 256.

³ 20 Edw. III, cc. 4, 5, 6; Statutes, i. 304, 305.

⁴ See above, p. 416.

⁶ Rot. Parl. ii. 329; iii. 12.

⁵ Vol. ii. p. 452.

⁷ Vol. ii. p. 459.

Legislation against maintenance.

Inadequacy of the laws against maintenance.

Maintenance and champerty.

Riotous households.

