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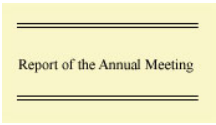

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TENDENCIES IN FOURTEENTH-CENTURY CONSTITUTIONAL DEVELOPMENT

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No century of English history is in greater need of revision than the fourteenth. The key-note in the modern interpretation was struck by Bishop Stubbs and he was frankly unsympathetic. The century seemed to lack grandeur, the inspiration of great causes and movements. It was not a period of great achievements; it was mainly the working out of ideas which had already triumphed, in principle, in the century before. Politics were, Stubbs believed, as Professor Galbraith has recently repeated, not based on principles, but on personalities. The dominant motives of the century were selfishness and pride.

This view has been generally accepted. Modern writers have added some details but have not questioned the main outline. Professor T. F. Tout and Mr. J. C. Davies suggested a new motive for constitutional struggles, in a clash of systems of government, the "household" system on the one hand, the instrument of the king's prerogative, and the offices "of state" on the other. But this new motive for discord does not provide a great constitutional issue for the fourteenth century comparable to that of the thirteenth; and in any case, its existence, at least in the terms propounded by Tout and Davies, has been questioned, even for the reign of Edward II. No other modern writer has made any significant deviation from Stubbs's tradition. Figgis's stress on the beginnings of Divine Right under Richard II has not been worked out in detail, and rests on a slender foundation. The latest biographer of Richard has largely renounced the idea of finding logic and principles underlying the political struggles of that most important period. The fourteenth century largely remains where Stubbs left it. It was a great age of transition, but its main contribution to the constitution was apparently the provision of somewhat dubious precedents and arguments for the opposition to Charles I.

Despite this, material has been gathered in recent years for some revaluation of the period. There has been a tendency to correct Stubbs's preoccupation with the Commons as the defenders of the nation's liberties, and to give more attention to the royalist case, helped by work on the coronation by Professor Schramm, and on the coronation oath. The problem of war, as a factor in political and constitutional evolution, has received some attention, following the basic work of Dr. Morris. The great problem of the evolution of bureaucracy has been presented in T. F. Tout's *magnum opus,* in the work of some of his students, and by the co-operative Anglo-American project begun by the late Professor Willard. Political theory, given so little prominence by Stubbs, has been added to by R. W. and A. J. Carlyle, C. H. McIlwain, and Passarin D'Entrèves. There have been specialized studies of almost every great political and constitutional crisis of the century, beginning with the accession of Edward II in 1308 and ending with the deposition of Richard II in 1399. All this work has em-

phasized the importance and the stubbornness of the problems of the period. These raised issues which, though partly unperceived by Stubbs, and obscured by personalities and cross-purposes, seem to have been as important as any in the more famous thirteenth century; and they included the tragic precedents of deposition which left an indelible mark on the constitution. Men did not make such shattering breaks with political tradition as these depositions over differences of small moment. The lines of the future constitution of England were being determined just as much in the fourteenth as in any century of English history.

The problem which has received the greatest attention of all is that of parliament, important for an understanding not only of this century, but of all English history. It is still the most stubborn. A failure to understand its true nature in the fourteenth century may have militated against the efforts of both Stubbs and his successors to grasp the principles at issue in the conflicts of the fourteenth century. Stubbs may have been at fault in accepting the claims of the Commons and of the baronial opposition too much at their face value; modern writers may have been even more at fault in their conception of parliament itself. This conception has dominated all the interpretation of the medieval parliament since the writings of Maitland and McIlwain. It is that of parliament as a court, as the High Court of the Realm. It will be suggested below that this concept lies squarely across the path of any attempt to re-interpret the fourteenth century in the light of modern research. It obscures the true nature of the great developments which occurred between 1376 and 1388, and the new relationship which these created between the ruler and the nation. In fact, it obscures the greatest single contribution which the fourteenth century witnessed to the growth of the English constitution.

These are very dogmatic assertions. Whether or not they are true must, obviously, in the present state of our knowledge, be a matter of opinion. I have given elsewhere my reasons for believing that the modern view of parliament as a court as, for instance, it was reflected in the pages of Professor Pollard, has been carried much too far. If my conclusion on this point is wrong, much that follows here will be erroneous. The assumption behind the argument, in the pages which follow, is not only that the medieval parliament was not in essence a court, and was not simply an extension of the council; it is that parliament, as an institution consisting of king lords and commons, as distinct from the king in his council in his parliament, only gradually acquired the attributes and functions of a court. Not only were its judicial functions not essential and primary, they did not at first exist at all. They did not exist in the thirteenth century, for instance. They were acquired in the fourteenth. They had come to be regarded as the essential qualities of parliament long before the seventeenth century. But that was not because they had always been so. It was the result of a constitutional revolution. Without a knowledge of this revolution, the nature of the evolution both of parliament and of the constitution in the fourteenth century must remain obscure. It is precisely this knowledge which the modern theory of parliament denies us. That is why I venture to set it aside, in the pages which follow, more completely and dogmatically than the present state of our studies really allows. I hope, in due course, to be able to present my reasons fully; meanwhile, a

tentative and exploratory interpretation of the fourteenth century, on the basis of a parliament which was primarily a legislative and political assembly in process of acquiring its judicial functions, may not be entirely out of place.

Parliament then, it may be said dogmatically, began in the thirteenth century as a meeting, a colloquy, a *tractatus,* in which the king and the community discussed and agreed upon, the affairs of the realm. It was also the place of a court; but as *Fleta* put it, *habet enim rex curiam suam in consilio suo in parliamentis suis.* The king had his court in his council in his parliaments, and there transacted much judicial business; but it was business transacted by king and council in parliament, not by parliament itself. It was, *Fleta* said, the court *in the presence of* earls, barons and nobles; and it is surprising how this part of *Fleta's* statement has been ignored. The famous struggles centring on *magnum concilium* or parliament in the thirteenth century were in no way concerned with a High Court of parliament. Their greatest single aim was the establishment, in parliament, of a principle similar to that enunciated in the name of Edward I, that what touches all shall be discussed by all. The supreme constitutional achievement of the century was precisely the achievement of this principle relative to parliament, an achievement which lies, somewhat elusively, at the basis of the Montfortian experiments in government, the royalist restoration of 1266, and the New Monarchy, if I may venture so to call it, of Edward I. The supreme achievement of the thirteenth century was the complete adaptation, to the new and fundamental institution of parliament, of the ancient tradition that government was an act of co-operation between monarch and nation, carried out on a basis of discussion and consent.

The reason why this did not satisfy the fourteenth century also, was not that the core of the medieval political tradition was changing, but that it had to be adapted once more, in the fourteenth century as it had been in the thirteenth, to changing institutions, conditions and needs. Just as the informal methods of discussion appertaining in the twelfth century had proved to be no longer adequate in the thirteenth, so the basis of co-operation set up in the thirteenth proved inadequate in the century which followed. In the age of Henry III it was enough for the magnates to strive for the principle of consultation in parliament, leaving the initiative and directive power entirely to the king. The great Edwardian era of statutes, the beginnings of bureaucracy, and the evolution of council and parliament, gradually made this principle, in such a simple form, inadequate as a basis for the constitution. The practice of co-operation between the king and the nation necessitated a more active and constructive participation in government, at least by the magnates, an influence over policy, over the ministers of the Crown. Whether or not these were obtained, would determine whether the English constitution would evolve, in the later Middle Ages, to express the true medieval concept of limited monarchy, out of which democracy would one day be created, or would evolve, through the steadily increasing powers of the central government, to follow the predominant early modern pattern of absolute rule.

It may have been some dim realization of this tremendous constitutional issue, which lay behind the first, extraordinary, opposition to

Edward II. The barons in 1308 went so far as to impose on their new ruler a promise, in the coronation oath, that he would accept any just laws which his subjects would subsequently elect. This remarkable promise, and the baronial attempts to enforce it, escaped the attention of historians for many generations, and their scope and nature are still obviously a matter of doubt. In the main, it seems certain however, the early opposition to Edward II attempted to begin where the reformers of the thirteenth century left off. They carried to its logical conclusion the idea, derived ultimately from *Magna Carta,* of compelling the king himself to enact their reforms. The fatal weakness of this method was that it relied upon, and extolled, the very sovereignty of the ruler which it was attempting to limit; and this weakness was increasingly apparent as the problem of sovereignty emerged as the paramount constitutional question of the age. The method was condemned by the precedents of Henry III and Edward I's reign. And it did not reach the heart of the problem; for the devices adopted to limit the ruler in previous generations—the cleansing of the king's household, political attacks on the king's servants, temporary control over the king's council—were palliatives for misgovernment, but not cures. They had repeatedly been shown to be such in the history of the past hundred years. They were expedients for imposing checks on the monarch, none of them really valid, each of them liable to frustration, in the end, by the unending resources of the Crown. The coronation oath of 1308 gave the barons the shadow of constitutional reform but the substance still eluded them. Precisely the same objection applied even to the famous Declaration of 1308 arrogating to the barons a right of violent opposition to an unjust king. Despite Fritz Kern's approval of the principle of *Widerstandsrecht* contained in it, this Declaration did, in the last analysis, do no more than attempt to legalize rebellion. Under the English constitution this could never be, at bottom, more than a contradiction in terms. And even legalized revolt did not create a new constitution. That had still to be worked out from the discordant elements of the early fourteenth century.

All this explains why, confronted with such bewildering problems, the early opposition to Edward II was, almost of necessity, blundering and futile. The ingredients for a really successful opposition still lay in the future. They were to be found, in the long run, where they had really existed in the previous century, and where alone they could be discovered again in the fourteenth, in parliament, the key institution in the realm. But the theory and practice of parliament were not yet adequate for a great constitutional step forward. Meanwhile, in the constitutional debates of Edward II, the precedents drawn from the great Edwardian era, were all, ultimately, on the side of the monarch. They were, to put it simply, that the king ruled, and the subjects consented; not, as the opposition to Edward II claimed after 1308, that subjects could impose their regulations and concepts of government on the king. That is why the bulk of the nation was compelled, however unwillingly, to support Edward in his destruction of the baronial opposition, including both the Marcher Lords and Thomas of Lancaster, in 1322, and in his formal enunciation, in the same year, of a great and definitive royalist restoration of the constitution, comparable in importance with that which had ended the Montfortian experiments in reform. This was the famous Statute of York.

Few statutes have been so intensively studied as the Statute of York, and yet it is possible that even now its implications have not become fully apparent. It settled the constitution and influenced constitutional issues as perhaps no other single statute did between 1215 and 1399. It was, in substance, as we should expect, merely a re-statement of the traditions of the great Edwardian era. But, by that very fact, it was reactionary in its results, if not in its intentions; it prohibited all further advance along the lines which had been consistently followed by reformers since 1215. It made the imposition of reforming ordinances on the monarch illegal (thus, incidentally, nullifying the effects of Edward II's new form of coronation oath). It debarred all enactments, by whatever sanction, against the position and powers of the monarch. It restored all initiative in parliamentary legislation into the hands of the king. Thus the attempts of the early fourteenth century to meet the changing conditions of the age, by imposing new definitions restrictions and regulations on the ruler, were brought to an abrupt close. Unless the Statute of York were to be annulled—which would need another revolution and would alienate the Commons who had received, in the statute, a new definition of their place in parliament—future constitutional progress would have to be along different and more constructive and original lines.

This is perhaps the most important single explanation of the tragic step of deposition, which was the next contribution of the fourteenth century to constitutional advance. Deposition was perhaps the only logical reply left for the magnates to the Statute of York. The problem facing Isabella and Mortimer, and the anti-royalist coalition which had supported them in the overthrow of Edward II in 1326, was that not only of preserving the fruits of the revolution, but also of undoing some of the consequences of the royalist reaction of 1322 and finding some basis for stability and concord, in a country torn by dissension and threatened with recurrent civil war. The Statute of York itself invalidated in advance all the concessions which the rebels might wring from the unwilling monarch. Nothing could ensure the permanency of Edward's acceptance of their victory, save the destruction of Edward himself. The logic of their situation forced the rebels of 1326 to the deposition, and eventually to the murder, of the king. But it forced them equally insistently to preserve the monarchy and the forms of the constitution, whilst destroying the monarch. It made the revolution of 1326, like that of 1688, so conservative that it might almost have been devised and carried out by the royalists themselves.

This deposition of a king in 1326, for all practical purposes the first in English history, was inevitably, in spite of its conservatism, a landmark in the evolution of the constitution. In the long run, it had consequences which were not far short of disastrous for the ruler. In one sense, from that moment the history of the modern British monarchy may be said to have begun. But it is probable that nothing like this was intended. The watchword of the revolution of 1326, like that of 1066, was continuity. Strong pressure was used on Edward II to obtain his abdication rather than his deposition, and an indispensible condition of his vacation of the throne was the accession of his son. The whole settlement of 1327-30 was, indeed, one of the great compromises of medieval history. The barons renounced their efforts to impose legislative reforms on the monarch. The monarch

accepted at least the intention and spirit of the old baronial programmes of reform. The Statute of York was not rescinded, but then, neither was the fourth clause of Edward II's coronation oath. Great hostility was shown to Edward II himself, but the monarchy itself which, in the last analysis, he died defending, was left substantially intact. Edward III proclaimed his intention of ruling with the co-operation of his magnates and in no other manner. The settlement of 1327 went back for its inspiration, like the Statute of York, to the great age of Edward I, but with a difference. This time the monarch, not the opposition, had been defeated. There could be no going back entirely to the Edwardian era, or even to the Statute of York. Initiation in legislation was, in fact, tacitly conceded to the subjects after 1327, though it normally took the shape of humble petitions by the Commons, not demands or even requests by the Lords. But, apart from this, there was no great innovation that had immediate consequences. Men did not greatly change the monarchy itself because, contrary to a wide-spread opinion, they never, in medieval England, wanted greatly to change it. Despite the fundamental difference, the restoration of the monarchy by Edward III was singularly like that of his grandfather, Edward I.

It was only challenged once, in the years that followed, in 1340 to 1341, and this was due to transient causes, to the failure of Edward in Flanders, his economic embarrassment and, above all, his quarrel with the government which he had left at home. This quarrel was, so far, unique in English history, in that it was a quarrel of the king with his own servants that brought on a political crisis, not an attack by the magnates on the servants of the king. It is notable for the deep tendencies it revealed, within the apparently stabilized constitution, rather than for what was actually achieved. It shows that the deep constitutional problems which had confronted the nation under Edward II had in no way been settled. The compromise of 1327-30 had served an invaluable purpose in giving England a respite from the ceaseless struggles of the first quarter of the century, but it had, after all, only papered the cracks. The nation was still seeking a better share in the government. Lords and Commons took advantage of Edward's quarrel with John Stratford to demand full ministerial responsibility to parliament. They took an important step towards the impeachment of the next generation, by asking for judgment by the Lords on ministers and offenders against Magna Carta. And if they did not actually impose these concessions on the ruler by a reforming ordinance, such as had been prohibited in 1322, they used their right of petition and their control of the purse to exactly the same end. It is no wonder that Edward III in 1341 and 1343 rescinded the concessions which he had been compelled to make in 1341, earning unduly harsh censure from Bishop Stubbs. These demands of 1341 were a flagrant violation of the settlement of 1327-30. If conceded permanently, they would have undone much of the good which that settlement was achieving, and have plunged the country once more into deep political strife. The nation was not yet ready for the advances for which they stood. But they show beyond any question, how urgent the need for advance was becoming, and how Edward III's well-meant and statesmanlike efforts at stability and harmony, on the basis of the Edwardian traditions of government, were in reality little more than an effort to stem the tide of constitutional change.

Despite this, Edward achieved remarkable success in the years which followed 1343, and his achievement has received much less appreciation than it has deserved. His Crecy campaign, his Knights of the Round Table, his Order of the Garter, his Act of Treasons, his anti-papal legislation (reminiscent of the Statute of Carlisle of 1307), his adoption of English in the law courts, all form part of a pattern, at the heart of which lies the concept of the new national monarchy, expressing the unity of the king and the people against all outside influences and governments, a pattern which may fairly be said to anticipate, in many respects, that of Henry VIII. This was a great period of English history, as invaluable for the constitution perhaps, and serving something of the same purpose, as that of the Tudors. It could not stave off the deep political and constitutional crisis which followed, but it gave England fifty years of fair government and stability in which she prepared for further constitutional advance.

The first, tentative step, by Lords and Commons, breaking this period of conciliation and co-operation, was the petition against the king's clerical ministers in 1371. The decisive events came in the adoption of impeachment and appeal against the king's friends and servants, in 1376 to 1388. The causes of the failure of the compromise of Edward III's reign lay partly outside the English kingdom, in the deterioration of foreign affairs. But the most important cause o fall was the growing need for a re-definition of constitutional theory and practice, still anchored, by the Statute of York and the compromise of 1327, to traditions and precedents which went back, in their essence, to the personal monarchy of Henry II. A re-definition was at length made possible and, indeed, inevitable, by circumstances which had not existed at the beginning of the century; above all by changes and developments in the structure and practices of parliament. The rapid development of bureaucracy and the powers of the ruler had made the problem of maintaining the effective co-operation of the nation in government extremely urgent, and had made the question of ministerial responsibility the central problem of the constitution. Social and economic changes had increased the power, political experience, and constitutional understanding, of both Lords and Commons, and strengthened their determination to share in national affairs. Parliament itself had grown to be a great and venerable institution, which had made for itself new customs, and established new precedents. The practice of common petitions had been established and with it the initiative of Lords and Commons in legislation. The co-operation of Lords and Commons had become close and effective; and a point had been reached where the cohesion and experience of the latter could give rise to the office of speaker in 1376, the first recorded speaker in history, to give effect to the consensus of opinion, and make effective demands, outside written bills or petitions, on the king. The Lords too, had vastly enhanced their importance in parliament. On the one hand, they had begun to overshadow the council; on the other, they had established precedents, in 1330 and 1341, for giving judgment in parliament on others as well as their peers. In short, there had emerged, what was entirely lacking in the previous century, and even in the reign of the second Edward, the conditions necessary for the true concept of parliament as a court. It was this fact which enabled men to take another step forward in the practice of the constitution, as suggested below.

Before discussing this, a word may be said of other consequences, no less important for the constitution. The evolution of parliamentary democracy in England was to be achieved largely by a process which has, so far as I am aware, been little studied. This was the process by which men came to think of parliament, not in the medieval fashion, as the king discussing and acting with his Lords and Commons, but as the Lords and Commons acting together and separately from the monarch, claiming indeed to impose their will, in the name of England, on the king. The Lords and Commons claimed, in effect if not in theory, to arrogate part of the ancient functions of parliament to themselves. Exactly how this claim grew in England, I am uncertain. Unless I am mistaken, it had made no impression on the theory of the constitution as late as the time of Sir Thomas Smith. Yet it seems likely that its first beginnings must be sought long before the second half of the sixteenth century. It seems certain that the emergence of the concept of the High Court of parliament, in which the Lords were the judges and the Commons could be the accusers, and in which, on occasions, the functions of the king were relegated to the background, contributed powerfully towards this development. And this development was, in the last analysis, as important as the development of the High Court of parliament itself. Its first stages formed part of a great but obscure parliamentary revolution in the fourteenth century, which was as important as that which occurred in any other period, not excepting, perhaps, even that of the Stuarts. At the heart of this revolution, however, without which the rest would hardly have been possible, was the emergence of parliament as a court. Instead of the significant process being, as Pollard imagined, the disappearance of the judicial functions of the assembly in favour of the legislative, the process was almost exactly the reverse. It was this fact which made possible the political revolution of 1376 to 1388 which we may now turn to discuss.

To break the constitutional deadlock of the fourteenth century—for it was a deadlock, however much this fact was disguised by a willingness of both king and nation to compromise—men turned, in 1376 to 1388, from the older, legislative aspect of parliament, to the newer, judicial aspect. They did this in the famous processes of impeachment and appeal. These involved the idea of attacking the king's ministers in parliament, not by compelling the king to pass enactments exiling or punishing them, as the outcome of purely political opposition, but by compelling him to dismiss and punish them as a result of a formal judicial process in a court of law, in parliament that is, the High Court of the Realm. This put the attacks on the king's ministers on a new basis, the basis of law. The opposition could claim to act, even if its claim could be, and was, challenged by the king, within the bounds of the constitution even as defined by the Statute of York. The magnates no longer, in 1376, 1386, and 1388, claimed the privilege of legal revolt, though they did invoke the new precedent of deposition. They broke away from the feudal *Widerstandsrecht* as a basis of opposition, and moved forward to a basis of parliamentary action based, not on legislation, but on law. They sought their old objective of a share in the control over the king's ministers by new and more modern methods. For the first time in English history they made their opposition to the monarch turn, not on rights or custom or the unwritten

feudal compact, but on the law of the land administered in a court. It is true that the law they appealed to was the law and custom of parliament, and not the Common Law. Parliament and the Common Law had not yet made that close alliance which was the basis of the opposition to Charles I. But a long step forward had been taken. Impeachment was to be one of the actual weapons employed in opposition to the Stuarts, and the debates of 1386 to 1388 already have something of the flavour of the debates of 1620 to 1641.

Thus this great step forward in the middle years of Richard II's reign really did change the English constitution. It provided the greatest political and constitutional revolution of the fourteenth century. It was a new and formidable attempt by the nation to achieve a re-statement of the ancient traditions, so as to conform to the conditions of the early modern age. In this, it inevitably presented a sharp threat to the position and claims of the ruler, all the more challenging since these had themselves been steadily expanding, with the growth of the monarchy ever since the accession of Edward I. The new claims of the Lords and Commons to control the king's ministers by judicial processes were every bit as dangerous and unwelcome to the ruler as the earlier efforts to control the king's ministers by other means. At bottom, they were hardly more constitutional. It is true that they evaded the limitations imposed on baronial opposition by the Statute of York, but they could not evade a challenge to the central and essential position of the ruler, which the Statute of York had been intended to maintain. Even judicial processes in parliament needed the agreement and assent of the ruler, if it could be argued—very doubtfully—that they needed nothing more. The king was, as the *Modus Tenendi Parliamentum* said, the head, the beginning and the end of parliament. "In parliament," Sir William Jones said as late as the seventeenth century, "the king is the sole judge, the rest are but advisers." The lords propounded almost exactly the opposite of this in their famous declarations on the nature of the new High Court of Parliament in 1386 and 1388. They were, in effect, claiming the new judicial attributes of parliament as an instrument for the Lords and Commons rather than for the king. Richard II, who realized very clearly all that this new opposition portended for the monarch was called upon to defend his prerogatives in parliament as urgently as Edward II or Charles I. Hence the quarrel between him and the opposition became again, what it had been in the reign of Edward II, a trial of strength, the outcome of which was bound to have tragic consequences, either for the nation or for the crown.

In this struggle, the opposition at first had the advantage, as it had had against Edward; but it could no more maintain its full advantage than it had been able to in 1321, or, for that matter in 1259. Even now, in spite of impeachment and the new self-consciousness of Lords and Commons in parliament, the nation had no real alternative to the ideas of personal monarchy derived from medieval tradition, and no real machinery for enforcing and maintaining its claim to co-operate with the king in policy and administration. It needed two centuries more of political experience and progress before this could be achieved. The opposition to Richard II ended, as it had to end, like that to Edward II, in deposition; but meanwhile it made a notable contribution to the development of the medieval English state.

It settled again, and this time perhaps decisively, the old issue which had confronted England ever since the New Monarchy of Edward I, the issue of the ultimate nature of the monarchy, whether this was to be limited and based on true co-operation between ruler and subject, or whether it would, in England as in France, develop into absolute rule. This issue had, by the reign of Richard II, become insistent and supreme. The ancient, largely informal, co-operation of king and nation of the early Middle Ages—not without its own recurrent crises—had now been destroyed forever by the growth of national bureaucratic monarchy, of large-scale commerce, of "bastard" feudalism, of secularism, and the beginnings of the modern political outlook. The monarch was now strong enough to threaten the liberties of the nation as no early medieval ruler ever could. The Lords and Commons, operating through the changed institutions of parliament and council, were strong enough to endanger the prerogatives of the crown. At bottom, the interests of the king and the subjects were, as they always had been, largely identical; but the nation was confronted with a harder task of re-definition than had ever been encountered in medieval history before. It is no wonder that both Richard and his opponents, during the period 1386 to 1399, fell into the same blunders and excesses which had characterized the reign of Edward II; that the Lords Appellant crushed Richard by threats of deposition and had no mercy on his honest and faithful servants, or that Richard openly leaned, in his last years, towards the practice, if not the theory, of absolute rule. There seemed, as after 1322, to be no middle way, no line of compromise. It is not surprising that, in the end, men once more sought, or acquiesced in, the fatal expediency of deposition.

The precedent of 1327 was, accordingly, revived in 1399, but with a difference. There could, in 1399 as in 1326-7, be no deposition by parliament; but there could be a deposition by something resembling the new processes of law, carried out before the assembled estates. The difference, in this respect, between the deposition of Edward and that of Richard, is the measure of the fourteenth-century contribution to the concept of parliament as the High Court of the Realm. The difference between the part played by the assembled estates in 1327 and 1399, is the measure of the extent to which the Lords and Commons had begun to reach out, even in the fourteenth century, towards the concept of parliament as consisting of themselves claiming rights and privileges and powers which were independent of the king.

Of course the deposition of Richard II could not solve the constitutional problem any more than that of Edward II. We are now reasonably sure that it was not even a "parliamentary" deposition, and did not on that account begin a premature Lancastrian experiment in constitutional monarchy. Even though the estates of parliament played a large part in Richard II's deposition, his successor was no king by grace of parliament, but rather by the grace of God. He had to try to put together again the pieces of the monarchy which he had momentarily shattered. He was the successor to Edward I and Edward III. He was compelled to take over, substantially, the regality which Richard laid down. How he did this, is beyond the scope of this essay. One thing, however, is certain. His rule had to be a compromise similar to, though not the same as, that after 1326.

Henry IV had triumphed in 1399, but the monarchy he inherited had once more been defeated. Yet in victory or defeat, it was necessary for the constitution. It had to be reinstated. All that men could safely take away from it were Richard's excessive claims. What was left was adequate for all normal purposes of government; adequate, in spite of the Wars of the Roses, to provide England with Tudor popular despotism, and the Stuarts with a formidable case to support their bid for an absolutism based on conciliar government and prerogative courts. But it had nevertheless been decided by the struggles of the fourteenth century that it should be the ancestor of the limited monarchy of modern England. It should be, in essence, the same monarchy as that which Edward II had, in 1308, inherited from his father Edward I.

The fourteenth century had finally established that the Divine Right of Kings would never be acceptable to the English nation. It completed the work of the thirteenth century, the establishment of parliamentary government, by discussion and consent. It did far more than that. Just as it witnessed the beginnings of the modern monarchy, so it witnessed the beginnings of the modern opposition, an opposition bound and limited, as the king was, by subordination to the law. Just as it determined that the former was not to lead, in England, into absolutism so it determined that the latter should not lead to political anarchy. The one decision was made through a new and extreme form of political action—deposition; the other through an institutional innovation—the evolution of a new concept of parliament consisting of king Lords and Commons and constituting the High Court of the Realm. The judicial aspect of parliament was finally correlated with the political; both were conceived as an act of co-operation between the king and the *universitas regni,* completing the institutional framework of the early modern state. The claims of the opposition, as well as of the monarch, it was decided, should be subject to the over-riding concept of the supremacy of parliament including both, the repositary not only of politics and legislation, but also of justice and law. If this concept was very slow in maturing, at least the foundations had been laid for it in the doctrines and conflicts of the reign of Richard II.

In their struggles and blunders, both king and people in the fourteenth century were guilty of many excesses. But they did, nevertheless, fight for great principles. The issue was, in truth, far deeper than personalities. The outcome in the fourteenth century, as in the thirteenth, was equally important to the state. If the century still left many constitutional problems unanswered, so does every century. If it ended on a note of discord, and even of defeat, that was mainly because the speed of transition during the period outstripped even the fertility of medieval constitutional inventiveness, not because the medieval tradition had failed. The idea that this was a century of decadence and futility is incomprehensible to those who have studied its many-sided efforts at progress, in politics and religion, economics, scholarship, and the arts. Even the great Peasants' Revolt of 1381 was not a sign of decline and oppression; it was rather a sign that even the unenfranchised masses of England were catching a glimpse of the vision of political power—the nearest they were to get to it until the Reform Act of 1832. The age of Edward III and the English yeomen, of William of Ockham and Duns Scotus, of John

Thoresby, John Wyclif, William Langland, Geoffrey Chaucer, of peasant leaders mystics and Lollards, was surely not an age of stagnation and reaction. The truth of this century is that, in every aspect of its life, it was one of immense creativeness as well as of massive change. It is already regarded as important in history as the age of the beginnings of the modern national state in England, with its commerce, its bureaucracy, its middle class, its secularism, its gunpowder, and its royal navy. It should perhaps also be considered important as the period when the foundations of the modern institution were finally determined. These were to be, in line with the great medieval tradition, the co-operation, under the law, of monarch and nation in government, as expressed in an extended and strengthened central institution, of parliament. This was still, as later in the time of Sir Thomas Smith, "the most high and absolute power of the realm of England," as it always had been; but it was also now "the highest and most authenticall court of Englande, by vertue whereof all those things be established . . . and no other means accounted vailable to make any new forfaiture of life, member, or landes of any English man, where there was no lawe ordayned for it before," as it was to remain from that time until the present day.