

THE DEPOSITION OF KINGS

1. The slow changes in the English constitution of the 14th and 15th centuries:
 - a. the development of a bicameral Parliament
 - b. its gradual growth of involvement in taxation and legislation and the of the custom of consulting it on great matters of the realm.
 - c. the growth of the power and, at least to a certain extent, of the independence of the departments of state (the chancery and the exchequer) and of the courts
 - d. the attempt of the magnates to control the departments of state by controlling appointments, and of the king to control both the departments of state and the magnates through the wardrobe and chamber—and of the ultimate failure, at least in the 14th century, of both efforts
 - e. the rise in the middle of the 14th century of the importance of the council. In the Lancastrian period two lines of authority emerge, which did not conflict: one between the signet and the secretary, the other between the privy seal and the council, both leading ultimately to the great seal and the chancery.
 - f. the experimentation of Edward III with chamber finance and the return of chamber finance in the reign of Edward IV a hundred years later and the increasingly tight control that Henry VII had over finance.
2. The medieval depositions:
 - a. Edward II—1327.
 - b. Richard II—1399.
 - c. Henry VI—1460. (Not a deposition, an act of accord, though a deposition of sorts took place in March of 1461. Coronation of Edward IV in June.)
 - d. Edward V—1483.
3. Edward II—Two sets of writs summoned a Parliament in the king's name to meet at Westminster on 7 January 1327. The Parliament assembled but the king remained at Kenilworth in Warwickshire.
 - a. Was what assembled at Westminster a Parliament?
 - b. The chronicles tell us of an unsuccessful attempt to get Edward II to come to the Parliament.
 - c. They tell us of sermons, of charges against Edward, of an announcement that he had been deposed by the magnates, clergy and people, of a massive swearing of loyalty to Edward III.
 - d. They also tell of a commission of bishops, barons, clergy, knights and burgesses who went to Edward and secured his abdication in favor of his son.
 - e. Much depends on whether the events in the assembly, be it a Parliament or not, took place before or after the deputation to Kenilworth, or whether there were two deputations.
 - f. The earliest official version of what happened (*Mats.* p. VI–101):

“Whereas Sir Edward, recently king of England, of his free will and by the common counsel and assent of the prelates, earls, barons, and other nobles, and of the whole community of the realm, has abdicated the government of the realm; and whereas he has granted and wills that the government of the realm should devolve upon his eldest son and heir, Sir Edward, who should govern, reign and be crowned king; and whereas all the great men have performed their homage [to the said heir]: we proclaim and publish the peace of our said lord, Sir Edward, the son [of King Edward]; and on his part we command and firmly enjoin each and every one, on pain of disherision and loss of life or members, not to break the peace of our said lord the king; for he is and shall be ready to enforce right for each and every one of the said kingdom in all matters and against all persons, both great and small. So, if any one has some demand to make of another, let him make it by means of [legal] action, without resorting to force or violence.”

4. Richard II—From the Parliament Roll of 1399 (*Mats.*, pp. VI-119 to VI-121, with additions):

[1] At the parliament summoned and held at Westminster by the King Henry IV on Monday, the feast of St. Faith the virgin (which was the 6th day of October), in the first year of the reign of the same King Henry, the same King Henry was seated on his royal seat in the Great Hall of Westminster. In his presence and in the presence of the lords spiritual and temporal and the commons, who had come there by the authority and summons of the parliament, and of several other gentle and common folk who were there in great number, Thomas of Arundel, the archbishop of Canterbury, recalled how for the Tuesday just passed, the day after the feast of St. Michael, the feast of St. Jerome the doctor [September 30], the king, Richard the second after the conquest, had summoned his parliament to be held there, which summons was of no force or effect because of the acceptance of the renunciation made by the said King Richard and of the deposition of the same King Richard which was made on the Tuesday aforesaid, as appears more fully in the record and process of it made and enrolled in this roll of parliament.

- a. A committee representing the estates of the realm accepted Richard’s abdication in favor of Henry (*Mats.*, pp. VI-119 to VI-121).

[10] MEMORANDUM that on Monday on the feast of St. Michael the archangel [September 29] in the twenty-third year of the reign of King Richard II, the spiritual and temporal lords and other notable persons, to wit, [the names listed include an archbishop, a bishop, two earls, two barons, a prior, an abbot, two justices of the Common Bench, two doctors of canon law, two knights and two notaries public] were by advice and consent deputed for the below-described acts from a gathering at Westminster, in the usual place of council, of spiritual and temporal lords, judges and others skilled both in canon and civil law and in the laws of the kingdom. About the ninth striking of the clock they came into the presence of the said King Richard who was in the Tower of London.

[11] The earl of Northumberland, as spokesman for the group with him as set forth above, recited before the king how the king while at liberty at Conway in North Wales promised Sir Thomas, archbishop of Canterbury, and the said earl of Northumberland that he was willing to yield and renounce the crown of England and France and his royal majesty because of his inability and insufficiency which he had confessed there and that he thought that this should be arranged as to the best manner and form by which he could do this according to the best advice of experts. The king replied before the said lords and others mentioned above to this kindly and said that he wished to do effectively what he had promised before at Conway. Nevertheless, he wished to have a talk

with Henry, duke of Lancaster¹ and the above-said archbishop, his kinsmen,² before he fulfilled a promise of this kind. He asked also that a copy of the cession which was to make be given to him so that he might be able to deliberate on it in the meantime. When a copy had been given him, the aforesaid lords and others retired to their lodgings.

[12] Meanwhile on that day after lunch the king eagerly sought after the arrival of the aforesaid duke of Lancaster, and he waited for it some time. Finally, the same duke of Lancaster, the lords and persons named above, and even the said archbishop of Canterbury, came to the presence of the said king in the aforesaid Tower, [three additional named barons] many others also being present there at the time. And after the same king spoke with said duke and archbishop of Canterbury apart (and he seemed to those standing around to show a cheerful face while he was among them), then the said king, all those present having been summoned, said publicly before them that he was prepared to renounce and cede according to his promise made as set forth above. Then quickly — although he could have, as he was told by others, made the renunciation and cession, which had been reduced to a schedule of parchment, through someone else deputed as his spokesman so that he could avoid the labor of long reading — nonetheless, the same king willingly, it seems, and with a smiling countenance, holding the schedule in his hand, said he wished to read it himself, and he distinctly read it through. He absolved his liegemen, he renounced, he ceded, he swore, and he said and mentioned other things in the reading, and signed with his own hand, as is more fully contained in the said schedule, the contents of which follow in these words:

[The formal renunciation is three paragraphs long, and we haven't time to read it here. The wording is of some interest.]

[14] And immediately the king added these words to the aforesaid renunciation and cession, that if it were within his power he would that the said duke of Lancaster succeed him in the realm. But because this was not in his power, as he said, he asked the said archbishop of York and the bishop of Hereford, whom he previously made his agents, to declare and announce the cession and renunciation to all estates of the said kingdom, to announce to the people his intent and desire in this regard. And in sign of his intent and free will, he took the gold ring bearing his signet from his finger and placed it on the finger of the said duke, and requested, as he said, that this be made known to the estates of the realm. When this was done, everyone bid him farewell and left the Tower to return to his lodgings.

- b. The abdication was proclaimed to the assembly and was accepted by the estates and the people (pp. VI-121 to VI-122).

[15] On the morrow, that is Tuesday, the feast of St. Jerome [September 30], in the great hall at Westminster, the place for the holding of parliament, was adorned, and the archbishops of Canterbury and York and the duke of Lancaster and other dukes and lords both spiritual and temporal, whose are described above, and the people of the kingdom gathered in a great multitude because of the making of parliament [*propter factum parliamenti*], and the aforesaid duke of Lancaster occupied the place granted him by custom and his estate, and the royal chair solemnly prepared with drapes of gold was now empty, and there was no presiding officer. The archbishop of York publicly declared as the king had ordered, in his name and in that of the bishop of Hereford, that the king himself had made the cession and renunciation as described above and also described

¹ Henry Bolingbroke, son of John of Gaunt, future Henry IV. GS.

² Arundel's mother was Eleanor of Lancaster, great-granddaughter of Henry III.

the king's signing and the giving of the signet. He had another read the same cession and renunciation, first in Latin and then in English. Immediately after, it was asked of the estates and people then there present and first of the aforesaid archbishop of Canterbury, to whom by reason of the dignity and prerogative of his church, the metropolitan see of Canterbury, it belonged to speak first of the prelates and princes of the kingdom, if for their interest and the utility of the realm they wished to accept the renunciation and cession. The estates and the people because of the reasons specified by the king in his renunciation considered it most expedient, and each man singly and in common with the people unanimously and heartily admitted the renunciation and cession.

- c. Then charges were read against Richard, which were accepted by the estates and people followed by a formal sentence of deposition pronounced, again, by a representative body (pp. VI-122 to VI-124).

[16] After this admission was exposed to the public it was very expedient for the good of the kingdom and for removing all scruple and sinister suspicion that in addition to this cession and renunciation which was admitted as is laid out above that there be publicly read and declared to the people by means of articles reduced to writing the many crimes and defects of the king, concerning the evil rule of his kingdom, which he had frequently perpetrated, on account of which, as he declared in the cession that he made, he was worthy of deposition. The greatest part of the declaration was read in public, the content of all the articles is as follows:

[The articles begin with the coronation oath:]

[17] "Will you preserve for the church of God, the clergy and people whole peace and concord with God in accordance with your powers?" He replies, "I will preserve."

"Do you grant that just laws and customs will be kept and do you promise that they will be protected by you, and that what the people choose will be confirmed for the honor of God?" He replies, "I grant and promise." . . .

The Indictments Against the King About His Deposition

[18] The first indictment against the king: He is accused because of the evil of his reign, to wit, his giving the goods and possession of the crown to unworthy persons, his indiscreet squandering of other such goods, and for this reason his placing taxes and other grave and unsupportable burdens on the people without cause, and doing many other evil things. Furthermore, with his consent and mandate certain prelates and other temporal lords were elected and assigned by the entire parliament for the governance of the realm. These men at their own expense faithfully labored with all their might for the just governance of the realm. Nevertheless the king made a plot with his accomplices and proposed to accuse the said spiritual and temporal lords, who were occupied with the utility of the realm, of high treason. He violently compelled the justices of the realm to confirm his nefarious proposals by the fear of death and torture and thus he busied himself with the destruction of the said lords.

[There follow 32 more articles, some quite vague, some quite specific.]

And since it seemed to all these estates, thereupon interrogated singly and in common, that those statements of his crimes and defaults were notoriously sufficient for deposing the same king, considering also his own confession with regard to his incompetence and other matters contained in the said renunciation and cession which had been openly published, all the estates aforesaid unanimously agreed that the deposition of the said king was abundantly justified in order to secure the greater safety and tranquillity of the people and the good of the kingdom. For which reason the

aforesaid estates and commons, unanimously and with one mind, constituted and publicly deputized then and there certain commissioners, to wit, the bishop of St. Asaph,⁶⁰ the abbot of Glastonbury,⁶¹ the earl of Gloucester,⁶² the lord of Berkeley, Thomas Erpyngham and Thomas Grey, knights, and William Thirnyng, justice, to carry out this sentence of deposition and to depose the same King Richard of all dignity, majesty and kingly honor by the power, name, and authority of all the aforesaid estates, as was observed in similar cases according to the ancient custom of the realm. Without delay these commissioners assuming upon themselves the burden of this commission, and sitting before the said throne as a tribunal, having first had some deliberation on these matters (which had been reduced to writing) under the said power, name and authority, and through the bishop of St. Asaph, their co-commissioner and colleague, caused to be read and recited that same sentence by the wish and order of these commissioners in these words:

60 John Trevor, bishop of St. Asaph 1394–?1410.

61 John Chinnock, abbot of Glastonbury, 1374–1420. *Monasticon* i.7.

62 Thomas Despenser, earl of Gloucester, 1397–99.

“In the name of God: We, [same list as above] ..., as peers and nobles, spiritual and temporal, of the realm of England, representing the commons and estates of that kingdom, especially deputized for the things set out below, sitting as a tribunal, having heard the many perjuries and cruelty and other innumerable crimes of the said Richard surrounding his rule in the aforesaid kingdoms and dominion, committed and carried out during the time of his reign and which were plainly and publicly proposed, shown and recited to the said estates which were and are so public, notorious, manifest and talked about that they can be hidden by no subterfuge, and since the said Richard has earlier confessed, recalling, reckoning and proclaiming it true from his own knowledge that he was and is totally insufficient and useless for the rule and governance of the aforesaid kingdoms and lordship, and for tending to their affairs, that he is on account of his demerits not unworthy to be deposed, and since this confession has been published by Richard himself and by his own will and command before the said estates, brought to their attention, and exposed in public, and since we have had careful deliberation about these things and all the many things which have been done in this matter with the aforementioned estates and with ourselves, and since we have been given the power, name and authority in this matter to pronounce, determine and declare that this Richard abundantly and conservatively was and is useless, uncontrollable and totally incapable and unworthy for the rule and governance of the said kingdom and lordship, and rights and what pertains thereto. For these reasons and their import we pronounce determine and declare him justly to be deposed of all dignity and kingly honor, if any such dignity or honor yet abide in him; and with like assurance we depose this man through our conclusive sentence in each and every one of these words.

“We expressly forbid any of the lord archbishops, bishops and dukes, marquises, earls, barons, knights, vassals and subvassals, and other men, of the said kingdoms and lordship and of the other areas appertaining to the said kingdoms and lordships, who were his underlings and liegemen, henceforth from obeying in any way or looking to the above-said Richard as king or lord of the above-said kingdoms or lordship. In addition, however, the said estates, wishing that there be nothing lacking which should be or ought to be required concerning these things, having been asked about this one by one, they jointly and singly constituted those same persons previously named as commissioners as their agents for rescinding and renouncing to the said King Richard the homage and fealty previously done to him, and for making known, if necessary, all these matters such as touch on the deposition and renunciation.”

- d. Henry then challenged the realm of England, the first piece of English that we have put in the mouth of an English king in an official record. The claim was based on inheritance and conquest (p. VI-124).

[53] Speedily since it was apparent the kingdom of England and its appurtenances was vacant as a result of these happenings, the aforesaid Henry duke of Lancaster rising from his place and standing straight, so that he could be seen by the people and signing himself humbly with the sign of the cross on his face and on his heart, having first invoked the name of Christ, claimed the kingship of England as it was thus rendered vacant, along with the crown and all its members and appurtenances, under this form of words in his mother tongue:

“In the name of Fadir, Son, and Holy Gost, I, Henry of Lancaster, chalenge this rewme of Yngland and the corone with all the members and the appurtenances, als I that am disendit be right lyne of the blode comyng fro the gude lorde Kyng Henry Therde, and thorghe that ryght that God of his grace hath sent me, with the helpe of my kyn and of my frendes, to recover it—the whiche rewme was in poynt to be undone fro defaut of governance and undoyng of the gode lawes.”

- e. There followed the acceptance of Henry by the people and a sermon by the abp of Canterbury (p. VI-124):

[54] After which claim and proclamation the lords spiritual as well as temporal and all the estates there present, were individually and together asked, what they thought concerning this claim and declaration. These same estates, with the entire people, without any difficulty or delay unanimously agreed that the said duke should rule over them. And immediately, as the same king showed to the estates of the realm the signet of King Richard, handed over to him for a sign of his will, as it is said above, the aforesaid archbishop, taking hold of King Henry by his right hand, lead him to the said throne. After this, the king knelt before the throne and prayed for a little while; the archbishop of Canterbury, with the assistance of the said archbishop of York, placed the king and had him sit on the throne; the people stoutly applauded with great joy. Directly the said archbishop of Canterbury, quiet having been gained with great difficulty because of the joy of all those standing around, made a modest collection [of texts] and proceeded in these words:

5. The official theory of what happened is even more complex than the events.

- a. For removal of Richard from the throne we have a notion of voluntary abdication, the voluntariness of which is patently untrue, and deposition pronounced by the estates of the realm (the word parliament is never used in the official documents). This sentence is based on precedents from canon law and from the empire.

Chronicon Ade de Usk (E. Thompson, 2d ed., London, 1904), 29-30, 181: “[I]t was found by us that the perjuries, sacrileges, unnatural crimes, oppression of his subjects, reduction of his people to slavery, cowardice and weakness of rule—with all of which crimes King Richard was known to be tainted—were cause enough for setting him aside, in accordance with the chapter, *Ad apostolice dignitatis*, under the title: *De re judicata*, in the *Sextus*.” The reference is to Pope Innocent IV’s bull of deposition of Frederick II in the Council of Lyon (1245) [VI 2.14.2].

- b. Henry’s accession to the throne is never said to be by favor of parliament, but the other claims are confused: inheritance, conquest and divine favor are all mixed in, substitutes and poor ones at that for the fact that Henry was not the next in line, but the man who was next in line, the earl of March, was four years old at the time.

6. Another view of the deposition of Richard II

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Creton_Harley1319f18r_fleet.png

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Creton_Harley1319f37v_R2_Northumberland.png

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Creton_Harley1319f41v_NorthumberlandOath.png

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Creton_Harley1319f44r_NorthumberlandToChester.png

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Creton_Harley1319f50r_R2_Henry.png

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Creton_Harley1319f53v_R2delivered.png

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/slides/Creton_Harley1319f57r_H4acclaimed.png

7. In 1460, the king and the three estates assembled in parliament agreed to what was called an act of accord, by which Richard of York, the descendant of the bypassed heir of 1399 would succeed to the throne. They did this because the justices had refused to decide the issue (*Mats.*, pp. VI-126 to VI-129). (In fact, Edward IV, Richard of York's son, succeeded upon Richard of York's death on the field of battle later in 1460.)

8. Edward V

- a. Dr. Shaw preached a sermon on June 22, 1483, and the Londoners acclaimed Richard III king.
- b. Buckingham on June 25 led a commission to ask Richard to take possession of the crown.
- c. On June 26 Richard sat in the royal chair at Westminster.
- d. On July 6 he was crowned.
- e. The coronation oath takes the "have" out (English vs. French). The renunciation of homage to Edward V and the coronation ritual all recognize the role of the estates.
- f. The most extraordinary part of this extraordinary tale is the document in *Mats.* pp. VI-129 to VI-131, particularly, the last paragraph (p. VI-131):

"Albeit that the right, title, and estate which our sovereign lord the king Richard III has to and in the Crown ... of England .. is grounded upon the laws of God and of Nature, and also upon the ancient laws and laudable customs of this said realm ... yet nevertheless, for as much as it is considered that the greater part of the people of this land is not sufficiently learned in the abovesaid laws and customs, whereby the truth and right in this matter may very likely be hidden, and not clearly known to all the people, and thereupon put in doubt and question. And moreover, as the court of parliament is of such authority and the people of this land is of such nature and disposition, as experience teaches, that the manifestation and declaration of any truth and right made by the three estates of this realm assembled in parliament, and by authority of the same, makes, before all other things, most faith and certainty and, quieting men's minds, removes the occasion of all doubts and seditious

language. Therefore at the request and by assent of the three estates of this realm, that is to say, the lords spiritual and temporal, and commons of this land, assembled in this present parliament, by authority of the same, be it pronounced, decreed, and declared, that our sovereign lord the king was and is true and undoubted king of this realm of England ... as well by right of consanguinity and inheritance, as well by lawful election, consecration, and coronation. And moreover that at the request and by the assent and authority abovesaid, be it ordained, enacted, and established, that the said crown and royal dignity of this realm ... rest and abide in the person of our said sovereign lord the king, during his life, and after his decease in his heirs begotten of his body. And especially ... that the high and excellent prince Edward, son of our said sovereign lord the king, be heir apparent of the same sovereign lord the king, to succeed to him in the abovesaid crown and royal dignity.”

9. The Act of Succession of Henry VII (*Mats.*, p. VI-71):

“To the pleasure of Almighty God, the wealth, prosperity, and surety of this realm of England, to the singular comfort of all the king’s subjects of the same and in avoiding of all ambiguities and questions: be it ordained, established and enacted by authority of this present parliament that the inheritances of the crowns of the realms of England and of France, with all the pre-eminence and dignity royal to the same pertaining, and all other seignories to the king belonging beyond the sea, with the appurtenances thereto in any wise due or pertaining, be, rest, remain, and abide in the most royal person of our now sovereign lord, King Henry VII, and in the heirs of his body lawfully coming, perpetually with the grace of God so to endure, and in none other.”

10. What are the elements?

- a. For getting rid of a monarch, EII, RII, EV
 - i. abdication (that won’t work for EV, hence bastardization)
 - ii. judgment of deposition
 - iii. by whom? — 3 estates, Parliament (impeachment)
 - iv. on what grounds? *rex inutilis*, villainy (heresy, blasphemy, perjury and sacrilege), inheritance
- b. For putting in a new one, all five cases
 - i. God, victory, coronation
 - ii. inheritance
 - iii. acclamation by the people
 - iv. judgment by the 3 estates, Parliament