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Abstract

The deposition of Edward II was not an isolated event in European history. It developed from a series of imperial and papal precedents regarding the nature and relationship between the king and the responsibilities of the office he personified. Thirteenth century deposition theory, with its emphasis upon the tyrannical, iniquitous or useless king, was fundamentally important in creating a judicial structure around which the deposition of a monarch could be constructed. Edward II's deposition in particular evidences the impact and pervasive influence of this developing line of thought in the first quarter of the fourteenth century. These civil and canon law forms were not the only influences shaping the deposition, however. The Germanic ideas of individual rights and the contractual theories inherent in the feudal structure of society were both very important to the development of secular deposition. These notions granted legal justification to the otherwise largely illegal action of deposition, even if the abdication of the ruler retained its primary position of importance.

Both depositions in fourteenth century England utilized similar basic elements, although the structure of the act in 1399 was intrinsically different from that of 1327. The political background to both depositions was very similar, with royal attempts to expand prerogatives being the major component, especially in regard to personal property. Edward II and Richard II attempted to adopt certain forms of kingship, both secular and sacerdotal, which were not acceptable in England, regardless of their success in France. The differences between their depositions rested largely on the circumstances in 1327 and 1399. Richard's deposition threatened a succession problem, but the real crisis revolved around the role of the king and his relationship to the law. This same problem arose in 1327, but the fundamental difference lay in the manner in which

they deposed the monarch: deposition followed by abdication.

Edward II's deposition was not conclusive. Although it relied heavily upon thirteenth century deposition theory, the key to its tentative legality lay in its use of the feudal aspects of diffidatio. Unlike the 1399 deposition, the 1327 crisis was not pre-conceived and was a result of important debates on the nature of kingship. The deposition on 1399, with its lack of initial public discussion and decision-making, was only a pale reflection of the original revolutionary act.

KINGSHIP AND DEPOSITION
IN
FOURTEENTH CENTURY ENGLAND

Nancy E. Messimer

being a thesis presented to the University of St. Andrews
in application for the degree of M.Litt.



May 1979

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Degree of M.Litt.

I hereby certify the Nancy E. Messimer has complied with relevant Resolutions of the University Court for the above degree.

Michael C. Prestwich

Declaration:

I, Nancy E. Messimer, declare the following Thesis is based on my own research and is of my own composition, and has not been previously submitted for a higher degree.

Certificate:

I certify that the above candidate has fulfilled the conditions of the Ordinance and Regulations prescribed for the degree of M.Litt.

Abbreviations

- Ann. Paul. Annales Paulini in Chronicles of the Reigns of Edward I and Edward II, ed. W. Stubbs (R.S., 1882-83).
- Bain, Cal. Docs. Scot. III Calendar of Documents Relating to Scotland, Vol. III, ed. J. Bain (Edinburgh, 1887).
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- C.M.R. 1326-27 Calendar of Memoranda Rolls 1326-27
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- E.H.R. English Historical Review
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- Haines, Church and Politics R.M. Haines, The Church and Politics in Fourteenth Century England (Cambridge, 1978)

Abbreviations, con't.

- Higden Polychronicon Ranulphi Higden, ed. J.R. Lumby, VIII (R.S., 1882).
- Historia B.L. Faustina B. V (Historia Roffensis).
- Knighton Chronicon Henrici Knighton, ed. J.R. Lumby, I (R.S., 1889).
- Lanercost Chronicon de Lanercost, ed. H. Maxwell (Glasgow, 1913).
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- Rot. Parl. Inediti Rotuli Parliamentorum Anglie Hactenus Inediti, 1279-1373, ed. H.G. Richardson and G.O. Sayles (Camden Series, II, London, 1935).
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- W.H.R. Welsh Historical Review

I would like to thank Dr. Michael Prestwich for supervising this research project. His suggestions and interest were always very valuable.

My great thanks also go to the Institute for Advanced Historical Research, where the greater portion of this thesis was completed, and to the post-graduates also working there, especially Miss Isabel Guy, for various references and invaluable discussions.

Finally, I must thank Mr. Robert Dawlings for proof-reading this thesis.

Introduction

The history of the reign of Edward II is undergoing significant revision, with an emphasis being placed upon a new interpretation of the character of the baronial opposition. Because of the nature of these studies, no investigation into the last four years of the reign or of the deposition has been considered necessary. Not since Tout and Clarke explored the intricacies of the parliament of 1327 and its aftermath has the deposition of Edward II been a subject of historical scrutiny. The purpose of the present study is to present the fact of the deposition in the light of its Continental precedents and contemporary opinions on kingship.

Edward II's deposition was not an unprecedented event in European history. In many respects, it was the culmination of five hundred years of philosophical thought and political realities. Its guiding influences germinated during the ongoing arguments which consumed the energies of both empire and papacy during the eleventh century. The polemicists, engaged in defending or refuting the imperial definition of kingship, hammered out what was in fact a radical new notion of the role of the monarch. Mediaeval society based its self-awareness on the idea of the body politic and on the notion of the pyramid. It accepted the duality of the lay and ecclesiastical hierarchy, but could not conceive of a nation governed by a council. There could only be a single head to the body if it were to be governed effectively. For this reason, the relationship between the Pope and the Emperor was fraught with tremendous tension. The position of an emperor was very different from that of a king. Although the Pope could, and sometimes did, interfere in national politics, notions of royal suitability were not so stringently defined as were those of imperial suitability, and so papal incursions were less easily justified. Nevertheless, the right

of deposition remained in the hands of this highest of ecclesiastical judges and sprang from his unquestionable right to depose bishops. It is difficult to ascertain why the Emperor did not take upon himself this right of jurisdiction within the lay sphere as a complement to papal prerogatives. The answer to this probably revolves first around the quasi-sacerdotal aspects of kingship, and secondly around the feudal notions of the role of the king and the magnates' prerogatives of diffidatio.

Edward II's deposition is distinctive because it was the first purely secular rejection of a monarch by a national assembly. There is no mention of papal rights or papal acknowledgement and approval of the deed. The bishops who figure so prominently in 1327 were not acting in their capacity as spiritual leaders, although this clerical element was a necessity, but rather as temporal lords. The importance of this action cannot be underestimated. This deposition was distinctly feudal in character despite the emphasis given to civil and canon law. The forms of these two laws allowed the proceedings to appear legal. This is perhaps the most outstanding feature of the deposition: the tenacious clinging to legal format, and, as far as they understood the term, the actualities of the law. For this reason, the deposition was neither preconceived nor inevitable, but rather a last resort for a powerful group who considered this particular monarch to be both inutilis and tyrannus. Many important questions were raised at this time, most notably the vexatious problem of the nature of parliament, the role of the communitas regni, and the place of the king within the community.

I

The Political Background

T.F. Tout placed the nation squarely behind Edward II after the baronial revolt of 1321-22 due to the factious behavior of the contrarians. The king must also be given credit for temporizing until the proper moment, then acting immediately and defeating the magnates in a practically bloodless campaign. This victory gave Edward the unforeseen opportunity to rectify his past errors and start afresh, yet in four years he alienated the entire lay and ecclesiastical hierarchy, and was himself deposed. The king's seeming inability to take advantage of these situations is a theme which runs throughout the reign and is responsible for the crises during the period from 1322-27.

i. the Despenser tyranny.

Lancaster's trial and execution on 22 March 1322 confirmed the Despensers' control over both the king and the government in England. The persecution of the Contrarians lasted well into 1323, and included executions for treason, forfeiture of lands, and payment of fines. All the chronicles of the reign comment upon the decimation of the noble estate: Lancaster had been beheaded outside the walls of his own castle at Pontefract, Damory had died during the campaign, Hereford was killed at Boroughbridge; Berkeley, the elder Audley and both the Mortimers surrendered and were imprisoned; a host of other smaller figures, like Badlesmere, were executed or fined. This proscription also made it possible for the Despensers, and especially the Younger Hugh, to extort money from the survivors for their continued good behavior. There is no doubt that they were the greatest beneficiaries of the revolt. Having cleared the field of their most

vociferous enemies, they were left free to exploit their control of the king and the administration. Between 1322 - 1326, the Despensers continued to accumulate lands and grants, especially those forfeited by the Contrarians. Immediately after Boroughbridge, Hugh the Elder had been presented with the earldom of Winchester. This is mentioned in most of the chronicles without elaboration, although the Brut, coupling it with Harclay's rise to the earldom of Carlisle, construed these elevations as detrimental and prejudicial to the Crown.¹ Murimuth also mentioned the elevation and tied it specifically to the break-up of the Lancastrian estates.²

At face value, there does not seem to be anything remarkable about this grant, as the king was rewarding a faithful baronial supporter. The earldom of Winchester cannot be likened to Edward's grant of Cornwall to Gaveston at the beginning of the reign, despite their both being royal favourites. By granting Cornwall in 1307, the king doubly disparaged the Crown: first, this title had previously been held by a king's son, and Edward I may have intended it to be given to one of the sons of his second marriage, secondly, lands and titles were not normally given to commoners or aliens. Although the magnates attacked the Despensers for their insatiable greed and manipulation of the monarch, they could not be dismissed as upstarts and adventurers. The first Hugh Despenser was a justiciar during the reign of Henry III, fought for de Montford at Lewes and was killed at Evesham in 1265. His son, Hugh the Elder, a staunch royalist, was summoned to parliament in 1296, accompanied the king to Flanders and on various Scottish campaigns. He was also a royal diplomat, going to the papal court in 1298 and

1. Brut, p. 224

2. Murimuth, p. 37. Edward gave "castrum et honorem de Tynbeth in Wallia, quod fuit comitis Lincolniae."

3. Vita, p. 15

1305, as well as taking part in the peace negotiations between Edward I, the King of the Romans and the King of France.¹ The Elder Hugh, although sharing his son's ignominy, was not obviously involved with questionable land acquisitions prior to 1321. There can be little doubt that he found royal favour lucrative, and he was rewarded in numerous ways under both Edwards. Perhaps the marriage of his son to Eleanor de Clare in 1306 was one sort of remuneration for his services. There was certainly no reason why the Despensers should not have married into the higher nobility, as they were well connected in any case. The Elder's mother's second husband was Roger Bigod, earl of Norfolk. Hugh himself had paid the king a fine of 2,000 marks for marrying Isabel, daughter of the earl of Warwick, without a licence. The Despensers, then, represented an established family both within the royal sphere and the baronial circle. After the baronial revolt, Edward was able to flesh out Despenser's title with lands forfeited for treason; for instance, in May 1322, he received two manors in Wiltshire from the estate of the rebel John Giffard,² and various lands previously a part of the earldom of Lancaster. As unpopular as the king's actions were in regards the Lancastrian estate, Edward was certainly within his rights. The penalties for treason carried with them the understood sequestration of all estates to the Crown. Although there does not seem to be any clear guideline, the heir to an estate was often able to recover an inheritance in whole or part once he had been restored into the monarch's favour and was able to present a petition. Henry of Lancaster retained the title earl of Leicester by Edward's grace, but the major portion of his brother's estates was withheld by the king until 1330. Similarly, in the reign of Edward III, the earl of March's

1. D.N.B., Vol. VI, pp. 412-14

2. C.P.R. 1324-27, p. 174

estates were restored in 1354 when the appeal against Mortimer was annulled. However, in 1325, Henry had to defend his prerogative to use his father's arms as his hereditary right and assure the king that he was not using his brother's in contempt of the Crown.¹ Edward was, in fact, showing good sense and judgement in attempting to turn the unfortunate events of revolt to both his and the Crown's profit. By dismembering the Lancastrian estate, he was making resources available to himself on a short term basis, was able to reward loyalty with tangible gifts without loss of revenue and, most importantly, was able to neutralize the threat of a baronial champion with resources to match the Crown's own.

It was the Younger Despenser who profited most obviously from the rebellion. Not only did he recover his estates in Wales and England, but he gained a sizeable proportion of the forfeited Mowbray estates in Bedford and Kent. In February 1325, he was granted custody of the heir of Aymer de Valance and his lands as well as custody of the heir of John de Hastings and his marriage.² In August 1323, an indenture was confirmed between the earl of Norfolk and Despenser for the castle and town of Chepstow for an annual rent of 300 marks plus other lands in Wales and the Marches once a part of the Bigod estates.³ Between December 1324 and February 1325, Despenser attempted to accumulate Lancastrian lands at the expense of the earl's widow, Alice de Lacy, in Cheshire and Lancashire as well as in Wiltshire, Somerset, Dorset, Berkshire, Gloucester, Devon, Southampton, Oxford, Cambridge and Lincoln. 'In fear of death', she gave up the lordship of Denbigh, the constablership of Chester, and the honour of Bolingbroke.⁴ The favourite also acquired reversionary interest in the manor and castle

1. Vita, pp. 137-38

2. C.P.R. 1324-27, p. 95

3. Ibid., p. 34; Davies, Lordship and Society in the March of Wales, p. 280

4: C.Ch.R. III, p. 48

of Clifford and Glasbury.¹ The Brut goes so far as to assert that the Despensers had contrived to have all the Contrariants' lands confiscated so that they might have them.²

The acquisitiveness of Hugh the Younger was not bound by gaining forfeited lands alone. After Pembroke's death in 1324, Despenser began, with royal backing, to harrass the dead earl's widow and co-heirs. It is impossible to say for certain why Pembroke's family was treated so badly or if they received harsher treatment than others who were forced to sell lands or make recognizances at the end of the reign. However, a good case can be suggested for a motive of revenge on Despenser's part. Pembroke encouraged his exile in 1321.³ Interestingly, Pembroke's heirs were John Hastings and Elizabeth Comyn, the children of his two sisters. Before gaining wardship of the boy and his marriage, Hastings made a recognizance for 24,000 to Despenser for an unspecified reason.⁴ Hugh the Younger appears also to have been responsible for subverting justice when he was accused by Pembroke's widow of refusing to allow the escheator to return an inquest for lands at Haverford and Hertford, allegedly because he desired them. And although she received her dower rapidly after her husband's death, she alleged that Baldock refused her dower in both of these places as well as in Monmouth unless she produced the original royal charters.⁵ By July 1325, Despenser had succeeded in acquiring Little Monmouth and its dependencies.⁶ In the last years of the reign, Despenser's treatment of Elizabeth Comyn is the most notorious of his actions.

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1. C.P.R. 1324-27, p. 63, 102-3, 103; Davies, Lordship and Society, p. 280
 2. Brut, p. 225
 3. Phillips, Aymer de Valence, Earl of Pembroke, p. 235
 4. C.C. R. 1323-27, p. 309
 5. Phillips, op. cit., p. 235
 6. C.Ch.R., p. 478

She was captured and imprisoned At York until she agreed in March 1325 to make a recognizance of £10,000 to both Despensers and release her rights at Goodrich and Painswick to them.¹

Imprisonment and extortion of lands on pain of an unspecified punishment seem to have been a favourite method of acquiring the dower property of rich heiresses. Alice de Lacy and Elizabeth Comyn are two examples. The widow of Roger Damory, Elizabeth de Burgh, suffered the same treatment, irrespective of her close ties to the royal family. Before her husband's death, she was taken and held at Barking Abbey until the early summer, by which time she had unwillingly agreed to grant Usk to Despenser in exchange for the lordship of Gower. It was only then that she received the remainder of her inheritance, which she held in her own right quite separate from her husband and which ought not to have been subject to this sort of pressure. By 1300, the law had been moving toward a sound economic base for a widow or wife in regards to the lands, tenements or chattles she brought into the marriage. However, this process was undermined by the treason trials under Edward II, when innocent relatives, like widows, lost dower rights and were deprived of both inheritance and jointure, and had no access to maintenance allowances.² This kind of military punishment proceeded from internecine warfare, and would only be acerbated by Despenser manipulations, leaving the secondarily injured parties with no legal recourse except petition. At the end of 1325, Elizabeth de Burgh was summoned to York, again imprisoned and ordered to quit-claim her Welsh lands. This gave Hugh the Younger control of the entire de Clare portion of south Wales, realising his ambitions in this area. To complete the task, William de Braose, whose family had originally held Gower and whose attempts to sell the land had created the tension in the Marches prior to 1321,

1. C.P.R. 1324-27, p. 116; C.C.R. 1323-27, p. 357; Phillips, Amyer de Valence, Earl of Pembroke, p. 235

2. C.D. Ross, 'Forfeiture for Treason in the Reign of Richard II', p. 567

brought an order of novel disseisin for the land against Elizabeth in April 1324. He won the case, immediately handed the land to Hugh the Elder, who presented it to his son.¹ Although Elizabeth sued in parliament, restitution was not made until 1327.² Other, less prominent land-owners also suffered under the Despensers. These extortions only came to light after 1327 when the Crown was attempting to settle the debts relating to the Despensers' forfeited property. There certainly must have been others who, like Richard Talbot and his wife, John de Sutton, and Alice Mowbray, were forced to hand over lands to the royal favourites because they alone were able to manipulate the governmental machinery to their own benefit.³

Just as the Despensers were able to acquire land with the use of a combination of force and law, so, too, did they and others in royal favour tie even lesser persons to them for sums of money. In March 1325, John de Sapy, a former member of the royal household and involved in the Middleton affair, made a recognizance of £200 with the Younger Despenser.⁴ The wife of a certain Robert of Dorking made similar arrangements with Baldock for the slightly odd sum of £286, although there seems to have been some deal coalescing.⁵ Various men who had been part of the rebel coalition were fined and also made recognizances to the Crown. To save their 'lives and lands', Adam de Everingham paid 400 marks; Robert de Raygate, 200 marks; Howel ap Howel, £500; and John Mauduyt, 1,000 marks.⁶

The impunity with which the Despensers undermined the law in all of these cases was directly proportional to their influence over the

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1. G.A. Holmes, 'A Protest Against the Despensers, 1326,' pp. 208-9
 2. C.P.R. 1327-30, p. 32
 3. Holmes, op. cit., p. 210, ff
 4. C.C.R. 1323-27, p. 357
 5. Ibid., p. 309
 6. C.C.R. 1327-30, p. 5, pp. 20-1. There are numerous other examples. All of these were cancelled by parliamentary petition at the start of the new reign.

king. Prior to the baronial revolt, the Elder's use of royal favour was marked to a great extent by a certain circumspection. The Younger, also, although his actions, especially in regard his attempts to acquire the Gloucester inheritance, were questionable, they were never actually illegal or in contempt of written law. Needless to say, much violence was done to traditional and customary laws, but Hugh the Younger could not be accused of hindering the king's justice. After the collapse and defeat of the baronial opposition in 1322, the way was clear for them to do what they wished, there being no visible baronial or royal checks on their behavior. There can be little question that the propertied class was being placed in an increasingly uncomfortable position. The king's favourites were apparently able to acquire any lands or tenements they desired despite the legal niceties of the situation. The initial attacks on Marcher customs may have created a feeling that inheritances were not secure. The fear that judgements of treason could be brought at any time against anyone involved in the baronial revolt only sharpened their insecurities.¹ This was the basis of the Despenser tyranny: a king who had delegated royal prerogatives to personify justice, and more specifically to control property, in a way that was completely unacceptable to contemporaries on a national level.

ii. the Queen and Gascony

The Saint-Sardos affair and the Queen's growing alienation are inextricably linked at the end of this reign. Without the crisis engendered in France at this time, Isabella would not have had either the opportunity or the freedom to group around herself the growing number of dissidents in opposition to Edward II.

1. J.R. Maddicott, Thomas of Lancaster, p. 260. This is an obvious parallel to the situation in 1399.

The Seneschal of Gascony, Sir Ralph Basset, informed the King of the attack and destruction of the planned bastide at Saint-Sardos in early November 1323. Edward, who had no knowledge of the affair, was naturally very concerned, for this action made a delicate situation extremely difficult. As long as English monarchs had held lands from the French crown, they had attempted to discover ways to delay or avoid doing personal homage to their overlord. Edward had done simple homage twice, in 1308 and 1320, both times after long delays. In 1322, the English king had again postponed the journey, pleading that the continuing war with Scotland prevented his leaving the country. Charles IV accepted these excuses, only reminding Edward of his duty in September 1323, after the thirteen year truce with the Scots had been sealed. Edward again protested the dangers from the north and the ceremony was again postponed, this time until the following June.

The problems in Gascony were far more serious than the king's concern over the prejudicial symbolism of homage. The duchy was particularly unsettled. More cases were heard before the Parlement of Paris than ever before and private warfare threatened to involve the king directly. The crisis culminated with the attack on the planned bastide, and the murder of a French official bearing Charles IV's arms. Basset and certain other English officials were summoned three times before the French king and after the final default on 9 February 1324, they were banished and their property confiscated. Charles took this opportunity to seize the castle of Montpezat.¹

At this same time, it was decided in Parliament to send an embassy to attempt to settle both these disputes, since preliminary envoys, the Earl of Kent (who had agreed to a six months truce when it became obvious that Edward could not mount a full scale campaign) and Archbishop

1. P. Chaplais, The War of Saint-Sardos, pp. ix-xii

Bicknor of Dublin had handled the initial situation very poorly. Their failure had led first to a local and finally to a general French call-to-arms in June 1324, as well as an exasperated Charles declaring the duchy and county forfeit.¹ In England, discussions concerning Gascony dragged on throughout the spring and, in June, it was decided to send an embassy to France headed by Pembroke. Unfortunately, he died soon after his arrival on the Continent, before his presence could make an impact on the negotiations.²

The Queen was then sent to her brother's court to make peace between the two monarchs in March 1325. By May of that same year an agreement had been reached which allowed Edward to retain possession of Gascony and Ponthieu, although he was forced to pay a relief of £60,000. Some difficulty seems to have arisen over Charles' late insistence upon continued royal occupation of the Agenais as an indemnity for his losses.³ However, the treaty was drawn up and confirmed 13 June 1325.⁴ Although Edward duly set out to perform the necessary homage, at the last moment he pleaded illness⁵ and allowed his son to cross to France in his stead on 12 September 1325.⁶

Whether the excuse was feigned or actual is difficult to determine. The major chronicles present two different but not unlikely nor, indeed, incompatible variations. Both Murimuth and the author of the Vita remark upon the Despencers' unwillingness for the king to leave the country. Although they did not themselves dare to go to France, they could not safely remain behind either because of the great hatred the magnates and the people held for them.⁷ Attempting to influence the council's decision, Hugh the Younger intimated that the magnates were acting in

1. Chaplais, ed, The War of Saint Sardos, p. xiii

2. Phillips, Amver de Valence, Earl of Pembroke, pp. 232-3

3. M. McKisack, The Fourteenth Century, p. 110

4. Foedera, II, ii, p. 132, 134-36, 137-8

5. Ibid., pp. 139-41 (24 August 1325)

6. Vita, p. 141; Murimuth, p. 44

7. Ibid., p. 140; Murimuth, p. 44, 'qui nec audebant...qui perfecto odio oderant illos...'

a treasonous manner by suggesting the King depart. Refusing to be swayed, the assembled magnates reiterated their counsel, being more concerned with possible prejudice to the Crown than veiled threats by the royal favourite.¹ The king could very well have been persuaded by the Despensers to remain and send the Prince in his stead, but he had similar advice from other quarters. Pope John XXII had been very concerned about the continuing troubles between these two realms and had sent mediators to the French court. Now whether it was a papal or a French suggestion initially, Charles did agree that the Prince would make an adequate substitute for his father and he would be invested with the duchy under the same terms.² This sudden change should not be construed as an attempt by the French crown to join in a conspiracy with the disaffected Queen. Charles did not take advantage of the internal crises in England nor Isabella's grievances to confiscate English lands in France. No doubt he would have preferred to absorb the Agenais as well as to extend his rights of appeal in these areas. However, his patience with Edward's excuses and his willingness to accept the Prince as a substitute suggest that his intentions were not aggressive.³

The Despensers were mainly involved in the growing alienation of the Queen, and in the popular mind equally responsible for sending the Prince to France. Because they feared for their own safety should the king go to France, they may have been instrumental in persuading him to substitute his son. This particular manoeuvre had historical precedents, and the favourites could have argued the necessity of a proxy as easily as the assembled magnates counselled the king to accept the agreement. Their actions have been misconstrued by the hostile Brut as methods by which they might eventually succeed in exiling both the

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1. Vita, pp. 138-39. This is interesting due to the analogous situation in Scotland between 1290-92, when the Guardians refused any plan which would be prejudicial to the king and betray their trust.
 2. Ibid., p. 141;
 3. McKisack, The Fourteenth Century, p. 110

Queen and Prince, and in this way deny him his inheritance.¹ Knighton assumed the exile was engineered to allow the favourites to gain these lands as they had others.² With hindsight, it is obvious that sending the Prince abroad was a tactical error. It can only be assumed that neither the King nor those close to him realized the depth of the Queen's indignation. Edward's increasing awareness of the problem is illustrated in his letters to the Queen, Prince, and his brother-in-law, the French King. In them, he denied that the Queen had any reason to fear the favourites, and he was more concerned that she was keeping company with Mortimer. Edward was probably cognizant of her adultery; the entire French court knew. However, the King did not grasp the desperate nature of Isabella's situation. When she received no support from her husband in her efforts to free the court of the Despencers' influence, she had very little choice but to intrigue with those men exiled in France.³ After this, events moved very swiftly.

The Queen's coastal lands had already been sequestered and her French servants arrested in September 1324. Although others with large French households, such as the Earl of Richmond, the Countess of Pembroke, and the Prince were able to protect their retainers, no exception appears to have been made for the Queen.⁴ She was allowed maintenance for herself and her much reduced household and assigned an objectionable lady-in-waiting in the person of Lady Despenser. However, she was not subjected to the sort of treatment others experienced at the hands of the favourites. It could be argued that the state of emergency which existed at the time and the fear of invasion necessitated taking her estates into protective custody, and this action was not an extra-

1. Brut, p. 234

2. Knighton, p. 431

3. Blackley, 'Isabella and the Bishop of Exeter', p. 235

4. Ibid., pp. 225-26

ordinary measure. However, in regards her practically non-political role throughout the reign and her reputation as a peacemaker, it appears unfounded to presume she would at the least provocation, turn and support an invading French army. She had been Queen of England for seventeen years, and her marriage had been explicitly arranged to cement peace between the two countries. Isabella had never taken obvious sides during the internal political crises which had marked the reign, although her sympathies may have been partially with the baronial forces. It is very difficult to imagine the Queen plotting against anyone or attracting a coalition of dissenting magnates and bishops about her before November or December 1325.¹

There were a number of highly placed officials in France either in connection with the diplomatic mission or in voluntary exile. By September 1325, not only the Queen and Prince, but also the Earls of Kent and Richmond, the Bishops of Durham, Winchester and Norwich, and, of course, Mortimer were resident at the court in Paris. There were also lesser figures, probably attached to the greater lords, among them William Trussel and John Cromwell.² The Bishop of Exeter accompanied the Prince abroad, and his arrival was crucial to the events which followed. The Bishop left France and returned to England so soon as to make it seem that he left secretly and in great haste.³ In a letter of 8 December 1325, the Queen wrote to Exeter about his abrupt departure, which left her without funds for her household, and was done without her permission, and so dishonoured both herself and the King, while it favoured the Despensers.⁴ Part of Exeter's instructions included orders for Isabella's return, since homage had been

1. Blackley, 'Isabella and the Bishop of Exeter', p. 220

2. *Brut*, p. 233

3. *Vita*, p. 142; *C.C.R. 1323-27*, pp. 580, 581

4. Blackley, *op. cit.*, p. 231

done for Gascony. This might also partially explain why the Bishop carried no funds for the Queen. In any case, the Queen's growing dissatisfaction and resentment of her treatment prompted her to refuse to return to England while the Despensers remained with the King. Isabella had left England 'gladly' in the spring, 'delighted' to leave the company of the Despensers, because, she claimed, in the previous winter and spring she had feared for her life. Clearly this was what was meant when she contended she had feigned friendship with the favourites in order to 'escape worse' punishments than the sequestration of her lands and the decimation of her household.¹

iii. the Household, Exchequer, and Royal Prerogative.

During this reign, there were three main changes in the household. First, the wardrobe was evolving into a department of state. Secondly, the privy seal was being separated from the household and its place taken by the new 'secret seal'. Thirdly, the chamber was becoming increasingly important as the king's domestic department. Throughout the reign, the magnates made attempts to control the household, because they viewed these officers primarily as ministers of state. Obviously aware of the growing national importance of previously personal departments, they were concerned that these areas be regularized and subject to outside review. Naturally, the King did not share this concern because ministers of state were still very much household officers. Not surprisingly, this created a series of crises revolving around royal prerogative which were only beginning to be taken into hand at the end of the reign.

Throughout this period there was a continued conflict between the Crown's view of its own rights and those same rights as defined by a

1. C.C.R., 1323-27, pp. 579-580

militant but divided baronage. Early attempts to curb the Crown were mainly concerned with the king's extravagant generosity which was felt to be responsible for the increased occurrence of prises and purveyance, taxation and the alienation of Crown lands to foreigners who had usurped the magnates' traditional role as counsellors. Between 1311-21, there was, correspondingly, a widespread effort to control the appointment of royal officers and to regulate royal patronage.

The magnates complained about the use of the privy seal, specifically between 1300-1311, and part of the problem appears to have been the widespread belief that it was used to obstruct or circumvent justice.¹ Most writs, however, were ordered under the privy seal and then sent to the Chancery to be issued under the Great Seal because it was more convenient and expedient to do so. This became problematic only as the seal became increasingly independent. When the controller of the Household, who originally kept the seal, exercised the office with clerks beneath him, the seal was well on its way to evolving into a new department of state rather than simply the private instrument it had been under previous monarchs. The key to this dilemma lay in the inadequately defined character of the privy seal. Legally, it was still a household instrument and so was free from control by any outside force. Obviously, the magnates were attempting to direct its public character. Before the middle of the reign, the privy seal cannot be considered as an independent department because its clerks were still treated as any other household clerk. It is only after Baldock's keepership in 1323 that the seal is obviously semi-independent and the separation between the keeper and controller permanent. However, the policy at the end of the reign appears to have been to assimilate the privy seal office with the Chancery. The 1326 ordinance affected the method by which both Chancery

1. J.C. Davies, The Baronial Opposition to Edward II, p. 571; also appendix no. 56.

and privy seal writs were to be enrolled.¹

The baronial opposition was also concerned about proper use of Crown issues. The attempt to channel all receipts through the Exchequer was an old idea with supporters among the administration as well as the reformers. Pressure of events, however, generally meant that there were never enough funds available at any one time to cover all expenses as they occurred. In fact, it was often found that the use of tallies was much faster and more efficient because it allowed the creditors to go directly to the receivers of revenue. Nevertheless, the government recognised the wisdom of having the various departments accountable to a central, organized treasury, and the several administrative reforms at the end of the reign were adopted with this end in view. Exchequer control of some household accounts must be approached from the standpoint that no war in Scotland meant household funding requirements would be less immediate. The rise of the Chamber as the King's personal chancery and exchequer would also lessen the problems of differentiating between the personal and public areas of royal prerogative. It would be to the government's advantage to bring in Exchequer reform where it would no longer conflict with royal prerogative.

When Bishop Stapleton became Treasurer, he found the Exchequer accounts in terrible confusion and arrears due both to the number of men who had held office and to the volume of business handled without a set procedure. Edward has often been criticised for the high turnover in the Treasury. Despite the fact that there was a different treasurer every year of the reign, there were only eleven men who held the post between 1307 and 1327. In the first seventeen years of his son's reign, between 1327 and 1344, eighteen different men held the position. So Edward I's use of only seven different treasurers during

1. T.F. Tout, Charters, Vol. II, pp. 299-305

his long reign is unusual.¹ Continuity would remain a problem, but experienced men would lessen the degree of dislocation. Contemporary opinion seemed to favour annual review as a deterrent to corruption.² In any case, mediaeval bureaucracy tended to function under the pressure of its own weight regardless of the political climate. The reforms, promulgated in 1323, 1324 and 1326 (the latter under Melton's direction), were designed to allow the accounts to run smoothly regardless of changes in personnel. The Cowick Ordinance (1323) gave directions for the drawing up of yearly accounts and the procedure by which they might be checked before enrolment in the new system of calendars organized by the bishop. It also specified the separate categories by which these rolls were to be filed, different rolls being compiled for Gascony, Ireland, customs, escheators and the wardrobe, for instance. This latter point was more fully detailed in the Westminster Ordinance of the following year, which was basically supplementary to the 1323 act. It provided for increased accuracy in wardrobe accounting, initially by giving the Exchequer control over various sections of the wardrobe and subsequently by having these sections accountable directly to the Exchequer. Moreover, a special clerk was assigned to deal with household documents who was accountable annually to the Exchequer. The second ordinance at Westminster (1326) was obviously a follow-up designed to complete the reforms instigated earlier. The main feature of this act was the decision to hear all foreign, which includes wardrobe, and sheriff accounts in full Exchequer, although separately to avoid needless confusion.³

Due to the increasingly public nature of the wardrobe throughout

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1. Tout, Charters, Vol. VI, pp. 20-23
 2. Vita, p. 139
 3. Tout, Charters, Vol. III, pp. 196-200

Edward's reign, it was an obvious advantage to the king that a section of his household be directly under his control and not accountable to the Exchequer, no matter how economically favourable that reform might be. Consequently, between 1314-18, there was a corresponding increase in the importance of the Chamber to deal with those private areas previously handled by the wardrobe. The King cannot be said to have 'retreated' into the Chamber. It was a natural progression with no untoward significance until Hugh the Younger began to use his position as chamberlain to extend his influence. He was able to increase the prestige of the office, in part because it had been largely ignored by the Ordainers and also only touched upon in the re-ordering of the household in 1318. Tout defined the Chamber as a miniature wardrobe with administrative and financial aspects. Its importance increased greatly after 1322 when a majority of the Contrariants' lands, especially Lancaster's, went directly into it. This included the ninety-three original forfeitures plus later increases and yielded approximately £12,000 per annum clear, although it was allocated to the Exchequer within six months to finance the proposed Scottish campaign. Nor were these estates dissipated. Excepting those granted to the Despensers, most of the forfeited lands remained in Crown hands until after 1327. Fines paid by the Contrariants were also a major source of revenue.¹

To deal with the increased importance of this new department, the Chamber used what had become known as the 'secret seal'. In part, this was due to the capture of the privy seal and its keeper at Bannockburn. However, it continued to be used after their ransom in the capacity of the King's most private notarial instrument. As it was only used for the King's personal business, it did not develop in the same way as the privy seal. It is always important to remember that the

1. Harriss, King, Parliament and Public Finance, p. 524. Contrariant lands in England were worth £12,652 in 1324.

magnates were not attempting to destroy the household system. Rather, they were endeavouring to control the financial heart of the government. This in turn brought any sort of reform squarely into conflict with Edward's concept of royal prerogative.

Edward, quite naturally, objected to the Ordinances from the standpoint of their diminution of his regality, being contrary to his coronation oath in which he had sworn to preserve the rights of the Crown intact. Despite Magna Carta and Articuli Super Cartas, royal rights remained vague, and there is no question that the monarch attempted to expand those nebulous rights and customs even as the baronage sought to inhibit this same royalist expansion. An example of the nature of the conflict can be seen in regard to prise and purveyance. Customarily, this was the way of victualling the itinerant royal household, with controllers responsible for assessing the value of the goods taken to insure that they were paid for when required. Under both Edward I and II, this vague prerogative was used to provide food and transportation for both armies and garrisons. There is no question that this became a deep-seated national grievance. That the baronage, who were mostly unaffected by either prise or purveyance, championed the cause for fear of a widespread peasant uprising, only serves to underline the importance of the projected reform. The whole problem was highly complicated. In this reign, prise continued to be levied by the sheriffs of the counties on the King's behalf. Due to the immediate tax structure, prise and purveyance by royal officials necessarily placed the burden on those less able to bear it. This was almost certainly not a calculated manoeuvre, because it would not have been in the interests of the Crown to do so, even though this was felt, contemporaneously, to be the crux of the problem. The constitutional issues were obvious to the magnates at the time and considered to be of equal importance. Because prise was an ancient right, the King did not need any sort of

parliamentary consent to levy it. Unlike a tax on property or moveables, which it closely resembled, there was no need to acquiesce to either baronial or communal petitions for redress of grievances in return for a consent to tax. Prise, then, became an arbitrary levy and thus a valuable economic and political weapon in the hands of the King. In this way, it was possible to evade 'the fundamental constitutional restrictions which had been place on the monarchy during the half century following Magna Carta'.¹

iv. Scotland and the expansion of military service.

Edward was unable to deal with the Scots and so was powerless to support the Crown's claim to suzerainty which Edward I had successfully exploited. The articles of deposition are explicit on this point: the king had lost these territories left to him in peace by his father. There can be no doubt that in this reign military failure was both the cause and result of internal political difficulties. Edward II's failure to secure Scotland can be attributed to an unfortunate combination of internal opposition on the part of the military leadership and the unorthodox methods used by the Scots to fight a numerically superior enemy.

Edward marched north in 1310, but the Scots steadfastly refused to be engaged in a pitched battle. The traditional feudal host of heavy cavalry was often surprised by punitive ambushes which seriously undermined morale and decimated unwary troops. The Scots would conceal themselves in woods and caves, attacking stragglers and the cumbersome baggage trains. This was a deliberate policy on Bruce's part, aware that he had neither the military nor financial resources to risk his crown on the outcome of a single battle.² Instead, he relied upon the

1. Maddicott, Thomas of Lancaster, pp. 106-08

2. Vita, p. 12

denigrated style of guerrilla warfare which was to be so successful against the English, and culminate in a truce (1323) and finally a treaty (1329). Bruce had no choice but to fight in this way. Scotland was not a wealthy nation and could not have financed a constant war effort if this had included fielding troops year after year. When Robert Bruce seized the Scottish throne in 1306, the country had been without an effective king since 1290. This precipitated dissension among the baronial class, and he became in many regards virtually a monarch without a kingdom. The situation was made still bleaker when Edward I, arguably the most experienced and successful warrior of his day marched north in the summer of 1307. Seriously ill, the old king died before he reached Scotland, and so it is impossible to ascertain or compare how he would have dealt with a situation his son was to find frustrating and draining both economically and militarily. As it was, Bruce was able to exploit and exacerbate the internal dissension in England by conducting punitive raids over the border into the more prosperous regions of the northern counties.

The Scots were very systematic in their raiding, being mainly interested in food, cattle, metal and, of course, money. The object appears to have been to break Edward's supply line through the north, making it much more difficult to mount a campaign. It also had the additional effects of relieving the Scots of the burdens of financing a long, sustained military effort, and forcing English communities to deal individually, and generally treasonably, with the invaders in order to avert total loss of goods and lands. Many northern towns paid cash tribute. If a settlement was approached and paid what was demanded, they would be left in peace. Although accused of ruthlessly slaughtering inhabitants of towns, villages and monastic communities, it appears that the Scots only plundered and killed men in places which attempted to resist. The bishopric of Durham bought a truce for 2,000 marks in 1312,

and between 1311-1329, they had paid approximately £5,000, or nearly twice what they would have expected to be taxed over the same period.¹ In June 1316, the Scots invaded Richmond and the gentlemen of the town negotiated a settlement for a large sum in order to prevent the town being burned. To guarantee good behavior, several hostages were taken, along with an unspecified quantity of iron. In 1318, 1,000 marks were extracted from Ripon, and Knaresborough lost large numbers of cattle.² The following year saw the invasion of Westmorland where both hostages and cattle were carried away.³ The Scots would repeatedly return to an important town as they did to Richmond in 1322, to levy tribute.⁴ In this way, they were able to establish an economic base and could anticipate funds from term to term, while denying Edward both the resources and capital he would otherwise have received from this area.

It is difficult to estimate exactly how much revenue the Scots received through tribute. The Vita puts the pre-1314 figure at £40,000.⁵ While this is probably an exaggeration, it gives a good indication of the kind of hardship felt in the north. In 1313, these counties complained to the King that they had suffered losses of £20,000 and, further, that the enemy had demanded 1,000 quarters of corn in Michaelmas.⁶ There can be no question that the financial capabilities of these areas had been severely undermined. For instance, in 1307, Northumberland paid £916 18s 11d in taxes, two years later they were unable to pay at all, and in 1311, they were exempted altogether.⁷ The people of the West Riding petitioned their inability to pay the eighteenth of November 1319

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1. G.W.S. Barrow, Robert Bruce, p. 283
 2. Lanercost, pp. 216, 221
 3. Ibid., p. 228
 4. Ibid., p. 230
 5. Vita, p. 48
 6. Bain, Cal. Docs. Scot. III, no. 337
 7. Barrow, op. cit., p. 281

due to Scottish raids and also received an exemption.¹ The county of Durham was marginally better off because it could bargain as a block, but there can be no question as to the importance of the tribute payments to their survival.² What becomes immediately obvious is the extent to which these raids devastated the north, and made it impossible to sustain any sort of royal war effort when Edward did go on campaign. Tarsset manor in Northumberland had been worth £237 per annum, but by 1315, its worth was reduced to less than £4. One of the Valence manors at Felton had similarly declined from a worth of £22 to just over £2 per annum.³ Bruce was able to extract two to three times what the King should have received in taxes and the area was correspondingly unable to supply an army with the necessary foodstuffs.⁴

As the war in the north became increasingly defensive, it was also clear that local militia was inadequate to cope with the speed and discipline of Scottish hobelars. Partly, this was due to a lack of support from the central government. In the critical years between Bannockburn and the siege of Berwick, when Lancaster was not in active opposition, royal government had an opportunity to deal with the Scottish problem. Prior to this, Edward had been torn between two projects: the defeat of Bruce and the struggle with the barons over Gaveston and the Ordinances.⁵ The king could not compromise his prerogative by sanctioning the Ordinances and he received no substantial help from the opposition while he refused these reforms. Between 1314-1319, recognition of the Ordinances was always the price for a Scottish campaign. In September 1314, attempts were made to blockade Scottish

1. Parl. Writs II, ii, p. 143

2. J. Scammel, 'Robert I and the North of England', p. 390

3. E. Miller, 'Farming in Northern England', p. 15. See also the Northumberland County History, vii, pp. 234-5, xv, pp. 244-5

4. Barrow, Robert Bruce, p. 283

5. Vita, p. 12.

ports, permission was sought to use the remainder of the sexennial tenth to provide cash for purveyance, and negotiations for a truce were begun. The King and Lancaster appear throughout this period as working colleagues, and this is most evident in their attention to the north.¹ By January, however, it became clear that these measures had proved ineffective because of the sort of war the Scots waged. It was decided that local lords, excused from parliament due to the seriousness of the problem, be responsible for maintaining some sort of military presence. The dispossession of major land-holders after 1296 and the death of northern lords at Bannockburn must have severely damaged seigneurial authority and this helps to explain both the ineffectiveness of local recruits and the growing lawlessness in the area.² Needless to say, Scottish reprisals to resistance must also have loomed large in the community consciousness. Although inadequate, the King had little choice but to continue along these lines until money could be raised for a campaign later that summer.³ The King, in fact, was unable to take an army north until 1319. This effectively meant that he had to rely on these inadequate local militia bound by short term indentures. David, Earl of Athol was indentured to serve with twenty men-at-arms in the Marches from 1 December 1316 at the king's wages.⁴ Similar contractual arrangements were made for garrisons. John Cromwell and the Earl of Angus were commissioned to keep Newcastle and the march of Northumberland from September 1319 until June 1320, with 30 men-at-arms from their personal retinues and an additional 140 men from the King at his wage. Similar indentures were made for Bamburgh, Alnwick and Warkworth.⁵ Some communities were expected to provide their own defense with a salary from the King.⁶ The anarchic situation also rebounded

1. Maddicott, Thomas of Lancaster, pp. 165-66

2. J.A. Tuck, 'Northern Society in the Fourteenth Century', pp. 26-7

3. Maddicott, op. cit., p. 168

4. Bain, Cal. Docs. Scot. III, no. 513

5. Ibid., no. 667

6. Ibid., no. 554

upon royal garrisons such as Carlisle and Berwick, which went unpaid and unvictualled. Under this tremendous pressure, local and royal administration in the provinces was breaking down beneath the burden of widespread graft and corruption on an unprecedented scale. The refugees fleeing south to the reception areas designated by the King were made to pay for even a night's pasturage for their livestock or fined for trespassing.¹ Royal purveyors must have used extraordinary measures. Neither the King nor Lancaster could adequately supervise their representatives in the counties and governing the north from London, always difficult, became ineffective and finally impossible.²

Despite these difficulties, Edward cannot be accused of indolence toward the Scottish problem. This was not obvious to contemporaries, unfortunately, and many communities in the north discovered that the only way to safeguard their possessions was to conduct their own negotiations. This was treasonable, of course, and the King was often petitioned to issue pardons for the offenses. The treaties were not made in a covert manner, but rather so openly that the people felt that they could ask Edward's help in the situation.³ What is outstanding is the length to which the country was willing to go to support the war effort. Given the condition that taxing the north was useless and that there was some opposition because of the King's seeming inability to provide defense, taxes were granted very regularly.⁴ With the exception of 1307, all of these taxes were to go toward campaigns and the income remained consistent despite the varying rates.⁵ Of course, the magnates who granted these taxes were only liable for taxation on their demesne; nevertheless, there was no real trouble in their collection. By the

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1. J. Scammell, 'Robert I and the North of England', p. 389
 2. Maddicott, Thomas of Lancaster, p. 161, 185
 3. J. Scammell, op. cit., p. 394; See also Bain, Cal. Docs. Scot., nos. 463, 486, 716, 799.
 4. J.F. Willard, Parliamentary Taxes on Personal Property, 1290-1334, p. 10
 5. J.H. Ramsay, Revenues of the Kings of England, 1066-1399, Vol. II, p. 148

end of the reign, however, there is little doubt that the northern population was discouraged by the lack of success and was questioning the uses to which their money was being put. Those in the south and midlands, mostly untroubled by the constant Scottish incursions, were not so obviously disaffected. The author of the Gesta Edwardi de Carnarvon believed that "many had fought successfully with the Scots" until the battle at Byland, and maintained that Harclay's execution for treason was justified on the grounds that his treaty would have caused great damage in the north.¹ But in this area, the overwealming opinion was that the King was unable to defend them, being both a coward and unlucky in war.² In order to live in peace, they would favour an agreement which recognised Bruce's claim to the Scottish throne irrespective of Edward's rights, as evidenced in Harclay's treaty of 1322.³ Although the thirteen year truce was made in hopes that the differences between the two countries could be resolved, Edward was not prepared to compromise about ultimate suzerainty. Indeed, the north had no illusions about the permanency of the 1323 settlement. That year, Durham continued to collect the necessary tribute even though they were protected by a royal truce.⁴ "The naming of the 'Shameful Peace' was the final mark of the gulf between those who suffered from the invasions and their more fortunate compatriots."⁵

Considering the diverse mood of the nation in regards the Scottish raids between 1311-1323, it is perhaps surprising that the King did not meet with more resistance in his attempt to extend military service in order to deal with the continuing threat from the north. One interesting

1. Gesta, p. 84

2. Lanercost, pp. 240-1

3. Ibid., pp. 241-3; also Tuck, 'Northern Society in the Fourteenth Century', p. 30

4. J. Scammell, 'Robert I and the North of England', p. 392

5. Ibid., p. 403

and signal development was the levy of footsoldiers from each vill, to be maintained by the vill at the county muster and for sixty days in the field. This was granted at the Lincoln parliament in 1316, and the levy had been well underway when it was cancelled in June.¹ The August levy attempted to use distraint of knighthood in a new way. All those who held fifty librates worth of land were summoned, but there was no mention of payment.² At the same time, the northern fencibles were required to serve with more than the customary amount of armour. This met with a certain degree of resistance because parliament had not consented to the array.³ It may be that the initial levy was granted specifying footsoldiers to insure that a campaign did take place and that the resources were not diverted. Certainly the growing use of heavily armoured footsoldiers would be no match for the lightly armed Scottish hobelars in speed and mobility. For a variety of reasons, chief among them famine, the Bristol rebellion and the revolt of Llewelyn Bren, no campaign was mounted in 1316. The King may also have been attempting to shift the cost of raising troops onto the local communities. The writs for 1316 suggest this. Again in 1318, some towns were asked to supply footsoldiers with appropriate armour to serve for forty days at local expense.⁴ For the siege of Berwick, local lords were required to array, arm and victual their tenants for a month from the date of assembly.⁵ In 1321-22, an unpaid levy was summoned, which aroused great discontent.⁶ Certainly after 1319, major changes took place on the local level, and every military campaign after this date involved mounting or arming county and town levies.⁷ Arrangements were made to supervise the coast, as had been done in 1316, Edward remained in

1. Maddicott, Thomas of Lancaster, p. 185

2. Parl. Writs, II, i, p. 478

3. Maddicott, op. cit., p. 185

4. Parl. Writs, II, i, pp. 505-6

5. Ibid., p. 520

6. Maddicott, op. cit., p. 314

7. M. Powicke, Military Obligation in Medieval England, p. 147

the north with six hundred men, and in each wapentake two knights and two sergeants were assigned to array local forces for which a scale of equipment was drawn up. Penalties for refusal or avoidance were harsh.¹ At the end of the reign, the war in Gascony only served to underline this tendency. An urban levy of September 1324 required specific and expensive equipment to be purchased at the expense of the city.² These demands had to be severely modified, probably due to the extension of service they represented and the fact that it was to be at the cost of the people. Later, forty-pound landholders were required to have two horses even if they were not knights, and tenure before eligibility for knighthood was reduced from three years to two.³ After November 1324, there were a series of measures which suggest that the government had a plan for the army in which the revived idea of a mounted infantry figured greatly. The force was to consist of four main elements: the feudal lords, heavily armed footsoldiers, men-at-arms plus hobelars and archers in a ratio to the foot, and levies from the towns of extra foot.⁴

Taxation, purveyance, prises and failure all strengthened any opposition that there was as a result of these extensions of service at the end of the reign. However, complaints about the measures themselves did not surface until the deposition. The conservative legislation of Edward III's reign is a direct result of the extensions at this time, although he continued to expand obligation in the same manner as his predecessors.⁵

1. Parl. Writs, II, i, p. 527

2. Ibid., p. 675; C.G.R. 1324-27, p. 226

3. M. Powicke, Military Obligation in Medieval England, pp. 148-9

4. Ibid., p. 148

5. Ibid., pp. 159-61

II

Kingship in the Fourteenth Century

i. Kingship in England and France

It is impossible to discuss mediaeval kingship using the example of one archetypal model. In France and England, the status of the monarch developed along essentially non-converging lines, although it can be argued that there was an attempt made by English kings to emulate their more absolute peers on the Continent. Some historians trace the "evolution v. revolution" argument from this period, commenting upon the successful limitations placed on English monarchs over long periods of time, and resulting in the development of the constitutional monarch and parliament, whereas the Ancien Regime came to an abrupt halt with the execution of Louis XVI.

As Walzer points out, there is a great gulf between the depositions of the fourteenth century and the trials of either Louis XVI or Charles I. The collective baronage in this mediaeval period had no intention of destroying the monarchy. Such an action would have been inconceivable to them. The principles of sovereignty were not under attack in these instances. Rather, the opposition was intent upon replacing the person of the king, not upon dispersing the abstract notion of the Crown among the community. If Edward II was coerced by threats which rejected his heir and dynasty, there were numerous other suitable candidates for the throne. The relevance of kingship was never questioned, and was maintained throughout these depositions. Intrigue and murder were committed precisely in order to become or remain a king.¹ For this reason, neither the deposition of Edward II in 1327 nor that of Richard II in 1399 can be viewed as unqualified

1. M. Walzer, Regicide and Revolution, p. 2

revolutionary acts. However, it is equally true that the civil war and trial of Charles Stuart had as its ultimate precedent these same depositions. It is in the seventeenth century that the Doctrine of Capacities is taken to its logical extreme: an anointed King charged with treason against the Crown, and executed.

In general, monarchy in the Middle Ages depended upon the 'ideology of personal rule';¹ he was much more than a leader among equals, although the actual extent of his sacerdotal claims and his ability to enforce those claims could be and often was limited. He was a symbol of national feeling, on whose power and inviolability, coupled with his prerogatives of law and justice, his subjects depended. While the king personified these abstract roles, the conservative elements in the society would protect even a weak king.² For this same reason, it mattered less that a king could be killed; the important thing was the legitimacy of his successor's claim.³

There are no indications that absolute laws of succession were recognised in the mediaeval period. By the fourteenth century, however, the best claims were usually based on the notion of primogeniture or at least right line of descent. Where a fief or dignity was hereditary, the honour passed from father to eldest surviving son. Should there be no children, it appears that the senior available heir inherited the estate. Complications often arose if a man left only daughters or only illegitimate children. The former condition necessarily meant that an estate would be divided between the heiresses. In this instance, the custom of ainesse would provide that the eldest daughter would take possession of the baronial seat, the title, and any impartible dignity such as the Marshals y. The remainder of the lands would be

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1. Walzer, Regicide and Revolution, p. 1
 2. Maddicott, Thomas of Lancaster, p. 326
 3. Walzer, op. cit., p. 1

distributed between the other sisters. The dismemberment of a great and/or ancient estate was a serious problem, and one to be avoided if at all possible. After the Earl of Gloucester's death at Bannockburn, the Crown waited until 1317 before partitioning the estate among the Earl's surviving sisters. Initially, the delay was due to the countess' alleged pregnancy. The Vita mentioned this episode and the author also advised the reader of the law on this point. A posthumous child born after the eleventh month would not usually succeed to the inheritance of the deceased, and the Earl's widow had been expecting 'for a year or more'.¹ Regardless of the letter of the law, the government's attitude was obviously a cautious one. It appears that in this instance, a male heir, even though a minor and of questionable legitimacy, was preferable to the division of the great marcher earldom. There does not seem to have been any attempt to annex the earldom to the Crown as was done to the palatinate of Chester in the settlement of 1242. Here, on the death of John the Scot in 1237, the heiresses would have customarily divided the lands and goods between them. This was, of course, unsatisfactory, and the co-heiresses were accordingly bought out in order to preserve the integrity of the county, and Chester was annexed to the Crown. By 1247, it had become inalienable Crown land. In this case, as Powicke points out, all rights of ainesse with attendant rights over any impartible dignity, lapsed to the Crown.²

Customarily then, feudal holdings were divisible if no male heir were available. How does this fact reflect upon the greatest of feudal lords, the king? In 1290, Edward I drew up a plan for the English succession which followed the lines of strict promogeniture. There were two noteworthy points in this otherwise feudal settlement. First, and

1. Vita, p. 62

2. M. Powicke, Henry III and the Lord Edward, pp. 788-89. For more detail, see R. Stewart-Brown, 'The End of the Norman Earldom of Chester', (E.H.R., 1920)

most importantly, it was decided that England, unlike any other feudal holding, was impartible. Secondly, female succession was provided for should there be no male heirs of the king's body.¹ Although neither of these points are without precedent, the precedents anticipated situations that had not transpired. There had been succession problems, but these controversies had arisen principally from an incomplete recognition of primogeniture rather than a lack of male heirs. Only Henry I left a single daughter as his sole legitimate heir, and during his lifetime at least, she was recognised as the heir-apparent. Female succession then was not impossible, although an adult male was always preferable, as events were to illustrate in this case.

It may be helpful, therefore, to view the 1290 settlement in the context of Edward I's familial situation. By 1290, the King had buried three sons and the fourth, Edward of Caernarvon, was still dangerously young. It was very much within the realms of possibility that the King's daughters would be his heirs, creating a disastrous and unique situation. If it could be established that a kingdom was foremost a feudal entity, it, too, would be dismembered in the instance of co-heiresses. Taken to its logical extreme, this would mean that the eldest daughter's husband would become king *de jure uxoris* with all of the impartible dignities pertaining thereto, while the kingdom itself would be partitioned between the younger sisters and their husbands. The situation would be untenable, and the settlement propounded by Edward I was an attempt to circumvent the problem.

This theory of impartibility and its emphasis upon strict lines of primogeniture was to have far-reaching effects. These were the underlying principles on which Edward acted in his resolution of the

1. M. Powicke, Henry III and the Lord Edward, p. 733; Foedera I, ii, p. 742

Scottish succession crisis which developed in October 1290. There was no uncontested successor to the Scottish throne when Margaret, the 'maid of Norway' died en route from Scandinavia. Thirteen different claimants were recognised, although it was evident at the outset that there were only two of real importance: Balliol and Bruce. Both of these men were descendants of David Earl of Huntingdon, brother of William the Lion. John Balliol was the Earl's great-grandson by his eldest daughter's daughter. Robert Bruce, although a generation closer, was the Earl's grandson by a junior daughter. Balliol, then, based his claim very simply on right line of descent by strict primogeniture in accordance with the custom of both Scotland and England, partible or impartible. He did, in fact, argue that the kingdom was impartible, although he was certainly in a position to claim the rights of ainesse. This advantage would allow him to become king regardless of any partition of the demesne simply because dignities pertaining to a fief, in this case defined as the royal dignities, were by nature indivisible.¹ The Bruce argument was slightly different and more complicated. He maintained that the kingdom was strictly impartible and appealed to tradition as well as to natural and Roman law for precedents. Customary law in Scotland was also cited to argue that a younger son had more right to succeed than a grandson simply by virtue of a closer blood tie. A logical extension of this premise was that a son of a younger daughter had a better claim than the grandson of an elder daughter. Although there does not seem to have been any question about the transmission of rights through the female line, the actual question of succession in Scotland was not so well defined. There is some evidence to suggest that Alexander III passed over his three sisters as well as his cousin's

1. M. Powicke, Henry III and the Lord Edward, p. 789. Also see the Introduction to Stones and Simpson, Edward I and the Throne of Scotland, 1290-1296.

eldest sister to recognize Robert Bruce as his heir, being the nearest surviving blood male. Obviously, any son that one of these women might have would have a better claim. However, in 1237, Bruce was the only male representative, and it made political sense to acknowledge his precedence. This problem became merely hypothetical in 1241 when Alexander III was born. In 1281, a further settlement was detailed in which primogeniture, primarily through male and secondarily through female heirs of the king's body, was acknowledged and seems to have anticipated Edward I's 1290 settlement. But its most striking feature was its admission of female succession.¹ Edward I, with the aid of a host of lawyers and clerks, investigated these claims and a decision was made in favour of Balliol. From 1047 until 1284, the Scottish succession was held to have progressed by strict lines of primogeniture, and the English monarch was acknowledging both custom and the wisdom of his own settlement.

In France, the succession crisis of 1328 was related to events which occurred in the reign of Philip IV. In 1314, the king arrested his three daughters-in-law; Margaret of Navarre, Blanche of Burgundy and Joan of Burgundy, for adultery, and complicity with adultery. They were shut away, and their unfortunate lovers were executed. Blanche, wife of the future Charles IV, maintained her innocence until her death in 1326, despite being repudiated four years previously. This was an obvious dynastic manoeuvre; Charles, the youngest of Philip's three sons, became king in 1322 and he required a Queen whose reputation was not tainted with adultery. For present purposes, however, the line of succession on the death of Louis X, the eldest of these sons, is more germane. Louis married twice, and this second marriage produced a son who ruled for five days as Jean I. This left only a

1. A.A.M. Duncan, Scotland: the Making of a Kingdom, pp. 612-13. This work also contains a good genealogical tree, pp. 628-9. See also Barrow, Robert Bruce, p. 57

single daughter, Jeanne, from his first marriage. This child was born a year after the alleged liaison between her mother and the unfortunate knight had begun, and so was considered to be of doubtful legitimacy. Louis X continually recognised her as his rightful heir, but suspicions were ultimately more powerful, and Jeanne was passed over in favour of her elder uncle, Philip. Here is one of the earliest instances of the tradition which solidified into the Salic law. The problem of female succession, quite apart from the question of legitimacy, was one which was unknown in France until 1316. The Capetians had the incredibly good fortune to pass the Crown from father to son in a direct line for eleven successive generations. The impact of this simple biological fact upon notions of hereditary kingship and primogeniture cannot be underestimated.¹

When there was no legitimate male issue to succeed, however, the French turned to collateral heirs, the Valois. This marked the signal departure from the notion of strict primogeniture to primogeniture in the male line only. In 1328, there was still one surviving daughter of Philip IV, Isabella. Further, she had two sons who, by custom, had excellent claims to the French throne even if she herself was not eligible. It was decided, however, by a French council, that a woman could not inherit the Crown of France, nor could she transmit her claims to her sons. There is no reason to assume that the French were not improvising at this point in an attempt to unravel a particularly knotty problem. Isabella was, of course, dowager queen of England, and her eldest son, Edward, was the reigning monarch. The fact of her adultery with Mortimer was notorious in the French court and could only have further blackened her claims, although Edward III's legitimacy does not seem to have been questioned. Here is a good example, then, of political considerations weighing very heavily in determining the

1. C.T. Wood, 'Queens, Queens and Kingship', all relevant portions of the article.

succession. The ramifications of a united France and England were enormous and, from the Continental vantage point, totally undesirable.

The sacerdotal aspect of monarchy was more prominent in France than in England, and because this was so, the whole tenor of the French monarchy differed from that found in England. The Gallican kings based their claims on a complex combination of mythical heroes, particularly Charlemagne as presented in The Song of Roland. This was heavily overlaid by the example of the ideal king, Louis IX. A sanctified and legitimate royal succession was the bedrock of the French monarchy.¹ The importance of this claim is evident in Philip IV's prompt action during the scandal in 1314. It was crucial that the greatness and, in a most basic sense, majesty of the monarchy not be jeopardised by bastardising the royal line. The king was sacred by virtue of his being anointed with holy oil, touching for scrofula, possessing the relics of Charlemagne and the old crusading tradition. These personal attributes reflected on the kingdom, making it more 'Christian'.² It also allowed the French monarchy to progressively exploit their unique association with the Papacy. By judicious use of propaganda, Philip was able to create a situation reminiscent of Gregory VII's as summarised in the Dictatus Papae and the papal argument of the Investiture contest. In this period, an attack on a French king was equated with an attack on the Church which he represented so closely. Conversely, he could argue that royal attempts to strengthen the kingdom and defend it were for the good of the realm, whose injury was believed to also endanger the universal Church.³ Here is a good example of the the manner in which secular government used the Church to justify its utilitas and provide

1. C.T. Wood, 'Queens, Queens and Kingship', p. 393

2. J.R. Strayer, 'France: The Holy Land, the Chosen People, and the Most Christian King', pp. 302-3

3. Ibid., pp. 307-9, 312-13. He paraphrases the papal bull 'Rex Glorie' of Clement V.

it with a just cause for any royal undertaking.

English attempts to mimic the French shed some interesting light on the way each of these monarchs viewed both himself as king and mediaeval kingship in general. Like Philip, Edward I idealized Louis IX. Kingship was a trust, for which he was ultimately responsible only to God. It followed, then, that men could not divest a king of his prerogatives.¹ This may help explain his attitudes and actions in relation to the settlement of the Scottish succession. Edward had been brought up to believe in the veracity of the English claim to suzerainty in Scotland and to "cherish it as part of the inheritance of his dynasty."² Therefore, to arbitrate, rather than to sit as judge in his own court, may have been tacitly construed as an abandonment of his claim. This would have involved him in neglecting his duties and traditions, and perhaps also in violating his coronation oath. Any other attitude on his part would have been unusual for the times.³ Edward also attempted to upgrade the mythological base of the English monarchy. Neither Alfred the Great nor Edward the Confessor had the same sort of appeal as the French heroes. So the English monarchy turned to another source: the Arthurian legends. In 1278, Edward had the tombs of Arthur and Guenevere opened, to confirm the truth of their existence and burial, and then interred again in another place. After defeating the Welsh, he took possession of Arthur's crown, as a symbol of sovereignty, much as he was to do later in Scotland with the Stone of Scone. In 1284, he held a Round Table in Snowdonia. All of this suggests that he was attempting consciously to link the royal line with this greatest of legendary kings.⁴ Obviously an attempt to make the conquest more

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1. B. Lyon, 'Philip IV: The King Who Avoided Being Constitutional', p. 104
 2. Stones and Simpson, Edward I and the Throne of Scotland, p. 12
 3. Ibid., p. 21
 4. M. Powicke, Henry III and the Lord Edward, p. 724. This is also a comment upon the king's personal reading taste.

palatable to the Welsh, this claim of right descent had as an additional advantage the incorporation of a potent symbol.

English attitudes toward succession differed greatly from those of their French counterparts. There was never the same emphasis upon legitimacy as continuity, and chance may have had a large part to play in this.¹ Henry II had his son crowned king in his own lifetime to establish his line and precedents for primogeniture, but this effort was thwarted by the Young King's death. John was crowned in lieu of his nephew, whose minority was determined to be more crucially important than his proximity to the Crown. It is not clear whether the accidents of sons dying young or blood relations seizing the throne by force were the result or the cause of an initially weak sense of hereditary kingship in England. These problems certainly complicated the issue in a profound manner. However, hereditary right was always of seminal importance. The English, unlike the French, often were forced to pass the Crown horizontally when there were no heirs on a vertical line. John's accession is more unusual because of the existence of an acknowledged heir. No doubt, age was a decisive factor. Certainly by the thirteenth century, primogeniture had become an established fact, bolstering the obvious notion of hereditary kingship. The Lord Edward could return to England at a leisurely pace without the fear that some unscrupulous family member would seize the Treasury and have himself crowned king.

Both the French and English monarchs touched for scrofula, the King's Evil, and this was probably connected originally to the notion of the king as priest or healer. There is little evidence to prove that the Saxon kings touched for scrofula, although it certainly was

1. C.T. Wood, 'Queens, Queens and Kingship', p. 393. The author believes chance to be a very important factor.

incorporated into the catalogue of royal attributes after the Conquest. In England, the rite became very similar to a liturgical service.¹ Figures for alms given to those who came to seek this royal healing were recorded in the Alms Rolls of the individual kings. The usual donation was a penny. Bloch suggests a parallel between a king's success and the number of those wishing to be healed. The figures for Edward I support this hypothesis. The lowest figure appears in 12 Edward I at 237 persons touched,² while the highest is in 18 Edward I at 1,736 persons touched. Other figures range over the five hundred mark.³ Figures for Edward III are also substantial at the beginning of the reign, although not as impressive as those calculated for his grandfather. In 9 Edward III, the king touched 108 persons; the following year, 136; and for 11 and 12 Edward III, a total of 885.⁴ Edward II's figures are quite low in comparison. In 9 Edward II, the king touched 214 persons. From this relatively respectable number, there is a steady decline between 1316-1321. In 13 Edward II, 93 persons came to be touched, but the following year, only 79 sick persons approached the King to be healed of scrofula.⁵ It seems unlikely that the King, who must have been aware of the symbolic importance of the action, avoided occasions where his sacerdotal powers could be exercised. These years corresponded to Lancaster's pre-eminence, revolt, and death, when miracles were popularly ascribed to his intervention. It is possible that 'hardly anyone continued to come for healing to a monarch lacking in prestige'.⁶

Sacerdotal aspects of kingship tended to militate against female succession. The French Treatise on Consecration (1372) was written by

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1. M. Bloch, The Royal Touch: Sacred Monarchy and Scrofula in England and France, p. 53
 2. A. Taylor, 'Royal Alms and Oblations in the Later Thirteenth Century', pp. 104-5
 3. Bloch, op. cit., p. 56
 4. Ibid., p. 57
 5. Ibid., pp. 56-7
 6. Ibid., p. 59

Jean Golein, and was very specific on this point. First, no woman could approach 'so near the priesthood' as to receive unction. Secondly, no woman had been 'trusted with the healing' of scrofula. In attempting to justify a polemic against Edward III's claim through his mother to the French throne, the author relied upon ancient authority to bolster his case. In a manner similar to the Mirror of Justices, Golein contended that the first king anointed with the holy oil decreed that no woman could ever be anointed. Further, Charlemagne, with the counsel of the 'pope, cardinals, prelates, kings, dukes, and other Christian princes,' ruled that France could only be inherited by men.¹ Only much later was this argument utilized in England, specifically by Fortescue in 'A Defense of the Rights of the House of Lancaster,' in which he contended that the female line could not transmit royal power. A certain emphasis was also placed on a ruler's healing properties: a Queen was not anointed on the hands and so could not heal by touch.²

Other symbolic routines were imbued with sacerdotal overtones. The pledging and redemption of coins for curative rings was one of these activities. Well known on the Continent, it became specifically connected with the English monarchy only during Edward II's reign, where it was described as part of the traditional royal procedure in the Household reforms of 1323. It is possible that, in an effort to bolster his own position by reinforcing the sacred character of the king, he grafted this ceremony onto the existing rituals of the household.³ One of the most important and obvious symbols of kingship was the anointing which took place at the coronation. The French kings used the miraculous oil brought from heaven by a dove at Clovis' baptism. The effect this had should not be under-estimated. The English tried

1. Bloch, The Royal Touch, Appendix IV, pp. 281-2

2. Ibid., p. 103. These arguments are obviously circular in nature.

3. Ibid., pp. 92-3, 99-100

to emulate this clearly superior sort of anointing, particularly in times of crisis. In 1318, Edward II sought a second coronation after the miraculous rediscovery of the holy oil reputedly given to Thomas Becket by the Virgin, but subsequently misplaced. A delegation was sent to John XXII to receive permission for the act. Refusing to either recommend or disapprove, the Pontiff stated that unction was not a sacrament, so it could be repeated. He did add, however, that if the King was determined to be re-anointed, the act must be done in secret.¹ This would have altogether defeated the purpose of the ritual, of course, and so no action was publicly taken. The miraculous oil disappeared from view again, only to resurface at the coronation of Henry IV. The parallels with France are blatant, but it is impossible to conjecture with any certainty that English attitudes toward their monarch were affected by the origin of the oil used at his coronation. Undoubtedly the King was aware of the symbolic impact of a miraculous oil in an age when symbols were seen in everything. In the eyes of the magnates or the community, was Henry IV in some intangible way more of a king than his predecessors in having made use of this oil? It was presumably more important for Henry to legitimate his claims by these means; to lend an air of orthodoxy to a coup and usurpation.

Edward II believed that his role comprised a threefold responsibility. First, he had a duty to preserve the rights of the Crown as inherited from his father. Secondly, he was obliged to uphold the peace and dignity of the Church, and of the people who were his subjects. Thirdly, he promised to resist any weakening in both of these areas.² There are not any new ideas here or the beginnings of any absolutistic principles. Basically, these constitute the promises the King made at his coronation, which differed very little, in fact, from the oaths

1. C.T. Wood, 'Queens, Queens and Kingship', p. 398; Bloch, The Royal Touch, p. 138

2. Parl. Writs II, ii, appendix pp. 46-7

taken by his immediate predecessors. The controversial fourth clause was not necessarily unrelated to these previous three principles, or even an effective check on the king. This final clause can, in fact, be seen as a logical extension of the king's duty to uphold customary law. This being more fluid than statute or Roman law, it may have been felt advisable to guarantee finally the primacy of customary English law. There is little here to distinguish between Edward's views on kingship and those of his father, or even between English and French monarchical opinion. The fact remained, however, that the French heir to the throne was rex prior to his formal installation.¹ Although Edward was acknowledged as king on the day of his father's death, it was still very much the ceremonial coronation which made him king. Theoretically, both English and French monarchs enjoyed the same prerogatives, but in practise, their positions were much different. Rather than attempting to control the governmental machinery, the French nobility preferred to preserve their independence from the Crown, even to the extent of refusing to comply with summonses to the Parlement. Unlike their English counterparts, they mostly failed to take advantage of the king's financial needs to limit his power.² When French kings called an assembly, it was usually on the local rather than national level, and even larger groups were generally incomplete by English standards, due to the absence of town representatives or a section of the lords hostile to the Crown. Although grievances could be discussed, no legislation resulted from Parlement.³ Initiative remained in the hands of the French king, as it did in the hands of the English monarch for the most part. However, English kings had proof that their power was not absolute. Certainly Henry III's reign was a sufficient

1. C.T. Wood, 'Queens, Queens and Kingship', p. 395

2. D. Waley, Later Medieval Europe, p. 69

3. D. Hay, Europe in the Fourteenth and Fifteenth Centuries, pp. 107-8

example of conciliar as well as baronial limitation on kingship. Edward II had to take account of his baronage, as had his father, in a way Philip IV and the French never did.¹ There were no French equivalents to Simon de Montfort or Thomas of Lancaster. "France... demonstrates... more clearly what strength monarchy could generate... whenever the mighty official was not counterbalanced by that rival feudal figure... 'the overmighty subject'."² After the defeat of the opposition in 1322, Edward turned the judicial and particularly the legislative clock back to at least 1310 in an effort to re-establish his own authority as well as customary procedure. This was the purpose of the obviously political Statute of York (1322). Although surrounded in controversy by modern historians, the greatest difficulties seem to have been in the area of definition. It is commonly accepted that the 'estate' of either the King or Crown can be construed as the condition or welfare of either, and the Statute attempted to make clear, finally, what aspects of kingship were negotiable and which were immutable. The document echoes both the coronation oath of 1308 and a long tradition of customary law, with aspects which can be described as Roman law inspired. Essentially, it said nothing new concerning either the role of the king or of his counsellors. It defined the areas in which negotiation could take place: 'matters touching the king and his estate, and the estate of the realm and people'. This would include taxation, and to a certain extent, justice, where the authority had been delegated. However, all attempts to limit the king's prerogative were to be null and void. This referred not only to those acts established in the past, but also to those that might be promulgated in the future to the prejudice of the royal power or estate of the Crown. In effect, it set down what

1. Lyon, 'Philip IV: The King Who Avoided Being Constitutional', pp. 105-6

2. Waley, Later Medieval Europe, p. 56

had been established fact prior to the Ordinances.¹

ii. The precedents to the deposition of Edward II

Geoffrey of Monmouth, writing in the twelfth century (c. 1136), presented a precise, and traditional, definition of good kingship. In the Historia Regum Britanniae, kings are made and unmade with alarming frequency, but the author judges his monarchs by two unwavering standards: their ability to provide peace and justice. Those rulers who neglected their duties were tyrants and thus deserving of deposition. Geoffrey was mainly concerned with the recognised customary hierarchy of responsibility which placed the king at the apex of the social pyramid, supported by the great magnates of the realm. A bad king raised the base over the nobly born in his councils and murdered or exiled his nobles for fear of losing the kingship by treachery or force.² A good king, on the other hand, established his peace throughout his kingdom, did not exact capricious taxes from the people in order to increase his own personal wealth, and encouraged prosperity by protecting the farmers and peasants from oppressive overlords while making their lands inalienable.³ These ideas are not new. Very little is said about ecclesiastical rights, although one tyrant is accused of destroying the Church. In fact, the author consolidates his views on evil kingship in a discussion of this particular king. Not only did he disinherit the Church, but he also exiled the nobility, and laid a fertile country waste in his efforts to secure his throne.⁴

Monmouth's views are echoed in both Bracton and The Mirror of

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1. D. Clementi, 'That the Statute of York is no Longer Ambiguous'; this paragraph is a paraphrase of this entire article.
 2. Geoffrey of Monmouth, History of the Kings of Britain, p. 103, III, 17; p. 78, III, 6
 3. Ibid., p. 89, II, 17; p. 103, III, 16
 4. Ibid., p. 188, VIII, 2

Justices. If a king is to rule rightly, commented Bracton, he must have both arms and law because neither is effective without the other. The kingdom would be defenceless without arms, and justice is impossible without laws. The king could not exist without law anymore than law could properly be viable without an authoritative figure to give just judgement. Obviously, this was an immensely important reciprocal and fundamentally symbiotic relationship. To further clarify the monarch's role, Bracton stated: 'For the crown is to make justice and judgement, and to maintain peace, and without these things (arms and laws) the crown cannot consist nor hold'.¹ The author of the Mirror is more concerned with an idealised concept of the relationship between the king and justice. Agreeing with Bracton that the king should have no peer, nevertheless he must in some way be made accountable if he should 'by his fault sin' against the people. In order to insure that justice would be done, 'it was agreed as law' that the magnates would hear all complaints against the king, his family, or his ministers. This did not limit royal prerogative, because, the author states, at a Saxon king's coronation, he swore, among other things, to submit to justice and 'suffer right like any other of his people'. Therefore, this limitation was sanctioned by custom, as was the annual or semi-annual convening of parliament, which was said to have been 'ordained as a perpetual usage' by Alfred the Great.² This ideal was reiterated in both the Provisions of Oxford (1258) and the Ordinances (1311), and the Mirror described an unrealized goal rather than actual practise. The necessary components of good kingship are made clear, however.

There was a very fine line between acceptable authority and unacceptable tyranny in mediaeval political thought. It was vaguely de-

1. Woodbine, ed., Bracton de Legibus et Consuetudinibus Angliae, II pp. 19, 21-2; 166-7

2. Maitland, ed., The Mirror of Justices, pp. 6-8

delimited by two overlapping relationships: that one between the king and the laws, and that one between the king and the 'people' as a corporate entity. By the fourteenth century, strictly feudal attitudes had been heavily overlaid with three centuries of revived Roman law. The study of the Justinian law code in the eleventh century created, by the thirteenth, an archetypal ruler on two philosophically incompatible planes. First, there was the classical imperial ruler, bound only by a self-imposed moral conscience as epitomised by the famous phrase, 'Digna Vox'. Secondly, there was the feudal overlord, bound by custom even as practical considerations, chiefly the growing obsolescence of those rights he swore to maintain, allowed him to overstep imposed limitations in order to resolve the tension between custom and rationality.¹

For many mediaeval philosophers, individual rights were never lost and the individual had a just right to defend himself against infringements of his recognized liberties as a free man. The essence of royal government was to guarantee private rights and complement the existing rights of the community: those rights to life, family relationships and property. Royal expropriation of these liberties had to have a just rationale, such as forfeiture for crimes. This, in turn, led to the development of the theory of a king's general overlordship, which justified necessary impositions on a subject's goods.² Civil law stressed the public powers of the Crown, and it offered a path by which the king could circumvent any attempt to limit his authority. 'Reasons of state' became a principle of public law, and was, by its nature, right

1. Waley, Later Medieval Europe, p. 9; E. Lewis, Medieval Political Ideas, p. 267. The 'Digna Vox' is quoted from C.H. McIlwain, Constitutionalism Ancient and Modern, p. 72, and translates as 'It is a worthy voice of reigning majesty to profess that the prince is bound by the laws.'

2. Lewis, op. cit., p. 162, 101

or justly reasonable. It was used to explain the need for taxes due to a defensive war, or any other necessity for the public welfare.¹ This was employed in France by Philip IV to carry royal power beyond previous limitations, and its effectiveness allowed the Crown to interfere with property rights. For instance, in 1311, the king's right to levy taxation without consent was recognized, in part, because extreme imperialists could argue that all property in the realm belonged to the king, not only for purposes of jurisdiction and defense, but also in a fundamentally proprietary sense. As long as the reason remained 'ex causa publice utilitatis et deffensionis regni sui', the Crown could justify its actions. Of course, there was a reaction to this extreme stance, but it was basically ineffective, given the nature of the French monarchy.² In the face of this pressure, the individual also turned to public law. There was a growing tendency in the fourteenth century for individuals to form corporate groups as defined by common need, increased political awareness, and their involvement in local justice. Much later, this interdependent political group would be recognized as the source of political authority.³ However, at this time, they were able to successfully use their status as a corporate group under certain circumstances to negotiate with their sovereigns in a meaningful way, and represent their true intentions. In France, this had the additional effect of undercutting the king's attempts to exploit the imperial aspects of his dual role.⁴

In the thirteenth century, a similar and seemingly irreconcilable doctrine of kingship was enunciated by Bracton in his treatise on English common law. A king was simultaneously responsible only to God

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1. G. Post, 'Law and Politics in the Middle Ages: The Medieval State as a Work of Art', pp. 66-69
 2. J.R. Strayer, 'Defense of the Realm and Royal Power in France', p. 298, n.32. For a full discussion, see the entire article.
 3. Lewis, Medieval Political Ideas, p. 208, 102
 4. E.A.R. Brown, 'Representation and Agency Law', pp. 363-4

because his power was received from God alone, and under law and his curia. Two modern historians, Ullmann and McIlwain, have developed complementary models to explain this obvious contradiction. Ullmann bases his solution to this problem on the twin concepts of the theocratic and the feudal king.¹ A theocratic king's will was law, he stood above his subjects forming an estate of his own, and was in no way responsible to them because they had conferred no responsibility upon him. Therefore, it is impossible to speak of a legal bond between the theocratic king and his subjects. However, the feudal king was in an entirely different situation. As overlord, he had entered into an implicit, if not explicit, contract to which he, even as king, was subject. In this way, says Ullmann, the king became a member of a community in which co-operation was vital. This feudal characteristic formed the only platform on which government could be based as it was the only conceivable way a theocratic king could be made subject to any law. This is also the only way deposition could be possible. The act of renouncing the feudal contract on the grounds that the agreement had been broken, is essentially the act of diffidatio. McIlwain narrows the field somewhat by arguing that Bracton made a sharp distinction between 'gubernaculum' and 'jurisdictio'.² In acts of government, especially those of peace and justice, the king had no superior and thus no restrictions on royal power. He did have a moral obligation as exemplified in Justinian's Code, but it was self-imposed. However, Bracton also made a distinction between an enactment of legal procedure and a definition of legal right, and so the king could not be considered absolute. Rights implied custom, which could not be destroyed. Ullmann also connects customary rights with the abstract notion of the Crown

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1. W. Ullmann, Government and Politics, pp. 145-52 for full discussion of the ideas summarised here.
 2. C.H. McIlwain, Constitutionalism, pp. 74-85 (Chapter 4) for full discussion of the ideas summarised here.

which was being developed as early as the twelfth century as an expression of the legal bond between the king and community. Because this bond was becoming synonymous with customary rights, it followed that matters of the Crown were common to both king and community. This concept was a good buffer for complaint when the king could not himself be openly indicted. McIlwain continues his argument by contending that in 'jurisdictio' the king was limited by a law that was both 'positive and coercive'.¹ He had sworn in his coronation oath to proceed by law, and even though his judges were acting in his name, they were also bound to lawfully proceed in determining the rights of the subject rather than the will of the king. He concludes that the Roman concept of the king's will having the force of law was never a dynamic theoretical or practical fact. Ullmann basically agrees with this, but employs a slightly different rationale. English common law never directly disputed the principle of the theocratic king, for the king could never be a defendant in his own court. Therefore, it was flexible enough to leave the theocratic king 'a certain field of action within which the full weight of the royal 'voluntas' could make itself felt'.² The king may have been above the law, but without the participation of the magnates of the realm at least, he could not make the law.

Germanic ideas on the supremacy of law and the rights of individuals to resist ultimately led to the feudal notion of diffidatio, however, their philosophical antecedents are not so obvious. One school of philosophical thought expounded the proposition that the link between a ruler and his subjects consisted of a contractual arrangement. The Mirror of Justices includes such a theory of consent. The Saxon people, the author relates, had forty sovereigns who aided each other. When they conquered England, they chose from amongst themselves

1. C.H. McIlwain, Constitutionalism, p. 85

2. Ullmann, Government and Politics, p. 184

one to rule them all and 'to maintain and defend their persons and goods by the rules of right'.¹ In the eleventh century, Manegold of Lautenbach concluded that a king made a pact with his subjects to rule rightly, and in turn this was derived partially from the Opus imperfectum in Matthaem of the Pseudo-Chrysostom. Here Thomistic doctrine of passive or non-resistance to the will of God as manifest in an evil king was superseded by the theory of the contract. Both the Psuedo-Chrysostom and Aquinas continued to stress the finality of the act of choosing a king, that is the belief that once chosen, the king could not be removed. Manegold maintained that if the king violated his contract, his subjects were released and absolved from their homage. His philosophical outlook was a direct result of the continuing polemic between the Empire and Papacy as personified by Gregory VII and Henry IV.²

Aquinas recognized the right of civil disobedience in relation to commands which exceeded the scope or purpose of the royal office, especially to those things derogatory to the common good.³ However, he basically agreed with Patristic thought that a wicked king could be sent by God as punishment, and so it was a Christian's duty to submit. Early theories of deposition were severely hampered by this pervasive idea. A king could only be punished by God, and this was generally construed to designate eternal justice. Man could not anticipate divine justice, but the glaring differences between a just ruler and the tyrant defied resolution on this sort of passive level. Aquinas attempted to resolve this dilemma by granting to public authority the right to depose a tyrant. This action, however, would only be valid if the corporate entity of 'the people' had the right to initially

1. Maitland, ed., The Mirror of Justices, p. 6

2. I.S. Robinson, Authority and Resistance in the Investiture Contest, pp. 124-30; also see Lewis, Medieval Political Ideas, p. 165

3. Lewis, op. cit., p. 253

provide themselves with a ruler. Assuming this to be the case, deposition was justified as the king had abused his royal authority and had broken any contract, explicit or implicit.¹ In this, he agreed with Lautenbach. Appealing to the theory of the organic unity of any group, Occam justified the deposition of criminal or incorrigible rulers, in specific a pope, by arguing that natural reason demanded the removal of a hopelessly diseased or ineffective member for the sake of the entire body's health.² There were three basic factors in the relationship of a tyrant to any social or governmental structure. When conceived as an organic unit, it was widely considered that the state could only operate fully and to its best advantage under a just prince. A tyrant, being intrinsically unjust, created an impasse from lack of authority within the unit. Although the conflict could only be resolved by divine intervention, there was the possibility that a solution would be found employing human agencies.³ Aquinas did not approve of tyrannicide because he believed that it often created more difficulties than it resolved.⁴ On the other hand, John of Salisbury argued that tyrannicide was a permissible and sometimes unavoidable duty. Because God alone punished tyrants, citizens of any state were unable to anticipate divine justice. However, this justice might be handed down in a variety of ways, among them being tyrannicide through human agency.⁵ The onus was very much dependent upon the divine will; man did not have freedom of action. By the late thirteenth and fourteenth centuries, specifically after the death of Aquinas, philosophical thought on the problems of kingship, law, the tyrant and tyrannicide began to more fully reflect Roman law precepts. Marsiglio of Padua, in Defensor Pacis, propounded the notion of a single, positive and coercive law

1. Lewis, Medieval Political Ideas, p. 287

2. Ibid., p. 15

3. R.H. & M.A. Rouse, 'John of Salisbury and the Doctrine of Tyrannicide', p. 704

4. Lewis, op. cit., p. 253

5. Rouse, op. cit., p. 703

which would be applied by a single executive instrument, the 'pars principans'.¹ Although mainly concerned with the Italian city-state, his views were echoed throughout Europe. But the hardening of philosophical opinion came with Aegidius Colonna, who fixed the distinction between the political and regal states. Under this system, the king theoretically became the 'author and superior of the law, of which he was the arbitrary judge.' It was a very short step from this to the conception of royal absolutism.²

Deposition in the Historia Regum Britanniae is not one of legal form. Kings are overthrown and others set in their place, but only once is the group responsible for such an act named. It is defined by the author as the 'leaders of the realm', and this suggests the source of authority for the others.³ Considering the author's concern for the privileges of the nobility, especially for their right of council, this would not be an unreasonable assumption. It is not altogether anachronistic to ascribe to the early twelfth century nobility the sort of justification used by the magnates in the Declaration of 1308. These latter felt it was not only their right, but their duty to uphold the rights of the Crown should the king in some way fail to maintain the oaths taken at his coronation. In Liber ad Gebehardum, Manegold of Lautenbach had made the distinction between the natural quality and the title of an office, in this case between the public and private personification of the king. This had its precedents in the distinction between ecclesiastical offices and the men who filled them.⁴ The magnates of the Historia, however, do not seem as politically and philosophically

1. D. Hay, Europe in the Fourteenth and Fifteenth Centuries, p. 86

2. W. Parsons, 'The Medieval Theory of the Tyrant', pp. 142-3

3. Monmouth, History of the Kings of Britain, p. 103, III, 17

4. I.S. Robinson, Authority and Resistance in the Investiture Contest, p. 125

sophisticated as the polemicists. There is certainly no suggestion that the 'leaders of the realm' co-opted to themselves any part of the royal power when the king was unable to exercise it, although there are intimations that kingship was an elective office.

In the ninth century, deposition was considered right and proper under certain circumstances, but there was generally an ecclesiastical element involved. Charles the Bald protested against those who wished to depose him in 859 by declaring that the only authority who had the power to do so were the bishops who had performed his consecration.¹ Geoffrey of Monmouth does not say by what right the barons in the Historia are able to depose a king. They do not appear to be acting in a strictly feudal manner, that is withdrawing homage in the manner of diffidatio. Nor do they appear to be acting out of necessity, due to any military failures on the part of the monarch. Ninth and tenth century magnates recognized dilapidatio and related offenses as crimes, however, and this is also true of the barons of the Historia. More important, though, is the connection between tyranny and the willfull destruction of the kingdom. Tyranny has a very precise meaning for the author in this instance. It consists of royal greed, infringements on private property, and the conscious destruction of the customary social hierarchy. Monmouth's views on the role of kingship concur very closely with contemporary papal opinion, and for the beginnings of any deposition theory in the Middle Ages, canon and Roman law are the most instructive sources.

As early as the last quarter of the eleventh century, Gregory VII maintained the papal prerogative to depose an emperor in the same way he would depose an unsuitable bishop.² This prerogative would also pertain to a king. A monarch, then, became a removable official who

1. A.J. Carlyle, A History of Mediaeval Political Theory in the West, I p. 252

2. G. Barraclough, The Medieval Papacy, p. 86

remained in this office as long as he continued to act rightly. If he should deviate from the papal conception of righteousness, he could be removed as a tyrant. These arguments arose from the conflict over lay investiture, but as Barraclough has pointed out, the ultimate contest concerned the authority of the Emperor, and thus any king, in relation to the Papacy. The question of final temporal authority was not solved by Gregory VII, nor did his successors directly follow his line of argument. Nevertheless, clerical taxation, bestowal of benefices and royal jurisdiction continued to be areas of disagreement between the Papacy and the crowned heads of Europe.¹

No real theory of deposition was formulated before the thirteenth century, and because it developed through a series of precedents which underlined its more theoretical aspects, the deposition of a monarch was initially within the realms of practical possibility. The basis of deposition theory was the ancient conception of the tyrant, and the simple fact of tyranny was sufficient justification for action against a ruler. There is one other interesting point which solidified into the foundation of deposition theory. In 751, Pope Zachary deprived Childeric III of his kingship, not for crimes against the Church or other evil deeds, but because that particular king did not have the power to exercise the prerogatives of his office; he was only king in name. His political weakness disrupted both the spiritual and temporal order within his kingdom. Thus, a politically powerless ruler was also considered to be politically useless.² The notion of the useless king was very important for the particular deposition of Edward II, and complemented the papal prerogative to replace or depose a sinful or evil ruler.

This canonical theory is the second crucial factor in the development of deposition theory. The precedents for the removal of a temporal

1. P. Partner, The Lands of St. Peter, p. 293

2. E. Peters, The Shadow King, pp. 43-4

ruler were largely based upon the Pope's undoubted responsibility for the replacement of bishops. There were a number of factors which would influence the replacement of a bishop, and not all of these would have to be related to the insufficiency of the individual or lack of moral character. However, it is fair to say that the deposition of kings most strongly resembled the latter cause rather than the former.

Henry IV was threatened with excommunication and finally deposition because he failed to rule rightly. Following Lautenbach's analysis, then, it is possible that the Pope was not infringing on civil jurisdiction, but he was only informing them of an accomplished fact, having previously absolved them from their oaths and left them free to depose the Emperor.¹ Now it is true that Gregory VII's conception of right rule involved the king recognizing that disobedience to certain apostolic laws was not only contempt for the Pope, but also by implication contempt for the laws of God and the fundamentals of Christian leadership.

Henry IV countered by insisting that his mandate came, not from the Papacy, but directly from God, and could not, therefore, be removed. The historical facts of the controversy are well known; but Henry's attempts at the Synod of Worms in 1076 to question the legitimacy of Gregory's title, coupled with the German bishops' withdrawal of obedience to the Pontiff only serve to underline the lack of demarcation between the temporal and spiritual swords.² Although each claimed to be wholly independent, and the Church naturally argued its innate superiority, the fact remained that the abstract Emperor and the equally abstract Church were inextricably dependent upon one another. For this reason, notions of imperial suitability were more prone to be influenced by the Church and its theories linking office and incapacity than were the

1. W. Parsons, 'The Medieval Theory of the Tyrant', pp. 135-7

2. G. Barraclough, The Medieval Papacy, pp. 82-4. This is a very good general discussion of these problems.

standards for royal suitability.¹

The overall idea of utility in kingship must, then, be seen in connection with papal prerogatives to depose or correct temporal rulers. It is, of course, axiomatic that the Pope was the ultimate authority in regards defining utilitas, the definition of which was somewhat flexible. The whole notion of right rule was based on the idea of Christian rule, an obvious generalization, perhaps, but this did allow the pope a wider scope in secular affairs. It should be understood at the outset that very rarely did a pontiff abuse this authority, despite the temptation to use what was, in principle, an all-encompassing power. Broadly speaking, utilitas included more than crimes against the Church or evil deeds. Usefulness related more to the public than the private character of the monarch, and in this way the official character of the ruler was brought to the fore. Although the deposition of Louis the Pious in 833 was marred by partisan politics, the principle behind the act was clear. He was negligent and in this public capacity had done and was felt to have forced others to do things in derogation of God and the Church, while refusing reformation.² This is the major difference between the depositions of the eleventh and twelfth centuries, and those of the late thirteenth and fourteenth. The exception to this is the deposition of Frederick II as a tyrant, where the character of the ruler was again very much under scrutiny.

Edward Peters develops the point of utility with the example of Sancho II. This king was not a tyrant, but merely useless as a political force in Portugal. Unable to control either his magnates or prelates, the kingdom was allowed to slip further into chaos. Pleas from within the country asking for papal assistance prompted Innocent IV to address

1. E. Peters, The Shadow King, pp. 233-4

2. W. Parsons, 'The Medieval Theory of the Tyrant', pp. 132-3; Carlyle, Med. Pol. Theory, p. 250

himself to this problem, first through a series of letters and finally by direct intervention in the government of the country. Sancho II was deprived of the governance of Portugal rather than deposed, as Frederick had been only a week earlier. Peters suggests this was in recognition of the differences between the two cases. Sancho still retained the dignitas regni as was set out in the decretal Grandi, but the administratio was awarded to his brother, Alphonso of Boulogne, who became curator of the realm.¹ This was really a striking settlement: the king could not be deposed because he did not fit into the pattern set by precedent of the tyrannical monarch, personified by Frederick II, and yet clearly it was felt that the situation had deteriorated to such an extent as to warrant some sort of intervention by a higher authority. The legitimacy of Sancho's claim to the throne was never questioned, but not so his ability to rule. The charges against him outline his failure to govern as well as reign. He was negligent and his idleness and acquiescence to evil counsel created grave disorder throughout his kingdom.² This is an echo of the charges against Louis the Pious. There were also charges of bad generalship and pusillanimity in regard to the crusades against the Moors. This is particularly important in terms of the Portugese monarchy which originally existed in order to serve as crusading rulers. Kings of Portugal were neither annointed nor crowned in a liturgical ceremony. Because of the importance of crusading to the Portugese idea of kingship, failure in this area meant failure as a Christian ruler.³ The attempt to effect a settlement which separated the dignity of the king from the administration of the realm was one which subsequently was abandoned as an alternative to deposition. It certainly did not settle matters in Portugal, where virtual civil war

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1. E. Peters, The Shadow King, p. 136
 2. Ibid., pp. 138-40
 3. Ibid., p. 143

resulted, and the problem was only resolved with Sancho's death in Toledo in 1248. No monarch could allow this sort of division between dignitas and administratio simply because it undermined any notion of royal prerogative.

The deposition of Adolf of Nassau in 1298 completes the development of the rex inutilis in canon law as well as thirteenth century deposition theory. The charges against him were a composite of those leveled at Frederick II and Sancho II. As rex tyrannus, he violated the liberties of the Church, was responsible for the mistreatment of lay and clerical persons, failed to protect the rights of those unable to defend themselves, committed perjury and sacrilege. As rex inutilis, grounds of unsuitability were added to these serious criminal charges.¹ Adolf was 'non solum inutilis sed etiam infidelis' to the interests of the Empire by taking evil counsel, failing to maintain peace and encouraging private warfare, while at the same time neglecting the needs of certain territories for which he was responsible. He was accused of destroying his nobility, preferring to raise the base-born to positions of power. He was said to have caused civil wars, practised extortions to the detriment of the country and, finally, he is said to have served as a mercenary in the army of a foreign king, Edward I.² The charges are in themselves familiar, and Adolf was considered to be iniquitas and his crimes were judged to be notorious.³ The outstanding feature of this deposition is in the group under whose authority the act was done. Adolf's situation is analogous to Louis the Pious' in that the discontent sprang from a purely political source. As the King of the Romans, his election had been meant as a way of halting the Hapsburg monopoly of the Imperial title. His main supporters were among the western electors. His success immediately lost him the support of

1. E. Peters, The Shadow King, p. 236

2. W. Stubbs, Constitutional History of England, Vol. II, p. 384, n. 1,2

3. E. Peters, op. cit., p. 235

another group, dominated by Albert of Austria. Adolf followed a pro-French foreign policy which ultimately cost him the support of those magnates who elected him, and this situation was only exacerbated by his familial aggrandizements. He was deposed by the Archbishop of Mainz, with the electors' concurrence. Although they maintained that they had received papal permission for their actions, they had, in fact, arrogated to themselves this privilege which had once been only a papal prerogative. The process against Adolf, in its use of legal terminology found in papal decretals, canon law, and the eleventh century's polemical writings concerning Imperium as Officium, looked like a legitimate act of public law, as performed by those who had the authority to do so.¹

iii. The role of deposition within the reign of Edward II

The deposition of Edward II was not an isolated incident without precedent in European history. It was the direct result of a growing body of political thought, whose vitality and flexibility made it a workable model for the crisis of 1326-27. Nor was he the only English monarch to be threatened in this way. John submitted to Innocent III in the spring of 1213 rather than be deprived of the kingship, although widespread rumours of deposition made it rather more difficult to re-establish royal authority while giving both the French and Welsh a pretext for invasion and rebellion respectively.² The situation was analogous to previous papal interventions where the ruler refused to be governed by the Church, and had as its precedent the pope's right to replace unworthy bishops. It is immediately obvious, however, that the procedure invoked against John was not a precedent for that used against Edward II. Henry III may also have been threatened with deposition,³ and

1. E. Peters, The Shadow King, pp. 232-6

2. C.R. Cheney, 'The Alleged Deposition of King John', pp. 109-16

3. M. McKisack, 'London and the Succession to the Crown during the Middle Ages', p. 80; see Chronica Majora, iii, 245.

this would be a more useful model for explaining two events in Edward II's reign.

Once in 1310 and again in 1321, Edward was threatened by his barons with the renunciation of their homage unless he fulfilled their demands. The first incident was directly related to the events leading to the establishment of the commission appointing the Ordainers. When the King attempted to delay instigating any reforms which he had promised at the Stamford Parliament, the baronage brought the issue to a head. They maintained that the state of the nation had deteriorated since 1307, and that they were prepared to institute reforms for the welfare of the realm, with royal consent. Edward again prevaricated. In response, the magnates threatened him, and only after much provocation did they say that 'unless the king granted their demands they would not have him for king, nor keep the fealty that they had sworn to him, especially since he himself had not kept the oath which he had taken at his coronation'.¹ The author of the Vita provides the legal and moral justification for their actions, 'since in law and common sense there is this reservation, that with the breaker of faith, faith may be broken'.²

This is obviously a straightforward case of diffidatio. Although very feudal in nature, this sort of threat is significant for two reasons. First, it is immediately apparent that the magnates had no other legal recourse by which they could restrain the king. Their right only applied to the denial of a faithless lord, that is the right of just revolt. Although the king was not above the law, there was no way to punish or compel him to amend wrongs done.³ His prerogatives were far-reaching and considered superior to their own claims. He was the executive instrument and as such retained control of the

1. Vita, p. 10

2. Ibid., p. 10

3. Pollock and Maitland, The History of English Law, Vol. I, pp. 182-3

administration. Although sanction clauses were built into the Ordinances to be used against anyone contravening their reforms, it is impossible to visualize their being used against the king. Secondly, there is a great significance in the baronial charge that the king had violated his coronation oath. Of course, this supplied the magnates with a means of threatening the king. However, the important point is that an unusual situation was created: because petitioning the monarch to redress widespread grievances had failed in the past to produce the requisite results, the baronage became the reforming body. Edward's assent in this case was merely formal, as he had failed to maintain his oath and so his utilitas in this instance. Instead of the monarch, a momentarily united baronage had taken the initiative for reform, acting for the Crown when the king refused to do so. The Doctrine of Capacities had progressed from political thought to political reality. They recognized that coercion was not a viable means to compel the king to respect his oath. However, their own oath 'made to the crown to guide the king and the Crown' provided the necessary theoretical justification for taking upon themselves royal prerogatives of justice and law if the person of the king refused to acknowledge his duties. In this manner they vindicated both his oath and theirs, 'for he is bound by oath to govern his people and his lieges, and his lieges are bound to govern in his aid and in his default'.¹

It has been suggested in this context that the office of the Steward as envisaged by Lancaster resembled the curator of Innocent IV and canon law.² This is an interesting comparison, but the curator is not the pattern or model for the Steward. This office had, of course, a long history in an English political context. It is much more likely that Lancaster was attempting to revive some of de Montfort's power,

1. J.C. Davies, Baronial Opposition, pp. 24-5 for text of the Doctrine.
 2. E. Peters, The Shadow King, p. 240

rather than using this Continental precedent. It is, of course, impossible to estimate what impact the deposition of Sancho II had on the political ideas of fourteenth century England. The novel way in which the Kingdom of Portugal was treated, that is the separation of the administratio from the dignitas of kingship, was found to be unworkable in practice, regardless of the appeal it might have had as an alternative to deposition. It would have allowed, for instance, a distinction to be made between tyrannis and inutilitas. However, in the same way as a kingdom was considered impartible, so was the essence of kingship indivisible, in so far as an individual king would not countenance this separation of authority. In Edward II's reign, the presence of an overmighty subject who did gain a great deal of authority to use power legitimately, suggests that the magnates were aware of this philosophical precedent. The further problems created by Lancaster's strange inability or unwillingness to exercise this control after 1316 only underlines the difficulties inherent in dividing the responsibility for administration from the more personal aspects of kingship. There is no question that throughout the early fourteenth century, the growth of concepts such as the communitas regni, with the increased awareness of public law, had imposed upon the ruler new obligations, outside those of a strictly feudal or imperial nature. The state, as an abstract, was developing a welfare separate from that of the individual monarch, which could be defended by someone other than the king.¹ In this respect, such authority could and was used against the king by persons in positions of strength such as Lancaster or de Montfort. Even when power was in the hands of those personally loyal to the king, such as Pembroke, the arrangement was generally inadequate. Mediaeval society expected a king to rule as well as reign, so delegation of control to favourites, Gaveston

1. E. Peters, The Shadow King, p. 242

or the Despensers, was equally unsuccessful as well as damaging to the fabric of the regime.

The separation of king and crown is the first important step in constitutional deposition theory as it emerged in the fourteenth century. The imposition of reform on a king was not necessarily evidence that the baronage were opposed per se to royal supremacy. They were certainly opposed to the misuse of royal prerogative which would correspondingly jeopardize their aristocratic prerogatives. In this they were very conservative, but they also showed a good deal of political sophistication in developing this particular justification. It is more likely that the magnates were striving to maintain a strong and vital monarchy than interested in imposing one in which the individual king was pars inter partes. To this end, they were willing either to force him to fulfill his role as apex of the hierarchical triangle or to remove him in favour of someone else who would.

Edward was aware of both the philosophical and physical ramifications of his situation. When the Ordinances were produced for ratification, the king again attempted to delay, arguing at first that his rights had been too strictly limited. Nevertheless, he seemed willing enough to barter these in return for Gaveston's continued presence. The Vita is very revealing at this juncture. As with the provocations leading to the foundation of the commission the previous March, the barons 'held their ground, with many arguments, as faithful subjects consulting the king's interests, and finally' they presented the king with a choice between his favourite and civil war.¹ The author continues with another threat of deposition through Edward's own 'imprudence' if this slide toward civil war was not averted.² After the revocation of Gaveston's exile, when he had joined the king and together they had

1. Vita, pp. 17-8; Gesta mentions this fear of civil war, p. 39

2. Ibid., p. 18

journeyed north, Gaveston was given custody of Scarborough Castle in March 1312. One of the provisions stated that it was only to be surrendered to the king, and not even to him should he come there as a prisoner. There can be no doubt that due to a crisis in authoritative leadership, civil war was a distinct possibility for the third time since 1308.¹ The king was said to be led by unwise counsel, to 'despise the governance of the realm',² and castles were being victualled in preparation for an armed conflict. It is obvious that Edward was very much aware of the precariousness of his situation. Again, when the magnates came armed to parliament in 1312, the king complained to the Earl of Gloucester,

If I may use my royal prerogative as other kings do, may I not recall to my peace by the royal power a man exiled for any reason whatever? Of this right they deprived me by their own authority ... Since they seized my goods and killed my men (at Newcastle) it is very likely that they do not wish to have any consideration for me, but to seize the crown and set up for themselves another king.

To which the baronage replied that they had not 'presumed to diminish the royal prerogative in anything, nor ... attempted anything to his prejudice or disadvantage'. By judicially executing Gaveston they had acted 'in accordance to lawful ordinances ... which not even the king by his mere will can either revoke or change'. They appealed to civil law to support the claim that the king granted the particular revocation 'against ordinances, which by his own mere will he cannot annul'.³ They also denied their threat of deposition.⁴

Royal prerogative was to be the main source of conflict between Edward and the baronial opposition until the defeat at Boroughbridge in 1322. There can be no doubt that both groups knew what rights and

1. C.P.R. 1307-1313, p. 454. Murimuth, p. 16: 'fuit magna contentio inter regem Angliae et nobiles regni, propter dictum P. de Gaversonem, et maximus timor guerrae generalis.'

2. Gesta, p. 42

3. Vita, pp. 34-5

4. Ibid., p. 35

privileges they held and were concerned that these should not be jeopardized or eroded in any way. In general practise, a certain amount of leeway between executive and council was expected and granted. The main feature of a monarchical system was the king's ability and willingness to rule personally. Under the unusual conditions after 1307, the balance maintained between royal and aristocratic prerogatives was undermined in such a way as to set at odds those two conflicting Bractonian ideas of kingship: that a ruler might be simultaneously subject and superior to the law.

The second deposition threat occurred in 1321 under strikingly similar circumstances to the first. The quarrel was again centered around royal refusals to redress grievances, in specific the exile of the Despensers. By delaying, the king was subsequently threatened as a last resort. Again there is this basic formula of the patient baronage forced to exercise their right of diffidatio in the face of the king's unreasonable behavior. There is no hint of this not being another instance of strictly feudal defiance. The king is accused of violating his coronation oath, of maliciously refusing to exercise his personal prerogatives of law and justice.¹ Edward being thus unwilling, the baronage 'unanimously agreed... they would utterly renounce their homage and set up another ruler to do justice to all...' if the king would not satisfy their complaints.² An interesting point here is the role of the mutual baronial oath. The magnates contended that their pact prevented them from opposing what had already been determined. It is difficult to ascertain exactly what strength such a mutual oath would have in the face of possible internecine conflict. Certainly a similar treaty had been drawn up at the time of Gaveston's capture, but both Pembroke and Gloucester were mediators in the ensuing crisis despite

1. Vita, p. 113

2. Ibid., p. 112

this affiliation. The comparison obviously revolves around the problems of diffidatio and treason. A unilateral action by the magnates would support their allegation that the king had broken faith with them, giving them just cause for renouncing their homage. Individual action was possibly too philosophically narrow a use of diffidatio to be viable, although each baron certainly had the theoretical right to exercise this particular prerogative. One of the criteria for deposition, then, must have been the involvement of the entire community, regardless how defined, in such a way as to result in unanimous rejection of the ruler. Otherwise such threats could be, and were, construed as treasonous.¹

Edward II's reign illustrates another point concerning kingship in general and English monarchy in particular. "Any given political situation was always the result of, and complicated by, a mass of purely personal factors..."² The king understood both the philosophical and actual realities of his position as monarch. The fact remains that he did not act in a way expected of kings and this, in turn, reflected on the elemental aspects of his sacerdotal character. It is very revealing that both the Vita and the Lanercost Chronicle recount in 1318 the appearance of a man claiming to be the true son of Edward I. The Brut includes basically the same story under the entry for 1314.³ It was said that the king was a changeling.

For it was commonly reported that he had devoted himself privately from his youth to the arts of rowing and driving

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1. In Scotland in the fifteenth century, Sir Robert Graham also based his opposition to the throne and especially James I on political theory. He is said to have stood up in parliament and confronted the King, arresting him in the name of the estates for his tyrannous conduct. Unfortunately, the incredulous parliament kept silent, and the indiscreet Sir Robert was banished and all his goods forfeited. The story continues with Graham's renunciation of homage to James. As the author comments, "Whatever the truth of this tale the impression that it leaves is that Sir Robert Graham was a political idealist." R. Nicholson, Scotland, The Later Middle Ages, p. 321
 2. J.R.S. Phillips, Aymer de Valence, Earl of Pembroke, p. 288
 3. Vita, pp. 86-7; Lanercost, p. 270; Brut, p. 208

chariots, digging pits and roofing houses; also that he wrought as a craftsman..., and at other mechanical arts, beside other vanities and frivolities wherein it doth not become a king's son to busy himself.

The incident became widely known, and the Lanercost Chronicle states that he gained adherents on the grounds that the king resembled his father in none of his virtues.¹ The Queen was 'unspeakably' annoyed.² This affords a very revealing insight into how the English viewed their monarch. In times of crisis, they appeared to be as pre-occupied as the French with the mystical attributes of blood relationships passed through the ruling house. It is significant that Edward was said to be only a changeling, rather than a bastard. In this way neither Edward I nor the much loved Eleanor could be held in any way responsible for his character or foibles. Equally significant is the rumour's popular origins. It does not appear that the magnates took this accusation seriously. However, it is interesting that these charges resurfaced in 1326.

The clash between the two Bractonian ideals of kingship was not resolved after the defeat of the opposition at Boroughbridge, nor was it to be resolved by the deposition. It is perhaps the most consistent thread running through the fabric of Edward II's reign. The articulate author of the Vita laments the sad state into which the country had fallen by 1325:

The harshness of the king has today increased so much that no one... dares to cross his will. Thus parliaments, colloquies and councils decide nothing these days. For the nobles of the realm, terrified by threats and the penalties inflicted on others, let the king's will have free play... For whatever pleases the king, though lacking in reason, has the force of law.³

1. Lanercost, p. 270

2. Vita, p. 86

3. Ibid., p. 136

III

The Deposition of Edward II

i. The invasion

The Queen and Prince landed at Harwich on the Orwell on 24 September 1326. They were supported by a small group of exiled nobles (Mortimer, Kent, John of Brittany and William Airmyn, Bishop of Norwich) and a mercenary army under the leadership of John of Hainault, the count's brother. The price of his support was a marriage contract between his daughter and the young Edward. Returning in a posture of war with inadequate forces, Isabella must have been certain of her reception, and she correctly judged the temper of the country. In the three weeks prior to the announcement of her intentions, she was joined by the Earl of Norfolk and Henry of Lancaster. Many of the disaffected prelates responded immediately, including Burghersh, Orleton, Hotham and Bicknor.¹ Although the chronicles exaggerate the speed of this initial response, there can be no doubt that this represented a powerful and influential group. However, until the beginning of October, the direction and outcome of the invasion hung in the balance. For several days, Isabella remained at Walton-on-the-Naze on Brotherton's lands² while she received those willing to join her, and waited for the King's move.

Edward had not been idle. He certainly knew about the Queen's return by 28 September. On that day, London received a form for a proclamation to be made against Mortimer and 'other's of the King's enemies', and offering a reward for his head. The proclamation is dated 28 September, and it was to be read out that evening.³ Further

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1. Murimuth, p. 46. Although the chronicle says 'Durham' it is almost certainly a mistake.
 2. R.M. Haines, The Church and Politics in Fourteenth Century England, p. 162
 3. London Letter Book, E, p. 213

efforts were made to undercut the Queen's position in the country as a whole. On 30 September, Archbishop Reynolds, and Bishops Stratford and Gravesend republished an old papal bull originally directed against the Scots, but which, once suitably altered, appeared to threaten both the invaders and their supporters with excommunication.¹ The City was hostile to royal efforts to secure its support and on 2 October, Edward left London.

London's impact on events throughout the period between October, 1326 and January 1327 cannot be under-estimated. The City had been alienated by the eyre initiated by the Despensers in 1321, and this is one of the major reasons they supported the Queen at this juncture. They would naturally be inclined to support the party which promised to guarantee their own liberties. Isabella recognized the importance of securing the largest port in the realm, where many of the governmental offices were situated, and upon her arrival, established communication with the governing members. Isabella's letters were published widely and their effect was inflammatory. On 15 October, the citizens had forced the mayor, Chigwell, to declare that any enemies of the Queen remained within the City at their own risk.² There was wide-spread rioting, prisons were opened, the Tower captured and sympathizers placed in charge under the nominal command of Edward's youngest son. That same day, Bishop Stapleton was pulled from his horse by the London mob and beheaded.³ It is possible that the Londoners had a hand in initiating the deposition itself, suggesting Isabella would find the necessary support within the City to 'put her in possession of the realm'.⁴ Deposition would have been a very radical solution in early October, and

1. Haines, Church and Politics, p. 162

2. M. McKisack, The Fourteenth Century, p. 84

3. Murimuth, p. 48

4. M. McKisack, 'London and the Succession to the Crown in the Middle Ages', p. 81

it is likely that only the desperate circumstances engendered by Stapleton's murder made it a viable alternative. The City's early pledge to Isabella is ambiguous and probably was not meant to be construed as absolute support for deposition, but rather support for her stated intentions. There is little doubt that London's immediate backing made the Queen's position much less precarious and may have given her invasion an air of legitimacy. Nevertheless, order was not fully restored until mid-November when new mayoral elections were held under Isabella's auspices, and one of Mortimer's adherents elected.¹

At this same time, two other important events occurred. First, there was an attempt by the bishops to mediate between Edward and Isabella in the same manner as had successfully resulted in the short-term treaty at Leake. Archbishop Reynolds summoned his suffragans to meet in London at St. Paul's in order to select envoys to negotiate with the Queen. The bishops met instead at Lambeth when the City became too obviously dangerous. Present on 14 October were Gravesend, Stratford, Stapleton, Cobham and Hethe, but they all feared the London mob, and no one could be persuaded to head a delegation.² Shortly after this, Stratford, Cobham and Reynolds declared for the Queen, and the Bishop of Rochester was put under a great deal of pressure to do likewise.³ This last attempt to mediate failed, and Edward lost by default a group which may have supported him. Secondly, on 15 October at Wallingford, the Queen declared her intentions. It had been rumoured that the Queen intended to rid the kingdom of the evil counsellors who surrounded the King, as well as to revenge the death of Lancaster and restore the disinherited.⁴ This was in fact to be the substance of her program. Initially, there does not seem to have been any plan for deposition.

1. M. McKisack, The Fourteenth Century, p. 85

2. Historia, p. 47v

3. Ibid., p. 49

4. Lanercost, p. 250; Gesta, p. 87; Knighton, p. 435

There undoubtedly was some talk of controlling the King through the appointment of officials, much like that advocated in the Ordinances, although, as it comes from Baker, the origin of the remark is suspect.¹ Isabella had the material support of many of the great lords, and was joined by the body of Marchers and northern magnates, specifically Percy and Wake, at Oxford sometime after the 15th.² At Oxford, Orleton, who had been deputed to speak on the Queen's behalf, explained her position vis a vis both the Despensers and Baldock. He preached on the text of Genesis 3:15, 'I will put enmity between thee and the woman, between thy seed and her seed; it shall bruise thy head...' He was referring here to the antagonism between the favourites and the Queen, which had been a source of discontent and finally rebellion, and preached in the context of the Queen's declaration of intent. Although it was later to be misinterpreted as an attack on Edward, the Bishop vehemently denied this interpretation in his Responsiones.³

There can be no doubt that popular opinion, as seen through the chronicles, was cautious and confused rather than militant. On the one hand, there are chronicles such as the Brut which were vehemently anti-Despenser because of their involvement in Lancaster's death. Lanercost reports that Isabella had returned in order to oust the favourites. Yet the appearance of the mercenary army was obviously a cause for alarm, for the chronicle also mentions the rumour that the Queen was going to betray the King and kingdom.⁴ As the royal position became more precarious, many in the north believed the King would be willing to open negotiations with the Scots, giving up all suzerainty and allowing the northern marches to be incorporated into a greater

1. Baker, p. 21; See Ordinances nos. 14, 39, 40, & 29 for parallels.

2. Murimuth, p. 47

3. Haines, Church and Politics, p. 165; Foedera, II, ii, 169

4. Lanercost, p. 250; Scalacronica, p. 71

Scotland if Bruce promised to help repel the Queen and her confederates.¹ This rumour may certainly have influenced Henry Percy to join the growing number of dissidents, although the championing of Lancaster's honour might also have played a part. Percy was one of the few northerners who were involved with the Sherburn indenture, obviously in an effort to provide some sort of defense for the north.² Sir Thomas Wake was Henry of Lancaster's son-in-law, and this adds emphasis to his involvement in the opposition at an early stage.³ But there does not appear to have been any great popular rising in the north in the Queen's favour, or, indeed, anywhere apart from London. Rioting in Bury St. Edmunds and Abingdon was more related to continuing disputes between the towns and the abbeys, taking advantage of the general disorder to air their grievances. And even in London, the struggle seems initially to have been less of a reflection of national concerns than an overblown internal argument which used the Queen's arrival to guarantee the City's liberties. Until the King's capture, this uprising did not differ so drastically from the baronial stances of 1310-11 or 1321-22. What popular support existed was sporadic and localized. It was very much the magnates' affair with few exceptions until parliament was summoned in Edward's name for January 1327.

Throughout October 1326, Isabella continued to follow the King west. Edward travelled from London through Wallingford to Gloucester, where he probably crossed the Severn, and on to Westbury and Tintern.⁴ There can be little doubt that he and the few courtiers who remained with him were hoping to reach the huge Despenser holdings in Wales and rally support. The King made several meaningless gestures. He attempted

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1. Lanercost, p. 253. Bruce did cross to Ireland at Easter 1327 and proposed to invade England through Wales with Irish support. This is very interesting in light of contemporary fears. See J. Smith, 'Edward II and the Allegiance of Wales.'
 2. J. Maddicott, Thomas of Lancaster, p. 269
 3. Haines, Church and Politics, p. 183, n. 13
 4. Stubbs, Historical Introduction, pp. 518-19; Haines, op. cit., p. 165

to make Wallingford Castle defensible on the 7th (it fell to the Queen on the 15th), and ordered the Earl of Winchester to lead the array from the southwestern shires against the invaders, while also making him Constable of Bristol.¹ At this juncture it seems probable that Edward, Despenser, Baldock and Arundel attempted to reach Lundy Island and failed. By 27 October, the King was at Cardiff. Contemporaneously, after the Queen left Wallingford, she and her adherents traveled to Berkeley, which was restored to the former owners, and by 26 October, she was before Bristol, which fell without a fight. The following day, the Elder Despenser was tried before Norfolk, Kent, Lancaster, and Mortimer, and convicted by notoriety rather than King's record. There was an attempt made at this early stage to maintain the appearance of legality, thus the Earl benefitted from a trial by his peers.² At this same time (26 October), the Prince was made custodian of the realm.

Much has been made of this piece of legal fiction. Tout maintains that this declaration made the deposition inevitable, the opposition was giving notice that they would no longer have Edward as king and were 'determined to put an end to his authority'.³ This seems unlikely because the facts of the situation would not necessarily support such an action. The opposition had no solid grassroots support; the governmental machinery continued to function despite the political dislocation. This is a very important factor. The rank and file were undetermined.⁴ More importantly, the opposition was acutely aware that the King was still at liberty and so very much a threat. In any case, there is no evidence that Isabella planned to supplant her husband in favour of her young son prior to the January parliament, especially not as early as 1325-26, during her period in France and Hainault. The problem, finally,

1. Haines, Church and Politics, pp. 165-6; C.P.R. 1324-27, p. 332

2. M. McKisack, The Fourteenth Century, pp. 85-6

3. T.F. Tout, 'Captivity and Death', p. 73

4. M. McKisack, op. cit., p. 93

might have been a prosaic one. Isabella and her adherents were not able to find and capture the King, and so were unable to legally justify the actions they had taken: restoring Berkeley Castle as well as other lands to the disinherited, trying and executing the Elder Despenser, and taking Bristol. This would also account for the concern for the Queen's reputation. At Christmas, Orleton was again assigned the task of explaining the Queen's fears of returning to her husband because of his great anger towards her and that she feared physical harm.¹ The lessons of 1321-22 could not have been very far from their minds. Their rebellion was not yet sanctioned by success. By confirming the Prince as custos, they were covering their actions with the necessary legalities which would allow them to issue writs for a parliament under the authority of the Queen and Prince, the King being outside of the realm.²

The King and his few followers were captured on 16 November at Llantrissant. There are two conflicting versions of his capture, and it is more likely that Murimuth rather than Lanercost is closer to the actual fact. The latter reports only the bald fact of the capture, giving an approximate date.³ The former goes into more detail. The Queen sent Henry of Lancaster, Rys ap Howel and William la Zouche into Wales from Hereford to capture the King because they all held land in the area where the King 'ut praemittitur' was hiding. Elaborating on this, it appears that money changed hands.⁴ The Scalacronica, embellishing a tale, relates that Edward contacted Isabella, promising to make restitution for his behavior against herself and her household, 'expecting she would come to him as a wife ought to her husband'. However, he was captured 'so to speak' by Lancaster. Interestingly, this is confirmed by a safeconduct issued on 10 November for the Abbot of Neath,

1. Historia, p. 47v; Gesta, p. 86

2. M. McKisack, The Fourteenth Century, p. 88

3. Lanercost, p. 253

4. Murimuth, p. 49. They were captured 'non sine pecuniae interventu.' Baker, p. 25.

Rhys ap Griffith and others until Christmas whom Edward sent to Isabella on 'divers affairs affecting the realm'.¹ The Scalacronica also asserts that Hugh Despenser was betrayed by a Welshman whom the King had paid to conceal him.² Here is another indication of local support, although it appears that any bribery which took place was a result of a great hatred towards the Despensers rather than love of the Queen. Refusing to support Hugh the Younger in 1321, the Welsh renounced their homage to him when his estates were ravaged by the rebellious Marchers.³ Their attitude is a reflection of the national aversion to the royal favourites, *exacerbated* by Despenser's aggrandizement in this area. Grassroot attitudes are difficult to surmise, but it is not likely that lesser tenants would be unaffected by a violent change among the landed classes. The chronicles show a great awareness of the impact of accident and natural attrition among the magnates. This was especially obvious in the descriptions of Boroughbridge with its mass proscriptions. In popular opinion, the Queen had returned to avenge her uncle's death, which had become the quintessence of the slaughter. The Despensers were directly involved in the judicial procedure that condemned the rebellious Earl. They were, of course, also correctly identified as the men who stood between them and their King. Isabella had certainly struck a responsive chord. Using Lancaster as an initial rallying cry, it proved simple to gain support when the object was to remove evil counsellors. The reinstatement of those like the Mortimers and Berkeleys would symbolize the re-establishment of the legitimate personal seignorial structure which had not been adequately replaced when the holdings were either taken into the Exchequer or absorbed into the vast Despenser holdings. An analogy can be made between the northerners and the Marchers:

1. C.P.R. 1324-27, p. 336
 2. Scalacronica, p. 74, 73
 3. Vita, p. 111

both groups were willing to support an initiative which would guarantee security and peace. In the latter's case, security included surety of tenure and inheritance. The Despensers, by manipulating the law, were able to usurp the rights of acknowledged heirs. Among small landholders, more concerned traditionally with local than national politics, this could not have passed unnoticed. They, too, would have been threatened by this behavior, for if their superiors were not able to demand justice, how could they hope to do so?

The strength of the hatred felt toward the Despensers is evident in all the chronicles. For instance, Knighton includes the arraignment and charges against the Younger Hugh and then adds his own: the murder of Pembroke in France. Both the Chronicon and Brut relate the executions of the favourites with great relish and a certain eye for detail.¹ But his trial is not without its own interest. Despenser was judged to death at Hereford 'sine responsione'. This is obviously a direct reference to Lancaster's trial four years previously, and seemed to contemporaries to be a fitting piece of justice. It does not appear that he attempted to be 'mute of malice'. He was judged and executed 24 October 1326. Baldock was also arraigned before the same court, and was refused the right to reply to charges, but he was claimed by the Church. He was put in the custody of the Bishop of Hereford. Orleton made the journey to London for the parliament, taking Baldock, who was seized by the mob and thrown into Newgate, where he died 'in tormentis'. The Earl of Arundel and others of the King's supporters, Simon of Reading, John Daniel and Robert de Michedevre, were summarily beheaded at the instigation of Mortimer.²

Gaining control over the King's person was the single most important event in the period between September 1326 and January 1327.

1. Knighton, pp. 436-41; Brut, p. 240; Gesta, p. 87; but surprisingly not Baker, p. 25

2. Murimuth, p. 50; Ann. Paul., pp. 319-20

It allowed the insurgents to preserve the fiction that the King was still personally governing the realm. The fact of his imprisonment and the decision to carry government forward in his name point to the probability that, at this juncture, no decision for deposition had been made. There is, however, no evidence of the elaborate reconciliations which would certainly be required if ultimately the King were to remain in control of the realm. Instead, the Queen consolidated her personal position through Orleton's public disclosure of her fear of injury at the hands of her husband or the Despensers. By December, the evil counsellors had been removed, and these sorts of protestations were obviously inadequate. It may have been felt that a national forum would have been the most advantageous platform for any formal peace-making. Their first attempt in October to call an assembly under the authority of the Queen and Prince had aroused suspicion. With the capture of the Great Seal, they were able to issue writs of summons in the traditional form in the King's name. By this time, the formalities did not alter the realities of the situation: the January assembly was referred to as the 'Queen's Parliament'.¹ However, it was a legal necessity to let Edward seem to rule, the fact of his incarceration being only a temporary measure.

At this stage, the King appears to have retained no allies in positions to free him. Yet his authority as king remained partially intact. A writ to the City of London dated 5 November announced the restitution of the City's mayoralty, and was sealed by the Prince as custos. This obviously was not felt to be sufficient warranty given the tenor of the period, and another writ was issued, identical to the first and ratifying it, but sealed by the King dated 5 December.² A king in captivity, although personally helpless, remained a legal and social force.

1. Historia, p. 49v

2. London Letter Book, E, p. 214; C.P.R. 1324-27, p. 337

Considering that, it is very difficult to explain why the lay and ecclesiastical hierarchy rallied to Isabella with little hesitation and his household deserted him. The thread which links all these groups is the tyranny of the Despensers. It would have been a critical situation in any case, because their aggrandizement both before and after 1322 constituted a real threat to the established landed and privileged groups. If this had been the crux of the problem, the revolt of 1326 would have been a repetition of the rebellion four years earlier, and the offenders would have been suitably humbled, and perhaps executed under the terms of the Ordinances, much like Gaveston in 1312. Obviously, then, the problem was more profound and fundamental. It related directly to Edward as King. It was commonly said that Edward reigned, but the Despensers ruled. Petitions could not be presented to the King without Hugh's permission, and the favourites had him at their will.¹ The Despenser tyranny alienated natural support the King should have been able to command, while seeming to express a far more absolutist view of monarchy than fourteenth century English experience would allow. The treatment of two great men of the realm, Henry of Lancaster and the Bishop of Hereford, illustrates this point.

On 23 January 1324, the Bishop of Hereford, Adam Orleton, was accused of aiding and abetting Roger Mortimer of Wigmore during the baronial revolt two years previously. He was charged with supplying men-at-arms and horses to strengthen the rebel army, and committing other crimes against the King's peace. At the time, the King had confiscated a portion of the Bishop's temporalities, although by early February, they were restored and he was present at the Parliament of York. The speed of his restoration is some indication of the extent of his involvement with the Contrarians.² This was not to be the end

1. Flores Hist., p. 348

2. G.A. Usher, 'The Career of a Political Bishop: Adam de Orleton', pp. 36-7

of his difficulties, however. In June 1322, the Bishop received a letter from Edward demanding an explanation concerning the alleged excommunication of a royal hunting party while on the episcopal manor at Ross. Also included was a summons to appear before the King, which was reiterated in August. Although he failed to follow Edward into Scotland, he did present himself at York to the Chancellor with a written statement. The King had confused two separate incidents. The first one, in January 1322, involved a royal hunting party which trespassed onto Hereford's diocesan parks. The second occurred in May 1322, and involved the robbery of the Bishop's manors at Ross and Upton, where Orleton secured writs to apprehend the felons and ipso facto excommunicated them. What is important in all this is that Edward seems to have been determined to pursue this issue. A petty attempt at revenge was becoming a problem of national importance. Angry at the Bishop's resistance and Mortimer's escape in August 1323, the King tried to manipulate the legal proceedings to make the offence appear more sinister than, in fact, it was. Orleton refused to reply to a secular court in January and again in February 1324 when he met the King and parliament at Westminster. At this point, he was claimed by the Church, possibly because the charges had been elevated from transgressions to treason. In March, he was convicted 'in absentia' and his temporalities seized. Orleton was standing squarely on his ecclesiastical prerogatives: clerical immunity to secular jurisdiction as well as the inviolability of the confessional and spiritual counsel.¹ These legal jousts mark the first important break between the two men.² Later, Orleton was forced to seal a recognizance from his see of £10,000 to the King. This was quite apart from the destruction of the diocesan temporalities after their

1. Haines, Church and Politics, pp. 140-46 for a full discussion.

2. Usher, 'The Career of a Political Bishop: Adam de Orleton', p. 37

impoundment. The lands and goods were sold or destroyed, and such spoilation occurred that in 1327 the Pope intervened to insure that the Bishop would not be held responsible.¹ It is not difficult, then, to corrolate Orleton's treatment at the end of the reign with his immediate and active support of Isabella.

Other bishops were also alienated by the King at the end of the reign, and Orleton's case, although extreme, it not an isolated incident. The Bishop of Norwich, Airmyn, was involved in the peace negotiations in 1325 as an experienced royal agent, who enjoyed the King's confidence. When Bishop Salmon died, John XXII elected Airmyn, although Edward's candidate was the notorious Baldock. Airmyn prevailed, but his return in December 1325 unfortunately coincided with the King's growing disenchantment with the French treaty. Edward refused to restore the Bishop's temporalities and summoned him twice to appear before his Curia. Airmyn did not answer them, and perhaps seeing the result of Orleton's resistence, chose to flee to France at the end of June 1326, where he joined the Queen. He returned with the invading army.² John Stratford was also appointed to his bishopric over Edward's protests in 1323, and was similarly involved with the Gascon settlement. The King held the Bishop's temporalities for a year and required Stratford to seal recognizances for large sums to the Crown, which placed him under severe financial pressure. The Bishop also had been accused of various misdeeds in regard to diplomatic missions undertaken for the Crown, but this seems unlikely. It is probable that Edward was venting his displeasure at being unable to place his own nominee in an episcopal see. In 1325, at Stratford's suggestion, the Prince was sent to France in his father's stead to do homage. In light of his subsequent behaviour,

1. Usher, 'The Career of a Political Bishop: Adam de Orleton', pp. 41-2
 2. J.L. Grassi, 'William Airmyn and the Bishopric of Norwich', pp. 556-60 for full discussion

it is difficult to see this as treasonable. Stratford was one of the few bishops who joined Reynolds in denouncing the invasion, although within two weeks he acknowledged Prince Edward as custos regni.¹ Two other Bishops had been involved in the baronial rebellion of 1321, Droxford and Burghersh, whom the King wished to be removed from the realm for unspecified crimes. Their temporalities were also confiscated.² Bicknor of Dublin was involved in the initial Gascon negotiations, which were so poorly conducted. Under these sorts of circumstances, it is hardly surprising that Edward succeeded in alienating the episcopate. Very few supported him in the January parliament. This was a direct result of the King's disregard for the prerogatives of their offices and the justice he was bound to preserve.

There can be little doubt that this same thread of tyranny and injustice is woven into the pattern which secured for Isabella the support of the lay magnates. Percy and Wake had Lancastrian connections, and the legitimate grievance of northern conditions provided the impetus to join the invaders. Like the bishops, the Earl of Kent was involved not only in the ineffective military strategems but also in the first ineptly handled Gascon negotiations. Both of the King's half-brothers were connected very closely to the rebellion in 1326 at an early stage. This is, at least, one argument against the notion that Isabella had determined deposition prior to leaving the Continent. Both Kent and Norfolk had strong claims to the English throne in their own right, and where an absolute law of primogeniture was only a recent development, they could not be disregarded. They would have been readily involved in ringing the King with counsellors, but not with deposition at this early stage. Nor, indeed, with any plan to supplant the royal line

1. N.M. Fryde, 'John Stratford, bishop of Winchester, and the Crown, 1323-30', pp. 153-59

2. Haines, Church and Politics, pp. 137-8; C.P.R. 1321-24, p. 46, 69, 76; C.C.R. 1318-23, p. 425, 427, 437; Foedera II, ii, pp. 51-2, 60-1

altogether. This makes it highly unlikely that the second deputation to Kenilworth in 1327 could have seriously considered Mortimer when they threatened Edward with the extinction of his line should he refuse to abdicate, if indeed this happened at all. The Queen would never have jeopardized her son's rights. Furthermore, there were too many candidates with unquestionable claims. Henry of Lancaster was one of these, although his proximity to the Crown was of negligible importance in 1326-27.

Henry had been in France at the time of his brother's rebellion and so did not take part, although his sympathies must have been with the Marchers. Most of Lancaster's important holdings were in South Wales. He held Monmouth Castle and honour, and through marriage acquired lands in Glamorgan and Carmarthen.¹ In 1324, Henry recovered the honour and title of Earl of Leicester, and he seemed to be sufficiently in the King's favour for the dissident Bishop of Hereford to approach him and ask him to intercede in his behalf. The letter which Henry wrote in 1325 sympathizing with the Bishop is summarized in the Vita. The Earl supported the Bishop in what must have seemed an ecclesiastical problem, that is the protection of his bishopric and the honour of the Church. The King, however, charged him with treason. Further, Henry was charged with adopting the arms of his brother and setting up a memorial to him. It is not difficult to ascertain the Despensers' influence in these charges. The 'king's party' were attempting to manipulate these otherwise innocent actions into 'insults' and 'offenses' against the King.² Henry was able to exonerate himself, or rather the charges against him were dropped, principally because he was essential to the government. When it seemed that Edward would have to cross to France to do homage for Gascony, 'his presence was considered necessary

1. C.P.R. 1321-24, p. 69 for Henry's whereabouts. K. Fowler, The King's Lieutenant, p. 23 for lands.

2. Vita, pp. 137-8

to the lord king's son' who would be guardian. Edward, it seems, would have preferred to leave the Elder Despenser in charge because he was 'shrewder than all and more experienced'. But the universal hatred of the royal favourites precluded this, and Henry was nominated in his stead.¹ Judging from the King's pursuit of Hereford and the other Contrariants, his persecution of Lancaster was only to be postponed rather than cancelled. He would have had very little chance of recovering even a portion of the huge estates his brother had accumulated and whose heir he rightfully was. With a treason charge dropped but not pardoned, and his estates open to incursion by the favourites, Henry joined Isabella as the best way to reverse the judgement on his brother. If there was a motive of revenge involved, it was probably from the standpoint of public opinion rather than familial affection. Rebellion appeared to be the only way he could acquire the landed wealth represented by his brother's patrimony.

One of the most difficult desertions to explain is that of Edward's household. The King had very persuasive means of drawing men into royal service, the most obvious being his personal control of patronage. Its importance can be directly measured by baronial attempts to limit and direct it. Until the Statute of York formally nullified the Ordinances, it was often difficult for the King to reward trusted servants with lands, wardships, marriages, or commissions without the possibility of their revocation being demanded. One way to skirt this dilemma was to lease Crown land by indenture. However, what is clear is the continuing popularity of the King's service despite these inconveniences. After 1322, the Despensers' domination of the King, and therefore patronage, must have severely curtailed rewards to those outside of the inner circle. But exclusivity of patronage is not a sufficient explanation.

1. Vita, p. 140

The Brut contains an interesting passage which may shed some light on this problem: 'And the king... went into ship, and sailed towards Wales, and took no leave of the Steward nor of none of the king's household...'¹ This would have been at the end of October, when the Queen had published her intentions to rid the kingdom of evil counsellors. Edward had, in his movements west, attempted to raise shire defenses and garrison castles and this would account for the dispersal of part of his retinue. For instance, Geoffrey Scrope survived, despite being linked to the Despensers in the popular mind. The King had left him to move troops from London in October and to pay them. By November, he was attached to the new regime.² A cursory investigation shows that this was not an isolated incident. In his capacity as Constable of Fleshey Castle, Stephen de Abyndon was sent to array Essex on 26 October, two days after the Queen's landing.³ Similar orders were given the following day to John de Cobham in regard to Kent.⁴ Both of these men joined Isabella, and signed the Guildhall oath as knights of the household. Robert Wateville was appointed to raise troops in the south-east on 27 September, and received writs of aid to the sheriffs of the various counties.⁵ He also joined the Queen and swore the oath. Men like John Seagrave are perhaps more typical of Edward's household. He was commissioned with Cobham to array Kent.⁶ He does not figure among those who deserted to the Queen or swore the oath in London. It appears that a majority of Edward's household simply melted away. The King's household was smaller than in previous years because there was no

1. Brut, p. 239

2. E.L.G. Stones, 'Sir Geoffrey le Scrope (@ 1280-1340) Chief Justice of the King's Bench', pp. 4-5

3. C.P.R. 1324-27, p. 322

4. Ibid., p. 327

5. Ibid., p. 327

6. Ibid., p. 327

Scottish campaign.¹ The elaborate attempts to array troops are evidence that his flight was neither haphazard nor panicked. The Queen rapidly took the initiative, however, and it must have been obvious that to be linked to the Despensers was dangerous and likely to prove fatal. This was certainly the case for two minor members of Edward's household. John Daniel received a mandate to array all fencibles in Radnor, Luggernes and Pembroke on 10 October.² Two days later, Robert de Micheldevre was commissioned to raise the fencibles of Wiltshire for the King.³ Both men were captured with the King in November and executed.⁴ The king expected to raise an army as he had during the winter of 1321-22, and failed. The sheriff of Sussex pleaded lack of funds to pay for the levies required by the King. Edward replied on 14 October that the money could be obtained from the Treasurer by indenture, and the troops were needed immediately.⁵ Those who had been in the royal household and fortunate enough to be sent on commissions of array do not seem to have returned to the King. Interestingly, very few seem to have become immediately involved with the rebel forces under Isabella. This suggests that a majority of the royal retinue merely bided their time until it was clear who had gained control. Those who managed to join Edward were captured and executed for crimes against the king's peace.

ii. The deposition

Parliament was summoned under the Great Seal for the day after Epiphany, 7 January, to be held at Westminster. A majority of modern historians feel that by this time the actual deposition was a foregone conclusion and in most ways inevitable. This parliament was summoned

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1. Tout, Chapters II, p. 278. Total receipts for 19 & 20 Edward II were respectively £6, 175 7s 4 $\frac{1}{4}$ d.; £4,375 0s 2 $\frac{3}{4}$ d. A majority of these funds were received from the Exchequer.
 2. C.P.R. 1324-27, p. 326
 3. Ibid., p. 326
 4. Murimuth, p. 50, note name in n. 3
 5. C.C.R. 1324-27, p. 619

to justify rebellion and the new regime.¹ The former was certainly true in the same way that the barons sought parliamentary approval, or, at least, royal pardon for earlier actions which were construed as lèse majesté, such as Gaveston's execution and the wasting of the Despenser estates. The permanency of the new coalition was as yet untested and so, to an extent, uncertain. The group of men who met in 1327 did ultimately decide on the fate of a particular king, and their decision and attitudes became a precedent of immense importance. It is probably fair to assume that in this initial instance, the decisions which culminated in the deposition of a recognized and legitimate monarch were taken after much debate and as a last resort. The evidence shows that opinion was not unanimous, and that grave doubts were raised as to the authority of the deposing body. A case could be made, in fact, that, regardless of the deposition's legal impact, it was Edward's abdication which was the most important outcome of the parliament convened in January 1327.

As R.M. Haines points out, the chronicle evidence for this short period is extremely disparate. The most reliable source is generally felt to be the Lanercost Chronicle, the others adding some corroborative detail.² There can be no doubt that precise dating is difficult for the period between 7-20 January. Dating is, of course, a useful tool for clarifying events, and in the period encompassing the deposition the broad outline of these events is clear. The particulars are less so, but this is not surprising given the emphasis of the chronicle sources. While all record this parliament, only two, Lanercost and the Historia Roffensis, find its proceedings sufficiently important in themselves to give us any appreciable amount of detail. Another feature shared among these sources is their neutrality or hostility towards the proceedings.

1. M.V. Clarke, 'Committees of Estates', p. 30

2. Haines, Church and Politics, p. 168

Even the Brut is reduced to a straight recording of events. The obvious exception to this is, of course, Baker's Chronicon, but even it is very pro-Edward, or perhaps anti-Orleton is a more apt description. However, all of these sources record, in some fashion, the renunciation of homage and Edward's supersession by his son. It is a situation which paralleled the national concern over Gaveston's exile in 1311 at the expense of the arguably more important clauses of the Ordinances. The actual date of the deposition is not necessarily important for its own sake. Unlike the invasion, where the Queen's itinerary assists in determining the extent and depth of her support, dates only provide a certain amount of help in regard to the deposition. It is not so important to know when it occurred as to understand how those persons in power behaved and in what way they were able to justify their actions.

It is certainly possible to see more than simply vague outlines denoting similarities between the chronicle sources, especially Lanercost and the Historia. It would be of great value if the two seemingly conflicting segments of each of these chronicles could be brought into alignment. In order to do so, however, the dating in the body of the Historia must be discarded as it stands. Unfortunately, the Lanercost chronicle only picks up on the parliamentary proceedings after the first week, the author obviously believing the later events to be of greater importance. Both chronicles assign to Orleton a great role in bringing the parliament around to deposition. In the Historia, the Bishop addressed the assembly twice. The first time, he explained the Queen's unwillingness to return to her husband and asked the group whether they would rather have the father or son rule them.¹ Realizing the consequential nature of the question, the assembly dispersed until the next day after they had eaten. Although they decided for deposition, it was not without a great deal of fear and trepidation. Only then was

1. Historia, pp. 49 - 49v

the Prince brought before the crowd and acclaimed. Similarly, it is at this point that the three sermons were preached, Orleton speaking last. As Haines points out, the Bishop of Hereford initially appears to have been reiterating the brief given at Wallingford in October.¹ It seems out of place as a prelude to deposition, but not as an opening speech to the assembled magnates and commons in parliament where it might have been considered necessary to protect the Queen's reputation as well as to justify the course of action taken to that point. It might be possible that in his narrative, the author of the Historia, William Dene, combined the opening speech in parliament given by the Bishop and a later one, given on the 13th in response to both the Londoners' demand for an oath of solidarity and the King's refusal to come to Westminster. The key to this problem is in the meaning of the simple Latin phrase 'hoc primo die Parliamenti.' The wording is perfectly clear, but was Dene actually referring to the initial day specified on the writs, or the expected date of the King's arrival? The London Letter Book refers to the parliament beginning on the 12th.² If this is the case, then Dene's chronology falls into place with that of the Lanercost chronicler very neatly. As will be shown, the King's presence was essential for parliament, and it is possible that the communitas regni was waiting for him to return from Kenilworth. This clarifies the narrative a great deal.

The Queen, acting on the advice of all the nobles and prelates, called a parliament for the new year. Writs were issued 3 December for 7 January.³ Two bishops were sent to the King at Kenilworth to ask that he come 'to perform and enact with his lieges for the Crown of England what ought to be done and what justice demanded'.⁴ The

1. Haines, Church and Politics, p. 170

2. London Letter Book, E, p. 215

3. Clarke, 'Committees of Estates', p. 31; Parl. Writs, II, ii, pp. 350-2

4. Lanercost, p. 254

Brut adds some interesting detail to this story. Edward, it says, gave up the Great Seal willingly to Percy and the Bishop of Ely so that a parliament could be called.¹ This is corroborated in a proclamation made in London on 12 January.² This hardly seems likely under the circumstances of his imprisonment because it is difficult to envisage him as a free agent. Nevertheless, he still remained king, and it is possible that the legal fiction which allowed him to reign would similarly allow him to rule in this instance. Edward's apparent willingness to accommodate the rebels is very important, legally speaking, for what followed. When the envoys arrived in Kenilworth to accompany the King to parliament, the King, we are told, refused to come and cursed them contemptuously, and declared, 'that he would not come among his enemies - or rather his traitors'.³ Not surprisingly, again we find the same pattern which had been followed by the barons in 1310 and 1321 when faced with a defiant king:

And on the which day that the parliament was assigned, the king would not come there, as he had set himself and assigned. And nonetheless, the barons sent to him on time and other, and he swore by God's soul, that he nolde come there on foot.⁴

The envoys returned to London on 12 January,⁵ and reported the King's answer to those present. This raised two legal questions: how was a parliament to be defined, and what was the role of Edward's own legal position in regards diffidatio in 1327?

The first six days of the parliament were probably taken up in attempting to consolidate popular opinion for approving the actions which had taken place to that point. The opposition required widespread support in order to present to the King an unassailable fait accompli. The magnates negotiated with the City⁶ to win the support

1. Brut, p. 241

2. C.P.M.R., pp. 17-18

3. Lanercost, p. 254

4. Brut, p. 241

5. Lanercost, p. 254

6. McKisack, 'London and the Succession to the Crown during the Middle Ages', p. 82

of a basically conservative but divided community whose association with the rebels was imperative. During the earlier phases of the uprising, from September until December, the City's declaration for the Queen was crucial, but not yet decisive. London was, however, deeply implicated; although initially the unifying factor had been the re-establishment of the City's liberties, the murder of Stapleton placed her governing body in a tenuous position. The temper of the London mob, so recently brought to order, must have concerned those moderates who adhered to the Queen. Those around Isabella counselled her to transfer parliament to another place, but this suggestion was overruled.¹ Contemporaries were correct in assuming that London, as a municipal organization, had everything to lose if the rebel coalition began to disintegrate before they could be pardoned for their offenses. However, the more radical elements, who may have advocated the deposition at an earlier phase, do not seem to have gained any considerable amount of support until the King was seen to be recalcitrant. In any case, it made political sense to conduct parliament where support for any eventuality would be securely behind the rebels. Other groups were equally divided. The episcopate, at once the backbone of Isabella's supporters and her most tenacious opponents, was unsure of its position. It is possible that those unwilling to countenance any drastic changes created a deadlock by demanding Edward's presence before any important business was discussed.² It seems unlikely that the first mission to Kenilworth to bring the King to parliament was deliberately and falsely staged by the Queen's adherents to bolster her own legal position while undercutting the King's.³ Undoubtedly, the King's presence would be an embarrassment to the rebels, but in order to keep this important

1. Williams, Medieval London: From Commune to Capital, p. 297

2. Clarke, 'Committees of Estates', p. 32

3. Ibid., p. 35

episcopal support, the Queen's party agreed to bring Edward to London. This decision must have been taken and acted upon before parliament was in session, so as to give the mission adequate time to reach Kenilworth and return.¹

There can be no doubt that, in any case, the King's presence was a vital part of the parliamentary proceedings. The Queen's party had gone to great lengths to preserve the fiction that Edward continued to both rule and reign. It was necessary that he seem to acquiesce to parliament being called in his name. It was equally necessary that he attend the proceedings because he was an integral and indispensable element in its composition. So fundamental, in fact, that his death or abdication would normally dissolve it.² Furthermore, contemporary standards of justice demanded he be present in the event that his conduct as king be questioned in any way. If the King had not been able to speak in his own defense, or worse, not allowed to face his accusers, any hope of permanent reform would be seriously undercut. If both Lancaster's and Mortimer's condemnations could be overturned on this same technicality, so, too, could any proceedings against the King, and with certainly graver consequences. Edward's refusal to attend parliament, then, had a twofold effect. First, it undercut the legal position of the assembly. They could not properly conduct business in his absence and so their decisions would not have the force of law. Secondly, there was a startling change in the King's legal position. Within his prerogative, no writ ran against him. Therefore, it is equally reasonable to assume that the king could not be held in contempt of his own court. Thus, Edward could not be forced to go to parliament. But by his refusal, he very clearly and irrevocably

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1. Clarke, 'Committees of Estates', p. 32; Haines, Church and Politics, p. 171
 2. B. Wilkinson, 'The Deposition of Richard II and Accession of Henry IV', pp. 216-17

broke his oath to preserve the just and ancient laws of the realm as well as to uphold those laws which would be made in the course of the reign. The decision for deposition appears to have been taken only after the party returned from Kenilworth to London on Monday, 12 January 1327.

In the Flea and Memoranda Rolls of the City of London, there are three different oaths recorded pertaining to the deposition. All are dated except one. The first one can be summarized as follows:

The oath taken by divers persons to maintain the commonalty of the realm; to protect Isabella, Queen of England, and Edward, eldest son of the King and heir-apparent of the Realm of England; to aid them in their cause against Hugh le Spenser the Younger and Master Robert de Baldock their enemies and the latter's adherents; to give good counsel; to safeguard the liberties of the City; and to maintain whatever had been done by reason of that Quarrel. (French)¹

Two points are immediately obvious. First, that this oath was the prototype and so preceded the similar Guildhall oath. It could have been written at any time, but due to its references to Hugh the Younger, it would seem to have been composed between the fall of Bristol and execution of the Elder Despenser on 27 October, and the King's capture on 16 November. This first draft fits in very well with what is known about the temperament of the City prior to parliament and could be a statement of the City's position during the first week of that meeting. A.H. Thomas, commenting on the similarity between this and the Guildhall oath, believed it was drafted about the same time, but for the burgesses present in parliament. This is certainly a possibility, although it seems odd that a separate format would be necessary for this group. There is, in fact, a question as to whether the burgesses representing the Cinque Ports, Bury St. Edmunds and St. Albans were officially summoned to parliament as no writs exist for either their summons' or expenses.² However, the important point is that all those sections

1. C.P.M.R., p. 11. No importance can be attached to the designation of Despenser. He is still known as 'Younger' for ease of recognition.

2. Ibid., p. 11, nn 1, 3; Parl. Writs, II, ii, pp. 350-66

which were represented in London, regardless of rank, swore the same oath, that is the one taken at the Guildhall on Monday, 13 January. Secondly, there is no mention of deposition in this particular oath. In fact, that they felt it necessary to extract an oath to uphold all that had been done during the rebellion intimates that they anticipated the King would be restored and they would be placed in the position of having to negotiate for pardons in much the same way that the barons did after the execution of Gaveston. It is possible that the existing format was incorporated into the Guildhall oath, with the additional proviso 'to keep the ordinances made, or to be made, in the present parliament by the peers of the land'.¹

The first definite mention of deposition comes from the Mayor, Aldermen and 'commonalty of London' in their demand that the Archbishops, Bishops, Earls, Barons, 'and other great men' swear to maintain the Queen and her son as well as to 'crown the latter and depose his father for his frequent offences against his oath and his Crown'.² This was proposed by letter on 12 January, the day of the mission's return from Kenilworth. The atmosphere of the assembly changed at this point. It was apparent that the King was not going to be placated, making it impossible for either the magnates or the commons to seek redress of grievances or to be granted pardons for their previous actions as was originally planned. The City was itself one of the greatest offenders and clemency now appeared an impossibility. It is hardly surprising that they were the instigators of this action, and that they used their overwhelming numbers to intimidate the members of the commons and magnates alike.³ This is not, however, the substance of what they swore to achieve. They swore, in effect, to maintain the status quo and whatever was ordained in parliament. This seems a vague pledge of support

1. C.P.M.R., p. 12

2. Ibid., p. 12

3. Historia, p. 49v. They did not wish to answer 'propter metum London' and later this group threatened the Bishop of Rochester with death.

if the purpose was as consequential as an attempted deposition.

There was to be no unanimity in this assembly over the vexatious problem of dealing with a recalcitrant king. The Guildhall oaths took three days to complete (13-15 January), and even then, some very important people did not swear. Of the fifty-three magnates (earls and barons) summoned, only twenty-eight took this oath. Three of the prelates, namely the Archbishop of York, and the Bishops of London and Carlisle, refused. The Bishop of Rochester acquiesced, swearing the oath saving his order and Magna Carta.¹ Only four abbots swore, and most of the knights who did so were from south of the Trent.² This is very interesting in light of what is known about the composition of this parliament. It would be assumed that a great deal of effort would be expended to ensure that sympathetic persons were returned, and that all those summoned attended. However, earlier assumptions about the composition of this parliament must be largely qualified. Twenty-four persons from North Wales were summoned through the Justice on the information of Roger Damory. In this area, there seems to have been a great deal of resistance to the summons. The sheriff of Merioneth, Gruffydd Llwyd, refused to attend, as did the five others for whose attendance he was responsible. Part of their recalcitrance can be traced to the form of summons, and the late date on which it was received. Whereas the English representatives had received writs early in December, the Welsh writs were not issued until 8 January.³ The form of the writs is also very interesting. The representatives were not expected to participate in the work of parliament, but rather to hear the King's commands, 'pro communi commodo et pace et tranquillitate regni nostri et parcium predictarum favente Domino contigerit ordinari'. It is clear

1. Historia, p. 50

2. Clarke, 'Committees of Estates', p. 34

3. Parl. Writs, II, ii, p. 364

that, rather than bringing in Welsh support for deposition, resistance indicates grave reservations about the purpose of this assembly. It is possible that bringing in part of the opposition would allow the rebels to bind them to whatever transpired in this parliament.¹ They had a vested interest to protect what had been done under their own authority, and what would be done by this assembly. The wording in the writs is very similar in meaning to that of the Guildhall oath.

Seven of the men who sat in 1327 had been arrayers in 1322, and so familiar with the King's apparent disorganization and inability to mount a campaign.² Of these, only two men, Robert Baynard and John de Clivedon, swore in their capacity of knights of the shire, and both represented counties south of the Trent. The group of household knights swearing the oath is equally interesting. Only Robert de Ethingham, Humphrey de Waleden, Robert Kendale and Philip and John de la Beche are found in the King's household before 18 Edward II.³ Of the twenty-four barons who took the oath, eleven had been summoned for the Gascon venture in March 1325, and of those, only three were old Lancastrian retainers.⁴ In many ways, the Guildhall oath is remarkable in the men who did not swear. The Seagraves were initially Lancastrian retainers who had partially attached themselves to the Crown by 1325. Neither Nicholas, Stephen or John de Seagrave took the oath. Other families seem to have been split, such as the Lovels, Nevilles, and the de la Beches.⁵ These are families which had long association with the Crown, either directly or in the retinue of royalists such as Pembroke. Indeed, some appear to have entered royal service directly from Pembroke. John

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1. J. Smith, 'Edward II and the Allegiance of Wales', p. 166, n. 148
 2. M. Powicke, 'English Commons in Scotland, 1322 and the Deposition of Edward II', p. 558. The men were William de Moigne (Hunts.), Robert Baynard (Norfolk), John de Clivedon (Somerset), Robert Aylesbury (Warwickshire), John Morice (Bedfords), John Peverel (Somerset), and Thomas de Bolton (Yorks).
 3. B.L. Stowe 553, ff 66, 102, 127. Compare with lists in C.P.M.R. pp. 12-13
 4. Maddicott, Thomas of Lancaster, p. 56; Parl. Writs, II, ii, pp. 683-4
 5. See above, note 3.

de Dene was in Pembroke's service in 1318, and by 1323, he was with the King. He did not swear the oath. William Lovel, who did so, was with Pembroke fairly consistently from 1312-22.¹ It is difficult to make any generalizations about the role of household knights in the Guildhall oath. It might be suggested, however, that those men who had been in Edward's immediate service for less than three years signed the oath. Their dissatisfaction would be directly related to Despenser control over royal patronage during this time. Judging from the numbers that abstained from swearing to uphold any ordinances made in this parliament, it is probable that the oath was not an absolute ultimatum.² It is apparent that a large number had distinct reservations, and were not yet fully prepared to depose the King.

While the Guildhall oath was being taken, three sermons were being preached on inter-related themes over the same three day period. These were not preached in parliament proper, but at public meetings, probably organized by Reynolds and Mortimer.³ As with a majority of the circumstantial detail for this period, neither Lanercost nor the Historia agree as to the actual texts, or the order in which they were publically presented, except that Reynolds preached on Vox populi, vox Dei. The Historia records Orleton preaching on Vae terrae, cuius rex puer est after Stratford's sermon on the subject Cuius caput infirmum caetera membra dolent.⁴ Lanercost records the following sermons in order: Orleton, Rex insipiens perdet populum suum (13 January); Stratford, Caput meum doleo (14 January); and finally Reynolds on 15 January with Vox populi, vox Dei.⁵ The order may be significant for determining the actual date of the deposition. In Lanercost, the crowd's reaction to

1. Phillips, Amyer de Valence Earl of Pembroke, Appendix 2, p. 300, 304

2. McKisack, 'London and the Succession to the Crown during the Middle Ages', pp. 82-3

3. Clarke, 'Committees of Estates', p. 33

4. Historia, p. 49v

5. Lanercost, pp. 254-5

Orleton's exposé of the King's foolishness was immediate. They declared that they 'would no longer have this man reign' over them.¹ This parallels a similar situation in the Historia, where, following Orleton's harangue, the crowd accepts the Prince as their king.² In Dene's chronicle, this acclamation is directly followed by Reynolds' sermon outlining parliament's ability, in its capacity of communitas regni, to choose its own ruler. Only after this, are the other two sermons preached. In Lanercost, Reynolds' sermon is used in exactly the same chronological place, and the Archbishop declares that Edward is now 'deposed from his pristine dignity, never more to reign or to govern the people of England'.³ It is certainly true that Dene's account is telescoped,⁴ as it is unlikely that the deposition was accomplished following Orleton's initial speech. It is more probable that the sermons were intended to encourage the members of parliament and others to swear the Guildhall oath. When this was completed, on 15 January, Reynolds declared the King deposed.⁵

The themes of the sermons are as important as the light they shed upon the complicated dating problem. Unfortunately, the texts of the addresses are not extant. Nevertheless, the thematic references are sufficient to illuminate the difficulties encountered in dealing with a recalcitrant sovereign. Whether Stratford preached on Caput meum doleo or Cuius caput infirmum, the emphasis remained the same. Edward was unable to fulfill his role as the head of the body politic. The results were obvious to the Bishop's listeners: the tyranny of the last four years of the reign and the destruction of many of the great men of the

1. Lanercost, p. 254

2. Historia, p. 49v

3. Lanercost, p. 255

4. Haines, Church and Politics, p. 171

5. N.B.: The importance of the event may have prompted Dene to include it first in his chronology, although he is very sure about the order of the other two sermons, using the verbs 'addidit' and 'subdidit'.

realm through civil war. They were equally aware that both of these results had sprung from the King's adoption of favourites whom he allowed to rule in his stead. This theme was carried further by Orleton's sermon on Rex insipiens. It seems much more likely that this was the text used, rather than the older lament, Vae terrae. The latter would have been an indiscreet and hazardous appeal, considering the age of the heir-apparent and the unquestionable necessity of a regency during his minority. Rex insipiens could also be an echo of rex inutilis, of the king who is unable to govern, in this case due to personal liabilities, evidenced in his reliance on favourites, and his puerilities, such as the unkingly habits in which he constantly engaged. Certainly, Reynolds' text using Vox populi, vox Dei is the most obvious, and as a justification, the most important. This could be an appeal to Aquinas' stricture that only a nation which has the right to elect a king has the right to depose him. The connection between civil authority and divine right is an old one.

It is very likely that these sermons were used to acquaint as many people as possible with the formal reasons for deposition. Certainly the core of the articles of deposition are evident. Interestingly, none of the chronicles mention these articles, although Orleton included a list of charges leveled against the King in his Responsiones. He argued that they were written under Stratford's authority and incorporated into a public instrument, which was later published.¹ The articles are themselves fascinating for what they tell us about the impact of thirteenth century deposition theory. The use of legal form, especially from canon and civil law, was perhaps the most important underlying principle, because it was the safest assurance of success.² It would not have been

1. Haines, Church and Politics, p. 173, nn. 69, 70

2. E. Peters, The Shadow King, p. 216

advantageous for the opposition to become involved in civil war, as they had done in 1321, because the weight of support would have naturally swung back to even a bad king if it guaranteed the restoration of order. Feudal censures such a diffidatio, violations of the coronation oath, and charges of tyrannous conduct were not specific enough, nor had they been tested on the secular level. Prior to 1327, deposition had been the privilege of the highest ecclesiastical office. Edward's deposition was conducted in a purely national assembly, without prior appeal to Rome.¹ This created both a dilemma, and so a precedent. There was an attempt to spread responsibility for this act as widely as possible, but at the same time, it was not a 'parliamentary deposition'. Parliament had ceased to exist when the King refused to attend its proceedings, and the deposition is not enrolled, which suggests that no official responsibility for the act was vested in the estates in parliament. However, there is an obvious difference between legal form and legal action. Edward II could not legally be deposed by any lay body, and only by an ecclesiastical one with great difficulty. This does not alter the fact that he was indeed deposed, and not by parliament, but by the estates of the realm,² an ad hoc body which formed at Westminster when parliament was summoned. Around this nucleus was built the structure of common, civil and canon law precedents which gave the proper legal form to an otherwise illegal act.

The renunciation of Celestine V and the deposition of Adolf of Nassau may have been the working precedents for Edward's deposition.³ The latter is particularly relevant because he was deposed, in the first instance, by the electors. They had a clear philosophical right to do so,

1. E. Peters, The Shadow King, p. 238

2. McKisack, The Fourteenth Century, p. 92

3. E. Peters, op. cit., p. 237

but their action was underlined by papal support. Adolf was declared to be iniquus and inutilis, his crimes against Church and people were considered to be notorious.¹ Notoriety was also used in Edward's deposition to justify its public character,² and to give it its legal form. The group of magnates and ecclesiastics mainly responsible for this action were successful in their attempts to make the proceedings appear legal. The Pauline annalist comments, 'et ibidem dominus rex Edwardus per processum contra ipsum factum fuit depositus'.³

The similarity between thirteenth century deposition theory and these articles of deposition is striking. The process condemning Edward is a culmination of every possible feudal and civil notion of inadequacy and regal uselessness.⁴ In the first two clauses, the King is declared incompetent because he has been ruled by others and refused amendment. Further, he has neglected his realm and refused good government willfully, 'giving himself up to unseemly works and occupations'. These are amplifications of the charges against Frederick II and Adolf of Nassau which, in turn, are derived from those against Louis the Pious. A common charge which describes the destruction of the Church during his reign is found in clauses one and four, and is characteristic of all ecclesiastical depositions up to the fourteenth century. The inclusion of the charge against the Church suggests that the magnates were aware of papal prerogative in these matters, and that they were attempting to make the procedure appear less feudal. Nevertheless, earlier ninth and tenth century notions of dilapidatio are found throughout the charges, most notably in the final clause which outlines his criminal negligence, and in the fourth, where there is a reiteration of Monmouth's tyrannous king who destroys his magnates. Edward had

1. E. Peters, The Shadow King, pp. 234-5

2. Ibid., p. 241

3. Ann. Paul., p. 332

4. Chrimes & Brown, Selected Documents in English History, 1307-1485, pp. 37-8

done 'all that he could to ruin his realm and people...'. And further, the precedent of unsuitable personal characteristics as seen in the deposition of Frederick II are also included. Edward is cruel and lacking character, proud and obstinate. Feudal charges are found in clause five. The King had broken his coronation oath by exercising his prerogatives of law and justice to the detriment of the realm. It is to be understood that this was also done willfully, 'for his own profit'. The concept that the king ought naturally to protect the rights of his subjects, and especially rights of property, was very important during this period. The entire portrait as shown through these articles is one of the tyrannus rex. It is interesting that, in this case, his unwillingness to exercise justice and abide by law were used against him. Neither Marsiglio of Padua's theory of the pars principans, nor the digna vox found any real scope in English common law. In practice, the theocratic king had a very limited space in which to manoeuvre. The most straightforward of all the charges is embodied in clause three. It is directly derived from the deposition of Sancho II. The loss of territory strongly reflected on the capacity of a ruler, and although it can be argued that Edward lost neither Scotland nor Gascony, the consequences of continuous military defeat were enormous. It is perhaps revealing that a chronicle can précis the entire parliament and deposition proceedings in these words:

... they treated of the government of the realm, and with various arguments proposed, it was found that the king had done so many things inadvisedly that he was reputed to be inadequate for the office of king. (1)

The communitas regni had deposed Edward II on 15 January 1327. However, there is no doubt that their authority to do so was questioned, not only by various members who refused to swear the Guildhall oath, but by the administrative class as well. This particular group, which had

1. Gesta, p. 90

continued to function throughout the invasion, was still receiving and issuing writs in the old King's name until 20 January. It is obvious that the deposition and subsequent acclamation of Edward III was not enough for those concerned with legalities.¹ Despite its broadly based support, it was felt that the voluntary resignation of the King was equally necessary to ensure the success of their actions.² The actions of this group altered the definition of diffidatio to a large degree. This specific response had traditionally been linked to the rejection of the tyrant or the oath-breaker. The charges leveled against Edward did include this crime and, in fact, depended upon it as the bedrock of the feudal relationship. Although government was still very much in the hands of the king and peers, the growing importance of the other groups who were represented in parliament made it an absolute necessity to involve them as closely as possible in the change in regime. This altered the feudal character of the rejection of the monarch into something more faintly revolutionary. The magnates alone had been responsible for the deposition threats in 1310 and 1321. Such conduct required the commitment of the entire body. Edward's deposition also required total support, but of the communitas regni in the broadest sense of the term due to the inclusion of legal forms from civil and canon law. It was in an attempt to make their position unassailable and unalterable, and also, perhaps, as a recognition that their position was unique and thus precedential, it was decided to employ another potent feudal argument: abdication by the sovereign's own free will.

The purpose of the second deputation to Kenilworth was not so much to acquaint the King with the deposition as to force him to abdicate in favour of his son. The deputation, which left Westminster either on 15 or 16 January, arrived on 20 January. It is very interesting that

1. G. Lapsley, 'The Parliamentary Title of Henry IV', p. 311

2. McKisack, The Fourteenth Century, p. 92

the main emphasis of the chronicles was the renunciation of homage and/or Edward's abdication. Some include either one or the other, and a few include both. There is no consensus as to the composition of the deputation. Lanercost gives the following breakdown: 2 bishops; 2 earls; 2 barons; 2 abbots, priors, justiciaries, Preaching friars and Carmelites; 2 knights both from north and south of the Trent, 2 citizens of London, and 2 from the Cinque Ports, making a total of 24.¹ Both Knighton and Murimuth describe much smaller delegations,² which do not seem as representative. The Historia follows Murimuth, describing 3 bishops, 2 counts, 2 barons, and an unspecified number of citizens in the delegation.³ In this chronicle, the King is said to have humbly begged forgiveness for his faults and begged them not to kill him; to which Orleton answered in a cruel fashion. This is followed by the renunciation of homage.⁴ Murimuth's account of the proceedings in January are very interesting indeed. For him, only the abdication existed with the renunciation following. The only act parliament authorized was to send certain persons to diligently require the king 'quod renunciaret dignitati regiae et coronae, et quod permetteret filium suum primogenitum regnare pro eo'. In this account also, Edward confessed his inadequacies, giving the delegation just cause for their demands.⁵ Baker's account, which is an amazing elaboration on Murimuth, includes all of these features, as well as some obviously biased detail aimed at the defamation of various members of the opposition, most notably Orleton.⁶

It has been said that the only formal legal act in Edward's

1. Lanercost, pp. 255-6

2. Knighton, p. 441; Murimuth, p. 51

3. Historia, p. 49v

4. Ibid., pp. 49v-50

5. Murimuth, p. 51. The author's circumspection is incongruous from what is known about his background and involvement in government. He could have been an eye-witness to the proceedings. This makes the lack of detail all the more noticeable and difficult to explain because he was most likely to be well informed.

6. Baker, pp. 26-8

deposition was the elevation of his successor. Only afterwards was an attempt made to secure a voluntary resignation.¹ However, the renunciation of homage was also a recognized legal action and its importance is paramount for the deposition. The text, as given by William Trussel on behalf of the entire nation to Edward, 'father of our lord the present king', is as follows:

I, William Trussel, proctor of the prelates, earls and barons and other persons named in my procuracy, having for this full and sufficient power, renounce and resign to you Edward the homage and fealty (owed) to you Edward king of England as to the king up to this time, on the part of the said persons named in my said procuracy, in the name of them and each of them, for certain reasons contained in the said procuracy, and deliver and make quit the aforesaid persons in the best manner that law and custom give, and make protestation in the name of them all and of each of them, that they do not wish in future to be in your fealty or in your liegeance, nor claim to hold anything of you as of the king, but hold you from now on a private person with no manner of royal dignity. (2)

First, this is a hybrid of civil and feudal law elements, which underscores the difficulties the communitas regni was experiencing in their attempts to guarantee their own success and safety. It is very interesting that Trussel goes to great pains to emphasize the correctness of his position. He is a procurator, having full and sufficient power to speak for the nation in this matter.³ Here is yet another instance of the impact of civil law and civil law format upon feudal institutions.⁴ A purely feudal problem, the rejection of a ruler, was buttressed by the use of civil formulae. Secondly, it is interesting to note that Edward was considered to have lost his regal status prior to the renunciation,

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1. F. Kern, Kingship and Law in the Middle Ages, p. 126, n. 69
 2. Chrimes & Brown, Selected Documents, p. 38. The text was originally in French; Latin text is found in Knighton, p. 441
 3. N.B.: See Brut, p. 242 to see how important national responsibility was to this set of actions. The author has each group rejecting the monarch individually, giving more force and weight to the purely feudal aspects.
 4. E.A.R. Brown, 'Representation and Agency Law in the Later Middle Ages', entire article for a full discussion of the growth of procuracy in France in the thirteenth and fourteenth centuries.

the diffidatio serving only to underline this. It would seem from its placement in most of the chronicles after the abdication, that this latter was the determining factor. The deposition itself gave them the necessary legal justification to demand his resignation and allow them to profer their rejection.

There still remained, however, this attempt to make the abdication appear voluntary. It was said that Edward III was made king by common election of the whole realm and with the consent of Edward, his father.¹ This is echoed in the official statement of the government to the sheriffs of York:

Quia dominus Edwardus, nuper Rex Angliae, pater noster, de communi consilio et assensu praelatorum, comitum, baronum, et aliorum magnatum, necnon communitatum, totius regni praedicti, spontanea voluntate se amovit a regimine dicti regni, volens et concedens quod nos, ... ipsius regni guberationem et regimen assumamus. (29 January 1327) (2)

This is again echoed in the chronicles. Edward

gave up regal office, and all rights belonging to the crown he renounced before a notary, and dismissed himself from the governance of the realm. (3)

iii. February - September 1327

"The fourteenth century..., never really thought out the position of such a phenomenon as Dominus Edwardus de Karnarvon nuper regi."⁴ Judicially executing even a deposed monarch was not an option in the fourteenth century, and it remained a revolutionary act three hundred years later. Such a judgement would destroy the foundations of monarchical government. The incarceration of queens was the only precedent available for the ruling body, and this was not an entirely satisfactory resolution to their awkward dilemma. Their course tended to be obscure

1. Ann. Paul., p. 324

2. Foedera, II, ii, p. 683

3. Gesta, p. 90

4. E. Peters, The Shadow King, p. 240; C.M.R. 1326-7 p. 210 where Edward is referred to in this manner.

and uncertain during the following nine months. With hindsight, it is obvious enough that Edward's position as a former ruler was fraught with dangers for the governing coalition. This period had no niche for an abdicated ruler, and a king deprived of his kingdom by the rejection of his subjects was a still greater anomaly. Under more normal circumstances, groups which may loosely be designated as parties would revolve around the individuals in the governing elite: the Queen, heir-apparent, favourites, but most significantly, the King. Edward was no exception to this. He would be an obvious focal point as a remedy for the growing discontent with the Queen and Mortimer. The sympathetic backlash against the new regents was mainly popular in origin, which suggests a certain degree of division between the spiritual and temporal magnates who were mainly responsible for engineering Edward's deposition on the one hand, and the great mass of the population on the other. There does not seem to have been any support for restoration among the noble classes, but it is interesting that a small, but determined, group believed the acts of January 1327 were reversible, and the old king could be placed back on the throne. Until this tenacious minority made its position intolerable, it does seem that the new government had every intention of keeping Edward in honourable custody until his death. Initially, it may have been felt that there was no reason why this course of action could not succeed. Edward had been legally overthrown in what purported to be a popular deposition, the responsibility for which was taken upon the entire community. It must not have seemed possible that such a thing could be undone, nor that any would desire it to be so. As the Queen's popularity waned, nostalgia for the old king waxed. By August, the governing coalition had come to grips with the irrevocable fact that their rebellion would never be secure as long as Edward was alive.

The Brut states that 'Sir Edward abode in prison under good

keeping'.¹ It does not appear as if initially, at least, the King's captivity was particularly onerous. The former monarch's first warden was Henry of Lancaster. Although this appears at first to be an ironic and personally dangerous choice, there is little evidence to contest the fact that he behaved well toward the old king. Edward was to be in the Earl's custody for a total of five months, between November 1326, and April 1327, and he received a small amount from the government for the former king's upkeep at Kenilworth. In April, the Earl pleaded both financial and political difficulty and asked to be released of his charge. There were a growing number of plots for Edward's release at this time, and it may have also been felt that Henry's sympathies were questionable. This was further complicated by a projected Scottish campaign, where the Earl's presence would be necessary. The governmental coalition, itself showing signs of breakdown, evidently preferred the deposed monarch to be under especially strict surveillance.²

In April, the old king was taken to Berkeley Castle 'cum multi conspirarent ad ejus liberationem'.³ The government was going to elaborate lengths to conceal his whereabouts, but as Tout correctly surmised, it was unlikely that a group of fast moving, armed men would escape notice in an area 'swarming with Edwardian partisans and sympathisers'. By June, any conspirators had concentrated on Berkeley Castle and its environs.⁴ The government's ambivalence is undoubtedly a reflection of conditions within the country and public opinion.⁵ Edward's transference can hardly be traced, and one of the few records available simply notes the amount spent for his custody.

After April 1327, Edward was in the custody of Thomas Berkeley,

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1. Brut, p. 242
 2. Tout, 'Captivity and Death', pp. 76-7
 3. Knighton, p. 443; Higden, p. 324
 4. Tout, op. cit., p. 83
 5. Ibid., p. 78

who was later joined by John Maltravers. These were a more sinister pair of wardens, who had ties to both the old Lancastrian opposition and the new regime. Berkeley's family had been one of the many victims of the Despenser aggrandizement, and had lost Berkeley Castle to Hugh the Younger. Thomas' father had fought at Boroughbridge, and as a result of the defeat suffered forfeiture and imprisonment with his son. The family was also connected by marriage to Roger Mortimer. Maltravers had also fought at Boroughbridge, but managed to escape to the Continent after the defeat. It appears that he returned with the Queen in 1326, and received restitution of his lands the following February. By his marriage to Berkeley's sister, he was also allied to the ruling coalition. Rather than Berkeley, however, it is Maltravers and Thomas Gourney who traditionally were said to have cruelly mistreated the King while in prison, and the latter who was responsible for his death.¹

It appears that at least one of the attempts to rescue Edward II succeeded temporarily. Thomas Dunheved was said to have travelled through England stirring up the people to rise for the deposed and imprisoned monarch.² Another mention of Dunheved comes from the Pauline Annals in connection with Edward's alleged attempt to divorce Isabella. He had been sent to Rome to plead the case before the Roman curia, but had been unsuccessful. When he returned to England, his object immediately became to set the old king free.³ The government was obviously aware of the conspiracies, and on 26 June, a writ of aid was issued to Thomas Berkeley and Maltravers to arrest Richard de Irby and John Brown as well as a man called Boltred.⁴ John and Thomas de Berkeley were both excused service in Scotland in order to take care

1. D.N.B., Vol. XXXVI, p. 6

2. Ianercost, pp. 258-9

3. F.J. Tanqueray, 'The Conspiracy of Thomas Dunheved, 1327', p. 122

4. C.P.R. 1327-30, p. 131

of the 'special business of the king'¹ at the beginning of July. There is no question that the conspirators succeeded in their aim. In an urgent letter from an unknown person, the former king's rescue is described clearly and without any attempt on the part of the author to dissimulate.² This is corroborated by the release on bond of William de Aylesmere, who was indicted before Berkeley for 'consenting to and abetting' the robbery of Berkeley Castle, 'the taking of Edward of Carnavan, the late king', and levying the king's people in war against him.³ Edward III's commission to Berkeley to deal with the mysterious special business had been successful. One result of his activities to capture the conspirators must have been the recovery of Edward himself. As part of a campaign of silence, he may have been extensively moved around, but he did eventually return to Berkeley.⁴ By August, English attempts to free the old king seem to have failed. However, a Welsh conspiracy was formed, led by Sir Gruffydd Llwyd, who had been responsible for attacking the Mortimer estates in Wales during the 1321-22 crisis, and helping the King achieve his victory over the rebels. This was the same man who, as sheriff, refused to attend parliament in 1327. Nine others who were imprisoned with him until October of that same year were also involved in this refusal, and represented a powerful force in Wales.⁵ This conspiracy was also unsuccessful. On 21 September, Edward's death was announced. In May 1328, the Exchequer was ordered to pay to Thomas Berkeley and Maltravers the sums owed them for keeping the late king and his body at a rate of 100 shillings a day.⁶

The chronicles are very reluctant to assign responsibility for the

1. C.P.R. 1327-30, p. 130

2. Tanqueray, 'The Conspiracy of Thomas Dunheved, 1327', p. 122

3. C.C.R. 1327-30, p. 158

4. Tout, 'Captivity and Death', p. 88

5. Ibid., p. 89; J. Smith, 'Edward II and the Allegiance of Wales', p. 167

6. C.C.R. 1327-30, p. 284

deposed king's demise. He was said to have died 'either by natural death or by the violence of others...'.¹ Both Knighton and Baker, followed by Higden, embroidered the tale of his death, the nucleus of which is found in Murimuth.² Baker's story is the best known of any account, but it is mostly hagiographical in nature, and is an obvious attempt to elicit sympathy for the dead King. It is fascinating that such literature could emerge, considering the reign was marred by military disasters, the greed of royal favourites and tyranny. But a saint was made more by what was euphemistically called 'a good end' than the past record of his life. In the popular imagination, it was possible for both Thomas of Lancaster and Edward Plantagenet to be the subject of intense religious feelings. There was no contradiction seen in honouring the man who had led the opposition against the King, and that same King who was seen to be martyred for the sake of his kingship. Like Thomas, Edward II was a popular saint. Visitors were so numerous that Gloucester became very crowded and lodging became difficult to find. After six years, sufficient sums had been received in offerings at his tomb to defray the entire construction costs for the St. Andrew aisle of the abbey. Even after 1333, this money continued to support various rebuilding projects.³

There were, of course, those who believed that Edward was still alive or had somehow managed to successfully escape; among them were Edmund, Earl of Kent, Archbishop Melton, Bishops Gravesend and Beaumont, and Pope John XXII.⁴ The brutal and secret murder of a king often elicits this characteristic response from contemporaries. A general disbelief in his death would, in turn, lead to stories illustrating his

1. Lanercost, p. 259; Scalacronica, p. 74

2. Knighton, p. 446; Higden, p. 324; Baker, pp. 29-34; Brut, p. 253

3. Hart, ed., Cartularium Gloucestrie I, pp. lxi-ii

4. Tout, 'Captivity and Death', p. 97

escape and later obscure life.¹ There was, in fact, a very curious letter sent to Edward III sometime between 1336 and 1342, written by a man whose name was Manuele di Fieschi. It is a thorough and convincingly detailed account of Edward II's escape from Berkeley Castle and subsequent wanderings around Europe, which included a two week stay at Avignon in the company of John XXII. If such an escape could be proven, then it would explain Edward III's reaction to his father's death, as well as Berkeley's acquittal and Maltraver's rehabilitation.² Unfortunately, there is no way to verify the authenticity of the letter, and so this particular problem must remain unsolved. However, the widespread belief that Edward was alive extended to the Continent as well. The wardrobe book for 1338 carries a reference to the payment of a small sum to one Willelm Galeys who claimed to be the old king.³ It is difficult to believe that Edward II would have adopted the name of his father's enemy, William Wallace. There is no evidence to suggest that Edward III took the man's claim seriously; he was given a sum of money and disappears from the records.

The documentary evidence strongly suggests that Edward II did die on or about 21 September, and was buried at Gloucester in December. There seems to have been a degree of uncertainty as how the King's body ought to be handled. Originally, the intention had been to send the corpse to the Augustinian house in Bristol, but they refused to accept it 'ob terrorem Rogeri de Mortuomari et Isabellae reginae, aliorumque complicitium,...'. Instead, the abbot of St. Peter's went to Berkeley to take charge of the former king's remains,

et ad monasterium Gloucestriae est delatus, abbate cum
toto conventu solunniter revestitis, cum processione

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1. Tout, 'Captivity and Death', p. 79 mentions this. It is certainly true of a similar circumstance surrounding the murder of the Romanovs, and the escape stories continue to multiply to the present day.
 2. Cuttino & Lyman, 'Where is Edward II?', p. 530. Tout, *op. cit.*, also discusses this letter.
 3. *Ibid.*, p. 530, n. 43

totius civitatis est honorifice susceptus, et in ecclesia
 ibidem in parte boreali juxta magnum altare traditur
 tumultandus. (1)

iv. A precedent?

In 1399, Richard II was deposed by a secular national assembly in imitation of a similar event seventy years earlier. Both instances illustrate the problems of reconciling a strong monarchy and varying baronial interests. The series of crises leading to the depositions in 1327 and 1399 are very similar. Certainly there are parallels to be drawn between Richard's government between 1382-86, and Edward's, most notably in the dependence on favourites to the exclusion of the magnates, and the large scale development of the household. In this reign, there was a comparable rise in the Chamber and the use of the secret seal or signet as the king's notarial instrument. By 1386, the signet had become the most common way of moving the Great Seal, and was also used to release funds from the Exchequer.² The King's conscious efforts to create economic and political insecurity, however, were the most important factors in his downfall. In 1392, Richard quarreled with London and took the City into royal hands. The problem seems to have been a financial one, and regaining their liberties cost the City £100,000, although the King reduced this to a £10,000 free gift. This action probably lost Richard the support of the City in 1399, a crucial factor to the outcome of the rebellion.³ Richard's arbitrary actions such as the banishment of Hereford and Norfolk, and the commuting of the former's sentence to life exile in 1399, brought the question of the King's relationship to the law into relief for the first time since 1327. Certainly many of the specific charges leveled at his deposition

1. Hart, ed., Cartularium Gloucestrie, pp. 44-5

2. Tuck, Richard II and the English Nobility, pp. 58, 67-8

3. McKisack, The Fourteenth Century, p. 468

arose from his actions in the last two years of the reign. State trials for appeal and impeachment in parliament were manipulated in 1397 by the King, which allowed him to use parliament for direct action against any opposition as well as to appear to follow legal form.¹

Richard appears to have been aware of, and increasingly used, civil law as a form of political discipline through the media of both the council and Court of Chivalry.² His views of kingship were consequently influenced by this fact. He was much more a theocratic king, in the sense in which Ullmann uses the term, than Edward II or III. It is possible that the increasing importance of parliament and the series of continual councils which were an integral part of his minority government influenced Richard's defensive behavior. Certainly throughout the early and middle fourteenth century there was never any doubt that the custom of the king ruling with the advise of his magnates was a useful tool and politically sensible. Edward II narrowed the number of magnates enjoying this role in a way that was unacceptable to the majority of the lay body, although otherwise his attitude towards the essential requirements of government were compatible with those of his greatest subjects. Richard's attitudes, on the contrary, were out of line with contemporary opinions. In Richard's view, the aristocracy should be reflections of, and on, the King's power. Therefore, there was no need to give them firm, secure territorial standing or wealth to support their positions. The elevations of the Earl of Suffolk, the Dukes of York and Gloucester in 1385, and later, de la Pole underline the fact that only the King's favour or a man's personal proximity to the Crown were vital for this sort of recognition.³ There is no denying that, as favourites, the 'duketti' created as much tension as the Despensers. However, there was a major difference in their positions.

1. McKisack, The Fourteenth Century, p. 483

2. Tuck, Richard II and the English Nobility, p. 152

3. Ibid., p. 84

The Despensers were granted lands sufficient to support their new titles and, further, were liable for all the responsibilities inherent in them. The nobility in 1321 and 1326-27 were not opposing the King's right to confer titles, but only the way in which the lands were accumulated by the favourites. It was the insecurity of tenure created by the King which aroused the greatest opposition to royal policy.

It has been proposed that Richard's return to Edward's methods of government were 'self-conscious'.¹ Perhaps it is more accurate to suggest that Richard's autocratic views on government were a direct development of the policies of Edward I. The expansion of the king's role had become part of the legislative machinery set in motion at this time, and this expansion continued under Edward II, although with less obvious success. Edward III was responsible for re-establishing the prestige of kingship after the deposition and expulsion of Mortimer and Isabella, as well as royal initiative and control of the baronage. That he was able to do these things without provoking another revolt illustrates his sympathy and sensitivity toward their prejudices, liberties and views on kingship and government.² Richard was faced with much the same challenge, especially in recreating an atmosphere where royal prerogative could be re-established. He failed in this because his concept of kingship was radically different from that of the majority of those who surrounded him. Both groups were 'conservative' in that they both were attempting to preserve a particular form of advise and consent which they believed to be traditional. The baronage were operating under an increasingly clear contractual arrangement which had been strengthened by the development of appeal and impeachment as well as the precedent of deposition. Richard's view of the role of the king was more absolute and more in line with Despenser policy on

1. Tuck, Richard II and the English Nobility, p. 71

2. Ibid., pp. 2-4

royal prerogative. However, his understanding of Edward II's prerogatives were highly idealized, as is seen in the formality of his court, and strongly impregnated with Roman law ideas of imperial rights. Other than the coronation oath, it is very difficult to find any statements made by English monarchs on the nature of their role. It is very revealing, then, that Richard should be accused of making the law personal, by allegedly claiming the laws were in his mouth or breast. Richard certainly seems to have been more fully influenced by civil law than his three immediate predecessors, for whom such a statement would have been unnecessary. Fourteenth century monarchy continued to be essentially personal, and this was a source of great strength and freedom to the king. By his increasing reliance on a civil law as opposed to a common law interpretation of events, Richard created an atmosphere in which the relationship between the king and the law he had sworn to uphold was again brought into question.

As Wilkinson points out, both depositions in 1327 and 1399 were a direct result of baronial opposition to a monarch which began as an attempt to redress a private wrong.¹ The sequestration of the Lancastrian estates after Gaunt's death in February 1399, was the final act in a series of absolutist measures which marked the last two years of the reign. Apart from meddling with inheritance rights, Richard revoked and changed sentences for crimes which had already been judged, commuted non-traitorous acts into traitorous ones, made it necessary to obtain special pardons for those involved in the opposition in 1387-8, required 'blank charters' from both individuals and, later, counties as well as special oaths to be sworn in order to insure the behaviour of these groups.² The vindictive quality of the end of the reign is also exemplified in the character of the judgements of 1397-8, in which royal

1. Wilkinson, 'The Deposition of Richard II and Accession of Henry IV', p. 232

2. McKisack, The Fourteenth Century, pp. 488-90

justice was extended to affect the corrodies, fees and annuities of widows, heirs and retainers as well as those men directly involved.¹ It is not surprising that these actions were seen as contrary to common law and justice, and this, in great part, accounts for the reception Henry Bolingbroke received when he landed at Ravenspur at the end of June, 1399.²

The way in which the country rallied to Henry in 1399 is very similar to the support Isabella received in 1327. Initially, he was joined by retainers and others from his own estates, and soon after his arrival, the Earl of Northumberland, his son, the Earl of Westmorland and Lord Willoughby joined him, securing the north. Henry's army marched south towards Bristol meeting almost no resistance. At the same time, the Duke of York, as custos regni, had raised a substantial army, and, like Bolingbroke, headed for Bristol. He did not engage the rebels in battle, probably due to Henry's obvious popularity, belief that he had only returned to claim his inheritance, and the uncertain outcome of a military engagement.³ Richard was in Ireland at this juncture, returning only on 27 July to south Wales. Salisbury had been sent ahead to rally forces in north Wales for the King, but was unable to hold an army together for fear of Henry, and rumour that Richard was dead. When the King landed, he was forced north to Conway to join Salisbury because his own army deserted him. As Tuck points out, although no one believed the King could recover the initiative having lost England, Richard's own unpopularity was as much a cause of these desertions as the fear generated by Henry's success.⁴ The Earl of Northumberland and Archbishop Arundel persuaded Richard to meet Henry at Flint, where he was taken prisoner, and later escorted to London

1. C.D. Ross, 'Forfeiture for Treason in the Reign of Richard II', pp. 574-5

2. Tuck, Richard II and the English Nobility, p. 214

3. Ibid., pp. 214-16

4. Ibid., pp. 218-19

where he was placed in the Tower.

There is good evidence to suggest that Henry had designs on the throne as soon as the extent of his popularity became obvious. Equally, there is evidence that he took at least two oaths, and that Arundel and Northumberland did the same, to the effect that he had only returned to claim his rightful inheritance. Unlike the similar situation in 1326, it seems likely that deposition was decided upon in July, and there was no attempt to reconcile King and country. Like Isabella in 1326, Bolingbroke summarily executed notorious favourites at Bristol and Richard's supporters at Chester, but he went one further step. He granted offices in the north under his ducal seal to Northumberland and Westmorland in a manner which suggests he viewed himself as the authoritative figure.¹

A parliament was summoned on 19 August by Bolingbroke in Richard's name for 30 September. It seems certain that this particular parliament never met, in fact, although the parliament called under Henry's own authority for 6 October was valid and assembled in the usual manner. Writs of expenses were issued for both as if they had been one, or in recognition that those summoned were to be paid for their expenses from 30 September. Knights of the shire received payment for expenses in connection with 'the parliament summoned by the late king at Westminster... but for particular causes not holden, and the parliament summoned by the king on the feast of St. Faith'.² Similarly, the parliament of 20 Edward II merged with the records of 1 Edward III in such a fashion that the former disappears from view altogether, except for various petitions presented early in January before the deposition.³ Writs for expenses here were issued in late February and early March,

1. Tuck, Richard II and the English Nobility, p. 217

2. C.C.R. 1399-1402, p. 107

3. Rot. Parl. Inediti, pp. 110-11, 106-110

and treated the sessions as continuous.¹

Parliament was not held on 30 September because Richard had abdicated the previous day. On the 29th, a committee of the 'estates' went to the Tower and confronted Richard with his promise allegedly made at Conway, to vacate the throne due to his own acknowledged insufficiency and inability to rule.² It is at this point that the process against Richard and the precedent of Edward II are at greatest variance. Edward's abdication was demanded only after the assembly had formally deposed him and proclaimed his son as their king-elect. In 1399, these proceedings were reversed, the formal deposition only coming after the abdication. In both instances, the last event was the renunciation of homage by various members representing the communitas regni. The 'record and process' which are meant to represent events on 29-30 September never use the term 'parliament' to describe the assembly which gathered on the proper day at Westminster. On that day, the Archbishop of York announced the abdication and the estates acknowledged the act when asked to do so by the Archbishop of Canterbury. Afterward, a statement of the charges against Richard were drawn up so as to remove all scruple and suspicion.

It is impossible to know to what extent Bolingbroke and his supporters were aware of the 1327 precedent. It is possible to assume that the commission empowered to investigate Henry's claims also examined the precedent. This precedent had already been utilized during the reign when Richard was confronted in the Tower and threatened with deposition, if not actually deposed, in 1387.³ The 1399 commission recommended that Richard be deposed in the first instance by the authority of the people and clergy. It was well known that an abdication would invalidate the writs for summons to parliament. Adam of Usk, an eye-witness and the

1. H.G. Richardson, 'Richard II's Last Parliament', p. 46

2. Rot. Parl. III, p. 416

3. Tuck, Richard II and the English Nobility, p. 119

chronicler of the deposition was a member of this commission, and his account appears to have been drawn from some knowledge of Edward's deposition.¹ If they were familiar with the precedent, they would also have been familiar with the problems the opposition had in bringing the assembly to acceptance of deposition. Although, in principle, Henry's case was as strong as Isabella's in 1327, in fact, his position was precarious in the extreme. Dislike of Richard had prompted the baronial opposition rather than a desire to see Henry on the throne. In 1327, the Crown was claimed for the acknowledged legitimate heir; this was not the case in 1399. Henry rejected deposition as the primary step, in favour of an abdication in his favour. His position was insecure and there was no precedent for a parliamentary award in this case. In 1327, Edward had refused to come to the parliament which had been summoned in his name. In effect, he refused to recognize the legality of its assembly. In 1399, Henry went out of his way to ensure that Richard would not attend: his abdication was to be announced and he was to be represented by two proxies.² It seems then, that Henry rejected the procedure for deposition as presented in 1327, while retaining the basic formulae.

The official record of events with the attached grounds for deposition form a very interesting document. Although they were undoubtedly propagandist, this term, with its pejorative connotation, is unfortunate in many ways. The 'record and process' is a highly detailed work, and there is nothing comparable in Edward II's deposition. In comparison, the 1327 articles are spare in their denunciation, being only a generalization of Edward's insufficiency. Beyond this, there was no official record of the proceedings against the King. The existence and sheer detail of the proceedings and charges against Richard illuminate the

1. G. Lapsley, 'The Parliamentary Title of Henry IV', pp. 289-90, n. 4

2. Ibid., p. 276

difficulties Henry's supporters experienced in their attempt to depose the King. The official record seemed to anticipate every possible contingency and provide an answer for each question. It is most revealing that Henry preferred to have Richard abdicate rather than be deposed, in the first instance. There were certainly doubts and objections at the time, most notably voiced by the Bishop of Carlisle, and it appears that many thought the charges ought to be submitted to parliament. There was certainly the feeling that these proceedings, especially those on 29-30 September, were highly irregular, and that justice was being circumvented, as Richard was unable to speak in his own defense.¹

Much of this is familiar from the 1327 deposition. Certainly the basic problem of how to depose a legitimate king remained. The opposition in 1399 was less wary about using parliament as a vehicle than their predecessors had been, however. The 1327 assembly was not a parliament because the King refused to recognize it as such. The 1399 assembly was in many ways more nebulous in character. The estates that met 'propter factum parliamenti' cannot be considered a proper parliament because the King had abdicated. It is this body which also agreed to the deposition. It was, in fact, the group that convened on 6 October which is the only one that can be considered a true parliament, and it is to this record that the official documentation is attached. The men involved in engineering the events in 1399 were much more politically sophisticated than their counterparts in 1327. In both cases, the only legal action they took was to accept an abdication, and raise the successor to the vacant throne. In 1327, the opposition thought it prudent to secure as much broad support as possible for this unusual form of diffidatio, which meant the incorporation of as much civil and canon law as was practical. This hybrid diffidatio, deposition, was

1. G. Lapsley, 'The Parliamentary Title of Henry IV', p. 304

then presented to the King as an uncontrovertible rejection, at which time he abdicated, and homage was renounced by proctors. The situation in 1399 was much different, and the official documentation reflects this difference. The abdication, whether forced or not, is immaterial, except as a reflection on each King's view of kingship. Both Kings were undoubtedly coerced into renouncing their titles, although this is not recognized in the official accounts. It is highly unlikely that Richard abdicated 'vultu hillari', or that he had ever made such a promise to do so at Conway. Perhaps the voluntary abdication of Edward II when faced with the rejection of his royal line was a chronicler's attempt to explain an unlikely series of events. Certainly everything that is known about Richard's views militates against this analysis. However, the legal necessities of the case required the King to dismiss himself voluntarily from authority, and this is what the official version reflects. The opposition in 1399 did not use diffidatio in the same manner as their counterparts seventy years previously. The agreement that the King was unworthy and ought to be deposed is more an imitation of the questions to the judges, than a reflection of the precedent of 1327. The rejection of the monarch only came after his abdication, and cannot be seen in any feudal sense as diffidatio.

It was imperative that the process against Richard appear to be an abdication rather than a deposition. The fact that Richard was said to have renounced the throne willingly and appointed Henry as his successor supports this conclusion. The reason for this piece of legal fiction revolves around the problem of succession in 1399. Deposition alone, followed by the monarch's abdication in recognition of a fait accompli, was not a useful precedent at this time, and Henry did not, in fact, employ it. He could conceivably have had a more difficult time securing his own nomination under those circumstances. He did not necessarily have the best claim to the throne, although the young Earl

of March was passed over in the committee deliberations, which left him as the eldest surviving adult male of the royal line. It is only after both the abdication and deposition that Henry claimed the vacant throne. This is in direct contrast to 1327, when Edward III was vocally recognized, in fact, before his father had abdicated. However, it made logical sense to have arranged a usurpation in this manner, and the progression was in many ways more viable. An abdication was recognized by the 'estates', a group who, by precedent, had a certain authority to witness such an action, and who bolstered this 'voluntary' royal action by outlining the King's tyrannies and insufficiencies in great detail. After this had been accomplished, a new king claimed the throne, and was recognized, and this determination reported to the old king, at which time proctors renounced their homage.

In many ways, this procedure circumvented the problem of the authority of parliament. Richard was not tried in parliament, and this body, or a body assembled as if for parliament, was only responsible for recognizing the King's abdication.¹ Henry's declaration and claim to the throne was based on traditional rights of conquest and right line of descent. These are not 'Lancastrian' principles as much as they represent a conservative reaction to Richard's methods of ruling. The same can be said for the critique of the previous government as presented in the articles of deposition. All the points which were relevant to Edward's deposition and thirteenth century deposition theory are incorporated in them. Despite their detail, important charges of deception, willful injustice and arbitrary abrogation of customary law, dilapidation of the realm by the dissipation of the property of others, ruling evilly by his own counsel, breach of coronation oath and other tyrannous acts were supported by charges of the King's insufficiency and the notoriety of all these charges. Notions of just rule had not

1. Walzer, Regicide and Revolution, p. 3

changed substantially since 1327. Henry claimed the throne at a time when the realm was about to be 'undone for default of governance and undoing of good law'.¹ Afterwards, Archbishop Arundel preached on the text Vir dominabitur populo, which is reminiscent of, but much more pointed than, the similar sermons preached in 1327. If this sermon embodied Lancastrian views on kingship, that is the relationship between the king and the law, the supremacy and integrity of law, and the guarantee of individual rights,² these views are, in turn, only a re-iteration of notions of kingship found in Bracton and Geoffrey of Monmouth.

The 1327 precedent for deposition was acknowledged and suitably altered to fit the circumstances of 1399. Despite parliament's increasing importance as a judicial body, it had no power to judge a legitimate king. The precedent laid down in 1327 was a justification for revolution, around which were erected the trappings of legal form. The constitution in the fourteenth century could not offer a parliamentary title to the kingdom, and, recognizing this fact, Henry based his legitimacy on traditional claims rather than parliamentary ones.³ These assemblies provided the necessary stage for the proceedings, because the estates in parliament very closely represented the estates of the realm, and so the communitas regni. In fact, it is not necessary so much to label these assemblies as parliaments as it is imperative to recognize that they claimed to represent the national will.

Wilkinson maintains that the precedent set in 1327 was neither parliamentary nor a precedent for deposition by parliamentary 'estates'. Instead, it was a deposition by a group of magnates with the co-operation

1. Rot. Parl. III, pp. 422-3

2. G. Lapsley, 'The Parliamentary Title Of Henry IV', p. 305

3. Wilkinson, 'The Deposition of Richard II and the Accession of Henry IV', p. 239; Lapsley, op. cit., pp. 328, 340

and acclamation of the people.¹ Exactly the same can be said for the deposition of Richard II. The precedent gave Bolingbroke and his supporters the opportunity to use parliament as a forum in a fashion anticipated in 1327, more expertly realized in 1399, and taken to its logical extreme in 1649. The magnates responsible for engineering the deposition in 1399 were aware of the essential and crucial problem of authority. Neither of these depositions were legal acts within the structure of civil or English common law. They could only be instigated within the feudal concept of diffidatio, and even then the process was fraught with great difficulties. The only authority they could cite was royal authority, which in these cases was an obvious impossibility. So judgement was made by the 'estates', the lords, who actually resolved that the King's actions warranted deposition. Only then did the estates and communities proceed to depose Richard 'for the greater security and tranquility of the realm and the good of the kingdom'.²

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1. Wilkinson, 'The Deposition of Richard II and the Accession of Henry IV', p. 229
 2. Rot. Parl. III, p. 422

Conclusion

The essence of thirteenth century deposition theory was its refinement of the definition of acceptable kingship in light of contemporary opinion. To accomplish this task, it was necessary to consolidate all previous precedents into one workable model. In a purely utilitarian sense, thirteenth century deposition theory was not entirely successful in its efforts to achieve this goal. In part, the reason for this failure lay in its disregard for the evolving political structure of society during this period. Legal justifications for certain judicial actions had become increasingly sophisticated by the fourteenth century. This is particularly evident in the two depositions of this century, as well as in the evolutionary stage between 1327 and 1399. Also, thirteenth century theory did not take into account the real impartibility of the King and Crown. In theory, the Declaration of 1308 was a further expression of the increasingly abstract nature of the Crown. In practise, things were very different. One of the reasons why attempts to divorce the dignitas and the administratio regni never replaced deposition was that it did not solve the fundamental problem of the useless or recalcitrant king. It split the corpus politicum in an unacceptable manner, leaving the same sort of power vacuum experienced in a tyranny. In 1327, the main object was to remove Edward II from the governance of the realm. Allowing him to retain the dignitas while awarding the administratio to his heir, in this case a minor who would have required a regency council, would not have afforded a definite solution, but only complicated matters further. Assuming the magnates in 1327 were aware of the Portuguese precedent, they would also have realized that the civil war there was an inevitable by-product of this sort of partition. Even without this division, problems of authority emerged. Lancaster's rebellion in 1328 and Northumberland's revolt in 1400 can be seen as

an expression of this.

Irrespective of the multitude of precedents for deposition accrued by the fourteenth century, the action itself created tremendous problems. The institution of kingship was completely integrated with contemporary social and political institutions, and these areas were not to be adequately defined or differentiated in this century. Papal pronouncements on imperial suitability certainly helped to define the role of the king within the community. In England, however, where there was a vital monarchy, customary law had as great a role in defining the responsibilities of the ruler as did civil or canon law. In some ways, English law was more exacting in its demands upon royalty because it was more obviously based upon a contractual relationship.

This contractual relationship was fundamentally a feudal relationship in the fourteenth century. Of course, there can be no doubt about the actual impact of deposition theory on the events of 1327 and 1399. The articles of deposition are very clear on this point. However, this theory could not solve the basic fundamental fact of the illegality of the action itself. For this, the magnates relied upon the feudal contract. Breach of the coronation oath, inability to use royal prerogatives of justice and peace, willful destruction of the realm are all as important within these depositions as the classical theory of the Tyrannus Rex. Inutilitas and iniquitas coupled with notoriety served to bridge the gap between civil and common law definitions of good kingship. The strength of the feudal contract, which in theory gave the magnates the right to reject the monarch, was augmented by the precedents for deposition which gave recognized legal form and force to the proceedings.

It is equally evident that neither deposition nor diffidatio were entirely satisfactory solutions to this legal dilemma. In an effort to make their actions irrevocable, the magnates required the monarch's

abdication. The notion of inutilis was very important here. In 1327 and 1399, both monarchs confessed, or were said to have confessed, their inability to fulfill their obligations, and 'voluntarily' abdicated. The question of whether or not their resignations were given under pressure is not a point here. What is important is that the concept of the role of the king was so strong that an act of his will was felt necessary in order to bring the reign to a close.

In this sense, it is difficult to decide which deposition was the most conservative in its attempts to find legal justification for its actions. The deposition of Edward II came as a last resort, when the King refused to come to parliament and there was no alternative but to remove him. The deposition of Richard II was in many ways much better 'stage managed', probably because deposition by the estates was a foregone conclusion. This perhaps explains the primary insistence on abdication and the designation of an heir in Henry Bolingbroke. However, the magnates obviously felt it necessary to go through the formal deposition and renunciation of homage, despite the fact that the kingship was technically in abeyance.

The two depositions in the fourteenth century have both similarities and differences. The discrepancies are so glaring as to make it seem as if the previous precedent was discarded entirely in 1399. Although the same elements are used, they are manipulated and changed in such a fashion as to render the significance of the precedent almost negligible. Both, however, used thirteenth century deposition theory to provide legal form to an otherwise illegal action. The detailed instances of tyranny are a feature of the articles in 1399. The similarities between the two reigns are extra-ordinarily striking; they both exhibit extremes in the traditional role of the monarch. It was to these extremes that the deposing bodies addressed themselves in 1327 and 1399. The king was meant to take the initiative and exercise authority within

acceptable limits. The strength of the monarchy is seen in the lengths to which the opposition was forced to go in order to remove him. And even this desire to remove him is indicative of another strength of the monarchy. The magnates were determined to have a king who would both reign and rule in a traditional, acceptable, recognizable fashion. Although there were always those willing to rule when the monarch could or would not, this was never an adequate replacement. The fourteenth century shows that the community was willing to replace a recalcitrant or tyrannous monarch if necessary for the good of the entire corpus politicum, so that prerogatives of law and peace might be maintained.

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