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# The Legality of Bastard Feudalism: The Statutes of Livery, 1390 to c.1520

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Thesis submitted in fulfilment in degree of Doctor of  
Philosophy (History).

December 2012

## Abstract

This thesis is concerned with the nature of bastard feudalism and attempts to regulate it during the late medieval and early Tudor period. Bastard feudalism enabled late medieval governments and nobles to obtain the service they required, whether administrative, military or legal. In return for service, a lord granted to his retainers fees and/or his livery. Retaining and distributing livery became associated with public order problems such as maintenance, riots, assaults and intimidation. To prevent such abuses parliament passed several acts which restricted the distribution of livery and, later of fees, to members of a lord's family, his permanent household servants and his legal counsel. The relationship between the statutes and the resultant cases, thus the impact of the legislation on social practice, and by extension the extent and gravity of these abuses have not previously been investigated. This thesis provides a comprehensive investigation of the relationship between law-making and law-enforcing in England during this period by identifying all the cases of illegal livery that can be identified from the contemporary records. Chapter One examines the current literature on bastard feudalism in order to locate the thesis in its wider historiographical context. Chapter Two explains the records of King's Bench, their strengths and weaknesses, and establishes a strategy for analysing them using modern database technology. It justifies the design of the database employed and suggests further applications beyond the scope of the thesis. Chapter Three discusses the 334 cases identified, establishes the chronological and geographical distribution of the cases and locates them in their wider local and national contexts. Chapter Four examines the statutes and how they evolved in response to differing pressures from the commons, the lords and the crown. Chapter Five examines the legal processes involved in enforcing the statutes, the outcomes of the cases and the effectiveness of law enforcement with regards to illegal livery. Chapter Six provides a prosopographical analysis of those charged with illegal livery, both giving and receiving. The final chapter summarises the main findings of the thesis, the significance of the various patterns uncovered, and explains the wider significance of the research for the broader topics of late medieval politics, society, and public order. This thesis is thus a forensic and comprehensive study of a discrete facet of bastard feudalism that contributes to modern understanding of working of late medieval society, crime, public order, politics and the legal system.

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## Acknowledgements

During the writing of this thesis I have accumulated various debts and have many people to thank. First and foremost, I would like to thank my supervisor, Professor Michael Hicks, who has been immensely generous with his time, expertise and advice during the past three years. It would be almost impossible to exaggerate the positive contribution he has made to my research. Dr Neil Murphy, as my second supervisor, has provided many useful comments, discussions and advice throughout. My upgrade from M.Phil to PhD was examined by Dr Deborah Youngs who offered a fresh perspective on my thesis that enabled me to refine and develop my research. I have found fifteenth century historians to be welcoming and collegiate and have benefited from attending, and presenting at, various seminar series and conferences, especially the Late Medieval Seminar at the Institute of Historical Research. Drs. Sean Cunningham, Hannes Kleineke, Simon Payling and James Ross have discussed with me numerous aspects of late medieval history and offered much challenging advice and suggestions. Scot Jenkins similarly deserves my thanks for the countless conversations on numerous aspects of medieval history that I have had with him over the years. I have also benefited from various conversations with Drs Paul Cavill, Linda Clark, Adam Chapman, Jessica Lutkin, Jonathan Mackman, Rebecca Oakes and Ms. Samantha Harper. On the whole, the staff in the History Department in Winchester having been encouraging during my studies. I also thank my fellow research students who have shared MC101 with me over the past few years, namely Alex Langlands, Kate Weikert, Courtney Konshuh and Alex Brondarbit, for many welcome distractions and discussions. I must also thank Mr Tom Olding's whose Latin classes have been both useful and informative and helped with several translations of original documents. Prior to coming to Winchester I studied at The University of Glasgow and it was there that my interest in medieval history was sparked and my approach shaped. In terms of finance, I would like to thank the Department of History at the University of Winchester for awarding me a three-year full-time studentship to undertake this thesis from 2009 to 2012 and to the Institute of Historical Research for awarding me with a bursary to conduct archival research in London. Lastly, I would like to thank my parents, Jim and Isabel, for all their moral and financial support during my studies.

## Declaration of Originality

I confirm that this Thesis is entirely my own work.

I confirm that where I have consulted the work of other this is always clearly attributed.

No portion of the work referred to in the Thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.

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## Abbreviations

*BIHR – Bulletin of the Institute of Historical Research*

BL – British Library, London

*CCR – Calendar of Close Rolls*

*CIPM – Calendar of Inquisitions Post Mortem*

*CPR – Calendar of Patent Rolls*

CRO – Cumbria Record Office, Carlisle

*EHD – English Historical Documents*

*EHR – English Historical Review*

*EcHR – Economic History Review*

HMC – Historic Manuscripts Commission

HRO – Hampshire Record Office, Winchester

*L&P – Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII, 1509-1547*

*ODNB – Oxford Dictionary of National Biography*

*P&P – Past and Present*

*PL – Paston Letters and Papers of the Fifteenth Century*

*PROME – Parliamentary Rolls of Medieval England*

*Stat. Realm – Statutes of the Realm*

*TRHS – Transactions of the Royal Historical Society*

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## Notes

Unless stated otherwise, all archival references are to The National Archives, Kew [formally the Public Records Office].

1 January has been taken as the start of a new year.

Where there are multiple places of publication, only the British place is noted.

All volume numbers for journals have been given in Arabic numerals to ensure consistency.

Where possible, articles and essays by Simon Adams, Ralph Griffiths, Michael Hicks, K.B. McFarlane, A.J. Pollard, Roger Virgoe and Simon Walker that are included in later collections of essays have been cited to the original article with all reprints noted in the bibliography.

## Chapter One: Introduction

This thesis is concerned with the nature of bastard feudalism and attempts to regulate it during the late medieval and early Tudor period. Bastard feudalism enabled late medieval governments and nobles to obtain the service they required, whether administrative, military or legal. In return for service, a lord granted to his retainers fees and/or his livery. Retaining and distributing livery became associated with public order problems such as maintenance, riots, assaults and intimidation. To prevent such abuses parliament passed several acts which restricted the distribution of livery and, later of fees, to members of a lord's family, his permanent household servants and his legal counsel. The relationship between parliamentary legislation regulating the distribution of livery and the subsequent enforcement of those acts has hitherto not been fully examined. This thesis provides a comprehensive investigation of the relationship between law-making and law-enforcing in England during this period by identifying all the cases of illegal livery that can be identified from the contemporary records. It considers the development of the statutes, their enforcement and the identity of those indicted. These findings have wider implications for current understanding of bastard feudalism, politics, law and society in late medieval England. Before doing so, this chapter examines the historiography of bastard feudalism and late medieval political society in order to locate this thesis within wider scholarship.

### **Bastard Feudalism: The Debate**

'Bastard feudalism' is a term that has been used by historians since the late nineteenth century to explain a set of relationships between lords and their retainers, with the performance of service being the key component to those relations. The phrase was coined by Charles Plummer, who regarded bastard feudalism as 'a sort of ignoble caricature of the feudal system' that was corrupt from the apex to the base.<sup>1</sup> It was characterised by men being retained by lords 'who wore his livery and fought his battles ... while he in turn maintained their quarrels and shielded their crimes from punishment'.<sup>2</sup> Plummer was adhering to the Whig interpretation of constitutional history which viewed history as the inevitable progress to what nineteenth-century

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<sup>1</sup> J. Fortescue, *Governance of England*, ed. C. Plummer (Oxford, 1885), 25.

<sup>2</sup> *Ibid*, 15-16.

Whig historians believed was their ideal democracy. Late medieval England was regarded as a regression from the earlier, and more stable, feudal age.<sup>3</sup>

The deterministic nature of constitutional history, whereby history inevitably progresses towards the ideal democracy, resulted in research focused upon institutions and their development. The aims and objectives of constitutional history were expressed with the greatest clarity by William Stubbs: ‘the impulse and character of constitutional progress have been the result of the struggles of what may be termed the constitutional opposition’.<sup>4</sup> Constitutional historians gave little consideration to the importance of individual interests in the progress of history. As a result, the Whig interpretation of political and constitutional history is now considered to be problematic due to its concentration on abstract concepts of constitutional progression and regression and its anachronistic use of modern standards to judge historical events. Victorian constitutional history is further outdated by the fact that they were examining from a nineteenth-century view of the world which itself has been subsequently superseded. This poses a problem for constitutional history because further ‘constitutional progression’ requires late medieval England to be reinterpreted in light of changes to modern society.

In the mid-twentieth century K.B. McFarlane redefined bastard feudalism, stripping away the term’s negative connotations and offering an alternative to constitutional history. For McFarlane, bastard feudalism was a system that had ‘the appearance of [feudalism]’, with its ‘quintessence’ being retaining, i.e. payment for service.<sup>5</sup> McFarlane was influenced by the work of Lewis Namier on eighteenth-century politics which focused on the interests of individuals and why men became MPs rather than constitutional or ideological matters.<sup>6</sup> Ronald Syme’s *The Roman Revolution* provided a similar model. Syme’s objectives were clearly stated in his preface: ‘the noble houses of Rome and the principal allies of the various political leaders enter into their own at last’.<sup>7</sup> McFarlane’s objective was to do the same for late medieval England by proposing an alternative to constitutional history. Focus shifted from abstract notions of constitutional progression and regression to the

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<sup>3</sup> See especially: William Stubbs, *Constitutional History of England in the Middle Ages*, 3 vols (Oxford, 1880) passim.

<sup>4</sup> Ibid, ii, 545.

<sup>5</sup> K.B. McFarlane, ‘Bastard Feudalism’, *BIHR*, 20 (1947 for 1945), 161-80.

<sup>6</sup> Lewis Namier, *The Structure of Politics at the Accession of George III*, 2<sup>nd</sup> edition (London, 1957) [1<sup>st</sup> edition - 1929].

<sup>7</sup> Ronald Syme, *The Roman Revolution* (Oxford, 1939), vii.

specific interests of lords and their retainers, emphasising the mutual advantage in social relationships. The indenture of retinue – which bound a retainer, in war and peace, to a lord – was argued to best exemplify this form of social relationship. Emphasis was therefore placed, by McFarlane, upon a detailed knowledge of contemporary records.<sup>8</sup>

Most historians of late medieval England have accepted the view that bastard feudalism was part of the normal fabric of society. Two exceptions to this are R.L. Storey and J.G. Bellamy who emphasised the more disruptive elements of bastard feudalism.<sup>9</sup> Peter Coss rejects McFarlane's argument that bastard feudalism was primarily about the replacement of tenurial bonds with the cash nexus. For Professor Coss, 'the invasion and subversion of law courts and offices of administration' was the predominant feature of bastard feudalism, not retaining.<sup>10</sup> These interpretations are, however, exceptions to the general trend. Most have highlighted the cohesive and legitimate nature of bastard feudal relations. G.A. Holmes stated that bastard feudalism 'was well-established both as a normal network of relationships and as a possible element of disorder'.<sup>11</sup> Michael Hicks defined bastard feudalism, for the purposes of his study, as 'the set of relationships with their social inferiors that provided the English aristocracy with the manpower they required'.<sup>12</sup> Service was at the centre of bastard feudalism, which had also been true of feudalism. In his discussion of feudal homage, Marc Bloch asked his readers to 'imagine two men face to face; *one wishing to serve the other wishing to be served*'.<sup>13</sup> The primary difference between feudalism and bastard feudalism was the form of reward received for performance of service: feudal relations used land as the reward; bastard feudalism used retaining fees and patronage as the reward. Land was always a finite resource and therefore other forms of reward became increasingly important as time

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<sup>8</sup> K.B. McFarlane, *The Nobility of Late Medieval England: The Ford Lectures of 1953 and Related Studies* (Oxford, 1973). See essays in K.B. McFarlane, *England in the Fifteenth Century: Collected Essays* (London, 1981).

<sup>9</sup> R.L. Storey, *The End of the House of Lancaster*, 2<sup>nd</sup> edition (Gloucester, 1986) [1<sup>st</sup> edition – London, 1966]; J.G. Bellamy, *Crime and Public Order in England in the Later Middle Ages*, (London, 1973); J.G. Bellamy, *Bastard Feudalism and the Law* (London, 1989); J.G. Bellamy, 'Justice under Yorkist Kings', *The American Journal of Legal History*, 9 (1965), 135-55.

<sup>10</sup> P.R. Coss, 'Bastard Feudalism Revised: Reply', *P&P*, 131 (1991), 193. This article forms part of a wider debate in *Past and Present* between Peter Coss, David Carpenter and David Crouch on the origins of bastard feudalism. These articles are discussed below.

<sup>11</sup> G.A. Holmes, *The Estates of The Higher Nobility in Fourteenth-Century England* (Cambridge, 1957), 83.

<sup>12</sup> Michael Hicks, *Bastard Feudalism* (London and New York, 1995), 1.

<sup>13</sup> Marc Bloch, *Feudal Society Volume 1: The Growth of Ties of Dependence*, trans. L.A. Manyon (London, 1962), 145.

progressed. Bastard feudalism was not the debasement and regression from an ideal 'feudal' world, but was a legitimate form of social relationship with the potential to create stability.

Since McFarlane, research into bastard feudal society has developed in several ways. A greater understanding about local politics and society has emerged from county-based studies. Christine Carpenter has, however, been critical of the static nature of these developments, stating that 'McFarlane's legacy has been a barrage of detailed studies of nobles and gentry', which has enhanced present knowledge and understanding, but has failed to produce a new synthesis. This lack of a new synthesis led Professor Carpenter to argue for a new form of constitutional history that is 'conceived in terms of the world that our late medieval protagonists knew and grappled with'.<sup>14</sup> Edward Powell had previously called for a new constitutional history arguing that the history of institutions 'represents alternative structures of organisation regulating the distribution of power and authority'.<sup>15</sup> For Mark Ormrod, the new constitutional history has shown historians that political history cannot be understood 'without appreciating the ideas, values, principles and traditions that underpinned it'.<sup>16</sup> Political principals and ideology could clearly influence someone's actions as much as personal interests. At the same time others began examining noble households, concepts of service and the role of the gentry in local law and governance,<sup>17</sup> which has become a central focus of recent research.<sup>18</sup>

By the late fourteenth century parliament began to regulate the system of retaining and livery distribution since the unregulated system was deemed

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<sup>14</sup> Christine Carpenter, 'Political and Constitutional History: Before and After McFarlane', in *The McFarlane Legacy: Studies in Late Medieval Politics and Society*, ed. R.H. Britnell and A.J. Pollard (Stroud, 1995), 190, 198. See also: Christine Carpenter, *Locality and Polity: A Study of Warwickshire Landed Society, 1401-1499* (Cambridge, 1992), 628-47, especially 642.

<sup>15</sup> Edward Powell, 'After 'After McFarlane': the Poverty of Patronage and the Case for Constitutional History', in *Trade, Devotion and Governance: Papers in Later Medieval History*, ed. Dorothy J. Clayton, Richard G. Davies and Peter McNiven (Stroud, 1994), 13. See also: Edward Powell, *Kingship, Law and Society: Criminal Justice in the Reign of Henry V* (Oxford, 1989), 1-22; John Watts, *Henry VI and the Politics of Kingship* (Cambridge, 1996), 1-81.

<sup>16</sup> W. Mark Ormrod, 'The Rebellion of Archbishop Scrope and the Tradition of Opposition to Royal Taxation', in *The Reign of Henry IV: Rebellion and Survival, 1403-13*, eds. Gwilym Dodd and Douglas Biggs (Woodbridge, 2008), 174.

<sup>17</sup> Kate Mertes, *The English Noble Household 1250-1600: Good Governance and Politic Rule* (Oxford, 1988); Rosemary Horrox, *Richard III: A Study of Service* (Cambridge, 1989).

<sup>18</sup> C.M. Woolgar, *The Great Household in Late Medieval England* (London, 1999); Mark Arvanigian, 'Landed society and the governance of the north in the later middle ages: the case of Sir Ralph Eure', *Medieval Prosopography*, 22 (2001), 65-87; David Grummitt, 'Public Service, Private Interest and Patronage in the Fifteenth-Century Exchequer', in *Fifteenth Century III: Authority and Subversion*, ed. Linda Clark (Woodbridge, 2003), 149-62. See also essays in: *Concepts and Patterns of Service in the later Middle Ages*, eds. Anne Curry and Elizabeth Matthew (Woodbridge, 2000).

unacceptable. Bastard feudalism was never outlawed, but was instead regulated by various acts of parliament known as the statutes of livery. This thesis examines the statutes of livery, how they developed, when they were enforced, why they were enforced, the identity of those indicted and the overall effectiveness of the legal system.

### **County and Gentry Studies**

Studies of late medieval society over the past few decades have taken as their focus the individuals and groups that were active participants in bastard feudal society for whom records have survived. These have taken three forms: studies of counties and regions; biographies of individuals; and studies of specific families over a several generations. Initially, research was focused on McFarlane's model of indentured retainers and relations between lords and gentry which led to numerous studies that examined noble estates and their retainers.<sup>19</sup> These studies have led to an extensive, and detailed, knowledge of the higher nobility, their interests and their actions. With a few notable exceptions magnates and their retainers are not prominent in this study. Rather, the gentry and their retaining practices form the core of this study.

The gentry have been the focus of various local studies of late medieval England, all of which address themes essential for an understanding of bastard feudalism: landownership, office-holding, social relations and lawlessness. There is, however, no universally accepted definition of the gentry.<sup>20</sup> Stubbs regarded the gentry as all those between the yeomanry and the peerage.<sup>21</sup> Christopher Dyer emphasised the importance of landed income as the gentry's 'defining feature',<sup>22</sup> although this should not imply a purely rural gentry as Rosemary Horrox's discussion of the urban gentry indicates that there was no absolute demarcation between rural

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<sup>19</sup> J.M.W. Bean, *The Estates of the Percy Family, 1416-1537* (Oxford, 1958); J.M.W. Bean, *From Lord to Patron: Lordship in late Medieval England* (Manchester, 1989); Michael Hicks, *False, fleeting, perjur'd Clarence: George, Duke of Clarence 1449-78*, revised edition (Gloucester, 1992); P.A. Johnson, *Duke Richard of York, 1411-1460* (Oxford, 1988); James Ross, *John de Vere, Thirteenth Earl of Oxford (1442-1513): 'The Foremost Man of the Kingdom'* (Woodbridge, 2011); Carole Rawcliff, *The Staffords: earls of Stafford and dukes of Buckingham* (Cambridge, 1978); Christine Carpenter, 'The Beauchamp Affinity: A Study of Bastard Feudalism at Work', *EHR*, 95 (1980), 205-37; M. Cherry, 'The Courtenay Earls of Devon: The Formation and Disintegration of a Late Medieval Aristocratic Affinity', *Southern History*, 1 (1979), 71-97; Holmes, *The Estates of The Higher Nobility in Fourteenth-Century England*.

<sup>20</sup> Malcolm Mercer, *The Medieval Gentry: Power, Leadership and Choice during the Wars of the Roses* (London, 2010), 7-11.

<sup>21</sup> Stubbs, *Constitutional History*, iii, 22.

<sup>22</sup> Christopher Dyer, *Making a Living in the Middle Ages: The People of Medieval Britain, 850-1520* (London, 2002), 341.

and urban elites.<sup>23</sup> Debates regarding the line of the demarcation between the gentry and the higher nobility are, to some extent, artificial constructs, albeit ones understood by contemporaries. Greater knights had incomes of over £100 per annum; lesser knights £40-100; esquires £20-39; gentlemen £10-19; and yeomen £5-9.<sup>24</sup> An esquire with an income of £20 per annum had more in common, economically, with a gentleman on £19 per annum than with a fellow esquire on £39 per annum. This argument equally applies to the peasantry who, like the nobility, were not a homogenous group but were instead ‘a markedly stratified class’.<sup>25</sup> Within the peasantry there were gradations pertaining to the socio-economic position of an individual and political interests. Recent studies have noted a degree of cooperation between the upper strands of the peasantry and the lesser gentry. Matthew Holford noted that the upper yeomanry were part of the ‘middling sort’ who served as jurors for inquisitions *post mortem*.<sup>26</sup> They were also the 40s freeholders that were electors in shire elections<sup>27</sup> and were members of Sir Thomas Lovell’s Oxfordshire affinity who ‘were bound into local circles of foefees, witnesses and executors’ along with many members of the gentry.<sup>28</sup> Socio-economic realities did not fit neatly into rigid gradations employed by modern historians and contemporaries. However, the 1413 statute of additions stated that all of those named in official documents were to be identified by their rank or occupation.<sup>29</sup> Social status was an important feature of late medieval society and concepts of distinctive groups were understood by contemporaries. For the purpose of this study, the gentry are those defined in the records as knights, esquires or gentlemen, while the peerage refers to the sixty to seventy families that received parliamentary summons by hereditary right.<sup>30</sup>

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<sup>23</sup> Rosemary Horrox, ‘The Urban Gentry in the Fifteenth Century’, in *Towns and Townspeople in the Fifteenth Century*, ed. John A.F. Thomson (Gloucester, 1988), 22-44.

<sup>24</sup> Gerald Harriss, *Shaping the Nation: England, 1360-1461* (Oxford, 2005), 138; Payling, *Political Society*, 2-3.

<sup>25</sup> Rodney Hilton, ‘Reasons for Inequality Among Medieval Peasants’, *Journal of Peasant Studies*, 5 (1978), 271.

<sup>26</sup> Matthew Holford, ‘“Thrifty Men of the County”? The Jurors and Their Role’, in *The Fifteenth Century Inquisitions Post Mortem: A Companion*, ed. Michael Hicks (Woodbridge, 2012), 214-18.

<sup>27</sup> *PROME*, x, 405-6; Simon Payling, ‘The Widening Franchise – Parliamentary Elections in Lancastrian Nottinghamshire’, in *England in the Fifteenth Century*, ed. Daniel Williams, (Woodbridge, 1987), 174-5.

<sup>28</sup> Steven Gunn, ‘Sir Thomas Lovell (c. 1449-1524): A New Man for a New Monarchy?’, in *The End of the Middle Ages? England in the Fifteenth and Sixteenth Centuries*, ed. John L. Watts (Stroud, 1998), 145.

<sup>29</sup> *PROME*, xiv, 324-5

<sup>30</sup> Christopher Given-Wilson, *The English Nobility in the Late Middle Ages* (London, 1987), 55.

The knights, esquires and gentlemen who formed the late medieval gentry have been the primary focus of many of the local studies of late medieval England. Due to numerous discrepancies, however, it is not possible to simply compare the findings of the county studies. First, there is a wide variation in the chronological scope of the studies. Nigel Saul concentrates on the fourteenth century,<sup>31</sup> while Christine Carpenter and Susan M Wright focus on the fifteenth century,<sup>32</sup> and A.J Pollard discusses the second half of the fifteenth century.<sup>33</sup> Second, variations in characteristics and surviving records between counties has meant that the specific focus of each study is different: Professor Carpenter and Dr Wright consider all the gentry families for their respective counties; Simon Payling's study of Nottinghamshire is concentrated on 'the dozen or so wealthiest county families'; Professor Saul focused on three families in Sussex.<sup>34</sup> Toby Purser covered over two centuries for Hampshire, because shorter studies 'may have over-emphasised short-term changes or fluctuations at the expense of long-term continuity'.<sup>35</sup> Michael Bennett attempted to give a more rounded view of Cheshire and Lancashire in the late fourteenth and early fifteenth century by discussing the peasantry, the church and other communities as well as the gentry.<sup>36</sup> No two county studies are directly comparable since all counties had their own peculiarities.

One area of uncharacteristic agreement, however, has been the importance of land, which was fundamental to wealth, status and power in medieval society. From the 1436 tax returns J.P. Cooper estimated that around 20% of the cultivated land in England was in the possession of the great landowners, who were worth over £100 per annum. Those worth between £5-100 owned approximately 25% of the land and landowners earning under £5 owned around 20%. The remaining land was owned by

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<sup>31</sup> Nigel Saul, *Knights and Esquires: The Gloucestershire Gentry in the Fourteenth Century* (Oxford, 1981); Nigel Saul, *Scenes From Provincial Life: Knightly Families in Sussex, 1280-1400* (Oxford, 1986).

<sup>32</sup> Christine Carpenter, *Locality and Polity*; Susan M. Wright, *The Derbyshire Gentry in the Fifteenth Century* (Derbyshire Record Society, viii, 1983).

<sup>33</sup> A.J. Pollard, *North-Eastern England during the Wars of the Roses: Lay Society, War and Politics, 1450-1500* (Oxford, 1990).

<sup>34</sup> Simon Payling, *Political Society in Lancastrian England: The Greater Gentry of Nottingham* (Oxford, 1991). See previous three references for other studies.

<sup>35</sup> Toby Scott Purser, 'The County Community of Hampshire, c.1300-c.1530, With Special Reference to the Knights and Esquires' (unpublished PhD thesis, University of Winchester (Southampton), 2001), 3.

<sup>36</sup> Michael J. Bennett, *Community, Class and Careerism: Cheshire and Lancashire Society in the Age of Sir Gawain and the Green Knight* (Cambridge, 1983).

the church (20-25%) and the crown (5%).<sup>37</sup> This estimate is for the whole of England, excluding the Marches, and does not indicate the differences in the structure of landownership between counties. Furthermore the number of men in each of the landowning categories decreases as the individual wealth increases. Crown lands were owned by one man, the king, while the number of gentry is estimated to have been between 6,000 and 9,000, representing approximately 2% of the population.<sup>38</sup> Individually, the more elevated a position in society someone enjoyed, the more land they would hold, but collectively each social stratum, except the king, held approximately the same amount of land.

In addition to variations pertaining to social status, the pattern of landownership differed between counties. Using the *Nomina Villarum* returns (1316), Purser calculated that in Somerset 77% of vills belonged to the gentry while 20% belonged to the church, 2% to the crown and 1% to the greater magnates. In contrast, in Kent the crown owned 14% of the vills, while the church owned 46%, the magnates 7% and the gentry only 33%. Sussex similarly had a different composition with the magnates owning 25% of the vills with the gentry owning 45%, the church 26% and the crown 4%.<sup>39</sup> Although this is the only study to date that has taken into account land held by the church, a focus on secular land holding in other counties has contributed to debates on local political power. Martin Cherry argued that, in Devon, Edward Courtney, earl of Devon, had a large landed income which made him the most significant political figure in Devon.<sup>40</sup> In contrast, counties such as Nottinghamshire, Leicestershire, Cheshire and Lancaster had few resident magnates with landed income, leading historians of these counties to regard the gentry in them as being more independent.<sup>41</sup> Different counties could therefore have radically different structures of landholding which, in turn, influenced the way in which power was exercised in a community.

County studies have also examined how royal and noble power and authority was exercised at a local level. Professor Pollard noted that although local government

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<sup>37</sup> J.P. Cooper, 'The Social Distribution of Land and Men in England, 1436-1700', *EcHR*, 2<sup>nd</sup> series, 20 (1967), 423.

<sup>38</sup> T.B. Pugh, 'The Magnates, Knights and Gentry', in *Fifteenth Century England*, S.B. Chrimes, C.D. Ross, and R.A. Griffiths (Manchester, 1972), 97.

<sup>39</sup> Purser, 'The County Community of Hampshire', 47.

<sup>40</sup> Cherry, 'The Courtenay Earls of Devon', 75-6

<sup>41</sup> Eric Acheson, *A Gentry Community: Leicestershire in the Fifteenth Century, c.1422-c.1485* (Cambridge, 1992), 28; Bennett, *Class, Community and Careerism*, 76; Payling, *Political Society*, 18.

was theoretically the king's, it was, in reality, dominated by the local landed elites.<sup>42</sup> Bastard feudalism, according to Saul, was able to encroach upon the royal authority in the localities.<sup>43</sup> These encroachments are most evident on the rare occasions in which local lords influenced the appointments to offices. While kings needed local lords to help control the localities, those lords in turn needed the support of local gentry. For Nottinghamshire, Dr Payling argued that the low level of baronial and landholding meant that peers needed the support of the wealthiest and more prominent gentry in order to control the locality.<sup>44</sup> Devon, in contrast, had a great lay landowner in Edward Courtney around whom, Dr Cherry argued, political society in that region was centred.<sup>45</sup> The differences between Devon and Nottinghamshire further illustrate the influence of landownership in each county. These differences indicate that central government needed to work within local power structures in order to effectively govern a locality.

While some studies have taken groups of gentry as their focus, there have been several biographical studies of members of the gentry. Colin Richmond's examination of John Hopton, his family and his social circle is a revealing, yet in some ways inconsistent, examination of the fifteenth-century gentry. Richmond argues that Hopton was apolitical and lacked ambition for himself, mainly due to the fact he inherited vast areas of land at a young age, although he was very ambitious for his sons.<sup>46</sup> The apparent lack of political activity did not mean that Hopton was an 'ill-informed out-of-touch bumpkin.' Instead, Hopton 'was wealthy, enterprising, sensible and responsible'.<sup>47</sup> The inconsistencies do not lie in any assumption that someone lacking in political activity must inevitably be an 'ill-informed out-of-touch bumpkin' but in the fact that he was on the periphery of a group of Suffolk gentlemen who were associates and probably friends of the duke of Suffolk.<sup>48</sup> This indicates at least a loose connection with a major political figure.

In contrast, the Cheshire gentleman Humphrey Newton who, Deborah Youngs notes 'was not famous or infamous in his time', was a member of the gentry who did not engage in national politics. Youngs characterised Newton as a typical member of

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<sup>42</sup> Pollard, *North-Eastern England*, 144.

<sup>43</sup> Saul, *Knights and Esquires*, 106.

<sup>44</sup> Payling, *Political Society*, 104-8.

<sup>45</sup> Cherry, 'The Courtenay Earls of Devon', 76.

<sup>46</sup> Colin Richmond, *John Hopton: A Fifteenth Century Suffolk Gentleman* (Cambridge, 1981).

<sup>47</sup> *Ibid*, 258-9.

<sup>48</sup> *Ibid*, 110.

the lesser gentry who was ‘neither singled out as unusual in his own time, nor someone whom later history books consider marginalised’.<sup>49</sup> The respective studies of Hopton and Newton indicate a wide discrepancy in the circumstances and biographies of the gentry. First, in the wealth of the gentry: Hopton’s inherited lands gave him annual income of at least £300 per annum,<sup>50</sup> while Newton inherited land worth £11 per annum.<sup>51</sup> As a result, Richmond argued, Hopton did not make any further serious attempts to increase his income. For example, neither of Hopton’s two marriages gave him any additional lands to exploit.<sup>52</sup> Hopton’s illegitimacy is the likely reason for the supposed lack of ambition since that prevented him from inheriting from anyone else and the fact that he was even able to inherit at all was unusual. In contrast to Hopton, Newton did not have the legal barrier of illegitimacy preventing him inheriting more. Youngs highlighted Newton’s attempts to expand his wealth via marriage, stating that ‘virtually all Humphrey’s inheritance had come *via* this route’.<sup>53</sup> Newton also used his legal knowledge to gain numerous small fees for drafting documents and holding various stewardships.<sup>54</sup>

There was also a clear difference in the extent of their activity in local government. Richmond marginalises Hopton’s political activity, but it is important to recognise that Hopton was in a group closely associated with the Duke of Suffolk and held offices such as sheriff (twice) and commissions of the peace.<sup>55</sup> In contrast, Newton did not hold any official positions in local government, primarily due to his low level of income which meant that he did not qualify for many governmental offices. Rather than service in local government and administration, Newton’s main service was to lordly households and estates. Clearly, not all members of the gentry were engaged in a continual programme of ambitious social advancement. Philip Morgan argued that a surviving indenture of retainer from the Mainwaring family in Cheshire attested ‘eloquently of a landscape of narrow horizons with which the

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<sup>49</sup> Deborah Youngs, *Humphrey Newton (1466-1536): An Early Tudor Gentleman* (Woodbridge, 2008), 2.

<sup>50</sup> Richmond, *John Hopton*, 95.

<sup>51</sup> Youngs, *Humphrey Newton*, 69.

<sup>52</sup> Richmond, *John Hopton*, 28.

<sup>53</sup> Youngs, *Humphrey Newton*, 28.

<sup>54</sup> *Ibid*, 41-68.

<sup>55</sup> Richmond, *John Hopton*, 103-10.

affinity sought influence'.<sup>56</sup> The gentry were not a homogenous group, but instead varied widely in terms of wealth, status and interests.

Furthermore, the political aspirations, activities and ideologies of the gentry, and the peasantry, were not uniform. The Wars of the Roses have been taken as an indicator of the allegiances and political activity of the gentry. Malcolm Mercer argued that the political uncertainty that was prevalent during the Wars of the Roses forced the gentry to become 'more circumspect in their decision making', and that many were therefore reluctant to become strongly identified with any specific faction.<sup>57</sup> Towns were likewise circumspect in their involvement in magnate conflicts.<sup>58</sup> The political agnosticism of the most of the gentry was most evident at the Battle of Bosworth because Richard III had to rely primarily on the retainers he had before his usurpation when he was duke of Gloucester,<sup>59</sup> while Henry Tudor relied on troops supplied to him by Charles VIII of France.<sup>60</sup> Local considerations and personal ambition, however, sometimes led members of the gentry to engaging in political activity of the nobility, although current research suggests that they done this reluctantly. Pollard has described how, in Yorkshire, Richard Clervaux of Croft stayed out of the civil disturbances between 1453 and 1455. He finally had to declare his political allegiance with the Pudsay and Westmoreland connection only because local feuds began to be 'inextricably bound up with the dynastic conflict between Lancaster and York'.<sup>61</sup> An analogy can be drawn with J.L. Bolton's argument that financial interests, namely Henry VI's commercial policy, was what led the leading citizens of London into active Yorkist support in 1460-1.<sup>62</sup> Studies of the late medieval gentry therefore suggest that there was at least a desire by many members of the gentry to remain apolitical, unless local considerations forced them into becoming politically active.

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<sup>56</sup> Philip Morgan, 'Gentry Households in Fifteenth Century Cheshire', *Bulletin of the John Rylands Library*, 79 (1997) 25.

<sup>57</sup> Malcolm Mercer, 'Driven to rebellion? Sir John Lewknor, dynastic loyalty and debt', *Sussex Archaeological Collections*, 137 (1999), 154. See also: Malcolm Mercer, 'The Strength of Lancastrian Loyalism during the Readeption: Gentry Participation at the Battle of Tewkesbury', *Journal of Medieval Military History*, 5 (2007), 84-98; Mercer, *The Medieval Gentry*, 25-34.

<sup>58</sup> For a full summary of the historiography on the politics of town-crown relations in late medieval England see especially: Christian Liddy, *War, Politics and Finance in Late Medieval English Towns: Bristol, York and the Crown, 1350-1400* (Woodbridge, 2005), 1-18.

<sup>59</sup> Horrox, *Richard III: A Study of Service*, 317.

<sup>60</sup> T.B. Pugh, 'Henry VII and the English Nobility', in *The Tudor Nobility*, ed. G.W Bernard (Manchester, 1992), 50-1.

<sup>61</sup> A.J. Pollard, 'Richard Clervaux of Croft: A North Riding Squire in the Fifteenth Century', *Yorkshire Archaeological Journal*, 6 (1978), 18.

<sup>62</sup> J.L. Bolton, 'The City and the Crown, 1456-61', *London Journal*, 12 (1986), 11-24.

It should not be assumed that the gentry and those below them were only able to express politically aspirations by aligning themselves with opposing sides in aristocratic conflict. Richmond's examination of the personnel involved in Fauconberg's uprising in Kent in 1471 has shown that the townsmen, yeomen and gentry 'made a political choice' when they joined the revolt. From over two-hundred citizens of Canterbury that can be identified as being involved in the revolt, over one hundred acted freely and without duress. Clearly the population of Canterbury were politically conscious and had independent political objectives which were, in this instance, achieved by allying with the Bastard of Fauconberg in his rising against Edward IV.<sup>63</sup> Subsequent studies of juries and the operations of the law at a local level by P.L Larson and R.B Goheen have shown that both the gentry and the peasantry possessed and expressed their own political ideology and expectations.<sup>64</sup> County elections similarly demonstrate the fact that the upper peasantry were involved in national political life because 'in medieval terms, the electorate remained fairly comprehensive, and was certainly not thereby confined to the gentry class'.<sup>65</sup> The nobility were not the only members of late medieval society that were politically aware. Retainers exercised a political choice when accepting livery or a retaining fee.

This debate overlaps with the debate regarding the extent of bastard feudalism and connections in late medieval England. Saul has claimed that it was possible for certain members of the gentry to live 'outside the embrace of bastard feudalism'.<sup>66</sup> For Nottinghamshire, Payling has argued that, due to the distribution of land, the gentry were able to be more assertive and obtain 'a certain degree of political independence from their magnate superiors'.<sup>67</sup> Carpenter has rejected the notion of an 'independent gentry' since claims of that nature are only sustainable from negative evidence. Once evidence is found to linking a member of the gentry to a great lord they are no longer 'independent gentry'. Two of Saul's examples of 'independent gentry' have subsequently been found to have been connected to a lord.<sup>68</sup> Gentry independence is also evident in elections to parliament. Linda Clark found that only

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<sup>63</sup> C.F. Richmond, 'Fauconberg's Kentish Rising of May 1471', *EHR*, 85 (1970), 673-92, quotations on 685 and 692.

<sup>64</sup> R.B. Goheen, 'Peasant Politics? Village Community and the Crown in Fifteenth-Century England', *American Historical Review*, 96 (1991), 46-62; Peter L. Larson, 'Village voice or village oligarchy? The jurors of the Durham halmote court, 1349 to 1424', *Law and History Review*, 28 (2010), 675-709.

<sup>65</sup> Payling, 'The Widening Franchise', 174.

<sup>66</sup> Saul, *Knights and Esquires*, 260-1.

<sup>67</sup> Payling, *Political Society*, 18.

<sup>68</sup> Christine Carpenter, 'Law Justice and Landowners', *Law and History Review*, 1 (1983), 206 fn. 7.

456 out of 3,173 MPs between 1386 and 1421 could attribute their election to magnates.<sup>69</sup> Connection to a great lord was not a prerequisite for career advancement and financial gain and therefore the gentry did not always need to be members of a magnate affinity. As Richmond has noted, the late medieval gentry ‘were not Pavlovian dogs, jumping at the chance of a fee, a rent charge, a stewardship here, a parkership there’.<sup>70</sup>

In contrast, Carpenter emphasised the interconnectivity of social networks, which in turn meant that everyone was in some way connected to a lord.<sup>71</sup> Although an ‘independent gentry’ only exist until a link can be proven to a lord, it does not follow that, since no links have thus far been identified, there were necessarily links between ‘independent gentry’ and higher nobles that have been lost. A section of the gentry free of magnate control seems to have existed. However, in cases in which no upward contacts can be found (i.e. gentry to the nobility) the gentry still acted as lords to those lower down the social scale. Having servants was integral to being a member of the nobility at any level in late medieval England. Peter Fleming has highlighted the fact that household servants of the gentry were ‘in receipt of some combination of board and lodging, wages, fees, or livery’.<sup>72</sup> Rees Davies argued that it would be ‘a distortion’ to interpret the actions of magnate retainers simply in terms of their vertical relations to their lord since many of them were men of prominent standing in their own right.<sup>73</sup> Professor Hicks cites the example of William Plumpton, who as well as being a servants of the earls of Northumberland, had requests from many lower down the social scale for his good lordship.<sup>74</sup> The gentry had both upward and downward bastard feudal relations, because they could simultaneously have their own lords and be lords to others. The majority of cases of illegal livery discussed in this thesis involved members of the gentry illegally retaining yeomen and other members of the peasantry. The gentry were heads of bastard feudal affinities as well as retainers for lords.

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<sup>69</sup> Linda Clark, ‘Magnates and their Affinity in the Parliaments of 1386-1421’, in *The McFarlane Legacy*, eds. Britnell and Pollard, 134.

<sup>70</sup> Colin Richmond, ‘After McFarlane’, *History*, 68 (1983), 57.

<sup>71</sup> Carpenter, ‘The Beauchamp Affinity’, 515.

<sup>72</sup> P.W. Fleming, ‘Household servants of the Yorkist and early Tudor gentry’, in *Early Tudor England: Proceedings of the 1987 Harlaxton Symposium*, ed. Daniel Williams (Woodbridge, 1989), 19-36, quote on 19.

<sup>73</sup> R.R Davies, *Lords & Lordship in the British Isles in the Middle Ages*, ed. Brendan Smith (Oxford, 2009), 210.

<sup>74</sup> Michael Hicks, *English Political Culture in the Fifteenth Century* (London, 2002), 141-2, 154-6.

The social interaction between gentry and the peasantry has also been interpreted in discussions about the politics of a locality. Carpenter has emphasised the connection between central and local politics, stating that the social networks that stretched across Warwickshire, and beyond 'were inseparable from political affiliations and therefore subject to the same kind of influences and responsive in the same way to changes in the political climate'.<sup>75</sup> Carpenter's position is problematic because it implies that even the slightest shift in political allegiances would result in changes to the complex composition of social networks. Consequently, there would be a constant changing and altering of political allegiances and social networks, for which Carpenter provided a description for fifteenth-century Warwickshire.<sup>76</sup> The assumption that the political affiliations of the gentry were in a state of constant fluctuation implies that the gentry were much more politically active than studies of the lives and careers of individual members of the gentry have hitherto suggested.

Moreover, Carpenter's methodology of employing witness lists from deeds and charters to deduce changes in political loyalty is problematic. Caroline Burt employed a similar methodology by using witness lists to argue that the affinity of William Beauchamp, Earl of Warwick was predominantly a feudal affinity and that of his successor, Guy, Earl of Warwick was a bastard feudal affinity.<sup>77</sup> This methodology is problematic because witness lists are not necessarily a good indicator of allegiance. It does not necessarily follow from the fact that someone bore witness to a deed or a charter, that they were completely loyal to that lord and that lord alone. Similarly, if the same person bore witness to the charter of a different lord, it does not follow that the person no longer served or had no loyalty to the person they previously served. Deducing constantly altering retinues and affinities from witness lists creates an overly-aggressive picture of noble retaining policies, which exaggerates the levels of conflict and competition in local politics.

Another problem with Carpenter's line of argument is the premise that the primary concern of the greater nobility was political dominance in the area where their principal estates lay, and relegates that honourable service to the crown to being of secondary importance. Payling argues that this premise is 'demonstrably false' in the case of many great landowners, including Richard Beauchamp who spent a

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<sup>75</sup> Carpenter, *Locality and Polity*, 281.

<sup>76</sup> *Ibid*, 281-596.

<sup>77</sup> Caroline Burt, 'A 'Bastard Feudal' Affinity in the Making? The Followings of William and Guy Beauchamp, Earls of Warwick, 1268-1315', *Midland History*, 34 (2009), 156-80.

considerable amount of time in France when he was accepted the office of king's governor of Calais in 1427.<sup>78</sup> In terms of logistics, it was impossible for some of the great land owners in England to be actively in control of all of their estates, such as George, duke of Clarence, who held land across England as far apart as Cornwall and Yorkshire.<sup>79</sup> Members of the peerage could be equally as interested in matters pertaining to central government as they were to matters concerning their local landed interests.

### **Service: Affinities, Retinues and Households**

While some studies have focused upon politics and social relations in one defined area, others have focused on particular households and affinities in order to understand bastard feudal relations. Carpenter described a magnate's affinity as being comprised of various servants who formed 'a series of concentric circles' around him.<sup>80</sup> The large corpus of surviving indentures of retainer from John of Gaunt in the late fourteenth century and William, lord Hastings, during Edward IV's reign has enabled specific studies to be conducted on individual retinues.<sup>81</sup> Most, if not all, late medieval magnates were heads of large affinities. Likewise, kings were head of affinities of men who were retained and wore the royal livery in return for performing various types of service.<sup>82</sup> Ecclesiastical lords such as bishops, archbishops and abbots also retained men as estate officials by grants of fees and robes. R.A. Brown noted that 'the bishops of Winchester *were* bastard feudal lords throughout the late medieval period'.<sup>83</sup> Retaining was a feature of noble life during the late medieval period. This study is concerned with those forms of retaining that were deemed

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<sup>78</sup> Simon J. Payling, 'Review Article. The Waning of Noble Lordship in Late Fifteenth Century England?', *Parliamentary History*, 13 (1994), 331-2.

<sup>79</sup> Hicks, *Clarence*, 187-197.

<sup>80</sup> Carpenter, 'Beauchamp Affinity'. 515.

<sup>81</sup> William H. Dunham, *Lord Hastings' Indentured Retainers, 1461-83: The Lawfulness of Livery and Retaining under the Yorkists and Tudors* (Transactions of the Connecticut Academy of Arts & Sciences, 39, 1955); Simon Walker, *The Lancastrian Affinity, 1361-1399* (Oxford, 1990).

<sup>82</sup> Christopher Given-Wilson, *The Royal Household and the King's Affinity: Service, Politics and Finance in England, 1360-1413* (London and New Haven, 1986); Alison Gundy, 'The Earl of Warwick and the Royal Affinity in the Politics of the West Midlands, 1389-99' in *Revolution and Consumption in Late Medieval England*, ed. Michael Hicks (Woodbridge, 2001), 57-70; D.A.L. Morgan, 'The King's Affinity in the Polity of Yorkist England', *TRHS*, 5<sup>th</sup> series, 23 (1973), 1-25.

<sup>83</sup> R.A. Brown, 'Bastard Feudalism and the Bishopric of Winchester, c. 1280-1530' (unpublished PhD thesis, University of Winchester (Southampton), 2003), 289. At present, this is the only full length study of the bastard feudal affinity of a late medieval bishop. See also: Christian D. Liddy, *The Bishopric of Durham in the Late Middle Ages: Lordship, Community and the Cult of St Cuthbert* (Woodbridge, 2008), 25-30, 101-17.

unacceptable by contemporaries and therefore legislated against. In order for the retaining practices that were regarded as unacceptable to be understood, it is necessary to understand the practice of retaining in late medieval England.

Central to the magnate affinity, and pertaining to all sections of society, was the connection between men and their lords, which was bound up in the concept of service. To be called a servant 'does not generally appear to have been a pejorative or demeaning term'. Instead it was a label given to a dynamic relationship which served the interests of both servant and master.<sup>84</sup> McFarlane characterised late medieval England as being 'full of patrons seeking clients and clients in need of patronage', noting that 'the substantial men of every shire were much courted by those above and below them'.<sup>85</sup> The service a lord obtained from his servants, both within his household and his wider affinity was vital for providing him with the necessary resources to advance his interests. T.B. Pugh noted that the recruitment of members of the gentry was essential for 'the political and military power of a late medieval magnate'.<sup>86</sup> The primary function of a retainer was to serve the various needs, which could be domestic, administrative, political or militarily in character. The relationship was reciprocal. For the servants, Professor Bennett argues, service was important since it lay at the heart of all avenues for social advancement.<sup>87</sup> Although the reasons for retaining are clear, the precise nature of the relationship and the effect it had on the life of a particular retainer varied. Simon Walker examined the wills of John of Gaunt's retainers to highlight the social bonds between them, concluding that membership of a magnate affinity had a differing effect on different members of the affinity. The impact of membership of an affinity on the retainer was thus 'ill-defined' and varied.<sup>88</sup> Service was thus varied, ambiguous and advanced the interests of both lords and retainers. These varieties of service and servants are evident in the multiple reasons magnates had for obtaining service and the various functions of the affinity.

Ensuring the safety of a lord was the prime function of the late medieval household which formed the core 'concentric circle' around a lord. The political

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<sup>84</sup> P.J.P Goldberg, 'What was a Servant' in *Concepts and Patterns of Service*, eds. Curry and Matthew 2-3. See also: Horrox, *Richard III: A Study of Service*, 1-26.

<sup>85</sup> McFarlane, *The Nobility of Late Medieval England*, 113.

<sup>86</sup> Pugh, 'Magnates, Knights and Gentry', 101.

<sup>87</sup> Bennett, *Class, Community and Careerism*, 192.

<sup>88</sup> Simon Walker, 'John of Gaunt and his "affinity": a prosopographical approach to bastard feudalism', in *Prosopographie et genèse de l'état moderne: actes de la table ronde organisée par le Centre National de la Recherche scientifique et l'Ecole Normale Supérieure de jeunes filles, Paris, 22-23 octobre 1984*, ed. Autrand, Françoise (Paris, 1986), 209-22.

instability of the fifteenth century, according to Kate Mertes, was a significant contributory factor for the rise in household numbers during the fifteenth century.<sup>89</sup> This line of argument is based on the premise that in order to maintain their status and ensure their own security, it was expedient for lords to increase the number of men they retained. Having a large body of household retainers wearing a lord's livery livery *en masse* was significant because it emphasised the status and power of the lord and his household.<sup>90</sup> In these circumstances protection was the vital service being provided. Hicks highlighted the military capability of these retainers of household servants, arguing that even the lowliest of domestic servants were able-bodied men, able to bear arms and possess the ability to engage in violent acts. Their numbers also deterred attacks on their master or burglary of his house.<sup>91</sup> Late medieval household servants had combative function, particularly in times of political instability, in order to advance a lord's political, military and security requirements.

While there was a combative element to service in a great household, there were many other duties completely non-violent in character. Christopher Woolgar emphasised the importance of servants in the household of great lords in terms of their practical skills and enhancement of the prestige of the household. Servants of a higher social status were particularly vital in enhancing the reputation and prestige of a household and were 'an ornament to the household'.<sup>92</sup> Professor Woolgar also highlighted the fact that many were retained in the household for their professional skills.<sup>93</sup> David Morgan similarly argued that Henry V's household 'was not intended to operate as an exclusive war-band', but instead it had wider responsibilities relating to royal initiatives and control.<sup>94</sup> Military service was one of many functions, and not necessarily the primary function, carried out by household retainers. Other factors such as professional skills were important in addition to the prestige brought to a household by those of a certain social status serving were equally important.

The debate about the military and administrative importance of those serving a lord in his household has been echoed in debates about the nature of a lord's wider

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<sup>89</sup> Mertes, *The English Noble Household*, 136, 186-7.

<sup>90</sup> Noël Denholm-Young, *Seignorial Administration in England* (London, 1937), 24; Woolgar, *The Great Household*, 32, 173; Mertes, *English Noble Household*, 126, 132-3.

<sup>91</sup> Hicks, *Bastard Feudalism*, 47-8.

<sup>92</sup> Woolgar, *The Great Household*, 37.

<sup>93</sup> *Ibid*, 105, 121, 168.

<sup>94</sup> David Morgan, 'The Household Retinue of Henry V and the Ethos of English Public Life' in *Concepts and Patterns of Service*, eds. Curry and Matthew 71.

affinity of retainers, outside his immediate household. When examining the Beauchamp affinity, Carpenter argued that military purposes were not the main reason for creating a retinue. Only a few of Richard Beauchamp's retainers were permanent followers and mainly came from families close to the earl, who were unlikely to have been recruited for purely military purposes. Similarly other Warwickshire men were found to be in the wartime retinues of nobles from outside of Warwickshire.<sup>95</sup> Even for a magnate as militarily active as Edward, the Black Prince, David Green has argued that his retinue broadened from its central military focus to include more administrative responsibilities.<sup>96</sup> The administrative dimension of the affinity is further evident in their importance in local politics, such as that of Edward Courtenay, earl of Devon, who used his affinity to express and consolidate his power in Devonshire and neighbouring counties.<sup>97</sup> The non-military functions were at least as important, if not more, than the military functions of many affinities. Administrative requirements and an influence in local politics are now regarded as being key reasons for the creation of many retinues.

In contrast, Dr Walker's examination of John of Gaunt's retinue led him to conclude that the retinue was primarily military in character. Gaunt's numerous military and diplomatic commitments meant that 'anything else would have been an expensive luxury'. An indenture of retainer with John of Gaunt was, therefore, 'an emphatically military commitment'.<sup>98</sup> One reason for this differing interpretation is that Gaunt had much greater military needs than any other late medieval English noble, especially in light of the fact that he claimed the crown of Castile. These commitments and his unrivalled wealth meant that Gaunt had an untypically large household. Financial constraints meant that even Gaunt could not afford to pay many fees for non-military purposes. The cost of maintaining a large affinity was highlighted in J.M.W Bean's examination of the Percy estates, which shows that by 1461 between one third and one half of the earl of Northumberland's gross revenues were spent on fees. By the time of the fourth earl the cost was still a major burden, as evident in the *valor* of 1489.<sup>99</sup> While this amount of spending may be untypical – Professor Pollard, for example, has argued that the earl of Salisbury, Richard Neville,

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<sup>95</sup> Carpenter, 'The Beauchamp Affinity', 519-20.

<sup>96</sup> David Green, 'The later retinue of Edward the Black Prince', *Nottingham Mediaeval Studies*, 44 (2000), 141-151.

<sup>97</sup> Cherry, 'The Courtenay Earls of Devon', 74-5.

<sup>98</sup> Walker, *Lancastrian Affinity*, 42-3.

<sup>99</sup> Bean, *The Estates of the Percy Family*, 91, 133.

was spending much less on retaining fees<sup>100</sup> – it does highlight the extent to which retaining fees could potentially drain financial resources. James Ross noted that the limited finances of the de Vere, earl of Oxford family in the early fifteenth century meant that they had a lower level of gentility amongst their retainers<sup>101</sup> and even the more influential thirteenth earl of Oxford only spent around 10% of his income on retaining.<sup>102</sup> Gaunt's unprecedented military commitments meant that his retinue was not typical of most bastard feudal retinue. The current corpus of research on specific retinues therefore indicates that the characteristics of noble affinities varied depending on the specific needs of individual lords.

Retaining, however, had a public as well as private function because, during the middle ages, power could not be centralised at Westminster and therefore needed to be shared. The earlier interpretation of bastard feudalism argued that 'over-mighty magnates' with retinues of men was one of the primary causes of 'the paralysis of government' in late medieval England.<sup>103</sup> This interpretation failed to appreciate the nature of late medieval society. Gerald Harriss noted that royal government needed local elites to govern society, particularly magnates and leading churchmen who 'were a *governing* class, the king's natural counsellors, with a residual responsibility for good governance should the monarch fail'.<sup>104</sup> The gentry were equally important. Christopher Given-Wilson has argued that during the late fourteenth century the crown became increasingly reliant on members of the gentry for the governing of the localities. While the gentry still had a military role, their prime importance came from their usefulness as administrators, giving the king men he could trust in the localities.<sup>105</sup> Magnates with wide-ranging responsibilities such as the Percy earls of Northumberland and William, Lord Hastings had abnormally large retinues in order to assist with the governing and protection of the kingdom.<sup>106</sup> According to Horrox, Edward IV's main regional policy in the north was to allow Richard Duke of

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<sup>100</sup> A.J. Pollard, 'The Northern Retainers of Richard Nevill, earl of Salisbury', *Northern History*, 11 (1976 for 1975), 64-5.

<sup>101</sup> Ross, *John de Vere*, 177-80.

<sup>102</sup> Ibid, 20. For an analogous situation, also from East Anglia during Henry VII's reign see: S.J. Gunn, 'Henry Bouchier, earl of Essex (1472-1450)' in *The Tudor Nobility*, ed. Bernard 148-66.

<sup>103</sup> Fortescue, *Governance of England*, ed. Plummer, 14-16.

<sup>104</sup> Gerald Harriss, 'Political Society and the Growth of Government in Late Medieval England', *P&P*, no. 138 (1993) 32-3.

<sup>105</sup> Christopher Given-Wilson, 'The King and the Gentry in Fourteenth-Century England', *Transactions of the Royal Historical Society*, 5<sup>th</sup> series, 37 (1986), 87-102. See Given-Wilson, *King's Affinity*, 201-57.

<sup>106</sup> Dunham, *Lord Hastings' Indentured Retainers*; Pollard, *North-Eastern England*, 123.

Gloucester to become the dominant lords in the region, and was vindicated by Gloucester's ability to control the 'notoriously difficult' north.<sup>107</sup> An alternative interpretation is that Gloucester built up his following in the north independently and that, rather than having it as an active policy, Edward responded to these developments by utilising Gloucester's affinity for the purposes of governing the north. Both interpretations highlight the fact that Richard, as duke of Gloucester, was a magnate with a large retinue that was beneficial to the crown and helped to maintain stability. These are examples of cooperation, not conflict, between the crown and the magnates, who used their affinities to benefit the crown. The need for large affinities continued into the Tudor period and, as Sean Cunningham has noted, 'England could not be governed without them'.<sup>108</sup> This is evident in the earl of Oxford's position of regional dominance in Henry VII's reign.<sup>109</sup>

The fact that kings were able to use noble affinities for the running of local government should not result in an overly-peaceful interpretation superseding the overly-confrontational interpretation of earlier historians. Retaining remained a means of recruiting men for rebellious and lawless purposes. Philippa Maddern has stated that 'a lord was expected to be attended by a retinue which could serve him honourably in time of war; the problem was to tell when a retinue was unjustifiably warlike'.<sup>110</sup> The usurpations of Henry IV, Edward IV (twice), Henry VI, Richard III and Henry VII all depended, to varying extents, on either the ability of the usurper or one of his powerful allies to mobilise his followers, or the inability of the deposed king to mobilise support from the nobility and the gentry.<sup>111</sup> The potential for a magnate's affinity to challenge royal authority was Henry VIII's concern in 1521 when he had Edward, Duke of Buckingham, executed after he suddenly asked for permission to raise an armed bodyguard to visit his Welsh troops. Carole Rawcliffe argued that the duke was genuinely afraid for his own security when visiting Wales, but his family's history of rebellions had made Henry suspicious and therefore unwilling to comply with the request.<sup>112</sup>

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<sup>107</sup> Horrox, *Richard III: A Study of Service*, 40-72.

<sup>108</sup> Sean Cunningham, 'Henry VII, Sir Thomas Butler and the Stanley Family: Regional Politics and the Assertion of Royal Influence in North Western England', in *Social Attitudes and Political Structures in the Fifteenth Century*, ed. Tim Thornton, (Stroud, 2002), 241.

<sup>109</sup> Ross, *John de Vere*, 1, 152-6, 173-5.

<sup>110</sup> Philippa C. Maddern, *Violence and Social Order: East Anglia, 1422-1442* (Oxford, 1992), 108.

<sup>111</sup> See: e.g. Given-Wilson, *The Royal Household and The King's Affinity*, 267.

<sup>112</sup> Rawcliffe, *The Staffords*, 42-3, 100.

The case of Richard Tregoy's serves as an archetypal example of how retinues could be used to for lawlessness and order in a society. Hannes Kleineke has described how Tregoy's and his followers were notorious law-breakers in the South-West, but that he was arrested by men who could muster larger retinues than his.<sup>113</sup> Various other similar examples can be found, such as that of the Warwickshire knight Sir Thomas Malory, who was involved in several criminal gangs during the 1440s and early 1450s. When the Duke of Buckingham arrested him in 1451 he took with him 'an unusually large force'.<sup>114</sup> These cases illustrate the fact that bastard feudal retinues had the potential to be both a stabilising and a disruptive force in late medieval society. Although both Tregoy's and Malory used their retinues for lawlessness, their activities were stopped by other retinues in support of the crown.

### **Office Holding**

Service, both public and private, encompassed more than assistance in the apprehension of notorious law-breakers like Richard Tregoy's or Thomas Malory. Holding local office as either an MP, a royal official (e.g. sheriff, escheator, juror, JP) or an estate officer, for either the crown or a local lord (e.g. stewards, bailiffs, forester), was a key feature of gentry society.<sup>115</sup> For those below gentry status, office-holding 'brought social recognition and were stepping-stones to gentry status'.<sup>116</sup> Professor Coss regarded appointments to commissions of the peace as important for understanding the social power of a particular class, arguing that they 'represented the collective social power of the members of the gentry'.<sup>117</sup> Walker's study of the Yorkshire JPs between 1389 and 1413 indicated that, during that period, there was a 'relatively high level of gentry participation in the work of the bench'.<sup>118</sup> Professor Maddern attributed the fact that the gentry held many offices in local government as a reason for many of them being 'enthusiastic and skilful litigants'.<sup>119</sup> The prominence that office-holding has had in studies of the gentry is evident in Richmond's

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<sup>113</sup> Hannes Kleineke, 'Why the West was Wild: Law and Disorder in Fifteenth-Century Cornwall and Devon', in *Authority and Subversion*, ed. Clark 83-90.

<sup>114</sup> Christine Carpenter, 'Sir Thomas Malory and Fifteenth-Century Local Politics', *BIHR*, 53 (1980), 31-43, quotation on 38.

<sup>115</sup> For a study of one particular local office see: J.R Lander, *English Justices of the Peace, 1461-1509* (Gloucester, 1989).

<sup>116</sup> Harriss, 'Political Society', 33-4.

<sup>117</sup> Peter Coss, *The Origins of the English Gentry* (Cambridge, 2003), 10-11.

<sup>118</sup> Simon Walker, 'Yorkshire Justices of the Peace, 1389-1413', *EHR*, 108 (1993), 307.

<sup>119</sup> Maddern, *Violence and Social Order*, 227.

description of John Hopton as being ‘workshy’ due to his apparent lower level office-holding’.<sup>120</sup> However, the holding of local office should be not equated with membership of the gentry. Eric Acheson has been sceptical about an over-emphasis on office holding, arguing that it results in an examination of on ‘a sub-set of [the] gentry, those work-horses of local administration’ not the gentry as a whole.<sup>121</sup> Furthermore, James Masschaele’s study of jury service in medieval England has shown that jury service permeated through all ranks of society and that many jurors came from below the status of gentry such as the yeomen and peasants.<sup>122</sup>

Nevertheless, examinations of office-holding in various localities have provided an insight into the workings of patronage and politics at a local level. Several articles have taken either a single official, or a group of officials as a case study to further examine the significance of local office. Mark Arvanigian’s examined the career of Sir Ralph Eure, who held numerous local office as well as being a soldier, and concluded that he was ‘as comfortable with the auditors and justices as with soldier’. According to Arvanigian, Eure’s career was ‘representative of his generation [late fourteenth-early fifteenth-century] of rising, service-minded knights, many of whom built formidable careers and reputations in county service’.<sup>123</sup> Using Edward Guildford of Halden as an example, Hicks has argued that holding the position of justice of the peace gave members of the gentry genuine local authority, operated an intensive system of government that could, in certain circumstance, overrule central government.<sup>124</sup>

Taking one office as his case-study instead of one particular office-holder, Peter Larson’s examination of the jurors of the Durham Halmote Court has shown that there was a spectrum in service on juries in the villages of Billingham and Norton during the second half of the fourteenth and early fifteenth centuries. Dr Larson broadly categorised these jurors into three groups: the temporary stand-ins, who only served briefly for a short period; a group of men that served frequently to the extent that ‘it might not be too far off the mark to label these men as “professional” jurors’; and those who were neither temporary nor ‘professional’. Thirty-three jurors in his sample (46.48%) served the equivalent of five or more years, although not necessarily

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<sup>120</sup> Richmond, *John Hopton*, 165.

<sup>121</sup> Acheson, *A Gentry Community*, 36.

<sup>122</sup> James Masschaele, *Jury, State and Society in Medieval England* (New York, 2008), 9, 123-97.

<sup>123</sup> Arvanigian, ‘The case of Sir Ralph Eure’, 65-87, quotations on 83 and 87.

<sup>124</sup> Michael Hicks, ‘Out of Sessions: Edward Guildford of Halden, Justice of the Peace for Kent, 1436-43’, *Southern History*, 28 (2006), 24-45.

consecutively, leading Larson to reject the theory that jury service was seen as burdensome and arguing that ‘it seems ...[to have] had its allure’.<sup>125</sup> Dr Holford, focusing on juries for inquisitions *post mortem*, argued that ‘for all its potential inconveniences, one attraction of jury service was as a badge of respectability and authority’.<sup>126</sup>

An earlier study of the crown’s juries in Gloucestershire in the 1440s and 1450s by Goheen examined the role of the peasantry, specifically yeomen, prosperous husbandmen and artisan. Like the gentry, the peasantry had varying patterns of service for varying reasons such as to advance their own personal interests and family aggrandizement.<sup>127</sup> Many members of both the gentry and the peasantry wished to avoid local service. In many instances jurors failed to show up for jury service since ‘jury service was burdensome and generally viewed as a duty rather than a privilege’.<sup>128</sup> A desire to avoid local office is evident in the case of Humphrey Newton who, in 1497, was able to secure an exemption from taking on various roles in local administration such as tax collector, juror on assizes and inquisitions and bailiff, amongst others. He was also absent from the Cheshire palatine records and avoided administrative jobs in local government.<sup>129</sup> Recent research indicates that local office-holding was an aspect of public life for people from a range of social background, but participation varied from person to person. Some viewed office-holding as an opportunity to wield local power and give them opportunities for advancement, while others viewed it as burdensome and attempted to avoid it. Office holding is considered in Chapter Six in order to examine the effect that indictments for illegal livery had on the career prospects of the gentry.

### **Bastard Feudal abuses**

Another recognisable feature of bastard feudalism was the potential to facilitate lawlessness and perversions of justice. The problems associated with the wearing of livery for the legal system were recognised by contemporaries. Professor Masschaele cites an example from 1359 in which an assize of novel disseisin heard the defendant challenge the jury panel since the sheriff who constituted it wore the livery of a

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<sup>125</sup> Peter L. Larson, ‘Village voice or village oligarchy? The jurors of the Durham halmote court, 1349 to 1424’, *Law and History Review*, 28 (2010), 692-3.

<sup>126</sup> Holford, ‘Thrifty Men of the County?’, 214.

<sup>127</sup> Goheen, ‘Peasant Politics?’, 50-53.

<sup>128</sup> Masschaele, *Jury, State and Society*, 135.

<sup>129</sup> Youngs, *Humphrey Newton*, 65-7.

relative of the other party. This problem was recognised by the justices and the coroner was ordered to constitute a new panel for the case. When they heard that the coroner wore the same livery as the sheriff, he too was excluded from the process.<sup>130</sup> Problems with the system were emphasised by Professor Bellamy who highlighted the use of affinities in the various ‘land wars’ (i.e. feuds) he described.<sup>131</sup> Barbara Hanawalt has pointed out that the higher nobility did not need to ‘stain their hands in ordinary homicide’ in disputes with lower classes. Instead, they could get their retainers to do it, with the murder of John of Weldon by Sir Ralph Porthos’s household retainers being an archetypal example.<sup>132</sup> The abuses traditionally associated with bastard feudalism were expressed in the phrase ‘livery and maintenance’. For Bishop Stubbs, livery and maintenance ‘were signs of faction and oppression, and were two great sources of mischief’.<sup>133</sup> Various acts were passed in parliament throughout the late middle ages to deal with these perceived problems. This thesis is focused on the statutes dealing with the distribution of livery and the cases arising from them. From 1390 onwards various statutes were passed designed to restrict the right to grant of ‘livery of company’ to dukes, earls, barons and bannerets and they were only allowed to distribute livery to knights and esquires retained for life and domestic servants that were resident in the household.<sup>134</sup>

The specific purpose of the livery statutes has yet to be adequately addressed. One interpretation is that they were politically motivated, stemming primarily from royal wishes to maintain control over an unruly nobility. Restricting retaining equated to preventing powerful magnates from increasing their power and influence, which could challenge royal authority.<sup>135</sup> Others have regarded the problem of royal retaining as being the root of the early statutes from the late fourteenth century. Professor Given-Wilson noted that new legislation was enacted in periods ‘immediately after attempts by Richard II to use livery badges to extend his following at a time of political crisis’ in both 1388-90 and 1399-1401.<sup>136</sup> Another interpretation of the early legislation is that it was primarily a dispute between the Lords and the

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<sup>130</sup> Masschaele, *Jury, State and Society*, 114.

<sup>131</sup> J.G. Bellamy, *Bastard Feudalism and the Law*.

<sup>132</sup> Barbara A. Hanawalt, ‘Fur collar crime: the pattern of crime among the fourteenth-century English nobility’, *Journal of Social History*, 8 (1975), 4.

<sup>133</sup> Stubbs, *Constitutional History*, iii, 579

<sup>134</sup> *PROME*, vii, 147-50.

<sup>135</sup> Bean, *From Lord to Patron*, 200-30.

<sup>136</sup> Given-Wilson, *The Royal Household and The King’s Affinity*, 241.

Commons who wanted to restrict the retaining practices of the peerage.<sup>137</sup> Edward IV's legislation of 1468 has been regarded as a product of the disturbances in Derbyshire that year,<sup>138</sup> while Henry VII's legislation was part of his attack against noble power.<sup>139</sup> The statutes have also been regarded as the product of increased expectations in standards of behaviour. Livery laws were therefore a means of social control by restricting the wearing of livery to those believed to possess the appropriate standards of conduct.<sup>140</sup> Chapter Four provides a forensic examination of the statutes and the wider social and political influences upon their development.

Furthermore, several articles have addressed special acts, notably those of 1390, 1468 and 1504, although they have all adopted a narrow chronological perspective. Saul's discussion of the 1390 act is primarily focused upon the reasons for its enactments arguing that many lords were concerned about the growing aspirations of their inferiors. He does not, however, discuss any cases that arise from the statute.<sup>141</sup> Storey stated that he could find no cases of illegal retaining in the *coram rege rolls* between the 1390 and 1393 statutes leading him to argue that undue prominence has been given to the 1390 statute.<sup>142</sup> Hicks's article on the 1468 act discusses several cases including the indictments of the dukes of Norfolk and Suffolk. The scope of the cases discussed, however, is confined to those that occurred during the late 1460s.<sup>143</sup> Alan Cameron's discussion of retaining in Henry VII's identified several specific cases, drawing on evidence from the ancient indictments and the controlment rolls but did not utilise the evidence in the *coram rege rolls* to determine the outcomes of the cases.<sup>144</sup> Dominic Luckett examined some entries in the *coram rege rolls* relating to illegal retaining during Henry VII's reign, but not

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<sup>137</sup> R.L. Storey, 'Liveries and Commissions of the Peace, 1388-90' in F.R.H Du Boulay and C.M Barron (eds.), *The Reign of Richard II* (London, 1971), 131-52.

<sup>138</sup> M.A. Hicks, 'The 1468 Statute of Livery', *Historical Research*, 64 (1991), 17; J.G. Bellamy, 'Justice under the Yorkist Kings', *American Journal of Legal History*, 9 (1965), 150-5.

<sup>139</sup> Alan Cameron, 'The Giving of Livery and Retaining in Henry VII's Reign', *Renaissance & Modern Studies*, 18 (1974), 17-35; Sean Cunningham, *Henry VII* (London, 2007), 209-15.

<sup>140</sup> Michael A. Hicks, 'Lawmakers and lawbreakers', in *An Illustrated History of Late Medieval England*, ed. Christopher Given-Wilson (Manchester, 1996), 223; M.A. Hicks, 'The 1468 Statute of Livery', *Historical Research*, 64 (1991), 15; Nigel Saul, 'The Commons and the Abolition of Badges', *Parliamentary History*, 9 (1990), 302-15.

<sup>141</sup> Saul, 'The Commons and the Abolition of Badges', 302-15

<sup>142</sup> R. L. Storey, 'Liveries and Commissions of the Peace, 1388-90', in *The Reign of Richard II*, eds. F.R.H Du Boulay and C.M Barron (London, 1971), 147.

<sup>143</sup> Hicks, '1468 Statute of Livery', 15-28.

<sup>144</sup> Alan Cameron, 'The Giving of Livery and Retaining in Henry VII's Reign', *Renaissance & Modern Studies*, 18 (1974), 17-35.

comprehensively.<sup>145</sup> Cases of illegal livery have only been discussed on an *ad hoc* basis and therefore this thesis provides the first comprehensive examination of the cases.

While it is possible to quantify the cases of illegal livery from the surviving records and trace the developments of attitudes towards retaining from, amongst other things, parliamentary statutes, determining the overall effect the statutes had on social practice is problematic. Dr Mertes asserts that the livery statutes ‘swelled household numbers, inevitably’.<sup>146</sup> It is plausible that household numbers increased due to the livery statutes but the relevant records that can substantiate this supposition because have not survived – i.e. there is no surviving list of the numbers of servants in a household from before and after the livery statutes from which comparisons can be made. Similarly, Mervyn James suggested that the laws regarding retaining permitted magnates with large estates, such as Henry, fifth earl of Northumberland, to create extra offices such as ‘constabularies, bailiwicks, stewardships, and receiverships’, which would attract gentry service.<sup>147</sup> Essentially, the number of legal servants had increased to incorporate those non-resident annuitant outlawed by the statutes. Again, the lack of a sufficient number of detailed household records means that, while this is explanation is certainly plausible, it cannot be proven conclusively.

However, while there were abuses with the system, it is misleading to use what are essentially the most extreme forms of abuse associated with bastard feudalism as a reason to castigate the entire system. Despite the fact that abuses did occur, bastard feudalism was also a force for good in society, and was part of its normal fabric.<sup>148</sup> For Hicks, bastard feudalism could facilitate lawlessness and disorder, but it was not the cause of such disorder.<sup>149</sup> Good lordship – which was an important aspect of bastard feudal society – required lords to help and support their retainers in just causes but either supporting their litigation or offering physical protection against their enemies. In the case of George, duke of Clarence, for

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<sup>145</sup> Dominic Lockett, ‘Crown Office and Licensed Retinues in the Reign of Henry VII’, in *Rulers and Ruled in Late Medieval England*, eds. Rowena E. Archer and Simon Walker (London, 1995), 231-3.

<sup>146</sup> Mertes, *The English Noble Household*, 186.

<sup>147</sup> Mervyn James, *Society, Politics and Culture: Studies in Early Modern England* (Cambridge, 1986), 51.

<sup>148</sup> McFarlane, ‘Bastard Feudalism’, 161-80.

<sup>149</sup> Hicks, *Bastard Feudalism*, 221.

example, this usually took the form of overseeing a will or serving as a trustee.<sup>150</sup> This could help to ensure social stability, instead of damaging it.

Concentration on the elements of bastard feudalism especially the most spectacular cases of lawlessness and corruption ignores both the fact that a magnate's affinity could be a force for good in a local community. This thesis is concerned with attempts to control and regulate what contemporaries believed were the most problematic aspects of bastard feudalism, not with the aspects that contemporaries were content with. The statutes were never intended to eradicate bastard feudalism, only certain aspects that were deemed unacceptable and which are the focus of this study. They were an attempt to regulate a previously unregulated system. Moreover, this thesis is the first comprehensive examination of how bastard feudal abuses resulted in regulation of retaining and how those laws were enforced.

### **Local Lawlessness**

Connected to many of the cases of illegal identified in this study was problems associated with local lawlessness and feuding. Although bastard feudalism itself was morally neutral, it did facilitate lawlessness in localities. Various studies have examined the influences of lawlessness on a particular area, usually by examining local feuding between several leading families in a locality.<sup>151</sup> Like this thesis, these studies have been based on an examination of the records of the King's Bench. Bastard feudalism connections are evident in many of the indictments for illegal livery throughout late medieval and early Tudor England. This thesis demonstrates that local feuds caused central government on many occasions to take a greater interest in the retaining practices of local lords and gentry which, at times, led to indictments for illegal livery. Chapter Three examines specifically where and when

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<sup>150</sup> Michael A. Hicks, 'Restraint, Mediation and Private Justice: George, duke of Clarence as "Good Lord"', *Journal of Legal History*, 4 (1983), 59.

<sup>151</sup> Alisa Herbert, 'Herefordshire, 1413-61: Some Aspects of Public Disorder' in *Patronage, The Crown and The Provinces in Later Medieval England*, ed. Ralph A. Griffiths (Gloucester, 1981), 103-22; R.W. Hoyle, 'The Earl, the Archbishop and the Council: The Affray at Fulford, May 1504', in *Rulers and Ruled in Late Medieval England*, eds. Archer and Walker 239-56; Eric W. Ives, 'Crime, Sanctuary and Royal Authority Under Henry VIII: exemplary sufferings of the Savage family', in *On the Laws and Customs of England*, ed. Morris S. Arnold et al (Chapel Hill, 1981), 269-30; Mary L. Robertson, 'Court Careers and County Quarrels: George Lord Hastings and Leicestershire Unrest, 1509-1529' in *State, Sovereign and Society in Early Modern England*, eds. Charles Carlton and Arthur Joseph Slavin (Stroud, 1998) 153-70; Simon Walker, 'Lordship and lawlessness in the palatinate of Lancaster, 1370-1400'. *Journal of British Studies*, 28 (1989), 325-48; Powell, *Kingship, Law and Society*, 208-24; Maddern, *Violence and Social Order*.

these cases occurred, while Chapter Five examines the workings of the legal system in prosecuting cases and Chapter Six examines the personnel involved.

Local lawless and feuding, moreover, have been regarded as one of the major causes for the outbreak of the Wars of the Roses. McFarlane stated, in 1964, that it had yet to be demonstrated that local feuds 'did much to influence the alignments of Lancastrians and Yorkists'.<sup>152</sup> In contrast, Professor Storey, writing two years later, claimed that the House of Lancaster fell as the result of escalating private feuds.<sup>153</sup> It is now apparent that neither of these interpretations is satisfactory. Local disputes did impact upon allegiances in national politics, but they were not the cause of national crises. Henry VI's mental breakdowns exacerbated the factionalism of the royal court, leaving little possibility of arbitration from the centre. Simultaneously, there were several local disputes in which the only way that either side could be sure of support was to align themselves with either the Yorkist or Lancastrian factions. If one party in a dispute sought an alliance with the Yorkists the opposing party needed to gain Lancastrian support. Ralph Griffiths demonstrated how the Percy-Neville feud in Yorkshire in the mid-1450s that feud became intertwined with crises in national politics.<sup>154</sup> In relation to bastard feudalism, it indicates that instead of interpreting the Wars of the Roses as the inevitable result of many bastard feudal retinues causing disorder throughout England, what happened was that the means in which lords obtained the service they required during times of peace – i.e. bastard feudal retinues – were used for them to obtain service during times of political crisis. Bastard feudalism thus had both peaceful and warlike uses.

One reason for instances of violence and lawless at a local level across late medieval England was the importance of land economically, socially, politically and culturally. As Professor Griffiths noted: 'property lay at the root of wealth, reputation and influence which none could afford to relinquish'.<sup>155</sup> When landed interests were threatened, the tactics employed by the parties involved in disputes would, on occasion, involve several of the legal abuses associated with bastard feudalism.

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<sup>152</sup> K.B. McFarlane, 'The Wars of the Roses', *England in the Fifteenth Century*, 248.

<sup>153</sup> Storey, *The End of the House of Lancaster*, 27.

<sup>154</sup> Ralph Griffiths, 'Local Rivalries and National Politics: The Percies, the Nevilles, and the Duke of Exeter, 1452-55', *Speculum*, 43 (1968), 589-632. See also: M. Cherry, 'The Struggle for Power in Mid-Fifteenth Century Devonshire', in *Patronage, The Crown and The Provinces*, ed. Griffiths, 123-44; Simon J. Payling, 'The Ampthill Dispute: A Study in Aristocratic Lawlessness and the Breakdown of Lancastrian Government', *EHR*, 104 (1989), 881-907.

<sup>155</sup> Ralph Griffiths, 'The Hazards of Civil War: The Mountford Family and the Wars of the Roses', *Midland History*, 5 (1980) 1.

Complex inheritance law and ambiguous titles were causes of many disputes.<sup>156</sup> As a result, the gentry were usually willing to use the law to achieve their social and economic objectives and were ‘indefatigable, even obsessive, litigators’.<sup>157</sup> Sir John Fastolf, for example, was involved in five major legal disputes during his life, four of which involved property rights.<sup>158</sup> While some disputes were confined to the use of litigation by both sides, there were several occasions in which one or both parties resorted to violent activity. These are what Professor Bellamy described as the ‘land wars’ of the late middle ages, which in many instances resulted in the property of one of the parties being seized by the other party.<sup>159</sup> The dispute between the Duke of Exeter, Henry Holland and Ralph, Lord Cromwell over the manor of Ampthill demonstrates several of the ‘evils’ associated with bastard feudalism and the feud such as: intimidation of juries; Exeter’s fraudulent claim to the manor; and the seizure of the manor by force by Exeter.<sup>160</sup> It should be recognised that this feud, unlike many others, was resolved relatively quickly.<sup>161</sup> The case was also unusual because the duke of Exeter’s claim, which was eventually thrown out, was blatantly fraudulent, while most other land disputes arose from legal ambiguities regarding inheritance.

However, in many cases, those involved did not need to resort to violence and instead arbitration was employed. Dr Harriss noted that litigation was itself problematic because it was slow, costly and open to corruption and therefore the outcome may not have been just. In cases involving descendants to a particular title, the facts might be difficult to establish. Added to this was the fact that ‘litigation was essentially adversarial and could exacerbate and perpetuate divisions within the local community’.<sup>162</sup> Arbitration was, therefore, desirable and was an integral aspect of the legal system. Rather than dismissing arbitration ‘merely as the product of the shortcomings of the legal system’, Dr Powell has argued that, ‘it should be considered in the longer perspective as one phase of a vigorous and durable legal system’.<sup>163</sup>

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<sup>156</sup> For the complexity of medieval inheritance law see e.g.: Jonathan Rose, ‘Litigation and Political Conflict in Fifteenth Century East Anglia: Conspiracy and Attaint Actions and Sir John Fastolf’, *Journal of Legal History*, 27 (2006), 53-80.

<sup>157</sup> Harriss, *Shaping the Nation: England*, 197.

<sup>158</sup> Rose, ‘Litigation and Political Conflict’, 53.

<sup>159</sup> Bellamy, *Bastard Feudalism and the Law*, 34-56.

<sup>160</sup> Payling, ‘The Ampthill Dispute’, 907.

<sup>161</sup> For a longer running legal disputes see: Alexandra Sinclair, ‘The Great Berkeley Law Dispute Revisited, 1417-39’, *Southern History*, 9 (1987), 34-50.

<sup>162</sup> Harriss, *Shaping the Nation*, 198.

<sup>163</sup> Edward Powell, ‘Arbitration and the Law in England in the Late Middle Ages’ *Transactions of the Royal Historical Society*, 5<sup>th</sup> series, 33 (1983), 55.

Magnates such as John of Gaunt, Richard, Duke of Gloucester and George, Duke of Clarence have been shown to have been capable of arbitrating between feuding gentry in order to prevent the outbreak of violence and maintain social cohesion, thus emphasising the positive aspects of bastard feudal relations.<sup>164</sup> Even when violence occurred it was usually bloodless with very few deaths or serious injuries occurring.<sup>165</sup>

Feuds did not necessarily equate to violence and lawlessness, but instead exemplified the importance of land in medieval England, the measures that men were prepared to undertake in order to maintain possession of it, and levels of litigiousness. Howard Kaminsky argued, in his discussion of feuding in late medieval England, France and Germany, that ‘the juridical and societal dimensions of the noble feud together had the effect of consolidating a socio-political order based on the preservation of individual property rights’.<sup>166</sup> Violence usually only occurred when arbitration failed; but when arbitration did fail, it could have far-reaching consequences. Although not endemic in late medieval society, local feuding between noble families did, on occasion, constitute serious threat to public order. This thesis is concerned with the occasions in which local lawlessness led to campaigns against disorder that produced indictments for illegal livery.

## **Chronology**

While the different characteristics of bastard feudalism can be identified – the giving of livery; the use of monetary rewards instead of grants of land; the use of indentures of retinue as a contract for service; associations with lawlessness – it is far more problematic in light of recent research determine the precise chronology of bastard feudalism. A central argument of Hicks’s *Bastard Feudalism* was that the system needed to be viewed in wider chronological context because previous scholarship had been chronologically narrow and artificial boundaries had been adhered to too rigidly.<sup>167</sup> In a similar vein, Steven Gunn has argued that historians have not developed a great understanding of the reign of Henry VII due to his ‘liminal’

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<sup>164</sup> Carole Rawcliffe, ‘The Great Lord as Peacekeeper: Arbitration by English Noblemen and their Councils in the Later Middle Ages’, in *Law and Social Change in British History*, eds. J.A Guy and H.G Beale (London, 1984), 34-54. Hicks, ‘Restraint, Mediation and Private Justice’, 56-71; Horrox, *Richard III: A Study in Service*, 60; Walker, *The Lancastrian Affinity*, 162-3.

<sup>165</sup> Bellamy, *Bastard Feudalism and the Law*, 42.

<sup>166</sup> Howard Kaminsky, ‘The Noble Feud in the Later Middle Ages’, *P&P*, 177 (2002), 83.

<sup>167</sup> Hicks, *Bastard Feudalism*.

position in history – i.e. between the end of the late medieval period and the start of the early modern period. Traditional chronological divisions, Gunn argues, have made it difficult to fully assess Henry's reign.<sup>168</sup> Although Henry VII's is not the specific focus of this study, Gunn does highlight the problematic nature of adhering to rigorous chronological boundaries. For this study of the statutes of livery and their development to be meaningful, the period considered must be set in a wider chronological context.

According to Plummer, bastard feudalism began with Edward III's French wars and a new method of raising armies in which the crown contracted, by using indentures of retainers, great lords to supply a certain number of men at a fixed rate of pay.<sup>169</sup> Subsequent research has shown that this deterministic interpretation whereby feudalism mutated into a bastardised form during the late middle ages by the use of short-term indentures and the creation of large affinities is no longer sustainable. The bastard feudal method of military recruitment began before the Hundred Years War and was used alongside traditional feudal methods. Bean found seventeen indentures of retainer prior to 1330,<sup>170</sup> to which a further sixteen have been identified and published by Michael Jones and Simon Walker.<sup>171</sup> The short-term nature of these agreements means that it is possible that there were more that have not survived or have not yet been found. In addition, Michael Prestwich has shown how Edward I used a combination of mercenaries, feudal ties and what can be regarded as bastard feudal retinues during his various military campaigns.<sup>172</sup> Andrew Spencer has warned against overemphasising the importance of retaining in late thirteenth-century armies since land, as opposed to fees, was the main method of rewarding permanent associates and that 'although lords had begun to act in a 'bastard-feudal' way, they were still thinking in a 'feudal' way'.<sup>173</sup>

The distribution of fees and liveries also occurred in a non-military sense. J.R Maddicott has shown that fees and liveries were given to royal justices by

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<sup>168</sup> Steven Gunn, 'Henry VII in Context: Problems and Possibilities', *History*, 92 (2007), 301-17. Analogous arguments have been made by Paul Cavill on the parliaments of Henry VII: P.R. Cavill, *The English Parliaments of Henry VII, 1485-1504* (Oxford, 2009), 1-18.

<sup>169</sup> Fortescue, *Governance of England*, ed. Plummer, 15.

<sup>170</sup> Bean, *From Lord to Patron*, 41-56.

<sup>171</sup> 'Private Indentures for Life Service in Peace and War', eds. Michael Jones and Simon Walker, *Camden Miscellany*, xiii (1994), 35-66.

<sup>172</sup> Michael Prestwich, *War, Politics and Finance Under Edward I* (London, 1972), 41-91.

<sup>173</sup> Andrew Spencer, 'The Comital Military Retinue in the Reign of Edward I', *Historical Research*, 83 (2010), 54.

landowners, both lay and ecclesiastical, for the majority of the thirteenth and fourteenth centuries and declined during the late fourteenth century.<sup>174</sup> Scott Waugh identified evidence for over one hundred examples of contractual relations between lords and clients prior to 1300 in various types of surviving records.<sup>175</sup> Studies of Thomas of Lancaster, Simon de Montfort, William de Valence and William Marshall have shown that they led affinities of men who wore a lord's livery and/or were in receipt of his fees in the twelfth and thirteenth centuries.<sup>176</sup> In terms of the distribution of livery, Frédérique Lachaud noted while there were some Anglo-Saxon precedents, the first mention of distributions of livery of cloth appears in the records from the reign of Henry II onwards.<sup>177</sup> However, the nature of livery distribution differed from the later period and therefore 'livery as an aspect of bastard feudalism really belongs to the world of the later Middle Ages'.<sup>178</sup> There was no exact point when England stopped being a 'feudal' society and became a 'bastard feudal' one. Instead of instant change, there was a long term process in which tenurial relationships were gradually replaced by the cash nexus. In the lordship of Richmond, for instance, feudal ties remained strong and intact into the fifteenth century.<sup>179</sup>

Precursors to the late medieval magnate affinity have been detected in the military households of earlier English kings. Late medievalists such as Professors Given-Wilson and Hicks have suggested that military households such as the housecarls of King Cnut and the house warriors of King Alfred can be viewed in this context,<sup>180</sup> while Bean regarded late medieval indentures as a new version of the bonds seen in early medieval warbands.<sup>181</sup> Anglo-Saxon historians have discussed the importance of the housecarls to eleventh-century kings and have noted several features recognisable to any late medievalists. Nicholas Hooper stated that 'the

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<sup>174</sup> J.R Maddicott, 'Law and Lordship: Royal Justices as Retainers in Thirteenth and Fourteenth Century England', *P&P*, supplement no. 4 (1978).

<sup>175</sup> Scott L. Waugh, 'Tenure to Contract: Lordship and Clientage in Thirteenth-Century England', *EHR*, 101 (1986), 819-20.

<sup>176</sup> David Crouch, *William Marshall: Court, Career and Chivalry in the Angevin Empire* (London, 1990), 157-68; J.R Maddicott, *Thomas of Lancaster, 1307-1322: A Study in the Reign of Edward II* (Oxford, 1970), 40-66; J.R Maddicott, *Simon de Montfort* (Cambridge, 1994), 59-76; Huw Ridgeway, 'William de Valence and his *Familiares*, 1247-72', *Historical Research*, 65 (1992), 239-57.

<sup>177</sup> Frédérique Lachaud, 'Liveries of Robes in England, c.1200-c.1330', *EHR*, 111 (1996), 281.

<sup>178</sup> *Ibid*, 298.

<sup>179</sup> Melanie Devine, 'The Lordship of Richmond in the Later Middle Ages', in *Liberties and Identities in the Medieval British Isles*, ed. Michael Prestwich (Woodbridge, 2008), 98-110.

<sup>180</sup> Given-Wilson, *King's Affinity*, 6-7; Hicks, *Bastard Feudalism*, 22.

<sup>181</sup> Bean, *From Lord to Patron*, 143.

housecarls were paid and most likely did possess a corporate identity'.<sup>182</sup> Ryan Lavelle noted that rulers of pre-Conquest England required household soldiers whose 'service was important for the royal house's support'.<sup>183</sup> These studies have been primarily concerned with Anglo-Saxon military development, not the origins of bastard feudalism, and therefore any apparent similarities should not be over-emphasised. The issue has only been mentioned in passing by late medievalists and has been untouched by Anglo-Saxonists. During the Anglo-Norman period, kings also had household knights who were rewarded with cash payments rather than any grants of land.<sup>184</sup> These earlier military households were not proto-bastard feudal affinities since they seem to have been comprised of those present, and probably permanently living in, the king's household. What they do display is an earlier form of reward for service that was not attached to land but rather to cash payments.

The most direct attack upon the traditional interpretation of origins of bastard feudalism was a series of articles between 1989 and 1991 by David Crouch, David Carpenter and Peter Coss. All agree that retaining occurred in the thirteenth century, although their interpretations differ.<sup>185</sup> For Professor Coss, bastard feudalism was the reaction of nobility to Angevin legal reforms by corrupting the new legal system to ensure the continuation of their power. It was 'a response to the resurrection of public authority within feudal society and within the feudal state'.<sup>186</sup> For Professor Crouch, bastard feudalism did not evolve from feudalism. Instead, the origins of bastard feudalism can be seen as being a product of the reign of King Stephen.<sup>187</sup> Coss subsequently criticised this argument because it 'dissolve[s] the historical specificity of bastard feudalism'.<sup>188</sup> David Carpenter noted that bastard feudalism was caused by

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<sup>182</sup> Nicholas Hooper, 'Military Developments in the reign of Cnut', in *The Reign of Cnut: King of England, Denmark and Norway*, ed. Alexander Richard Rumble (London, 1994), 89-100, quotation on 90; Nicholas Hooper, 'The Housecarls in England in the Eleventh Century', *Anglo-Norman Studies*, 7 (1984), 161-76.

<sup>183</sup> Ryan Lavelle, *Alfred's Wars: Sources and Interpretations of Anglo-Saxon Warfare in the Viking Age* (Woodbridge, 2010) 107-110, quotation on 110.

<sup>184</sup> J.O Prestwich, 'War and Finance in the Anglo-Norman State', *TRHS*, 5<sup>th</sup> series, 4 (1955), 19-34; J.O Prestwich, 'Military Household of the Anglo-Norman Kings', *EHR*, 96 (1981), 1-35.

<sup>185</sup> P.R. Coss, 'Bastard Feudalism revised', *P&P*, no. 125 (1989), 27-64; David B. Crouch and David A. Carpenter, 'Debate: Bastard feudalism revised', *P&P*, no. 131 (1991), 165-89; P.R. Coss, 'Bastard Feudalism Revised: Reply', *P&P*, no. 131 (1991), 190-203. See also: David Carpenter, 'The Second Century of English Feudalism', *P&P*, no. 168 (2000), 30-71; David Crouch, 'From Stenton to McFarlane: Models of Societies in the Twelfth and Thirteenth Centuries', *TRHS*, 6<sup>th</sup> series, 5 (1995), 179-200.

<sup>186</sup> Coss, 'Bastard Feudalism revised', 54.

<sup>187</sup> Crouch, 'Debate', 168-77.

<sup>188</sup> Coss, 'Reply', 190.

‘a multiplicity of factors’ including Angevin reforms and the appointment of gentry to local offices giving ‘the magnates the opportunity to pervert the whole system’.<sup>189</sup> By emphasising the more disruptive elements of bastard feudalism, much of this discussion differs from that of late medievalists, however, the merits of these arguments need to be critiqued by examination of political society in the twelfth and thirteenth centuries. This thesis is focused on the late fourteenth to early sixteenth centuries and therefore a comprehensive discussion of these arguments is outwith the scope of this study. Nevertheless, Professors Coss, Carpenter and Crouch have shown that all the notable features of bastard feudalism discussed by late medievalists were present for more than a century, and possibly two, before the regulation of retaining by the 1390 statute of livery. What is being discussed in this thesis is therefore the regulation of a social practice that had been in existence for around two centuries before any attempt at regulation.

Like the origins of bastard feudalism, it has become increasingly difficult to assign a date at which bastard feudalism ceased to be a social reality. One view holds that Henry VII was able to control and regulate bastard feudalism and use it to the advantage of the crown.<sup>190</sup> This view is problematic since retaining, both legal and illegal, continued throughout the sixteenth century.<sup>191</sup> Steven Ellis, for example, has shown that Thomas FitzGerald, earl of Kildare, used bastard feudal ties as the basis for his rebellion against Henry VIII in 1536. Many of FitzGerald’s estate officials and household servants were implicated in the rebellion.<sup>192</sup> In this respect he was similar to other ‘over-mighty subjects’ such as the earl of Northumberland and duke of Buckingham.<sup>193</sup> Conrad Russell has noted the continued dependency on bastard feudalism that Tudor rulers had, regardless of their views on the system,<sup>194</sup> and even suggested that it ‘showed some brief sign of revival’ during the 1590s.<sup>195</sup> Simon Adams argued that the Earl of Leicester’s expedition to the Netherlands (1585-6) was

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<sup>189</sup> Carpenter, ‘Debate’, 177-89 quotation on 180.

<sup>190</sup> E.g. Pugh, ‘The Magnates, Knights and Gentry’, 115.

<sup>191</sup> J.P. Cooper, ‘Retainers in Tudor England’ in *Land, Men and Beliefs: Studies in Early-Modern History*, eds. G.E. Aylmer and J.S. Morrill (London, 1983), 78-96; Peter Roberts, ‘Elizabethan players and minstrels and the legislation of 1572 against retainers and vagabonds’, in *Religion, Culture and Society in Early Modern Britain*, eds. Anthony Fletcher and Peter Roberts (Cambridge, 1994), 29-31.

<sup>192</sup> Steven G. Ellis, ‘Bastard feudalism and the Kildare Rebellion, 1534-35: the Character of Rebel Support’, in *Kildare: History and Society: Interdisciplinary Essays on the History of an Irish County*, eds. William Nolan and Thomas McGrath, (Dublin, 2006), 213-32.

<sup>193</sup> *Ibid.*, 221-2.

<sup>194</sup> Conrad Russell, *The Crisis of Parliaments: English History, 1509-1660* (Oxford, 1971) 30.

<sup>195</sup> *Ibid.*, 163.

the last major military campaign to utilise bastard feudal methods in military recruitment.<sup>196</sup> Bellamy's examination of court records led him to conclude that bastard feudal offences continued into the Stuart period.<sup>197</sup> Bastard feudalism did not cease to exist with Henry VII's policy towards the nobility, but instead persisted into the early modern era.

Despite the lack of clarity regarding the precise chronological scope of bastard feudalism, it is possible to determine an adequate chronological scope for this study. The appropriate start date to begin is the 1390 Statute of Livery. The key consequence of this statute is the records it produced in the King's Bench, which can help address such fundamental questions concerning bastard feudalism and the law such as: the circumstances surrounding illegal retaining; their geographical and chronological distribution; who was being retained; the legal processes and results of cases of illegal livery. No records of illegal retaining exist prior to 1390 because it was not a crime. Consequently, 1390 is the most appropriate start date for this thesis. The end date for this thesis is 1520 for both reasons of feasibility and historiographical precedent. The historiographical precedent comes from the argument that after a generation or so of Tudor rule, bastard feudalism had been brought under control by the crown. An examination of the cases arising until 1520 enables long term developments in the statutes and their enforcement to be identified and analysed.

### **Objective of Thesis**

This thesis therefore addressed the issues outlined above by examining one aspect of bastard feudalism that can be isolated and studied in detail: illegal livery. Chapter Two discusses the main sources examined, namely the records of King's Bench, explains their strengths and weaknesses, and establishes a strategy for analysing them using modern database technology. It justifies the design of the database employed and suggests further applications beyond the scope of the thesis. Chapter Three discusses the 334 cases identified from those records, establishing the chronological and geographical distribution of the cases and locates them in their wider local and national contexts. Chapter Four examines the statutes and how they evolved in

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<sup>196</sup> Simon Adams, 'A Puritan crusade? The composition of the Earl of Leicester's expedition to the Netherlands, 1585-86', in *The Dutch in Crisis, 1585-1588: People and Politics in Leicester's Time*, ed. Paul Hofthijzer (Leiden, 1988), 7-34. See also: Simon Adams, 'Baronial Contexts? Continuity and Change in the Noble Affinity, 1400-1600', *The End of the Middle Ages?*, 155-98.

<sup>197</sup> Bellamy, *Bastard Feudalism and the Law*, 123.

response to differing pressures from the Commons, the Lords and various kings. An understanding of the nature of the enforcement of the statutes outline in Chapter Three is crucial for understanding parliamentary discussions of livery and retaining. Chapter Five then examines the legal processes involved in enforcing the statutes and the effectiveness of law enforcement with regards to illegal livery. Chapter Six provides a prosopographical analysis of those charged with illegal livery, both giving and receiving. The final chapter summarises the main findings of the thesis, the significance of the various patterns uncovered, and explains the wider significance of the research for the broader topics of late medieval politics, society, and public order. This thesis is thus a forensic and comprehensive study of a discrete facet of bastard feudalism that contributes to modern understanding of working of late medieval society, crime, public order, politics and the legal system.

## Chapter Two: Records and Methodology

### **The Records<sup>1</sup>**

The main contemporary sources examined in this study are the records of the King's Bench, which was the highest court in the kingdom and its rulings could only be overturned by parliament.<sup>2</sup> Three specific classes were examined in detail: the controlment rolls (KB29), the ancient indictments (KB9) and the *coram rege rolls* (KB27). The controlment rolls are arranged by regnal year and were originally compiled by the clerk of the court of the King's Bench in order to keep a record of all the crown cases dealt with by the court of the King's Bench. These were the working indexes for the clerk of the court and provide references in the form of regnal year and legal term to the case in other classes of documents. Contained within them were enrolled writs of *venire facias*, ordering local justices to make those accused appear in court. This was the first stage of the legal process.<sup>3</sup> Most writs have annotations, added later, that record the progress of the case, such as the production of a pardon and when, if at all, the accused appeared in court. When this occurs, the annotations give a reference to the relevant *coram rege roll* which contains all the relevant information on the case. These records were diligently updated, as illustrated by the case of Sir Ralph Greystock in Yorkshire. When Greystock finally appeared at King's Bench to produce a pardon on 11 July 1445<sup>4</sup> after being indicted in Michaelmas 1423 with illegally distributing livery to seven yeomen and one gentleman, the clerk of the court updated the controlment roll from 22 years earlier.<sup>5</sup> Therefore, it should be possible, in theory, to use the controlment rolls to identify cases of illegal livery efficiently and obtain basic information such as the legal term in which the offence occurred, the county in which the offence occurred, names of those involved, and the number of men charged in each case.

The ancient indictments contain the charges, by twelve jurors sworn to enquire on the king's behalf, and recorded before the court.<sup>6</sup> They consist of indictments which were the 'formal written accusation[s] of a crime recorded by a presenting jury

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<sup>1</sup> F.S Thomas, *Hand-Book to the Public Records* (London, 1853), 103.

<sup>2</sup> For a discussion of the role of the King's Bench see: Marjorie Blatcher, *The Court of King's Bench, 1450-1550: A Study in Self-Help* (London, 1978), 1-9.

<sup>3</sup> Powell, *Kingship, Law and Society*, 304.

<sup>4</sup> KB27/737 rot. 1 rex.

<sup>5</sup> KB29/57 rot. 5.

<sup>6</sup> For the next two paragraphs see: Thomas, *Hand-Book to the Public Records*, 107.

before a court'.<sup>7</sup> Juries were summoned by various courts such as those of justices of the peace, coroner, sheriff and royal commissioners and represented the local community in court and in special circumstances grand juries were summoned to represent the whole county. The files are arranged by legal terms – i.e. four a year at Easter, Trinity, Michaelmas and Hilary – and the majority of them survive. These records are useful because they give much more detail than the controlment rolls, such as the date of the offence and the place where the offence was committed.

Returned *oyer et terminer* files are also included in the same class as the term files and the indictments contained in them used the same legal formulae as the term files. *Oyer et terminer* commissions were different from normal term indictments because they were initiated by a specific commission by the crown in response to reported local disturbances, usually to men of considerable wealth and high status. The commission gave commissioners the power to 'hear and determine' certain cases of types of cases. During the fourteenth century they were primarily instigated by private requests. While this situation continued during the fifteenth century, they were increasingly instigated by royal government in response to political upheaval, rebellion and local feuding.<sup>8</sup> These commissions, unlike local commissions of the peace, could have jurisdiction in several counties. The revolt of Owain Glyndŵr in Wales in 1404-5 led to a commission being given to Richard, Lord Grey, and others in Gloucestershire and Herefordshire because various men in those counties were alleged to have given assistance to Welsh rebels.<sup>9</sup> Occasions in which violence was concentrated in a single county also resulted in commissions of *oyer et terminer*. Feuding in Yorkshire between the Percies and the Nevilles during the early 1450s led to an *oyer et terminer* commission headed by Richard, duke of York and Richard Neville, earl of Warwick, amongst others in 1454. The hearings occurred during June and July 1454 and then adjourned until March 1455.<sup>10</sup> Violence, however, was not the only factor that could lead to a commission of *oyer et terminer*. Fraud was the reason for the commission given to William Lasynby and Robert Hill in January 1415, which was to investigate 'the counterfeiting of the king's money in the county of

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<sup>7</sup> Powell, *Kingship, Law and Society*, 303.

<sup>8</sup> For the commissions in the fourteenth century see: Richard W. Kaeuper, 'Law and Order in Fourteenth-Century England: The Evidence of Special Commissions of Oyer et terminer', *Speculum*, 54 (1979), 734-84.

<sup>9</sup> *CPR, 1405-1408*, 149.

<sup>10</sup> Discussed in Griffiths, 'Local Rivalries and National Politics', 593-602. The surviving indictments are found in: KB9/148/1, KB9/148/2, KB9/149/1, KB9/149/2.

Essex'.<sup>11</sup> Surviving commissions testify to the various reasons for having *oyer et terminer* commissions, although the files that resulted from them survive in an ad hoc nature, possibly because some were never executed.

The final class of documents examined were the *Coram Rege Rolls* which contain the record of pleas at the Court of King's Bench.<sup>12</sup> These documents are the most detailed legal records examined in this thesis and give the final outcome of the case but do not state what was actually said in court. Included in these records are: the original indictment; record of the payment of fines paid to the King's Bench; the entire legal process; and the outcome of the case. However, these records only arise in instances in which a case was resolved by either a trial or the production of a pardon. As a result such records do not exist for every case that appears in either the controlment rolls or the ancient indictments. The absence of records in this class is itself revealing because the amount of cases that were resolved sheds light upon the legal process involved in prosecuting illegal livery.

Furthermore, there were counties in which King's Bench was not the main law-court. Lancashire, Cheshire and County Durham were all palatinates, which meant that they had their own legal and administrative system. Cases arising from these areas were, therefore, not included in the records of the King's Bench, but in the legal archives of their own palatine. It has therefore been necessary to examine these records separately. Cheshire is the only palatine county where illegal livery cases have been identified.<sup>13</sup> Consequently, the indictment files for Cheshire, CHES25, have a separate field in the database.

Finally, it is necessary to account for instances in which a case was heard at a local level, and therefore not returned to King's Bench. This situation arose in Nottingham in 1483, when John Howick, physician, was presented to the jury charged with being retained by Richard, duke of Gloucester and illegally using his livery.<sup>14</sup> This, however, seems to have been a rare case. Chapter Three demonstrates that Cheshire – a palatine county that was administratively independent, meaning that the surviving records may be representative of the lost local records – had a similar distribution of cases to several other counties. In the same vein, it is also shown that

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<sup>11</sup> *CPR, 1413-1416*, 293.

<sup>12</sup> For this paragraph see: Thomas, *Hand-Book to the Public Records*, 108-9.

<sup>13</sup> Discussed in Chapter Three.

<sup>14</sup> *Records of the Borough of Nottingham, Vol 2: 1399-1485*, ed. W.H Stevenson (Nottingham, 1883), 330-1.

no cases arose in Middlesex, a county for which the King's Bench was the court of first instance. Moreover, the only case of illegal livery that has been identified from the surviving justice of the peace proceedings can also be identified in the records of the King's Bench.<sup>15</sup> Although there is insufficient evidence to make any firm conclusions, what does survive suggests that most, if not all, cases of illegal livery were recorded in the records of the King's Bench.

### **Databases and Medieval Records**

The large number of cases involved, coupled with the consistency of the information contained in the records, made it logical to construct a database in order to analyse the cases found in the King's Bench records. Richard Gorski advocated the use of database technology for examining the operation of central government through appointment to office, stating that 'computer-assisted analysis transforms the common infrastructure of shire administration into an ideal tool for exploring local and regional contrasts within the kingdom'.<sup>16</sup> The use of databases as the basis for an analysis of socio-political history of the middle ages has been an emerging trend in historical research over recent decades. Selected examples illustrate the range of possibilities that databases have for the study of the middle ages. Harold Booton used the burgh records of Aberdeen to create a database to outline 'some of the more important social movements' that took place in the city during the late medieval period.<sup>17</sup> Rebecca Oakes employed a relational database to examine the mortality rates at Winchester College and New College, Oxford during the later middle ages shedding further light upon medieval demographic history.<sup>18</sup> Databases, in short, have various applications that can be, and have been, used for a wide range of studies.

With regards to the remit of this thesis, a comparison can be made with research in late medieval popular revolts. Samuel Cohn conducted a quantitative study of popular rebellions in Europe during the late medieval period, basing his

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<sup>15</sup> This involved the Hampshire gentleman Thomas Grenfield illegally giving livery to a tailor of Winchester: *Proceedings Before the Justices of the Peace in the Fourteenth and Fifteenth Centuries, Edward III to Richard III*, ed. Bertha Putnam (London, 1938), 249-50; KB29/106 rot. 24.

<sup>16</sup> Richard Gorski, *The Fourteenth-Century Sheriff: English Local Administration in the Late Middle Ages* (Woodbridge, 2003), 43-4.

<sup>17</sup> Harold W. Booton, 'The Use of the Computer in the Study of the Economic and Social Structure of Late Medieval Aberdeen', in *History and Computing*, eds. Peter Denley and Deian Hopkin (Manchester, 1987), 28-32.

<sup>18</sup> Rebecca Holly Anne Oakes, 'Mortality and Life Expectancy: Winchester College and New College, Oxford, c. 1391- c. 1540' (unpublished PhD thesis, University of Winchester (Southampton), 2008), 36-43.

conclusions on a sample of 1112 popular revolts found across Italy, France and Flanders between 1200 and 1425.<sup>19</sup> Earlier studies of popular protest had been confined to either individual revolts<sup>20</sup> or confined themselves to a much narrower sample of revolts,<sup>21</sup> rather than attempting a broad chronological and geographical analysis. The conclusions of this thesis are built on a similar quantitative analysis of the cases of illegal livery and retaining identified in the records of the King's Bench. As previously discussed, discussions of illegal livery have thus far focused on specific cases or cases over a shorter chronological span, while this thesis aims to give a more comprehensive analysis of all the cases.

It is, however, important to recognise the difference between the records examined by Professor Cohn to compile his database and those employed in this research. The sources examined by Cohn are more wide-ranging than the documents examined in this thesis which are all of a similar nature, stemming from one centralised governmental and legal structure. Cohn's study covers a wider geographical area and, more importantly, several different states with differing governmental and legal structures. Two broad classes of documents were examined in order to identify revolts: chronicles (ecclesiastical, civic and royal along with personal memoirs) and archives, in the form of various judicial records. Furthermore, such wide variations mean that it is almost impossible to identify every single instance because that would involve trawling the legal records of all the national and local record offices in France, Italy and Flanders over a longer period. Cohn highlighted this methodological concern stating that 'it comes as little surprise that the cities with the strongest chronicle tradition are often those with the greatest number of revolts'.<sup>22</sup> In contrast, examining a predefined number of legal records exclusively should, in theory, obtain a more comprehensive sample of cases of illegal retaining than popular revolts Cohn was able to obtain.

Legal and criminal historians have similarly used statistical evidence as a basis of a study. Phillipa Maddern used the records of the King's Bench for statistical

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<sup>19</sup> Samuel K. Cohn, *Lust for Liberty: The Politics of Social Revolt in Medieval Europe, 1200-1425: Italy, France and Flanders* (Cambridge Mass. and London, 2006).

<sup>20</sup> E.g. William H. TeBrake, *A Plague of Insurrection: Popular Politics and Peasant Revolt in Flanders, 1323-1328* (Philadelphia, 1993).

<sup>21</sup> E.g. Rodney Hilton, *Bond Men Made Free: Medieval Peasant Movements and the English Rising of 1381* (London, 1973), chapters 2 and 3, which form a prelude to a more in depth discussion of the English Rising of 1381. See also: M. Mollat and P. Wolff, *The Popular Revolutions of the Late Middle Ages*, trans. A.L. Lyttonsell (London, 1973).

<sup>22</sup> Cohn, *Lust for Liberty* 14- 22, quotation on 22.

purposes in her study of crime in East Anglia which included a description of the database used. In contrast to this study which uses a combination of the ancient indictments, the *coram rege rolls* and the controlment rolls, Maddern only used the *coram rege rolls* to obtain her statistics.<sup>23</sup> In order to explain the full significance of the study, Maddern contextualised her statistics by examining various other sources in conjunction with the legal records. Maddern examined the way in which violence was conceptualised in fifteenth-century England, utilising sources such as chronicles and contemporary literature.<sup>24</sup> The methodological implication for this study is that illegal livery cases need to be set in the appropriate context, which in this study are national politics, local politics and wider socio-cultural practices and values.

### **Strengths and Weaknesses of the Records**

In addition to problems presented by the surviving sources themselves, some historians have questioned the wisdom of exploiting the King's Bench records for the compilation of statistics. Hannes Kleineke has stated that the regional variations in the readiness of the population to take cases to the law courts results in an analysis of levels of litigiousness rather than levels of crime.<sup>25</sup> Dr Kleineke has therefore advocated a qualitative rather than quantitative use of medieval legal records.<sup>26</sup> Similarly, Ralph Griffiths has stated that it is impossible to statistically chart criminal activity from the fifteenth century and therefore conclusions are, at best, impressionistic.<sup>27</sup> A further problem posed by the records is that they may result from partisan action and not by a true reflection of the extent of illegal livery. Charles Ross commented that the records of the King's Bench 'by their very nature ... deserve to be treated with scepticism, since they were often produced by interested parties, private enemies, informers or spies working for the government'.<sup>28</sup> Despite these reservations, the remit of this thesis permits the use of statistics drawn from King's Bench records. When these cases are present in the records is revealing because it

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<sup>23</sup> Maddern, *Violence and Social Order*, 236-40.

<sup>24</sup> *Ibid*, 75-110.

<sup>25</sup> Kleineke, 'Why the West was Wild', 78-9.

<sup>26</sup> Hannes Kleineke, 'Poachers and Gamekeepers: Four Fifteenth Century West Country Criminals' in *Outlaws in Medieval and Early Modern England: Crime, Government and Society, 1000-1650*, eds. John C. Appleby and Paul Dalton (Farnham, 2009), 129.

<sup>27</sup> Ralph Griffiths, *The Reign of Henry VI: The Exercise of Royal Authority, 1422-1461* (London, 1981), 128.

<sup>28</sup> Charles Ross, 'Rumour, Propaganda and Popular Opinion during the Wars of the Roses' in *Patronage, The Crown and The Provinces*, ed. Griffiths, 16.

helps to explain the operation of the legal system. For example, the fact that there are no cases of illegal retaining between 1480 and 1487<sup>29</sup> does not necessarily mean that no-one was being retained illegally. The problem of hidden crime arises in any study of crime during any period and it is impossible to calculate the amount of unreported crimes, such as those against the statutes of livery. It is probable that illegal livery was being distributed during periods in which no cases were identified. What the records show, therefore, is that during these years no one was indicted on these charges, meaning that during these periods the statutes were not being enforced.

While it is possible to justify using the records of the King's Bench for the production to statistical evidence it is important to recognise the relative strengths and weaknesses of the source material. Problems can arise with regards to identifying cases which are distinct from each other. For example, the notes in the margins of the controlment roll for 14 Henry VII suggest that there were two cases against the statutes of livery of cloth in that year: one case involving John Wright in both Hertfordshire and Cambridgeshire, since both Hertfordshire and Cambridgeshire were entered in the margin next to the case; and a separate case involving four men in Hertfordshire exclusively.<sup>30</sup> However, the ancient indictments for 14 Henry VII Hilary named all the relevant individuals in the same indictment indicate that it should count as one case.<sup>31</sup> Clarification is required in the example of John Wright since both Hertfordshire and Cambridgeshire are written in the margins next to his case. JPs had jurisdiction in one county, in contrast to *oyer et terminer* commissions which could have jurisdiction in many counties. John Wright was from Cambridgeshire and, therefore, any offence he was accused of committing could not have been committed in Cambridgeshire but in Hertfordshire where the JPs had jurisdiction. A separate writ would, therefore, have been sent out for John Wright's charge because he would have been living in Cambridgeshire. In this particular situation, the separate writs show that a distinction was made between the fact that John Wright was from Cambridgeshire but wearing illegal livery in Hertfordshire, whereas the other men indicted from Hertfordshire. Instead of two separate cases in both Hertfordshire and Cambridgeshire, as the controlment roll suggests, there was only one case in Hertfordshire.

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<sup>29</sup> KB 29/114-118. This is discussed in Chapter Three.

<sup>30</sup> KB 29/129 rot. 22.

<sup>31</sup> KB 9/419 ms. 8.

It is also necessary to recognise that the cases discussed in this thesis are from the crown side of the King's Bench. Several cases, however, can be identified from private prosecutions on the plea side. In Nottinghamshire, in 1451, Sir John Talbot (later earl of Shrewsbury) accused Sir John Stanhope of illegally distributing livery to 24 men at Rampton on 20 January 1450.<sup>32</sup> Simon Payling has suggested that Stanhope's distribution of livery was a means by which he could mobilise his supporters in order to ensure his election.<sup>33</sup> Like many of the cases that this thesis is focused upon, local political circumstances were connected to indictments for offences against the statutes of livery. Examining other private suits such as the case brought against Sir John Dynham in 1467,<sup>34</sup> or that against Sir Ralph Hastings by Peter Pekham, esquire, in Essex in 1490,<sup>35</sup> may demonstrate a similar link between local disputes and illegal livery. The remit of this thesis, however, prohibits extensive consideration of private prosecutions, since that would involve identifying an entirely different set of cases spread over both the records of the common pleas (CP40) as well as those from the plea side of the King's Bench. Future research, however, can use the findings presented in this thesis to contextualise private prosecutions for illegal livery.

A further problem with the controlment rolls arises from double-counting, which occurs when the same person appears in several cases. Men from diverse social background such as George Neville, lord Bergavenny<sup>36</sup>, Thomas Wingfield, esquire<sup>37</sup> and William Wynge, yeoman of Pentrich in Derbyshire<sup>38</sup> were indicted on more than one occasion for offences against the statutes of livery. Repeat offenders were entered more than once into the database because it makes it possible to count the number of people indicted in each individual case. This does, however, mean that the number of different individuals that were indicted is smaller than the number in the database, due to multiple-entries. A failure to give the exact number of different individuals involved in illegal retaining, however, does not detract from the main conclusions of this thesis.

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<sup>32</sup> CP40/763 rot. 483; CP40769 rot. 138.

<sup>33</sup> Payling, *Political Society*, 162-4.

<sup>34</sup> CP40/822 rot. 288.

<sup>35</sup> KB27/916 rot. 74, plea.

<sup>36</sup> KB29/133 rot. 27; KB29/136 rott. 17-18; KB29/148 rott. 17-18.

<sup>37</sup> KB29/98 rott. 8, 19; KB29/99 rot. 31.

<sup>38</sup> KB9/13 ms. 11, 20, 60.

The final anomaly requiring consideration when attempting to count the number of cases is when a pardon survives for any violations of the statutes of livery, but no record of the crime exists in the King's Bench records. A letter patent dated 19 February 1452 pardons James, earl of Wiltshire, for 'all trespasses, offences, misprisions, contempts and impeachments against the statutes of liveries prior to 20 December [1451]'.<sup>39</sup> However, no case appears in the King's Bench records accusing the earl of Wiltshire of contravening the livery statutes.<sup>40</sup> Offences against the statutes of livery were included in pardons, not because any case had been brought forth on the matter, but because pardons habitually covered all offences up to the date of issue. In the context of this study, pardons for the purposes of identifying a case are unhelpful because a pardon does not necessarily mean each specific crime mentioned had been committed. Therefore, instances in which pardons survive, but no corresponding legal record does, are not included in the analysis of the cases.

Despite these methodological problems, it has been possible to utilise the records of the King's Bench for the purposes of this study. The examination of the King's Bench records began with the controlment rolls. From there it was possible to identify the case in both the ancient indictments and the *coram rege rolls* in order to establish the precise details of the case. There were two reasons for beginning with the controlment rolls. Firstly, the controlment rolls are heavily abbreviated and were compiled for the clerk of the crown as an index of the cases that concerned him during each regnal year. Each roll consists of a full legal year, while the other classes of documents require four rolls for each year. They can be used as an index for looking up the results of the case because they contain notes, entered later, and often much later, stating when those accused appeared in court and if they produced a pardon etc. It was therefore more efficient to examine the controlment rolls first.

Secondly, the nature of the fifteenth-century legal system meant that the controlment rolls contain information about cases that were started but subsequently never resolved. This allows for a larger number of cases to be identified which would otherwise be missed. William Dunham's examination of the *coram rege rolls* led to him finding no prosecutions for illegal retaining in 1469-70.<sup>41</sup> Michael Hicks's subsequent examination of the controlment rolls found several key cases, including

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<sup>39</sup> *CPR, 1446-52*, 525.

<sup>40</sup> KB29/82-3.

<sup>41</sup> Dunham, *Lord Hastings' Indentured Retainers*, 82

the indictment of the dukes of Norfolk and Suffolk.<sup>42</sup> In this situation the controlment rolls were more comprehensive in their recording of the specific cases. Therefore, when attempting to survey the instances of a specific crime over a long time period, it is logical to begin with an examination of the more comprehensive controlment rolls in order to identify cases and develop a general overview of the cases before consulting more detailed documents.

A further strength of the controlment rolls is that they have a high survival rate. Only twenty controlment rolls have been lost between the passing of the first statute in 1390 and the end of the chronological scope of this thesis in 1530. They are especially useful from the reign Edward IV onwards after which only two of the relevant rolls have been lost.<sup>43</sup> In situations in which the relevant controlment roll has been lost, ancient indictment and *oyer et terminer* files can be used to reconstruct the cases involved. For instance, the controlment roll for 8 Edward IV, has been lost but the surviving *oyer et terminer* file from Derbyshire in Easter 1468 shows that eight cases arose in Derbyshire in 1468.<sup>44</sup> When both the indictment and the controlment rolls have been lost, the *coram rege rolls* can be used to identify cases. For the reign of Henry V, numerous records lost are lost from all three King's Bench classes examined in this thesis and therefore all the records in each series had to be examined. One case that can only be identified from an entry in the *coram rege rolls* comes from Yorkshire in 1421 when Sir John Etton was indicted for giving illegal livery to two yeomen the previous year.<sup>45</sup> Neither the indictment, nor the relevant controlment roll survives for this case. Relying on the *coram rege rolls* is problematic because it prejudices the statistics in favour of cases that came to conclusion. This problem is, however, outweighed by the extra information that it gives about the operation of law, the chronological and geographical distribution of cases, and prosopographical data.

### **The Design of the Database**

In designing the database employed in this thesis several aspects of database modelling were considered to ensure that the database was properly designed. Charles Harvey and Jon Press have highlighted the dangers of a poorly designed database in

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<sup>42</sup> Hicks, 'The 1468 Statute of Livery', 23-25, citing KB 29/99 rott. 32-3.

<sup>43</sup> The missing years are: 15, 16, 18, 22 Richard II; 2, 6, 7, 10, 13 Henry IV; 4, 5, 7, 9, 10 Henry V; 7, 26, 31, 35 Henry VI; 8 Edward IV; 20 Henry VII.

<sup>44</sup> KB9/13 ms. 11, 19-23, 53, 63.

<sup>45</sup> KB27/642 rot. 31 rex.

historical research, stating that the effect is ‘that more complex types of queries cannot be answered and the desired information [cannot] be retrieved from the system’. Historical research multiplies these problems due to ‘the inherent complexity of the data and the circular nature of the research process’.<sup>46</sup> Two broad approaches to database in historical research have been considered: the source-orientated approach and the model-orientated approach.<sup>47</sup> Manfred Thaller has advocated the ‘source-orientated approach’ whereby databases should be regarded as editions of sources.<sup>48</sup> The focus in this respect is on the source material, rather than the research questions. In contrast, Peter Denley has discussed the ‘model-orientated approach’, stating that the most important thing is that the database answers certain pre-defined research question and that the data is in a regular and ‘relatively straightforward’ form.<sup>49</sup>

The database employed for this particular study can, in effect, be regarded as a hybrid between the two models. Essentially, the database is source-oriented, because it attempts to re-create the information in the original records and the majority of the fields have been chosen because they replicate the information given in the original source. However, the fact that the data was collected from three classes of records instead of one means that the database cannot be an exact replica of the original archival sources. In this respect the database can be regarded as conglomeration of sources made into a database in order to address questions fundamental to the aims and objectives of this thesis. The database is ‘model-oriented’ in the sense that certain information is being extracted from the three classes of documents in order to address the research questions. Furthermore, the validity of the ‘source-orientated approach’ can be seen in the ‘Surname Repeated’ field. This field was added during the data entry process when it became apparent that there was a relevant issue to be examined with respect to the extent to which family ties were prevalent in illegal retinues during the late medieval period.<sup>50</sup>

The nature and character of the sources meant that it was necessary to create a relational database with two tables. The first one is about the cases themselves. Each

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<sup>46</sup> Charles Harvey and Jon Press, *Databases in Historical Research: Theory, Methods and Applications* (Basingstoke, 1996), 102.

<sup>47</sup> I would like to thank Dr Mark Allen for several discussions regarding these wider methodological points.

<sup>48</sup> Manfred Thaller, ‘The Historical Workstation Project’, *Computers and the Humanities*, 25 (1991), 151-8.

<sup>49</sup> Peter Denley, ‘Models, Sources and Users: Historical Database Design in the 1990s’, *History and Computing*, 6 (1994), 40.

<sup>50</sup> Discussed in Chapter Six.

writ of *venire facias* that appears in the controlment rolls was entered as a separate case, unless a corresponding indictment indicated that two or more writs referred to the same indictment. The second table regards those involved (see below) in the case and can be used to develop a prosopographical understanding of the people that were indicted for contravening the statutes of livery. The database was therefore designed as follows:

#### Database Table 1 – Sources

- ID – a unique ID field.
- KB29 – the reference to the case in the controlment rolls.
- KB9 – the reference to the case in the ancient indictments.
- KB27 – the reference to the case in the *coram rege rolls*.
- CHES25 – the reference of the cases in the indictment rolls for the palatinate of Cheshire.<sup>51</sup>
- County – county in which the offence occurred.
- Shared Address – indicating whether the person distributing the livery was recorded as coming from the same place town or village as at least one of the people given illegal livery.
- Offence – either livery of cloth, sign, gown, or cap; illegal retaining; or the fraudulent wearing of livery.
- Reign – reigning king.
- Regnal Year.
- Year, AD – a numbers field stating the year that the case arose.<sup>52</sup>
- Place of Offence – the place where the offence was committed.
- Date of Offence – the date in which the offence was committed. It does not always follow that the offence was committed during the legal term that the indictment was made. An extreme example of this comes from Derbyshire in 1468 when Sir John Gresley of Drakelow was indicted for illegally giving his livery to five other men in 1461.<sup>53</sup>

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<sup>51</sup> No cases were identified from Lancashire of county Durham and therefore no field was required to represent cases from those counties.

<sup>52</sup> Information was obtained by checking the regnal years in: C.R. Cheney, *A Handbook of Dates For Students of British History*, revised by Michael Jones (Cambridge, 2000).

<sup>53</sup> KB9/13 ms. 19.

- Associated Feast Day – the feast on which the offence was committed or was dated to.
- Legal Term – the term that the case arose.
- Heard Case – who heard the case – JPs or an *oyer et terminer* commission.
- Surname Repeated? – a yes/no field which identifies if one or more surnames are repeated in the case to enable an examination of family connections.
- Notes – any miscellaneous information that was pertinent to subsequent analysis and discussion.

#### Database Table 2 – Indicted

- ID – a unique ID field.
- Source ID – the ID field for the source referring to the person indicted.
- First name – the first name of the indicted person.
- Surname – the surname of the indicted person. In situations in which there a father and son are distinguished as either junior or senior then the relevant Jr. or Sen. was entered into the database.
- Town – the town, city or village that the person came from.
- Status – their status or occupation – e.g. knight, esquire, yeoman, husbandman, labourer, etc.
- From different county? – a Yes/No field to show if the person indicted came from a different county than the one in which he/she was charge.
- Different county – the name of the county they were from, if different from the one they were charged in.
- Sine die – a yes/no field stating whether or not the person produced a charter of pardon resulting in the case being thrown out of court.
- Appear – a yes/no field indicting if the person ever appeared in court.
- Result – final result of the case. The reason for having a result field different from the ‘Sine die’ and ‘Appear’ fields is that it permits an analysis of the relevant percentages of people that were tried and found guilty and those tried and found innocent.
- Fine – the amount they were fined.
- Notes – any miscellaneous information about the particular that was pertinent to subsequent discussion and analysis.

No gender field was included because an extra field recording gender would needlessly use up memory. The overwhelming majority of those indicted were men. Gender can be identified by first-names and, it is therefore, unnecessary to have a separate field for gender. Cases in which women were indicted are discussed in full in Chapter Six. Despite this minor limitation, this was an effective database from which the conclusions presented in this study could be drawn. It was possible to use the query function in *Microsoft Access* to count the number of cases in a particular county, or during a particular chronological period, such as an individual reign. It was also possible to see the number of men involved in these cases, what their status was and the specific crime for which they were indicted. These queries are used throughout this study in order to illuminate many of the findings of this thesis.

### **Wider Applications**

The database model employed in this study has wider applications beyond the specific remit of this study because it can be utilised for other studies that rely on the records of the King's Bench. Other crimes, especially riot, can be examined using this database model. The nature of riot – i.e. usually involving more than one person, and with no specific victim – means that the database used in this thesis could be replicated for the purposes of a study of riot. Minor modifications to this design can enable other types of study focused on the King's Bench records to be conducted. For instance, an examination of cases of theft would require an extra table, or fields, detailing what had been stolen and who it had been stolen from. Murder, assault and rape could be examined too using the fields outlined about, but would require extra fields, or potentially another table, giving details of the victims.

A county-based criminal study can also be conducted using this database. Although focusing on one county would make it superfluous to enter the name of the county into the database, the other fields would be necessary for examining the types of crime, criminals and the enforcement of law in a particular county, over a select period of time. Extra tables could be added to record the details of the victims of crimes in these instances, if that was within the remit of a further study. Similarly, the database can be used to compare two or more counties in order to analyse levels of crime that were taken to King's Bench. Studies of crime throughout England can also be conducted using this database. In this situation, rather than examining a large

number of controlment rolls and look for specific cases, the study would record every crime recorded over a set number of years, likely a shorter chronological span than other possible studies.

### **Conclusion**

This chapter has discussed the methodology required to undertake this study. By considering records of the King's Bench, their nature and their relevant strengths and weaknesses it has been possible to determine what information can be obtained from their examination. The chapter has also considered the ways in which previous historians have utilised medieval records for the purposes of statistical analysis and the different possible database models that can be used to obtain them. By identifying the nature of the records and considering the ways in which databases can be used for historical research, it has been possible to adopt a methodology that is able to address the main research questions of this study.

## Chapter Three: Distribution of Cases

Using the methodology described in Chapter Two, 334 cases of illegal livery have been identified. This chapter surveys these 334 cases and discusses their distribution chronologically and by county. It is, however, likely that there were more than 334 instances of illegal livery. It is reasonable to presume that illegal livery was frequently occurring, but that the statutes were enforced only on certain occasions. A returned commission to chancery from the sheriff of Leicestershire in 1448 which mentioned five instances of illegal livery gives credence to this assumption.<sup>1</sup> The initial commission was concerned with extracting ‘alienations and acquisitions’<sup>2</sup> and it seems that the commissions misinterpreted the request. No formal indictment can be identified in the records of the King’s Bench and no similar cases can be found elsewhere in the calendared *inquisitions miscellaneous*.<sup>3</sup> Clearly, illegal livery was being distributed but the offences were not being prosecuted. J.M.W Bean noted that during the late medieval period a statute ‘could not be viewed as a piece of absolute law that must always be enforced with total rigor’. The enforcement of a particular statute would instead ‘depend upon the king’s will at any given time’.<sup>4</sup> This chapter examines those cases that were prosecuted by the King’s Bench. By examining the chronological distribution of the cases it is possible to locate the cases within a wider context of other contemporary events at both a national and local level. Examining the distribution by county creates an understanding of the local contexts of the specific counties in which cases arose. Combined, these two surveys reveal various trends about the enforcement of the statutes of livery, providing the foundations upon which the remainder of this study is built.

### *Chronological Distribution*

#### **1390-1413**

According to Nigel Saul, ‘the debate about liveries burst upon the late fourteenth-century scene with surprising suddenness’.<sup>5</sup> These Parliamentary debates, however, failed to translate into prosecutions for this new offence. Only one case from the rex

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<sup>1</sup> *Calendar of Inquisitions Miscellaneous, 1442-1485* (London, 2003), no. 213.

<sup>2</sup> *CPR, 1446-1452*, 140.

<sup>3</sup> *Calendar of Inquisitions Miscellaneous, Volume VI: 1392-1399* (London, 1963); *Calendar of Inquisitions Miscellaneous, Volume VII: 1399-1422* (London, 1968).

<sup>4</sup> Bean, *From Lord to Patron*. 217.

<sup>5</sup> Saul, ‘The Commons and the Abolition of Badges’, 305.

side of the *coram rege rolls* has been identified for the period 1390 to 1413. The case involved 30 men from Yorkshire in 1393 and this case was qualitatively different from later cases. Instead of one lord distributing livery to men that were not of his family, legal counsel or permanent household, the indictment was against a group of men that wore the same livery ‘by corrupt allegiances and confederacy, each of them maintaining the other in all complaints, true or false, against whomever should wish to complain against them or any one of them’.<sup>6</sup> During Henry IV’s reign the only identifiable case was in 1410 when 24 men were indicted in Derbyshire under a private suit and is recorded in the plea side of the rolls.<sup>7</sup> Cases from other courts may initially appear to be connected with the statutes of livery. At a session of the peace in Lincoln in 1395, John de Threkyngham, weaver of Lincoln, was retained ‘contrary to the statute’.<sup>8</sup> Rather than being against the statutes of livery, however, this was against the statutes of labourers. By 1395 only the distribution of livery had been regulated.<sup>9</sup> At the same session John Thekyngham was indicted for illegally leaving the service of Richard Bonding of Wellingoure.<sup>10</sup> The problem being dealt with in Lincolnshire in 1395 was the statutes of labourers, not the problem of unregulated retaining.

The near total absence of cases during this period may be unexpected given that there was much discussion of the issue in parliament. This may indicate that the offences were dealt with by some other means that did not involve the King’s Bench. In order to be certain of this hypothesis it would be necessary to examine local court records which do not survive to the extent required for this study. However, no cases have been identified in a preliminary examination of seven surviving justices of assize records from 1388 to 1417.<sup>11</sup> Justices of assize, like those of the King’s Bench, were not dealing with illegal livery in the years following the first acts. Alternatively, the private suit in Derbyshire in 1410 may indicate that prior to Henry V’s accession, the King’s Bench only dealt with private suits which the 1401 act permitted.<sup>12</sup> A sampling of the plea side of the *coram rege rolls*, however, failed to yield any further cases of

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<sup>6</sup> KB27/528 rot. 35 rex. Also printed in *Select Cases in the Court of King's Bench Under Richard II, Henry IV and Henry V*, ed. G.O. Sayles, Selden Society 88 (London, 1971), 83-5.

<sup>7</sup> KB27/596 rot. 76 plea. Printed in *Select Cases in the Court of King's Bench Under Richard II, Henry IV and Henry V*, 192-4.

<sup>8</sup> *Records of Some Sessions of the Peace in Lincolnshire, 1381-1396, Volume I: The Parts of Kesteven and The Parts of Holland*, ed. Elisabeth G. Kimball (Hereford, 1955), no. 42.

<sup>9</sup> *PROME*, vii, 147-50, 239-40.

<sup>10</sup> *Some Sessions of the Peace in Lincolnshire*, no. 41.

<sup>11</sup> The examined records were: JUST1/172; JUST1/1503; JUST1/1505; JUST1/1509; JUST1/1512; JUST1/1528; JUST1/1529.

<sup>12</sup> *PROME*, viii, 148-9.

illegal livery.<sup>13</sup> Even if there were other private suits during Henry IV's reign, it would not account for the lack of cases before the 1401 act enabled private suits.

Although the records of the King's Bench suggest little by way of enforcement of the statutes, the parliament rolls indicate that livery remained a political issue. Parliamentary discussion on livery is the subject of Chapter Four but here it is pertinent to consider instances of peers being accused in parliament. The forfeiture of dukes of Aumale, Surrey, and Exeter in 1399 includes a clause stating that they should not give 'livery of badges, or create a retinue of men except of necessary officers within their households, and of necessary officers outside their households to govern their lands and possessions'.<sup>14</sup> No indictments of illegal livery against any of these dukes survive in the records of the King's Bench. Nevertheless, the inclusion of livery in their forfeiture implies that they had been distributing illegal livery but were never charged, or at least that they were thought to have been doing so. It was also reported in January 1400 that an esquire of the earl of Huntingdon, Raulyn Govely, wore the earl's livery and refused to remove it 'in spite of all who would speak against it'.<sup>15</sup> Again, no indictment for this alleged offence can be found.

There was one case pertaining to the distribution of livery to non-permanent servants. On 8 February 1404 Henry Percy, earl of Northumberland appeared before parliament to plea for mercy for the various crimes he had committed. Included in this plea for mercy was a confession that he had not kept many of the king's laws and statutes 'especially by gathering power and giving liveries'.<sup>16</sup> The previous July, Northumberland had been conspicuous by his absence at the Battle of Shrewsbury, where a rebel army led by his son, Henry Percy, also known as 'Hotspur', and his brother the earl of Worcester had been defeated by the new Lancastrian regime, with Hotspur being killed during the fighting and Worcester beheaded soon after.<sup>17</sup> One chronicler noted that the rebels at Worcester wore the livery of Richard II,<sup>18</sup> which was why the distribution of livery was one of the accusations against Northumberland in parliament. Andy King has speculated that one of Northumberland's retainers, Sir

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<sup>13</sup> The examined rolls were: KB27/570 plea; KB27/574 plea; KB27/582 plea; KB27/586 plea.

<sup>14</sup> *PROME*, viii, 11-12.

<sup>15</sup> *Cal. Inqui. Misc., 1399-1422*, no. 88.

<sup>16</sup> *PROME*, viii, 231-2.

<sup>17</sup> For contemporary accounts see: *An English Chronicle 1377-1461*, ed. William Marx (Woodbridge, 2003), 32-4; *The Chronicle of Adam Usk, 1377-1421*, ed. and trans. Christopher Given-Wilson (Oxford, 1997), 168-71; *The Chronica Maiora of Thomas Walsingham (1379-1422)*, ed. David Preest (Woodbridge, 2005), 326-9.

<sup>18</sup> *An English Chronicle*, 33.

William Clifford, was probably distributing the earl's badges prior to the rebellion.<sup>19</sup> Despite being accused in parliament, no corresponding indictment has been identified from the surviving King's Bench files. Therefore, the case was omitted from the database constructed from the records because it was not prosecuted via the traditional means and fails to contain much of the required information such as county of origin, date of offence or names of those given illegal livery. The case does, however, suggest that livery was being distributed in order to artificially increase the size of Northumberland's affinity for the purposes of rebellion.

With the exception of the accusations made against Northumberland, there was no widespread enforcement of the statutes during the reigns of Richard II or Henry IV. This does not seem to have been peculiar to illegal livery. Reporting on the Cambridge Parliament of 1388 Thomas Walsingham refused to waste either time or parchment reciting most of the statutes passed 'for the very good reason that those same statutes were often enacted before this, but had hitherto not been observed'.<sup>20</sup> The lack of enforcement during the years initially following the passing of the first statute can be contextualised by comparison with other laws passed during this period. The clearest example of this is the statute *de heretic comburendo* from 1401 which introduced the death penalty for convicted heretics.<sup>21</sup> Only two men are known to have been burned at the stake prior to the 1414 revolt: William Sawtry on 2 March 1401 (curiously, before the act itself was passed) and John Badby, in 1410. Similarly, the 1406 act for which only one person, William Thorpe, is imprisoned for prior to the Lollard rebellion is 1413. The other known case was that of John Oldcastle, arrested in 1413, which itself triggered the revolt.<sup>22</sup> Lollardy was not considered a serious enough problem by those other than those behind the legislation, believed to be

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<sup>19</sup> Andy King, 'Sir William Clifford: Rebellion and Reward in Henry IV's Affinity', in *English and Continental Perspectives*, eds. Linda Clark (Woodbridge, 2010), 151.

<sup>20</sup> *The St Albans Chronicle: The Chronica Maiora of Thomas Walsingham*, 2 volumes, eds. and trans. John Taylor, Wendy R. Childs and Leslie Watkiss (Oxford, 2003-11) i, 859.

<sup>21</sup> *PROME*, viii, 95-6, 122-5.

<sup>22</sup> *Chronicle of Adam Usk*, 123; *Chronica Maiora of Thomas Walsingham (1379-1422)*, 319, 375-6. On John Badby see: Peter McNiven *Hersey and Politics in the Reign of Henry IV: The Burning of John Badby* (Woodbridge, 1987). For a recent discussion of the Thorpe case see: Maureen Jurkowski, 'The Arrest of William Thorpe in Shrewsbury and the anti-Lollard Statute of 1406', *Historical Research*, 75 (2002) 273-95.

Archbishop Arundel,<sup>23</sup> to enforce. It was not until Lollards had rebelled that anti-Lollard legislation was enforced.

Other laws passed during this period were enforced shortly after being passed. The most notable of these are the statute of labourers which were designed to restrict wages after the demographic catastrophe of the Black Death<sup>24</sup> for which cases have been identified from almost immediately after the in legislation was enacted.<sup>25</sup> Unlike the statutes of livery, there seems to have been no compunction on the part of the justices to enforce these laws. Justices had an economic imperative to ensure that they statutes were upheld and enforced. Enforcement, however, should not be taken as evidence of the effectiveness of the statutes. Christopher Given-Wilson has taken the high number of cases as being evidence for the ineffectiveness of the statutes, since it suggests that the perceived profit to be gained from higher wages was greater than the fine imposed.<sup>26</sup> Even if ineffective in achieving their objective of limiting wages, the statutes and ordinances of labourers were enforced after their enactment. When in the interests of local justices, new legislation was enforced with relative speed.

Another late medieval law that present research suggests was widely enforced in the late fourteenth century was praemunire. Five statutes between 1351 and 1391 sought to prevent the papacy from granting clergymen English benefices. By the sixteenth century it had developed from being primarily antipapal in character to anticlerical.<sup>27</sup> The pertinent point here about the legislation is that it was protecting royal prerogative and was therefore enforced. There has been no systematic examination of the legal records for the years immediately after the first statute, so any comparison is impressionistic. Diane Martin's examination of the plea rolls between 1376 and 1394 identified at least 91 'primary defendants' in cases of provisors or praemunire. This revised an earlier interpretation of Cecily Davis that the statutes were not enforced due to a concordat between the crown and the papacy

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<sup>23</sup> *Chronicle of Adam Usk*, 249. *Chronica Maiora of Thomas Walsingham (1379-1422)*, 319 notes the statute being enacted but does not say who was its architect. See also: Powell, *Kingship, Law and Society*, 141-67.

<sup>24</sup> *PROME*, v, 9, 14.

<sup>25</sup> Bertha Putnam, *The Enforcement of the Statutes of Labourers During the First Decade after the Black Death, 1349-1359* (New York, 1908), 170-4.

<sup>26</sup> Christopher Given-Wilson, 'Service, Serfdom and English Labour Legislation, 1350-1500', in *Concepts and Patterns of Service*, eds. Curry and Matthew 24.

<sup>27</sup> P.R Cavill, 'The Enemy of God and His Church': James Hobart, Praemunire, and the Clergy of the Norwich Diocese', *The Journal of Legal History*, 32 (2011), 127-9.

which was based on an examination of the close and patent rolls.<sup>28</sup> Cases did arise in the aftermath of the legislation's introduction indicating that the law-making and law-enforcing class were able to quickly enforce and prosecute new legislation when they wanted.

The absence of cases during this period implies that there was little will from those outside the Commons to enforce these statutes. Parliamentary petitions did not act as an impetus for widespread judicial activity against livery. During the late fourteenth and early fifteenth centuries, the Commons made several petitions complaining about the actions of liveried retainers and demanded action on the issue. Moreover, Richard II's use of his retinue of Cheshire archers and their crimes became one of the thirty-three charges against him when he was deposed in 1399.<sup>29</sup> Some sections of parliament clearly thought that livery was becoming problematic but, on the evidence of charges of illegal livery, these views do not seem to have been widespread. While parliament was attempting to deal with the problem of livery through legislation, there was no real effect because the statutes were not being enforced. The political debate about livery was unable to translate into real judicial activity against the problem. Paradoxically, the people that were petitioning about the problems of livery and passing the laws against livery (MPs) came from the same class of people that were traditionally responsible for local law enforcement as JPs

### **1414-1449**

Henry V's accession was the first period in which there were a substantial number of recorded cases of illegal livery. Henry V has been praised by both contemporaries and modern historians for his campaigns against disorder during the early years of his reign.<sup>30</sup> It is now evident that he was the first king to campaign against illegal livery. Neither Richard II nor Henry IV, from the evidence presented here, actively campaigned against illegal livery. The first major cluster of illegal livery cases occurred at the start of Henry V's reign when 21 cases arose in Staffordshire in

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<sup>28</sup> Diane Martin, 'Prosecution of the Statutes of Provisors and Premunire in the King's Bench, 1377-1394', in *Fourteenth Century England IV*, ed. J.S Hamilton (Woodbridge, 2006) 111. Note: in her footnotes Martin does not specify if the cases she is discussing originate from the rex side or common pleas side of the *Coram Rege Rolls*, or from a combination of both, thus preventing any direct statistical comparison. For earlier work see: Cecily Davies, 'The Statute of Provisors of 1351', *History*, 38 (1953), 116-33.

<sup>29</sup> *Chronicles of the Revolution, 1397-1400: The Reign of Richard II*, ed., Christopher Given-Wilson (Manchester and New York, 1993), 174.

<sup>30</sup> For various appraisals of Henry V's see especially: Powell, *Kingship, Law and Society*, 269-71.

1414.<sup>31</sup> Prior to these cases arising both Edmund Ferrers and Hugh Erdeswyk had petitioned parliament in April 1414, each to complain that the other had gathered a large group of their men together and attacked their property.<sup>32</sup> One further case can be identified from Staffordshire the following year.<sup>33</sup> In total, Staffordshire accounted for 71% of all cases of illegal livery during the reign of Henry V (22/31).

Staffordshire, however, was not the only county in which illegal livery was being detected. Five cases can be identified from the *coram rege rolls* from Shropshire in 1414.<sup>34</sup> To this can be added one case from Cheshire in 1415.<sup>35</sup> These cases were part of Henry V's attacks against lawlessness in the localities early in his reign that Edward Powell argued that Henry V needed to undertake before he could mount a military campaign abroad.<sup>36</sup> At a national level this meant dealing with the Lollard rebellion led by John Oldcastle in 1414.<sup>37</sup> At a local level, Henry was making widespread changes to the personnel involved in law enforcement throughout England. Soon after his coronation Henry V had issued new commissions of the peace for all counties and replaced his Chief Justice of the King's Bench, William Gascoigne, with William Hankford.<sup>38</sup> In the local context the cases occurred during a period of violent local feuding in both Staffordshire and Shropshire that had been ongoing since the early years of Henry IV's reign.<sup>39</sup> The cases were picked up at the time in which justices were travelling across the Midlands dealing with instances of unrest and local disturbances. Despite the fact that cases are only known in three counties, it is clear that the first major clusters of cases arose when the new king, Henry V, was attempting to eradicate, or at the very least minimise, local disorder, before undertaking his military campaigns in France.

The final years of Henry V's reign and the early years of Henry VI's minority witnessed a drop in the frequency of cases. From 1421 until 1423 four further cases of

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<sup>31</sup> KB29/53 rot. 24; KB9/113 ms. 2, 11, 28, 40-3. Calendared in 'Extracts from the Plea Rolls of the Reigns of Henry V and Henry VI', ed. George Wrottesley, William Salt Archeological Society, xvii (London, 1896), 6-7, 9-10.

<sup>32</sup> 'Extracts from the Plea Rolls of the Reigns of Henry V and Henry VI', 3-4.

<sup>33</sup> KB27/617 rot. 16 rex.

<sup>34</sup> KB27/613 rott. 39-40 rex.

<sup>35</sup> CHES25/25 ms. 14.

<sup>36</sup> Powell, *Kingship, Law and Society*, 168.

<sup>37</sup> See e.g. *Ibid.*, 141-67.

<sup>38</sup> *CPR, 1413-16*, 416-16. For a contemporary account see: *Chronicle of Adam Usk*, 244-7; *Chronica Maiora of Thomas Walsingham (1379-1422)*, 394-5.

<sup>39</sup> Powell, *Kingship, Law and Society*, 208-24.

illegal livery have been identified: one from Shropshire in 1421<sup>40</sup> and three from Yorkshire between 1421 and 1423.<sup>41</sup> Henry V's government was the first to take active judicial action against livery. The cases were part of an attempt to curb the violent local disturbances in midlands during the early years of his reign. Towards the end of the reign the frequency of cases dropped, but cases continued to arise during the early years of the Henry VI's minority. In this respect there was a clear continuity between the reigns of Henry V and Henry VI. Enforcement of the statutes of livery did not halt with the change of monarch. From 1415 onwards, there was a decline in the number of cases because the statutes were enforced only when it was deemed necessary.

Thereafter, there was a lull of five years until the next cluster of cases can be identified from Cheshire in 1428 when 14 occurred in the palatinate.<sup>42</sup> The following year there was one case in Sussex,<sup>43</sup> which was followed by a three year gap in which no cases can be identified. During the 1430s the geographical location of the cases diversified with 24 cases occurring over eight counties between 1432 and 1440. The first two of these cases were in Cheshire in 1432<sup>44</sup> followed by two in Somerset in 1433.<sup>45</sup> Other cases can be identified from Kent in 1435,<sup>46</sup> Warwickshire in 1436<sup>47</sup> and Sussex in 1437.<sup>48</sup> These cases were followed by three further cases in 1439-40: one of which came from London<sup>49</sup>; another from Yorkshire<sup>50</sup>; and ones from Oxfordshire in 1440.<sup>51</sup> The greatest number of cases between 1432 and 1440 came from Derbyshire, which accounted for 54% of the cases in this period. In 1434 an *oyer et terminer* commission produced 13 cases of illegal livery in Derbyshire.<sup>52</sup> After 1440 was another sustained gap in which no cases can be identified for nine years. The 1430s was therefore a decade in which cases of illegal livery were beginning to arise in more counties, although, like Staffordshire in 1414, the majority of cases occurred in a single county that was experiencing local disorder. The absence of cases

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<sup>40</sup> KB27/640 rot. 7 rex; KB27/642 rot. 7 rex.

<sup>41</sup> KB27/642 rot. 31 rex; KB27/645 rot. 8 rex; KB29/56 rot. 25; KB29/57 rot. 5.

<sup>42</sup> CHES25/12 ms. 16-17.

<sup>43</sup> KB29/62 rot. 3.

<sup>44</sup> CHES25/12 ms. 25.

<sup>45</sup> KB29/66 rot. 28; KB29/67 rot. 4.

<sup>46</sup> KB29/68 rot. 11.

<sup>47</sup> KB29/69 rot. 19.

<sup>48</sup> KB2970 rot. 16.

<sup>49</sup> KB29/72 rot. 30.

<sup>50</sup> KB29/72 rot. 22.

<sup>51</sup> KB29/74 rott. 3, 14.

<sup>52</sup> KB29/68 rott. 4-5, 9-10, 17, 20; KB9/11 ms. 15, 17.

in both 1423-28 and the 1440s is coherent with the wider chronological distribution of cases prior to the reign of Henry VII, in which there were short periods in which many cases arose followed by long periods in which the records indicate that no charges were made against anyone illegal distributing or receiving livery.

### **1449-1488**

The next distinguishable period was between 1449 and 1488. After almost a decade in which the statutes were not enforced, several cases connected with violent feuding were picked up during the 1450s. This was followed by several other cases arising during the early years of Edward IV's reign prior to the 1468 statute of livery. The 1450s have a reputation of lawlessness and the breakdown of government. Violent disputes at a local level throughout England have been shown to have contributed to the start of the Wars of the Roses and the breakdown of central government. Bastard feudal connections have been interpreted as being contributory factors to these violent outbursts. Several of the cases of illegal livery during this period can be seen to have been linked with these local disturbances.<sup>53</sup>

The first identifiable case from this period was in Hampshire in 1449<sup>54</sup> followed by cases Derbyshire in 1450,<sup>55</sup> Hampshire in 1451,<sup>56</sup> Huntingdonshire in 1452<sup>57</sup> and Shropshire in 1453.<sup>58</sup> Five cases linked to the violent feuding between the Percies and the Nevilles then were identified by an *oyer et terminer* commission in the county in 1454-5, one of which was from the city of York itself.<sup>59</sup> The reputation for lawlessness that Yorkshire had during this period is discussed in the geographical overview of the cases. Here it is important to highlight the fact that the Yorkshire cases of 1454-5 occurred during a period in which violent feuding was occurring throughout England. Another county with a reputation of violence during this period was Herefordshire. During the 1450s two commissions of *oyer et terminer* visited the county prosecuting a total of 13 cases: three in 1452<sup>60</sup> and ten in 1457,<sup>61</sup> in addition to

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<sup>53</sup> For a discussion of feuding and problems regarding retaining see sections 'Bastard Feudal Abuses' and 'Feuding' in the Introduction.

<sup>54</sup> KB27/764 rot. 24 rex; KB27/765 rot. 8 rex.

<sup>55</sup> KB29/82 rot. 7

<sup>56</sup> KB29/83 rot. 2.

<sup>57</sup> KB9/42/1 ms. 11.

<sup>58</sup> KB29/84 rot. 5.

<sup>59</sup> KB9/148/2 ms. 31, 38, 54-5; KB9/149 ms. 20-1, 49, 53.

<sup>60</sup> KB9/34/1 ms. 5; KB9/34/2 ms. 42, 142.

<sup>61</sup> KB9/35 mm. 67-9; KB29/87 rott. 15, 18.

three further cases for which process was issued but nothing further was enrolled.<sup>62</sup> The commission at Herefordshire was deemed sufficiently newsworthy by William Worcester to include it in a letter to John Paston on 1 May 1457,<sup>63</sup> suggesting a link between the cases and wider national concerns. Around this time two more cases of illegal livery can be identified. Five men from Hampshire were indicted in 1455 for contravening the statutes of livery,<sup>64</sup> as well as 12 men from Nottinghamshire.<sup>65</sup> These cases were not all necessarily linked to the violent magnate disputes that were characteristic of the decade. Nevertheless, the fact that there were so many occurring in as various places is indicative of the wider trend of the statutes being enforced during periods of lawlessness and unrest.

During the parliament of November 1459 the issue of illegal livery was again discussed. The parliament was decisively anti-Yorkist and has become known as the Parliament of Devils due to the passing of a bill of attainder against Yorkist nobles.<sup>66</sup> Another piece of business at this parliament was a Commons petition that complained about the lawlessness of men who wore the livery of certain lords.<sup>67</sup> This was the first Commons petition to parliament that came during a period in which the statutes were actively being enforced. Prior to this parliament two cases of illegal livery can be identified from the previous Easter and Trinity terms in Dorset and Leicestershire respectively.<sup>68</sup> Moreover, three writs of *venire facias* had been sent to some of those men from Yorkshire who had not appeared before the King's Bench after their indictments in 1454-5,<sup>69</sup> indicating that there was an interest in ensuring the statutes were enforced. After this parliament two further cases can be identified from the final year of Henry VI's first reign in Hertfordshire and Warwickshire.<sup>70</sup> These attempts to enforce the statutes were occurring during a Yorkist uprising that had been the product of a decade characterised by violence and lawlessness across England.<sup>71</sup> The fact that the statutes were being enforced during the time of a major uprising suggests

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<sup>62</sup> KB29/87 rott. 15, 18. There is a sufficient discrepancy between the names listed in the oyer et terminer indictments and those in the writs of *venire facias* in the controlment rolls to class these as different cases.

<sup>63</sup> *PL*, ii. 172.

<sup>64</sup> KB29/86 rott. 1, 11.

<sup>65</sup> KB29/86 rot. 27.

<sup>66</sup> *PROME*, xii, 448, 453-61.

<sup>67</sup> *PROME*, xii, 499-500.

<sup>68</sup> KB29/88 rott. 33, 35; KB29/89 rott. 3, 5-6, 32

<sup>69</sup> KB29/89 rott. 3, 5-6, 32.

<sup>70</sup> KB29/89 rott. 24, 30.

<sup>71</sup> Storey, *End of the House of Lancaster* remains the best overview of these feuds and how they were connected to wider events in national politics.

an element of political motivation. The extent to which those charged with contravening the statutes were connected to rebellious activities is considered later in this study. What is clear is that the statutes were being enforced during a period of political unrest, in what were rebellious regions.

Edward IV's usurpation in 1461, and the end of the first phase of the Wars of the Roses, witnessed a continuation of cases arising against the statutes of livery. Edward Neville, Lord Bergavenny, and John, Lord Clinton, along with eight others in Kent were indicted in 1461.<sup>72</sup> The case is only known from an entry in the controlment roll for 1 Edward IV, but may have originated towards the end of Henry VI's reign given that Edward Neville was the uncle to both Warwick and the new king. Even though he was not as active as other members of his family he 'could not escape involvement in the civil war'.<sup>73</sup> Nothing more seems to have come from the case as there are no annotations indicating any further legal proceedings. The case seems another example of the sporadic enforcement of the statutes that coincided with major political upheaval. The statutes were then reaffirmed in Parliament in November 1461.<sup>74</sup> Two further charges can be identified over the following two years in Herefordshire<sup>75</sup> and Worcestershire.<sup>76</sup> The men indicted were all yeomen and it is therefore unlikely that there was anything overtly political about their indictments. What can be argued is that the early Yorkist government, like its Lancastrian predecessor, regarded the abuses associated with unacceptable livery distribution as being a problem that it had to deal with. Rather than being separate epochs in the enforcement of the statutes of livery, the enforcement of the statutes that began during the reign of Henry VI continued during the early years of Edward IV's reign.

During the third session of the 1467-8 parliament, in May 1468, another statute concerning the wearing of liveries was passed that also prohibited private retaining by indenture.<sup>77</sup> Prior to the passing of this statute, there had been 12 cases of illegal livery during the previous two years. There had been a case in Derbyshire in 1466<sup>78</sup> followed by three in Surrey<sup>79</sup> and one in Cornwall in 1467.<sup>80</sup> Six cases were

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<sup>72</sup> KB29/92 rot. 13.

<sup>73</sup> T.B. Pugh, 'Edward Neville, first Baron Bergavenny', *ODNB*, xl, 488-9.

<sup>74</sup> *PROME*, xiii, 65.

<sup>75</sup> KB29/93 rot. 16.

<sup>76</sup> KB29/94 rott. 1,2,6.

<sup>77</sup> *PROME*, xiii, 384-6.

<sup>78</sup> KB29/97 rot. 29.

<sup>79</sup> KB29/98 rott. 8, 19.

<sup>80</sup> KB29/98 rot. 20.

prosecuted up by an *oyer et terminer* commission in Derbyshire in Easter 1468.<sup>81</sup> Like many of the cases from the 1450s, the cases in Derbyshire came from an *oyer et terminer* commission triggered by the violent feuding in the county that led to the murder of Roger Vernon, brother of Henry Vernon of Netherhaddon, by men in the service of Lord Grey of Codnor, during which the earl of Shrewsbury was also indicted for illegal livery.<sup>82</sup> It was these disturbances that seem to have given Edward the impetus to introduce a new statute on the matter. The inclusion of prominent councillors such as his brothers, the dukes of Clarence and Gloucester, the earl of Warwick and earl Rivers in the commission<sup>83</sup> suggests that the king was informed by close associates about the problems associated with illegal livery that they had discovered in Derbyshire.

The first identifiable case following the passing of the statute involved 40 men from Devon during Trinity term 1468.<sup>84</sup> It was, however, the twelve cases from Suffolk in 1470<sup>85</sup> that were the most prominent of Edward IV's reign. The cases from Suffolk are untypical because members of the peerage, the dukes of Norfolk and Suffolk were charged. As Chapter Six demonstrates, the majority of cases involved members of the gentry retaining those further down the social scale. Furthermore, the cases from Suffolk are the only cases which arise during the second phase of the Wars of the Roses (1469-71). The nature of this phase of the war as opposed to the first phase explains this discrepancy. While the first phase resulted from intertwining of many local conflicts with court politics, the second phase was the product of the disillusionment of Warwick and Clarence over their marginal role in national government, in effect this was a dispute within the House of York.<sup>86</sup> The problems of liveried retainers in the localities were not as prevalent as they had been a decade earlier hence there was little impetus to enforce the statutes. The only cases were against members of the peerage whose loyalty was in doubt. Moreover, the duke of Norfolk at that time had been laying siege to Caister Castle as part of an ongoing dispute with the Paston family.<sup>87</sup> Again, the cases against the dukes of Suffolk and

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<sup>81</sup> KB9/13 ms. 11, 19-23, 53, 63.

<sup>82</sup> Hicks, '1468 Statute', 17-18.

<sup>83</sup> *CPR, 1467-1477*, 69-70.

<sup>84</sup> KB27/829 rot. 21 rex.

<sup>85</sup> KB29/99 rott. 31-2.

<sup>86</sup> Hicks, *Clarence*, 15-96, passim. Consider also: 'What made the *Second War* possible was that the victorious Yorkists warred against themselves'. Michael Hicks, *Wars of the Roses* (London, 2010) 186.

<sup>87</sup> *PL*, i, 340, 344-6, 406, 550; ii, 557-9, 587.

Norfolk fit the wider trend: the enforcement of the statutes was political and occurred during a period of political uncertainty.

After Edward IV's readeption in 1471, there was another period in which there were no cases of illegal livery. This is not because problems associated with bastard feudalism were being ignored at this time, as evident by the fact that laws addressing other unacceptable forms of bastard feudalism, such as maintenance, were being enforced.<sup>88</sup> At this time the politics of foreign war and taxation seem to have influenced the enforcement of the statutes. Edward attempted to restart the Hundred Years War by invading France and the events surrounding these attempts point to an informal relaxation of the statutes.<sup>89</sup> The king's ambitions enjoyed widespread support and financial backing from both the Lords and the Commons, but the enterprise suffered from constant delays. To fund the campaign he needed parliament to vote him a tax which was potentially problematic considering that tax was one of the grievances of the rebels in 1470.<sup>90</sup> The Second Anonymous Croyland Continuator stated, however, that Edward's plan for invading France was 'applauded' by all. Moreover, 'a number of tenths and fifteenths were granted' and, in addition, 'all inheritors and possessors ... freely granted a tenth of their immoveable wealth'. Support for the invasion was evident by the fact that the amount of money raised was 'never seen before'.<sup>91</sup> The amount of support for potential campaign among the Commons and the population more generally is open to question and not pertinent to this discussion. What should be noted is that parliament had granted Edward a tax for the purpose of invading France and that the misuse of taxation contradicted contemporary political thought. In addition, raising an army meant that gentry needed to retain men for the campaign, which was permitted by the statutes. These considerations made it difficult for Edward to begin a drive against illegal livery since that would have inevitably resulted in the indictment, and therefore potential alienation, of some of the men who voted him the tax and would form the bulk of his military enterprise. Military and political expediency are likely to have created a tacit understanding between the king and his nobility may explain the absence of cases

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<sup>88</sup> E.g. KB29/102 rott. 39, 41; KB29/103 rot. 16; KB29/104 rott. 14, 15; KB29/105 rot. 24.

<sup>89</sup> For an overview of Edward IV's French Campaign see: Charles Ross, *Edward IV* (London, 1974), 205-38.

<sup>90</sup> 'Warkworth's Chronicle' in *Death and Dissent: The Deth of the Kyng of Scotis and Warkworth's Chronicle*, ed. Lister M. Matheson (Woodbridge, 1999), 100.

<sup>91</sup> *The Crowland Chronicle Continuations: 1459-1486*, eds. Nicholas Pronay and John Cox (London, 1986), 132-5.

between 1470 and 1476. This hypothesis may seem to be placing an undue burden on the available evidence, or lack thereof, since large gaps occurred during other periods rendering the lack of cases during this period was part of a wider trend. Nevertheless, there must have been a reason why these large gaps occurred. It remains a reasonable assumption that in this particular instance the need for the nobility to retain men for the purposes of foreign war meant that enforcement of the livery laws were informally relaxed prior to the 1475 invasion of France.

The final cluster of cases during Edward IV's reign occurred between 1476 and 1480, when 19 cases arose. Ten of these cases occurred in Kent in during Trinity 1478,<sup>92</sup> while four other arose in Sussex (three in 1476 and one in 1480),<sup>93</sup> one in Hampshire (1476),<sup>94</sup> two in Shropshire (1477 and 1480),<sup>95</sup> one in Oxfordshire (1478)<sup>96</sup> and one in Coventry (1480).<sup>97</sup> After 1480 there were no more cases of illegal livery during Edward IV's reign. Assessing illegal livery during Edward IV's reign Charles Ross argued that the king's professed intention to prevent the abuses associated with the distribution of livery as 'little more than a pious declaration'.<sup>98</sup> On the evidence presented here this seems an unfair criticism of law enforcement during his reign. In total, there were 47 cases of illegal livery during the reign of Edward IV that included indictments against peers such as the duke of Norfolk and Suffolk and the earl of Shrewsbury. Moreover, the chronological pattern of cases during Edward IV's reign is consistent with the wider trend: there are clusters of cases over a short period of a few years followed by periods of several years in which no charges occur. Edward IV's first reign continued a trend that began towards during the latter years of Henry VI's first reign in which the statutes of livery were being more widely-enforced than they had been. The number of cases and the clusters in 1460-3, 1467-70 and 1476-80 show that efforts were made by government to enforce the statutes of livery during the reign of Edward IV.

The absence of cases of illegal livery in the records of the King's Bench continued through the short reigns of Edward V and Richard III and into the initial years of Henry VII's reign, encompassing the third phase of the Wars of the Rose.

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<sup>92</sup> KB29/108 rot. 12.

<sup>93</sup> KB29/106 rott. 11, 28; KB29/110 rot. 12.

<sup>94</sup> KB29/106 rot. 24.

<sup>95</sup> KB29/107 rot. 12; KB29/110 rot. 16.

<sup>96</sup> KB27/908 rot. 5 rex.

<sup>97</sup> KB29/110 rot. 17.

<sup>98</sup> Ross, *Edward IV*, 396, 412.

The absence of cases during the reign of Richard III should therefore be considered in a wider chronological context. There had been no cases during the three years prior to his usurpation and after his death at Bosworth there were no cases until 1488. Richard's short reign occurred during a period in which the statutes were evidently not being enforced. During his reign, however, Richard III sent letters explicitly forbidding anyone to retain any of the king's men.<sup>99</sup> Unacceptable forms of retaining were still a concern between 1480 and 1488 but the political upheavals of this period may partially explain the lack of cases due to a desire of Richard III to not alienate potential supporters.

### **1488-1520**

It was during the reigns of the early Tudor kings that the statutes were most frequently enforced. Henry VII's reign was the apex for the enforcement of the livery and retaining statutes. In total, 148 cases (44% of all cases) arose during his reign – more than double that of any other reign examined in this thesis, and more than treble every other reign except that of Henry VI. In contrast to the accession of Edward IV in which charges against illegal retaining were occurring prior to his usurpation, there were no cases between 1480 and 1488, suggesting a more focused attempt to regulate retaining by Henry VII. An article sworn in Parliament in November 1485 reaffirmed older legislation, stating that no-one was to 'retain any man by indenture or oath, or give livery, badge or token contrary to the law'.<sup>100</sup> Two acts were passed during his reign regarding retaining: one in 1488<sup>101</sup> and one in 1504.<sup>102</sup> Henry VII built upon Yorkist actions designed to curb unacceptable forms of retaining, which is reflected in the higher rate of cases arising during his reign.

Between 1488 and 1503, 97 cases of illegal livery have been identified. The pattern that emerges shows that there were a large number of cases in the years immediately after the act being passed in 1488, followed by a drop in the annual number of cases after 1491. In 1488, the first case to arise during Henry VII's reign can be identified in Staffordshire.<sup>103</sup> This was followed by 21 cases in 1489: 15 in

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<sup>99</sup> *Letters and Papers Illustrative of the Reigns of Richard III and Henry VII*, ed. James Gardiner, 2 vols (London, 1861-3), i, 79; ii, 288.

<sup>100</sup> *PROME*, xv, 131-2.

<sup>101</sup> *Ibid*, xv, 375-6

<sup>102</sup> *Ibid*, xvi, 365-7.

<sup>103</sup> KB29/119 rot. 2.

Warwickshire<sup>104</sup>; two in Norfolk<sup>105</sup>; two in Northamptonshire<sup>106</sup>; and one in Hertfordshire<sup>107</sup> and Yorkshire<sup>108</sup> respectively. The number of cases then reduced to three in 1490,<sup>109</sup> but rose again to 21 in 1491.<sup>110</sup> From 1491 until the 1504 act the number of cases per annum remained lower than ten with the exception of 1499. During this period there was: one case in 1492<sup>111</sup>; two in 1493<sup>112</sup>; two in 1494<sup>113</sup>; two in 1495<sup>114</sup>; one in 1496<sup>115</sup>; none in 1497; one in 1498<sup>116</sup>; 22 in 1499<sup>117</sup>; seven in 1500<sup>118</sup>; five in 1501<sup>119</sup>; three in 1502<sup>120</sup>; and five in 1503.<sup>121</sup> Even before the celebrated 1504 act it is clear that the statutes were being enforced in a more sustained manner than under previous kings.

The 1504 act produced another upsurge in the number of cases, with 51 cases occurring between 1504 and the death of Henry VII in 1509, which supports the view that the act 'swiftly had an effect'.<sup>122</sup> This is also evident in the average number of cases per annum. After 1488 at least one case can be identified in each year, with the exceptions of 1497 and 1506. In total, 98 cases can be identified between 1488 and 1503, giving an average of 6.13 cases per annum. Fifty-one cases can be identified between 1504 and 1509 which gives an average of 8.5 cases per annum. These figures, however, remain low and it is clear that indictments for illegal livery were not a common feature of many quarter sessions. The real development that the 1504 act made, which differentiates this cluster from previous clusters, was the geographic diversity of cases. Earlier clusters can be viewed as initially having a high number of cases in one area with extra miscellaneous cases in other counties. The cluster of cases after the 1504 act had two counties, Yorkshire and Cambridgeshire, in which a

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<sup>104</sup> KB29/119 rot. 10; KB29/120 rott. 1, 11-13, 16, 28.

<sup>105</sup> KB29/119 rott. 12, 14; KB29/120 rot. 13.

<sup>106</sup> KB29/120 rot. 3.

<sup>107</sup> KB29/119 rot. 17.

<sup>108</sup> KB29/119 rot. 18.

<sup>109</sup> KB29/120 rott. 15, 19, 28; KB29/121 rot. 2.

<sup>110</sup> KB29/121 rott. 11, 15-16, 24, 27-8; KB29/122 rott. 4-5, 7.

<sup>111</sup> KB29/123 rot. 5.

<sup>112</sup> KB29/123 rott. 22-3; KB29/124 rot. 13.

<sup>113</sup> KB29/125 rot. 6.

<sup>114</sup> KB29/126 rot. 4.

<sup>115</sup> KB29/127 rot. 7.

<sup>116</sup> KB29/129 rot. 2.

<sup>117</sup> CHES25/18 ms. 7-9, 11-14, 17, 21, 26, 28, 33-4; KB29/129 rot. 22.

<sup>118</sup> KB29/130 rott. 14, 16; KB29/131 rott. 2-3.

<sup>119</sup> KB29/131 rott. 15, 19-20.

<sup>120</sup> KB29/132 rot. 33.

<sup>121</sup> KB29/133 rot. 27.

<sup>122</sup> Cavill, *English Parliaments of Henry VII*, 77-8.

large number of cases was concentrated in 1504-5, 14 in Yorkshire<sup>123</sup> and 13 in Cambridgeshire.<sup>124</sup> However, there are a large total number of cases from various other counties. Twelve further cases from 1505 can be identified over eight counties: Sussex,<sup>125</sup> Berkshire,<sup>126</sup> Derbyshire,<sup>127</sup> Hampshire,<sup>128</sup> Staffordshire<sup>129</sup> Hertfordshire,<sup>130</sup> Huntingdonshire<sup>131</sup> and Worcestershire.<sup>132</sup> After the initial cluster of cases 11 more occurred during Henry VII's reign: four in 1507 spread across Kent,<sup>133</sup> Sussex<sup>134</sup> and Hertfordshire<sup>135</sup>; and seven in 1508 spread across Yorkshire,<sup>136</sup> Berkshire<sup>137</sup>, Hertfordshire,<sup>138</sup> Bedfordshire,<sup>139</sup> Shropshire<sup>140</sup> and Wiltshire.<sup>141</sup> Included in these cases are the two indictments against George Neville, lord Bergavenny from 1507 for illegal retaining 471 men. It was the final years of Henry VII's reign that witnessed the most sustained campaign against illegal livery and retaining. The upsurge in cases immediately after the 1504 act, along with the act itself marked the reign of Henry VII as the most important for the regulation of retaining and the enforcement of the statutes.

Henry VII's reputation for enforcing the statutes regarding livery and retaining is evident in Francis Bacon's *The History of the Reign of King Henry VII*. Writing in 1621, Bacon tells the story of how Henry was being entertained 'nobly and sumptuously' by the Earl of Oxford and discovered that Oxford had liveried gentlemen and yeomen that were not permanent members of his household. Henry then said to Oxford: 'I thank you for my good cheer, but I may not endure to have my laws broken in my sight'.<sup>142</sup> No records survive to suggest that the Earl of Oxford was

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<sup>123</sup> KB29/134 rott. 26-7; KB29/135 rot. 12.

<sup>124</sup> KB9/436 ms. 9, 13-14, 42.

<sup>125</sup> KB29/135 rot. 6.

<sup>126</sup> KB9/436 ms. 16.

<sup>127</sup> KB9/437 ms. 17.

<sup>128</sup> KB9/436 ms. 13; KB29/135 rot. 13.

<sup>129</sup> KB29/135 rot. 10.

<sup>130</sup> KB29/135 rot. 11.

<sup>131</sup> KB9/436 ms. 8.

<sup>132</sup> KB29/135 rot. 20.

<sup>133</sup> KB29/136 rott. 16-17.

<sup>134</sup> KB29/137 rot. 1.

<sup>135</sup> KB29/137 rot. 1.

<sup>136</sup> KB29/137 rot. 17.

<sup>137</sup> KB29/137 rot. 36; KB9/444 ms. 80.

<sup>138</sup> KB29/137 rot. 27.

<sup>139</sup> KB29/137 rot. 27.

<sup>140</sup> KB29/137 rot. 36.

<sup>141</sup> KB29/138 rot. 5.

<sup>142</sup> Francis Bacon, *The History of the Reign of King Henry VII and Selected Works*, ed. Brian Vickers (Cambridge, 1998), 177-8.

ever charged with offences against the statutes of livery. Oxford's recent biographer, James Ross, likewise considers the story to be untrue and found no records of any fine being paid.<sup>143</sup> Bacon began his story with the phrase 'there remaineth to this day a report',<sup>144</sup> indicating his own uncertainty regarding the accurateness of the story. In late medieval and early modern England it was not uncommon for rumours and oral traditions to develop with factual inaccuracies. Michael Bennett has shown that the deposition of an 18 year old Colchester tailor in 1541 demonstrates that for around six decades after Bosworth, the origins of the Tudor dynasty remained a matter of oral tradition. Although the facts of the report are obscure, and seem to mistake the liaisons of Catherine de Valois and Owen Tudor with those of Margaret Beaufort and Edmund Tudor a generation later, the report is indicative of wider oral traditions being passed down over many decades.<sup>145</sup> Likewise, if Bacon's story about the earl of Oxford's fine had any basis in fact then it probably refers to three indictments from 1505 in which three men were indicted with illegally wearing the livery of the Earl of Oxford after they had been discharged for their services.<sup>146</sup> Around this time two other men were indicted for fraudulently wearing the badge of the king's mother, Margaret Beaufort.<sup>147</sup> It was not the Earl of Oxford that was being charged, as Bacon states, but instead six men were being charged for illegally wearing his livery. Bacon's likely motivation for including the story is that it helped to portray Henry as a strong king that enforced his laws, a theme also evident later on in his work when he states that Henry, unlike his French counterpart, Louis XI, 'was not afraid of an able man'.<sup>148</sup> In the context of this study the story is significant because it identifies Henry VII as a rigorous enforcer of the statutes of livery, which was something that was used by later writers to demonstrate a notion of ideal kingship.

Despite the fact that the 1504 legislation was only supposed to last for the life of Henry VII, livery was still prosecuted during the reign of Henry VIII. The early years of Henry VIII's reign follows a similar pattern to the later years of Henry VII's reign. During the first three years of Henry VII's reign eight cases can be identified,

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<sup>143</sup> Ross, *John De Vere*, 141-3.

<sup>144</sup> Bacon, *Reign of Henry VII*, 177.

<sup>145</sup> Michael Bennett, 'Table Tittle-Tattle and the Tudor View of History', in *People, Places and Perspectives: Essays on Later Medieval & Early Tudor England*, eds. Keith Dockray and Peter Fleming (Stroud, 2005), 155-65, citing BL, Stowe 144, fols. 3-4.

<sup>146</sup> KB9/436 ms. 7, 9, 14.

<sup>147</sup> KB9/436 ms. 8, 14.

<sup>148</sup> Bacon, *Reign of Henry VII*, 201. Note also comments on Ross, *John De Vere*, 143 fn. 128.

over a wide geographical range, in the city of Nottingham, Northamptonshire, Rutland, Yorkshire (all in 1510), Hampshire (1511) and Kent (1512).<sup>149</sup> It was four years until the next cases in 1516 when four members of the peerage were indicted: George Neville, Lord Bergavenny was again indicted in Kent for illegally retaining 85 men<sup>150</sup>; the earl of Arundel in Sussex<sup>151</sup>; and the Marquis of Dorset and the earl of Huntingdon in Leicestershire.<sup>152</sup> The following year there were 22 cases of illegal retaining in Worcestershire and Gloucestershire against members of the Savage family who were prominent in those counties<sup>153</sup> and a further case in Herefordshire in 1518.<sup>154</sup> A few months prior to the first of these cases arising, in December 1515, Thomas Wolsey was appointed Lord Chancellor. Central to Wolsey's law enforcement policy was the view that the law was to be applied to everyone regardless of economic or social position. He ordered the assize justices to report about 'misdemeanours' they encountered: 'that is to say, who be retainers or oppressors or maintainers of wrongful causes'.<sup>155</sup> If Wolsey's words were to be taken seriously it was necessary for him to show early in his chancellorship that he would indict peers who committed crimes. The illegal retaining of the four peers in 1516, along with other disturbances carried out by the Marquise of Dorset and the earl of Huntingdon<sup>156</sup> at this time gave Wolsey the necessary opportunity. This policy continued throughout his tenure as Lord Chancellor, although indictments for illegal retaining begin to wane after 1518.

### **Epilogue: After 1520**

Six men from Norfolk were indicted for illegal livery in 1522,<sup>157</sup> which are the only instance of illegal livery that can be identified between 1518 and 1530. Nevertheless, issues regarding what were acceptable and unacceptable forms of retaining continued throughout the Tudor period. Royal proclamations were made by Elizabeth I

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<sup>149</sup> KB29/140 rott. 26, 31; KB29/142 rott. 7, 24; KB29/143 rott. 24, 41; KB29/143 rot. 23.

<sup>150</sup> KB29/148 rott. 17-18.

<sup>151</sup> KB29/148 rott. 12, 40.

<sup>152</sup> KB29/148 rot. 16.

<sup>153</sup> KB29/148 rott. 50-1, 53-4. Discussed below.

<sup>154</sup> KB29/150 rott. 21-2.

<sup>155</sup> John A. Guy, 'Wolsey and the Tudor Polity' in *Cardinal Wolsey: Church, State and Art*, eds. Steven J. Gunn and Philip G. Lindley (Cambridge, 1991), 70-2, citing Henry E. Huntingdon Library, Ellesmere MS 2655 fol. 13; Peter Gwyn, *The King's Cardinal: The Rise and Fall of Thomas Wolsey* (London, 1991) 130.

<sup>156</sup> Leicestershire see: KB29/148 rot. 23. Discussed below.

<sup>157</sup> KB29/154 rot. 32.

regarding the enforcement of the statutes of retaining in 1572 and 1583.<sup>158</sup> Cases of illegal livery can be found in *York Civic Records* from both 1547 and 1577-8.<sup>159</sup> Livery continued to be distributed by lords during the early modern period and there was never an outright ban on livery. The limitations of this study, however, prohibit an examination of illegal retaining after 1520. Further research would be required to determine if cases of illegal livery ceased after 1522 or if they continued in a similar or distinctive pattern to those already outlined in this chapter.

### *Distribution by County*

For the purposes of this section, the counties of England have been divided into four broad categories, relating to the number of cases identified in each, which enables the identification of the similarities and differences between all of the relevant counties. The four broad categories are: counties with 19 to 26 cases; counties with 10 to 14 cases; counties with fewer than ten cases; and counties in which no cases arise. The two counties with the most cases, Yorkshire and Cheshire, are discussed separately. The section of Cheshire comes at the end of this chapter because it reinforces many of the prominent conclusions and, along with other evidence discussed, helps to provide a degree of security that all, or at least most, of the cases that occurred can be identified from the records of the King's Bench.

This section is methodologically reliant upon the traditional English county system. Counties can be problematic due to the fact that they were artificial constructs, created for administrative ease. Christine Carpenter has questioned the validity of adhering to the strict geographic boundaries of the county system. The artificial construct of the counties may not have been pertinent in the social, political and economic bonds that people formed. People were willing to form connections that crossed county boundaries.<sup>160</sup> While this criticism stands for studies focused upon social and economic connections, it does not hold for legal history. JPs had jurisdiction in only one county. In terms of law enforcement, England was divided into separate counties and justice was administered at this level. The arrangement of records by county is beneficial for an examination of the efficiency of local law

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<sup>158</sup> *Tudor Royal Proclamations*, ed. Paul L. Hughes and James F. Larkin (New Haven, 1961), ii, 350-2, 495-7.

<sup>159</sup> *YCR*, ii, 14; iii, 1; iv, 157. Discussed in D.M. Palliser, *Tudor York* (Oxford, 1979), 15.

<sup>160</sup> Christine Carpenter, 'Gentry and Community in Late Medieval England', *Journal of British Studies*, 33 (1994) 340-8.

enforcement.<sup>161</sup> Reliance on county boundaries is thus necessary for comparative studies of crime across late medieval England and permits an analysis of law enforcement at a local level.

This section examines the cases of illegal livery in England between 1390 and 1530 with reference to the counties in which the cases arose. It is important to recognise that the broad classifications used to distinguish between counties is largely artificial and that gradations exist between the classifications. Furthermore, the categories are not reliant exclusively on the number of men involved in each county but rather the number of cases and the way in which clusters of cases arise at particular times in particular counties and the scale of these cases. The intention is to give an overview of all the cases with reference to the counties where they occurred which, in turn, contributes to the historiography of many of these counties.

## **Yorkshire**

Substantially more cases occurred in Yorkshire than in any other county that returned cases to the King's Bench.<sup>162</sup> In total, 36 cases from Yorkshire and one from the city of York can be identified between 1393 and 1510. The earliest case identified in this study involved 30 men from Yorkshire in 1393.<sup>163</sup> Thereafter, there were not more case until the early 1420s when three cases occurred in 1421, 1422 and 1423.<sup>164</sup> A subsequent single case then appears in the controlment roll for Easter 17 Henry VI (1439).<sup>165</sup> An *oyer et terminer* commission heard five cases of illegal livery between 1454 and 1455 relating to the disturbances between the Neville and Percy families in the county.<sup>166</sup> There was then a lull in cases from Yorkshire until 1489 when 12 men from Cottingham were charged,<sup>167</sup> followed by one case in 1491<sup>168</sup> and two in 1494.<sup>169</sup> The largest cluster of cases arose between 1500 and 1505. Six cases arose in 1500<sup>170</sup> followed by 14 in 1504, three of which were for wearing the livery of a noble

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<sup>161</sup> Gerald Harriss notes that judicial business was one of the few areas in which the whole shire routinely functioned as a political institution. Harriss, *Shaping the Nation*, 188.

<sup>162</sup> More cases have been identified for Cheshire which is discussed in a separate section.

<sup>163</sup> KB27/528 rot. 35 rex. Also printed in *Select Cases in the Court of King's Bench Under Richard II, Henry IV and Henry V*, 83-5.

<sup>164</sup> KB27/56 rot. 25 rex; KB27/57 rot. 5 rex; KB27/462 rot. 21 rex; KB27/645 rot. 8 rex.

<sup>165</sup> KB29/72 rot 22.

<sup>166</sup> KB9/148/2 ms. 31, 38, 54-5; KB9/149 ms. 20-1, 49, 53.

<sup>167</sup> KB29/120 rot. 16

<sup>168</sup> KB29/122 rot. 5.

<sup>169</sup> KB29/125 rot. 6.

<sup>170</sup> KB29/130 rot. 14; KB29/131 rott. 2-3.

fraudulently<sup>171</sup> and one in 1505.<sup>172</sup> Two further cases occurred in 1508<sup>173</sup> and 1510<sup>174</sup> respectively. Larger clusters of cases occurred in other counties, but these clusters were more isolated, occurring over a shorter chronological period. Yorkshire, in contrast, had numerous clusters distributed throughout the period covered in this study.

In terms of reputation, it is unsurprising that Yorkshire had many instances of cases arising from laws that claimed to be dealing with problems of lawlessness and disorder. During the late medieval period, Yorkshire had a reputation for lawlessness and disorder. Ralph Griffiths characterised fifteenth-century Yorkshire as having ‘an unusually large number of magnate and gentry families consumed with mutual jealousies that frequently erupted in feuding and violence’.<sup>175</sup> One such instance occurred on 23 May 1504 in a brawl between the servants of the archbishop of York and the earl of Northumberland which was linked to several of the cases of illegal livery from that period.<sup>176</sup> This view of Yorkshire being a county of lawless men is reflected in contemporary records. For instance, on 10 May 1405 Henry IV sent writs to, amongst other, the mayor of York and the sheriff Yorkshire ordering them ‘to stop the malice of those who are daily trying to cause trouble in the realm’.<sup>177</sup> Several *oyer et terminer* commissions survive from Yorkshire during the period considered in this thesis, which indicates that the crown felt it necessary on several occasions to deal with problems pertaining to lawlessness in the county.

One notable feature of the cases from Yorkshire is that none can be identified during the reigns of any of the Yorkist kings. Prior to his death at the Battle of St Albans, Richard, duke of York, had various estates in Yorkshire, particularly in the West Riding near Wakefield.<sup>178</sup> The county enjoyed close relations with the House of York. Richard III had particularly good relations with the North during his years as Duke of Gloucester and his two year reign.<sup>179</sup> Polydore Vergil stated that during the uprising in Yorkshire in 1489 the men of the county ‘had cherished the name of

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<sup>171</sup> KB29/134 rott. 26-7; KB29/135 rot. 12.

<sup>172</sup> KB29/135 rot. 12.

<sup>173</sup> KB29/137 rot. 17.

<sup>174</sup> KB29/142 rot. 7.

<sup>175</sup> Griffiths, *The Reign of King Henry VI*, 132.

<sup>176</sup> Hoyle, ‘The Affray at Fulford’, 239-56. E163/9/27 contains several bills and articles relating this event.

<sup>177</sup> *Calendar of Signet Letters of Henry IV and Henry V*, ed. J.L. Kirby (London, 1978), no. 348.

<sup>178</sup> Ross, *Edward IV*, 5.

<sup>179</sup> See especially, Horrox, *Richard III: A Study in Service*, 27-88, *passim*.

Richard'.<sup>180</sup> That is not to argue, however, that Yorkshire became a tranquil county once the House of York acceded to the throne. A.J Pollard has noted that 'it took three years for the Yorkists to secure the whole of north-eastern England after their resounding victory at Towton' and that Edward IV made a concerted effort to suppress the Percy affinity in the county.<sup>181</sup> Yorkshire remained a violent county. An *oyer et terminer* commission was given to Richard, duke of Gloucester, the earl of Northumberland and several other knights in the city of York on 26 August 1470 after a rising led by Lord FitzHugh of Ravensworth, brother-in-law of Warwick the Kingmaker.<sup>182</sup> With regards to royal presence in the county, Gloucester did not make inroads into northern society until 1471, after the Warwick and Clarence rebellion, which was after the majority of the cases from Edward IV's reign. Prior to this, Warwick had been a major figure in the area and was replaced by Gloucester afterwards.<sup>183</sup> Problems of lawlessness and disorder remained characteristic of Yorkshire. What the absence of cases in Yorkshire during the Yorkist period suggests is that there was an element of political motivation for at least some of the cases. If the royal family and their close supporters, especially Warwick then Gloucester, were strong in this area then it is unlikely that prosecutions would have occurred against men with royal connections.

Conversely, indictments for illegal livery during the reigns Lancastrian and Tudor kings suggest attempts by the crown to curb the retaining practice of Yorkshire nobles and gentry. It was during the reign of Henry VII when most of the cases from Yorkshire, 29 in total, occurred. Tudor commentators noted the problems faced Henry VII with regards to governing Yorkshire, and the rest of the north. Polydore Vergil stated that 'the folk of the North' were 'savage and more eager than others for upheavals',<sup>184</sup> while Edward Hall later noted that the men of the north 'entirely loved and highly favoured' Richard.<sup>185</sup> There had been uprisings and disturbances in Yorkshire in both 1485-6 and in 1489<sup>186</sup> and although Henry had to deal with

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<sup>180</sup> *The Anglica Historia of Polydore Vergil, A.D. 1486-1537*, ed. and trans. Denys Hay, Camden Series, lxxiv (London, 1950), 11.

<sup>181</sup> Pollard, *North-Eastern England*, 285-94, quotation on 285.

<sup>182</sup> *CPR, 1467-77*, 221; Charles Ross, *Richard III* (London, 1981), 17-18.

<sup>183</sup> Horrox, *Richard III: A Study in Service*, 30-1, 39-40; Pollard, *North-Eastern England*, 285-315.

<sup>184</sup> *The Anglica Historia of Polydore Vergil*, 11.

<sup>185</sup> *Hall's Chronicle; Containing the History of England during the Reign of Henry the Fourth and Succeeding Monarchs to the End of the Reign of Henry the Eighth*, (London, 1809), 443.

<sup>186</sup> See e.g. Pollard, *North-Eastern England*, 380-3; Michael Hicks, 'The Yorkshire Rebellion of 1489 Reconsidered', *Northern History*, 22 (1986), 39-62.

rebellion in other regions, Yorkshire poses ‘a unique challenge’ because that was where ‘Richard III had his roots’.<sup>187</sup> Yorkshire’s reputation for rebellion was not new by the Tudor period. In the early years of his reign Henry IV was faced with the problem of rebellion in the north on several occasions. In 1405, he put down an uprising in Yorkshire and executed both the archbishop of York and the earl of Westmorland as traitors. It was only after these events that Henry IV felt confident of his authority in the north of England, including Yorkshire.<sup>188</sup> Therefore, the county which had the most consistent instances of charges of illegal livery and retaining was a county that also had a reputation for lawlessness, feuding and rebellion.

### 19 to 26 Cases

There was a great amount of variation between the six counties in this category with regards to numbers of cases that occurred in each county and the number that occur in each cluster. In terms of geography, five of these counties are in the midlands – Worcestershire, Staffordshire, Derbyshire, Herefordshire and Warwickshire – while one is in south, Kent. The prominence of cases of illegal livery in the midlands coincides with much discussion of lawlessness in the region, although it should be noted that some counties such as Nottinghamshire and Lincolnshire had few cases of illegal livery and are discussed elsewhere in this chapter. The primary characteristic of these counties is that most of the cases that occurred in these counties did so in clusters, with the exception of a few miscellaneous cases.

Twenty-two cases of illegal livery occurred in Derbyshire during the period examined in this study. Two main clusters of cases can be identified for Derbyshire in 1434-5<sup>189</sup> and 1468,<sup>190</sup> along with three other cases in 1450,<sup>191</sup> 1466<sup>192</sup> and 1505.<sup>193</sup> In addition to this there was a private suit in the county when William Vernon, son of Richard Vernon, was indicted in 1410.<sup>194</sup> The sheriff of Derbyshire, like that of Yorkshire, was sent a writ by Henry IV ordering him to take action against the

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<sup>187</sup> Pollard, *North-Eastern England*, 368.

<sup>188</sup> Simon Walker, ‘The Yorkshire Risings of 1405: Text and Context’, in *Henry IV: The Establishment of the Regime, 1399-1406*, eds. Gwilym Dodd and Douglas Briggs (Woodbridge, 2003), 161-2.

<sup>189</sup> KB9/11 ms. 15, 17; KB29/68 rott. 4, 5, 9, 10, 17, 20.

<sup>190</sup> KB9/13 ms. 11, 19-23, 53, 63.

<sup>191</sup> KB29/82 rot. 7.

<sup>192</sup> KB29/97 rot. 29.

<sup>193</sup> KB9/437 ms. 20.

<sup>194</sup> KB27/596 rot. 76 plea.

lawlessness in the county.<sup>195</sup> Derbyshire had a record of disorder during the fifteenth century. Prior to the cluster of cases in 1434-5, in 1433, a large number of men were charged for various offences such as unlawful maintenance, conspiracy, mayhem and extortion.<sup>196</sup> The cluster of cases in 1468 was heard by an *oyer et terminer* that resulted from disorder in the county which included the murder of Roger Vernon.<sup>197</sup> Bordering Yorkshire, Derbyshire displays similar characteristics in terms of reputation for disorder and the existence of multiple-clusters of cases, but is on a much smaller scale. Twenty-two cases can be identified in Derbyshire, compared to 36 in Yorkshire. Derbyshire also has a lower total number of cases than either Warwickshire or Staffordshire (discussed below). While Derbyshire had a smaller number of cases than Warwickshire or Staffordshire, it does have more clusters of cases and the cases are spread out more consistently over a long chronological period.

A similar trend can be detected in two other midland counties, Warwickshire and Staffordshire, which each had a large number of cases clustered together and few other cases scattered across the century. In 1414 an *oyer et terminer* commission found 21 cases in Staffordshire.<sup>198</sup> A further case arose the following year in 1415.<sup>199</sup> Afterwards, no cases arose until 1488,<sup>200</sup> with two more occurring in 1501<sup>201</sup> and 1505.<sup>202</sup> Warwickshire had a broadly similar distribution pattern to Staffordshire. Fifteen cases can be identified in Warwickshire between 1489 and 1490<sup>203</sup>, with a further two occurring in 1492<sup>204</sup> and 1493.<sup>205</sup> Earlier cases can be identified from 1436<sup>206</sup> and 1460.<sup>207</sup> Cases of illegal livery in Staffordshire and Warwickshire were distributed in a similar manner and scale. In both counties there were very large clusters of cases which incorporated all but a few of the cases of illegal livery in these counties, with the exception of a few scattered cases at other periods.

Herefordshire, a county on the Welsh border, was another one where there were numerous cases of illegal livery. As discussed in subsequent chapters, the cases

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<sup>195</sup> *Calendar of Signet Letters of Henry IV and Henry V*, no. 348.

<sup>196</sup> KB29/67 rot. 14.

<sup>197</sup> Hicks, '1468 Statute', 18.

<sup>198</sup> KB9/113 ms. 2, 11, 28, 40-3; KB29/53 rot. 24.

<sup>199</sup> KB27/617 rot. 16 rex.

<sup>200</sup> KB29/119 rot. 2.

<sup>201</sup> KB29/131 rot. 19.

<sup>202</sup> KB29/135 rot. 10.

<sup>203</sup> KB9/380 ms. 41; KB29/119 rott. 10-11; KB29/120 rott. 11-13, 16, 28.

<sup>204</sup> KB29/123 rot. 5.

<sup>205</sup> KB29/123 rot. 23.

<sup>206</sup> KB29/69 rot. 19.

<sup>207</sup> KB29/89 rot. 30.

in Herefordshire demonstrate a political dimension to the enforcement of the statutes. Richard, duke of York, held large amounts of land in the neighbouring region of South Wales and retained several members of the leading gentry in the county. Other prominent peers such as the duke of Buckingham and the earl of Shrewsbury similarly had retainers in the county.<sup>208</sup> This combination of magnate influence and proximity to the Welsh border made Herefordshire a county in which the excesses of bastard feudalism could thrive. In total, 20 cases can be identified from the county. The earliest of which was in 1452 when a commissions of *oyer et terminer* included three indictments for illegal livery.<sup>209</sup> A second commission five years later in 1457 prosecuted ten cases of illegal livery<sup>210</sup> to which can be added three further cases identifiable from the controlment rolls.<sup>211</sup> Four further cases can be identified from the county in 1461,<sup>212</sup> 1490,<sup>213</sup> 1491<sup>214</sup> and 1518.<sup>215</sup>

Worcestershire too had cases that involved prominent members of local society. In Worcestershire a cluster of cases arose 1517 when members of the Savage family, John V and his son John VI, were indicted for various offences against the statutes of livery.<sup>216</sup> Other cases had arisen in Worcestershire prior to these charges. There had been two previous clusters of cases in Worcester: three cases had arisen in 1463<sup>217</sup> and a further six between 1501 and 1505.<sup>218</sup> Three further cases arose in 1517-18, although the Savages were not charged in these cases.<sup>219</sup> Gloucestershire has similarities with Worcestershire that are appropriate to highlight here. Firstly, both John Savage Sen. and John Savage Jr. were each charged on two occasions with contravening the statutes of livery in 1517<sup>220</sup>, meaning that in that year they were each charged a total of eleven and nine times respectively. Gloucestershire differs from Worcestershire with respect to other cases that arise. Only three further cases can be

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<sup>208</sup> Herbert, 'Herefordshire, 1413-61', 105; *CIPM, 1422-1427*, nos. 510-12 lists the lands York inherited from his uncle, Edmund, earl of March, in Herefordshire and the Adjacent March of Wales in 1425.

<sup>209</sup> KB9/34/1 ms. 5; KB9/34/2 ms. 42, 142.

<sup>210</sup> KB9/35 ms. 6, 67-9.

<sup>211</sup> KB29/87 rott. 15, 18.

<sup>212</sup> KB29/93 rot. 16.

<sup>213</sup> KB29/120 rot. 15.

<sup>214</sup> KB29/119 rot. 11; KB29/122 rott. 3, 7.

<sup>215</sup> KB29/150 rott. 21-2.

<sup>216</sup> KB29/148 rott. 50-1, 53.

<sup>217</sup> KB29/94 rott. 1, 2, 6.

<sup>218</sup> KB29/131 rott. 15, 20; KB29/132 rot. 33; KB29/135 rot. 20.

<sup>219</sup> KB29/149 rot. 7; KB29/150 rot. 5; KB29/151 rot. 25.

<sup>220</sup> KB29/148 rot. 54.

identified in Gloucestershire, all of which are in the period 1517-18.<sup>221</sup> The fact that Worcestershire and Gloucestershire border each other and the fact that the same knights were charged in both counties suggests two things. Firstly, that there may have been a concerted effort by justices in both Worcestershire and Gloucestershire to curb the power of the Savage family in that area. This was a consequence of family's involvement in the murder the Worcestershire JP John Pauncefote in 1516.<sup>222</sup> The Savages, and their wider affinity, had a reputation for lawlessness before and after their charges of illegal retaining.<sup>223</sup> Secondly, illegal retaining practices could stretch beyond county borders.

In the south, the county in which the most number of illegal livery cases occurred was Kent. There were 21 cases of illegal livery, although the cases in Kent did not confine themselves to large clusters like Warwickshire or Staffordshire. Instead, Kent had one large cluster of cases in 1478, a smaller cluster in 1503 along with other cases spread out over a period of time. Moreover, Kent had the *cause célèbre* of illegal livery cases Kent had the largest cases of illegal retaining when, in 1507, George Neville, lord Bergavenny, was charged with illegally retaining 471 men.<sup>224</sup> He was charged again in 1516 for illegally retaining 83 men.<sup>225</sup> His grandfather, Edward Neville had similarly been indicted in Kent, along with ten others, in 1461.<sup>226</sup> However, the largest number of separate cases to cluster together was in 1478 when ten cases arose in that year.<sup>227</sup> Another cluster of cases occurred in 1503 when there had been five cases of illegal livery in 1503, including an earlier indictment against Bergavenny for illegal retaining.<sup>228</sup> A further case can be identified from 1512.<sup>229</sup> The distribution pattern in Kent was thus: one major cluster of different cases in 1478, a smaller cluster in 1503, along with several other larger individual cases involving prominent nobles.

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<sup>221</sup> KB29/148 rot. 54; KB29/150 rot. 16.

<sup>222</sup> Discussed fully in: Ives, 'Crime, Sanctuary and Royal Authority', 296-320.

<sup>223</sup> Ibid, 313-6, 318-9.

<sup>224</sup> KB29/136 rott. 16-17.

<sup>225</sup> KB29/148 rott. 17-18.

<sup>226</sup> KB29/92 rot. 13.

<sup>227</sup> KB29/108 rot. 12.

<sup>228</sup> KB29/133 rot. 27.

<sup>229</sup> KB29/144 rot. 23.

## 10 to 14 Cases

Suffolk followed a similar pattern to Warwickshire and Staffordshire, but on a smaller scale. Twelve cases occurred in 1470<sup>230</sup>, in addition to a further case in 1491.<sup>231</sup> While the number of cases is significantly fewer than Warwickshire and Staffordshire, Suffolk is similar in that there is one large cluster of cases that accounted for the vast majority that arose in the county and a smaller number of cases that occurred independently. These three counties display broadly similar characteristics in terms of cases of illegal livery: the vast majority of cases were confined to very large clusters of cases, in addition to a few other miscellaneous cases. When the cases occurred in Suffolk, moreover, are consistent with the broader pattern of enforcement of the statutes. The majority of the cases were clearly linked with large-scale magnate lawlessness when the 13 cases from 1470 were connected with wider instances of lawlessness in the county, particularly the siege of Caister Castle. The 1491 case, as discussed, occurred during a period in which there was widespread enforcement of the statutes during the early years of Henry VII's reign.

A further county in which there was one large cluster of cases was Cambridgeshire when, in 1505, all 13 cases from the county arose. Only 14 men were indicted in Cambridgeshire because they were accused of fraudulently wearing the livery of prominent nobles, namely the Earl of Oxford, the Duke of Buckingham and Margaret Beaufort, mother of Henry VII as well as a local knight Robert Cotton.<sup>232</sup> It should be emphasised, for the purposes of clarity, that the duke of Buckingham, the earl of Oxford or the king's mother were not themselves indicted with contravening the statutes of livery. Rather, people were being charged with illegally wearing their livery. The personnel that were charged, the legal processes involved in prosecuting someone and the exact provisions of the statutes are all discussed in subsequent chapters. Here it is appropriate to highlight the local context of these cases. During 1505 similar indictments were made in neighbouring counties of Essex<sup>233</sup> and Huntingdonshire<sup>234</sup> when the liveries of the earl of Oxford and the king's mother were being worn without their permission. Given the pattern of land ownership in Cambridgeshire at this time it is clear why cases such as these occurred in

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<sup>230</sup> KB29/99 rott. 31-3.

<sup>231</sup> KB29/121 rot. 11.

<sup>232</sup> KB9/436 ms. 9, 14, 42.

<sup>233</sup> KB9/436 ms. 7

<sup>234</sup> KB9/436 ms. 8.

Cambridgeshire. John de Vere, earl of Oxford, had extensive land holdings across East Anglia, including eight manors in Cambridgeshire and 45 in Essex.<sup>235</sup> Margaret Beaufort likewise held land in both Cambridgeshire and Essex<sup>236</sup> while the duke of Buckingham held land in Essex.<sup>237</sup> Cambridgeshire was a county in which several prominent nobles and royals owned land; it is was in that county that men who were either former servants or impersonating their servants were indicted for fraudulently wearing their livery.

Fourteen cases occurred in Hertfordshire over the period considered in this thesis, the first of which occurred in 1460.<sup>238</sup> No further cases can be identified in Hertfordshire until the reign of Henry VII when the remaining cases arose. The 12 cases from Henry VII's reign in Hertfordshire were spread out between 1489 and 1508 with: one case in 1489<sup>239</sup>; three cases in 1491<sup>240</sup>; two case in 1495<sup>241</sup>; one case in 1499<sup>242</sup>; one case in 1500<sup>243</sup>; two cases in 1502<sup>244</sup>; one in 1505<sup>245</sup>; one case in 1507<sup>246</sup>; and a final case in 1508.<sup>247</sup> Surrey had the same number of cases as Hertfordshire but with a different chronological distribution. All 14 of the cases from Surrey were confined to two clusters: three cases in 1467<sup>248</sup> and 11 cases in 1491, seven of which were for the fraudulent wearing of livery.<sup>249</sup> Sussex was distinct from Hertfordshire and Surrey because, while the statutes were enforced on a similar scale in all three counties, the majority of cases from Sussex did not occur during the reign of Henry VII. Ten cases can be identified from Sussex. Two 'mini-clusters' of three cases each can be seen to arise in 1476<sup>250</sup> and 1505-7<sup>251</sup>, with further isolated cases

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<sup>235</sup> Ross, *John De Vere*, 92-3.

<sup>236</sup> Michael K. Jones and Malcolm G. Underwood, *The King's Mother: Lady Margaret Beaufort, Countess of Richmond and Derby* (Cambridge, 1992), 262-7.

<sup>237</sup> Rawcliffe, *The Staffords*, 191, 193.

<sup>238</sup> KB29/89 rot. 24; KB29/93 rot. 16.

<sup>239</sup> KB29/119 rot. 11.

<sup>240</sup> KB29/120 rot. 3

<sup>241</sup> KB29/126 rot. 4.

<sup>242</sup> KB29/129 rot. 22.

<sup>243</sup> KB29/130 rot. 16.

<sup>244</sup> KB29/132 rot. 33.

<sup>245</sup> KB29/135 rot. 11.

<sup>246</sup> KB29/137 rot. 1.

<sup>247</sup> KB29/137 rot. 27.

<sup>248</sup> KB29/98 rott. 8, 19-20.

<sup>249</sup> KB29/127 rott. 27-8.

<sup>250</sup> KB29/106 rott. 11, 28.

<sup>251</sup> KB29/135 rot. 6; KB29/137 rot. 1.

arising in 1480<sup>252</sup> and 1516<sup>253</sup> in addition to two earlier case from 1429<sup>254</sup> and 1437.<sup>255</sup>

The final county discussed in this section is Shropshire. Bordering Wales and removed from the centre, Shropshire was similar to other counties such as Cheshire, Herefordshire and Worcestershire that had more cases of illegal livery. In Shropshire there was one cluster of cases in connection with major local disturbances, along with numerous other miscellaneous cases. In total, ten cases from Shropshire have been identified. Five cases occurred in 1414 as a result of Henry V's campaign against disorder that produced 21 cases in the neighbouring county of Staffordshire.<sup>256</sup> The King's Bench visited Shropshire immediately after visiting Staffordshire. The initial petition complaining about lawlessness and the suppression of the Glyndŵr revolt by 1414 suggests that internal politics and feuding were the cause of the visit. It should be noted, however, that the cases from this period were not included in the justice of the peace rolls that have been identified and edited for the county.<sup>257</sup> Another five cases can be identified from the county over the following century during periods in which the statutes were being enforced in other counties, in 1421,<sup>258</sup> 1453,<sup>259</sup> 1477,<sup>260</sup> 1480<sup>261</sup> and 1508<sup>262</sup> respectively. Moreover, it should be noted that there was no strong Welsh element to the indictments in Shropshire. Instead, the cases of illegal livery in Shropshire were related to wider instances of illegal livery and/or disorder in the midlands, with no specifically Welsh context to the cases.

### **Fewer than 10 Cases**

This section is concerned with counties that had a low number of cases, many of which occurred in isolation, as opposed to occurring at times of widespread lawlessness. Hampshire's seven cases provide an example of a county in which cases

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<sup>252</sup> KB29/110 rot. 12.

<sup>253</sup> KB29/148 rott. 12, 40.

<sup>254</sup> KB29/62 rot. 3.

<sup>255</sup> KB29/70 rot. 16.

<sup>256</sup> KB27/613 rott 39-40 rex; KB27/617 rott. 31, 40 rex; KB27/618 rot. 14 rex; KB27/619 rott. 5, 18, 24.

<sup>257</sup> *Shropshire Peace Roll, 1400-1414*, ed. E.G Kimball, (Shrewsbury, 1959); Edward Powell, 'Proceedings before the Justices of the Peace at Shrewsbury in 1414: A Supplement to the Shropshire Peace Roll', *EHR*, 99 (1984), 541-50.

<sup>258</sup> KB27/640 rot. 7 rex; KB27/642 rot. 7 rex.

<sup>259</sup> KB29/84 rot. 5.

<sup>260</sup> KB29/107 rot. 12.

<sup>261</sup> KB29/110 rot. 16.

<sup>262</sup> KB29/137 rot. 36.

occurred in isolation rather than clusters throughout the period examined in this study. The first cases from Hampshire were in the late 1440s and 1450s, the same time when cases were becoming more common across England, and again during the reign of Henry VII which was the period with the largest concentration of cases. The first three cases occurred during a six year span between 1449 and 1455 in 1449,<sup>263</sup> 1451<sup>264</sup> and 1455<sup>265</sup> respectively. A further cases arose in 1476 when Thomas Grenfield, gentleman, was indicted for illegally giving livery to one tailor.<sup>266</sup> There was then a gap of 29 years without a case in Hampshire until 1505 when there were two cases<sup>267</sup> followed by a final case in 1511.<sup>268</sup> Hampshire differed from many other counties in terms of land ownership because the church was the dominant land-owner. It was also the seat of the Bishopric of Winchester, the largest and wealthiest bishopric in England during the late medieval period and, until the Dissolution of the Monasteries, the largest landowner in the county. Consequently, no secular magnate had a strong landed base in Hampshire and the county was not seriously affected by forfeitures and appointments to office resulting from political change at the centre.<sup>269</sup> Nevertheless, there were cases of illegal livery in the county, but unlike counties such as Yorkshire, Warwickshire and Staffordshire there was no large cluster of cases in Hampshire. Cases in Hampshire were isolated, although like in other counties there were additional factors that led to people being indicted. The absence of any major cluster of cases of illegally livery occurring in conjunction with other forms of widespread lawlessness, especially that caused by bastard feudal affinities, appears to validate the lack of scholarship on bastard feudal abuses in fifteenth-century Hampshire, although it is apparent that there were similar problems in Hampshire.<sup>270</sup>

In Norfolk, there were three cases in total: two in 1489<sup>271</sup> and an additional case in 1496.<sup>272</sup> Soon after the period that this study focuses on six further men from Norfolk were sent writ of *venire facias* for alleged offences against the statutes of

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<sup>263</sup> KB27/764 rot. 24 rex.

<sup>264</sup> KB29/83 rot. 2.

<sup>265</sup> KB29/86 rott. 1, 11.

<sup>266</sup> KB29/106 rot. 24.

<sup>267</sup> KB9/436 ms. 13; KB29/135 rot. 13.

<sup>268</sup> KB29/143 rot. 24.

<sup>269</sup> Purser, 'The County Community of Hampshire', 276, 280, 286.

<sup>270</sup> For a notable exception on lawlessness in Hampshire, although not necessary related to bastard feudalism, see: Ralph Griffiths, 'William Wawe and his Gang', *Transactions of the Hampshire Field Club and Archaeological Society*, 33 (1977), 89-93. For popular violence in the county see: Helmut Hinck, 'The Rising of 1381 in Winchester', *EHR*, 125 (2010), 112-31.

<sup>271</sup> KB29/119 rott. 12, 14; KB29/120 rot. 13.

<sup>272</sup> KB29/127 rot. 7.

livery in 1522.<sup>273</sup> This is in contrast to its neighbouring county of Suffolk which, as discussed, did have several prominent cases of illegal livery during including the indictments against the dukes of Norfolk and Suffolk in 1470. Twelve men from Norfolk, including one knight and eight esquires, were indicted for illegal livery in 1470 along with the duke of Norfolk.<sup>274</sup> The fact that members of the gentry from both Norfolk and Suffolk were indicted along with each other for illegal livery is evidence that some members of the East Anglian gentry had horizons that looked beyond their home county and had more a regional perspective. This is also evident in Gloucestershire where the six cases of illegal retaining were connected to cases of illegal retaining and other various offences committed by the Savage family in Worcestershire.<sup>275</sup>

Lincolnshire similarly had did not have any cases of illegal livery until the reign of Henry VII, during which all three cases occurred, with two cases in 1490-1<sup>276</sup> and one in 1504.<sup>277</sup> The absence of cases during the Lancastrian era is both indicative of the low levels of enforcement of the statutes prior to the 1450s and that, during the Lancastrian period, gentry violence in Lincolnshire ‘would appear to have been at a reasonably low and, in medieval terms, generally acceptable level’.<sup>278</sup> Despite the role Lincolnshire played in the uprising of Warwick and Clarence in 1470, when Edward IV regained the throne his policy towards the county was one of reconciliation rather than retribution,<sup>279</sup> which along with the lower level of enforcement towards the end of Edward IV’s reign explain the absence of cases in Lincolnshire in this period. The absence of cases before the reign of Henry VII is evident in several other counties that only experienced a handful of illegal livery cases. In Berkshire the three cases that arose in the county occurred in the space of three years between 1505 and 1508.<sup>280</sup> In Northamptonshire there was a cluster of three cases of illegal retaining between 1488 and 1491<sup>281</sup> and an extra case at the beginning of Henry VIII’s reign in 1510.<sup>282</sup>

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<sup>273</sup> KB29/154 rot. 32.

<sup>274</sup> KB29/99 rott. 31-2.

<sup>275</sup> KB29/148 rot. 54; KB29/150 rot. 16; Ives, ‘Crime, Sanctuary and Royal Authority’, 296-320.

<sup>276</sup> KB29/120 rott. 19, 28; KB29/121 rott. 2, 19.

<sup>277</sup> KB9/435 ms. 11.

<sup>278</sup> Jonathan S. Mackman, ‘The Lincolnshire Gentry and the Wars of the Roses’ (unpublished D.Phil thesis, University of York, 1999), 142.

<sup>279</sup> *Ibid.*, 222-3.

<sup>280</sup> KB9/436 ms. 16; KB9/444 ms. 80; KB29/137 rot. 36; KB29/142 rot. 7.

<sup>281</sup> KB29/120 rot. 3.

<sup>282</sup> KB29/140 rot. 26.

A similar trend is evident in many of the counties that only had two cases of illegal livery, such as Bedfordshire. In 1498 John Lord Grey of Wilton was indicted for giving illegal livery to three men of Dunstable.<sup>283</sup> This was followed by one further case involving one labourer in 1508.<sup>284</sup> In Essex the two cases of illegal livery occurred in 1493 when nine men were indicted<sup>285</sup> and in 1505 when one smith was indicted for fraudulently wearing the livery of the earl of Oxford.<sup>286</sup> The absence of cases of illegal in many counties until the reign of Henry VII is indicative of the more widespread and rigorous enforcement of the statutes that occurred during his reign. In this respect Oxfordshire is atypical because the only two identifiable cases arose before the reign of Henry VII: in 1440 when two men were indicted<sup>287</sup> and again in 1478 when the rector of Queen's College Oxford was indicted for giving illegal livery to one man.<sup>288</sup> Similarly, in Somerset the only two cases occurred during the reign of Henry VI in 1433.<sup>289</sup>

Several counties only had one case of illegal livery. The only identifiable case from Nottinghamshire was in 1456 when 12 men were indicted.<sup>290</sup> Given the connection between illegal livery and wider instances of lawlessness, this evidence is consistent with Simon Payling's argument that, during the Lancastrian period 'the index of aristocratic disorder in the county was low'.<sup>291</sup> Although no study of gentry violence has been conducted for Nottinghamshire during the Yorkist and early Tudor periods, the absence of cases of illegal livery suggests that Nottinghamshire continued to have a low index of aristocratic disorder. Only one further case occurred in the county which was from the city of Nottinghamshire itself when one man was indicted in 1510.<sup>292</sup> Other counties in which only case can be identified have not been the subject of similar studies of gentry violence. One case occurred in Dorset when, in 1459, Simon Raule, court-holder was indicted for illegally giving livery to one labourer.<sup>293</sup> Rutland was on a similar scale with two men, Robert and Nicholas

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<sup>283</sup> KB9/417 ms. 119; KB29/129 rot. 2.

<sup>284</sup> KB29/137 rot. 27.

<sup>285</sup> KB29/123 rot. 22; KB29/124 rot. 13

<sup>286</sup> KB9/436 ms. 7.

<sup>287</sup> KB29/74 rott. 3, 14.

<sup>288</sup> KB27/908 rot. 5 rex.

<sup>289</sup> KB29/66 rot. 28; KB29/67 rot 4.

<sup>290</sup> KB29/86 rot. 27. Note – this case comes from the county of Nottinghamshire. The city of Nottingham had to cases which are discussed in the next paragraph.

<sup>291</sup> Payling, *Political Society*, 214.

<sup>292</sup> KB29/140 rot. 31; KB29/143 rot. 41.

<sup>293</sup> KB29/88 rot. 35.

Greenham, both husbandmen, being charged in 1510, which is the only identifiable case in the county.<sup>294</sup> Wiltshire likewise had only one case of illegal retaining that arose in 1508 when Sir Walter Hungerford illegally gave livery to seven men from Devizes.<sup>295</sup> The lack of cases from Dorset, Wiltshire and Rutland and the relatively small number involved suggests low level of gentry violence on a similar scale to Nottinghamshire.

Cases that originated in cities in which the King's Bench sat independently to that of the wider county, usually had few men charged in each case too. Four cases can be identified from the King's Bench operating in towns rather than the county at large. A glover from the city of Nottingham was indicted for illegal livery in 1510.<sup>296</sup> Likewise, in 1480, Thomas Shirwood, gentleman, was indicted in Coventry with offences against the statutes of livery.<sup>297</sup> One of the cases that resulted from the Percy-Neville feud came from the city of York in 1454.<sup>298</sup> Prior to these cases a case had arisen in London in 1439.<sup>299</sup> It should be noted that several cases can be identified from Greater London, but due to jurisdictional boundaries, they have been considered in terms of the counties they were legally part of during the fifteenth century. For instance, the six cases from Surrey in 1491 include charges against men from what are now London boroughs such as Croydon, Wimbledon, Southwark and Wandsworth.<sup>300</sup>

However, not every county in which only a few cases arose had a small number of men charged in each case, as was evident in the south-west. In total, there were only four cases of illegal livery in Devon. During Easter 1491 there were three indictments against William Courtenay and 92 others, eight of whom were from Somerset, for illegal livery.<sup>301</sup> Devon, and its neighbouring county Cornwall, had a reputation for lawlessness, feuding and disorder throughout the late medieval period<sup>302</sup> and cases of illegal livery in the county coincide with rioting in the county.<sup>303</sup> This reputation for lawlessness and violence, however, rarely translated into cases of illegal livery. The only other case identifiable from Devon comes from a

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<sup>294</sup> KB29/142 rot. 24.

<sup>295</sup> KB29/138 rot. 5.

<sup>296</sup> KB29/140 rot. 31; KB29/143 rot. 41

<sup>297</sup> KB29/110 rot. 17.

<sup>298</sup> KB29/89 rot. 6.

<sup>299</sup> KB29/72 rot. 30.

<sup>300</sup> KB29/121 rot. 27.

<sup>301</sup> KB29/121 rott. 15-16.

<sup>302</sup> See e.g. Kleineke, 'Why the West was Wild', 76-8.

<sup>303</sup> KB29/121 rot. 14.

returned sheriff's writ in the coram rege rolls for Trinity 1468 stating that Thomas Cokeyn, esquire, Henry Rolstone, esquire, two gentlemen and 36 yeomen had failed to appear in court.<sup>304</sup> Cornwall similarly only had one case of illegal livery, in 1467, when seven men were indicted from illegally receiving livery from John Vivian.<sup>305</sup> The activities of other members of the Cornish gentry and their retainers was noted by contemporaries but no further cases of illegal livery can be identified. Richard Tregoy, a perpetual perpetrator of lawlessness in Cornwall, was said to have kept a liveried retinue of malefactors but was never indicted for illegal livery.<sup>306</sup> In Cornwall the problems of livery and retaining occurred but this did not result in prosecutions for illegal livery. A similar lack of cases is evident in Somerset which had only two cases of illegal livery, both occurring in 1433 with four and six men being charged in each case.<sup>307</sup>

The absence of cases in the south-west, particularly during the 1450s when there was intense local violence between Thomas Courtney, earl of Devon, and Lord Bonville is noticeable, particularly since several cases were occurring in Herefordshire during that time. The large amounts of land owned by both Courtney and Bonville combined with large quantities of royal patronage available to them meant that they probably had sufficient numbers of legal retainers to perpetrate various crimes.<sup>308</sup> This, however, only explains one short period and does little to illuminate any potential illegal retaining practices of the lesser gentry of the south-west. What this evidence does indicate is that that the statutes of livery were rarely enforced in the south-west, despite its reputation of lawlessness, something that is likely to have stemmed from the inability of central government to deal with lawlessness on the fringes of the kingdom.

While Devon can be compared in one sense to its neighbouring counties, similarities can also be detected between the enforcement of the statutes in Devon with those in Leicestershire. Two cases arose in Leicestershire in 1516 in which 343 men were charged with offences against the statutes of livery.<sup>309</sup> Only one other case

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<sup>304</sup> KB27/829 rot. 21 rex.

<sup>305</sup> KB29/98 rot. 20.

<sup>306</sup> C1/42/108. For Tregoy's career see: Kleineke, 'Why the West was Wild', 75, 78, 83-93; Kleineke, 'Poachers and Gamekeepers', 134-6.

<sup>307</sup> KB29/66 rot. 28; KB29/67 rot 4.

<sup>308</sup> For discussion see: Cherry, 'The Struggle for Power', 123-40.

<sup>309</sup> KB29/148 rot. 16.

from Leicestershire can be identified, from 1459.<sup>310</sup> These are the only cases that can be identified from Leicestershire between 1390 and 1530. Furthermore, in both counties, the large cases happened in the same year that a large number of people were also indicted for case of riot arose.<sup>311</sup> The Leicestershire disturbances were connected to feuding in the county between two peers, the Marquis of Dorset and the Earl of Huntingdon (also Lord Hastings). The events seem to have well known at the time. In a letter to the earl of Shrewsbury, Thomas Alen wrote that ‘there is great trouble between the Marquis [of Dorset], Lord Hastings and Sir Ric[hard] Sacheverell’ and that both sides were ‘bound to appear in Star Chamber.’<sup>312</sup> Cases of riot occurring at the same time in both counties as cases of riot adds further credence to the interpretation that cases of livery arose in periods of local disorder and were used in conjunction with other acts. Therefore, the link between charges of illegal livery and lawlessness in these areas suggests that the charges were part of a wider process involved with combating disorder and lawlessness in these counties.

### **Counties with No Cases**

As discussed in Chapter Two, counties that were palatinates had their own legal administration and, therefore, did not have their cases heard in King’s Bench. One of the palatinates, the Bishopric of Durham, had no cases of illegal livery.<sup>313</sup> Cheshire, in contrast, had more than any other county with 39, which is discussed in the next section. The other palatinate, Lancashire, only had one case of illegal livery but that was a private suit in 1429 and is beyond the scope of this study.<sup>314</sup> Men from Lancashire were, however, indicted in other counties for illegal retaining. Three men from Lancashire were indicted in Yorkshire in three separate cases: Richard Radcliff, gentleman in 1491<sup>315</sup>; James Stanley, the future Bishop of Ely in 1500<sup>316</sup>; and Sir Edward Stanley 1504.<sup>317</sup> In these cases the King’s Bench was not operating in Lancashire, rather the men in question were breaking the livery laws in Yorkshire.

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<sup>310</sup> KB29/88 rot. 33.

<sup>311</sup> For Devon KB29/121 rot. 14. For Leicestershire: KB29/148 rot. 23.

<sup>312</sup> *L&P Hen. VIII*, ii, no. 2018. Discussed fully in: Robertson, ‘Court Careers and County Quarrels’, 153-70.

<sup>313</sup> DURH13/1, 224-30.

<sup>314</sup> PL15/2 rot. 2. Private suits and reasons for excluding them from this study are discussed in Chapter Two

<sup>315</sup> KB29/122 rot. 5.

<sup>316</sup> KB29/131 rot. 2. This case is discussed in depth in the ‘Religious’ section of Chapter Six.

<sup>317</sup> KB29/134 rot. 26.

The cases were therefore part of a campaign against illegal retaining in Yorkshire, not Lancashire.

Buckinghamshire and Middlesex, like Lancashire, were counties that had people from them charged with offences against the statutes of livery but had no cases of illegal livery in the counties themselves. Instead men from these counties were charged with breaking the livery laws in neighbouring counties: Bedfordshire in the case of the John Grey, Lord Wilton, in 1498<sup>318</sup>; Hertfordshire in the case of two husbandmen and a yeoman from Middlesex in 1495.<sup>319</sup> Both Buckinghamshire and Middlesex are counties close to London, but this was not necessarily the reason for the lack of cases of illegal livery in them since other counties like Hertfordshire, Kent and Surrey had cases of illegal livery throughout the period discussed. Indeed, in some circumstances a noble with a large retinue of men close to the capital may help to provoke an enforcement of the statutes, such as with Lord Bergavenny in 1507.<sup>320</sup> The absence of cases in Buckinghamshire and Middlesex was a product of the sporadic nature with which the statutes were enforced. The fact that men from Buckinghamshire, Middlesex and Lancashire were indicted for illegal livery in neighbouring counties despite no cases occurring in their own county is evidence that, although the law operated on a rigid county structure, society did not.

Three counties had no cases of illegal livery, nor had anyone from them charged with illegal livery in a different county. These were the three most northern counties: Cumbria, Westmorland, and Northumberland. The absence of cases in the northern counties of England is a result of the fact that the wardens of the marches were exempt from the livery statutes<sup>321</sup> because armed liveried retainers were required for the purposes of protecting the Anglo-Scottish border. Another reason for the absence of cases from these counties is the fact that they were sparsely populated. These counties are poorly documented compared with the more populous areas and there has been no study of landed society in these counties for the later Middle Ages. In the neighbouring Lordship of Richmond elements of the old feudal settlement remained strong during the fifteenth century and 'retained their relevance'.<sup>322</sup> It may be that the practice of retaining was not as prevalent in these large, thinly populated

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<sup>318</sup> KB29/129 rot. 2.

<sup>319</sup> KB29/126 rot. 4.

<sup>320</sup> Gwyn, *King's Cardinal*, 187.

<sup>321</sup> E.g. *PROME*, xiii, 65; xiii, 386.

<sup>322</sup> Devine, 'Lordship of Richmond', 110.

northern counties. Alternatively, the lack of cases of illegal livery may be indicative of problems associated with law enforcement in this part of England. A more definitive explanation can only be given after further research has been conducted into landed society in this part of England. What can be said is that the area furthest from the centre failed to produce any cases of illegal livery.

## **Cheshire**

The county that experienced the largest number of cases of illegal livery was Cheshire, where 39 cases arose. Cheshire, as a palatinate county, had a different administrative structure to the rest of the kingdom.<sup>323</sup> Moreover, it was heavily militarised<sup>324</sup> and was prone to experiencing prolonged periods of violence and lawlessness. The heavily militaristic element was why Richard II built up a retinue of men from the county during the ‘tyranny’ of the final years of his reign in an attempt to ‘convert the earldom into a bastion of royal power’.<sup>325</sup> The activities of Richard II’s Cheshire archers and their crimes was a source of serious criticism during Richard’s final years and the acts of 1399 and 1401 were influenced by the activities from men from Cheshire during Richard II’s final years.<sup>326</sup> Examining the cases from Cheshire is methodologically significant for this study because of its administrative independence rendering the integration of data from Cheshire into a wider study of the whole of England problematic.<sup>327</sup> Cheshire’s separateness from the rest of England has been emphasised by historians since the Tudor period.<sup>328</sup> Therefore, this section has two primary objectives: to survey the cases that occurred in Cheshire; and to determine if the records from Cheshire coincide with what is in the records of the King’s Bench for the rest of England or if it is representative of the lost local records.

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<sup>323</sup> The most comprehensive study of the administration of medieval Cheshire is: Dorothy J. Clayton, *The Administration of the County Palatine of Cheshire, 1442-85* (Manchester, 1990). For a discussion of attempts to maintain law and order in fifteenth-century Cheshire see: Dorothy J. Clayton, ‘Peace Bonds and the Maintenance of Law and Order in late Medieval England: The Example of Cheshire’, *BIHR*, 58 (1985), 133-48.

<sup>324</sup> It was for this reason that Philip Morgan regarded Cheshire as an ‘ideal choice’ for examining the impact of military service on a community, although acknowledges that these local variations made the county atypical from the rest of England. Philip Morgan, *War and Society in Medieval Cheshire, 1277-1403* (Chetham Society, 3<sup>rd</sup> series, xxxiv, 1987), 1-2, 8.

<sup>325</sup> Bennett, *Community, Class and Careerism*, 168. On Richard II’s Cheshire archers see also: Nigel Saul, *Richard II* (London, 1997) 367, 375, 393-4, 431, 444-5, 460; James L. Gillespie, ‘Richard II’s Archers of the Crown’, *Journal of British Studies*, 18 (1979), 14-29.

<sup>326</sup> *Chron. Rev.*, 174; *PROME*, viii, 11-12, 148-9. The development of the statutes is discussed fully in Chapter Four.

<sup>327</sup> See Chapter Two for a discussion of the methodology and data collection for this thesis.

<sup>328</sup> Clayton, *Administration of the County Palatine of Chester*, 46; Morgan, *War and Society*, 3-8.

When the cases from Cheshire are located in wider attacks on illegal livery and the wider distribution of cases across England, it is clear that Cheshire followed a broadly similar pattern to the rest of the country. It should be emphasised, however, that no two counties followed identical patterns of cases.

The first case to arise in Cheshire was in 1415 when seven men were indicted.<sup>329</sup> This can be viewed as part of the first major cluster of cases of illegal livery which occurred at the start of Henry V's reign when he was attempting to eradicate lawlessness in the localities.<sup>330</sup> Thereafter, fourteen cases of illegal livery occurred in 1428.<sup>331</sup> These cases are of particular significance in a parliamentary context because they shed light on the workings of parliament and the development of parliamentary legislation. In 1429 a new act was the first to explicitly state that the statutes were to be upheld in the palatinate counties of Cheshire and Lancashire<sup>332</sup> which indicates that parliament was essentially formalising legislation rather than expanding it. There were then two further cases in 1432<sup>333</sup> and one in 1434.<sup>334</sup>

After the 1434 case there was a gap of over six decades until the next cluster of cases when an *oyer et terminer* commission identified 21 instance of illegal retaining in 1499.<sup>335</sup> The National Archives catalogue refers to it as ‘? *oyer et terminer* file of eyre of Prince of Wales of 1499’ but does not elaborate as to why that date was surmised. One plausible reason is that 1499 was the date of a mayor royal visit to the county. On 4 August 1499 Prince Arthur made his first visit to the county after being made earl of Chester on 29 November 1489 and the eyre at this visit represented ‘increased financial, judicial and political oversight’. According to Tim Thornton, ‘the intention behind the eyre was clearly financial and political gain’.<sup>336</sup> Two members of the Stanley family were indicted by the commission: Sir William Stanley on three occasions<sup>337</sup> and James Stanley, rector of Manchester college twice.<sup>338</sup> The Stanleys were the eminent family of the north-west during this period

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<sup>329</sup> CHES25/25 ms. 14.

<sup>330</sup> Discussed in ‘Chronological Distribution’.

<sup>331</sup> CHES25/12 ms. 16-17.

<sup>332</sup> *PROME*, ix, 402-3. See Chapter Four for a fuller discussion.

<sup>333</sup> CHES25/12 ms. 25.

<sup>334</sup> CHES25/12 ms. 30.

<sup>335</sup> CHES25/18 ms. 7-9, 11-14, 17, 21, 26, 28, 33-4.

<sup>336</sup> Tim Thornton, *Cheshire and the Tudor State, 1480-1560* (Woodbridge, 2000), 71, quotations on 185.

<sup>337</sup> CHES25/18 ms. 8, 11.

<sup>338</sup> CHES25/18 ms. 13. The case against James Stanley is discussed in depth in the ‘Religious’ section of Chapter Six

and were influential to him winning the throne after their defection to his side at Bosworth and became ‘the military backbone of the new régime’. They were related to the new king via the marriage of Thomas Stanley, earl of Derby and the king’s mother Margaret Beaufort. There were, however, problems and mistrust between Henry and his step-family which were most evident in 1495 when Sir William Stanley was executed for treason after he became convinced that Perkin Warbeck was the rightful ‘Richard IV’ and defected to his cause in 1493.<sup>339</sup> When considered in conjunction with the fact that James Stanley<sup>340</sup> and Edward Stanley were indicted for illegal livery in Yorkshire in Michaelmas 1500,<sup>341</sup> it is clear that the Stanley family were the target of many illegal livery prosecutions at this time. To view these indictments purely as an attack upon the Stanley family, however, would be simplistic. Members of other prominent Cheshire families such as the Sir William Booth, Sir John Legh, Sir Peter Legh, Ewan Carrington, esquire, Sir John Warren, Sir Thomas Pole, William Davenport, esquire and William Brereton, esquire, were also indicted for illegal livery.<sup>342</sup> Therefore, the cases in Cheshire in 1499 were an attack upon illegal livery in the county which coincided with attempts by Henry VII to assert more control over the county.<sup>343</sup>

The fact that Cheshire had the largest number of cases of illegal livery, and a different legal system which did not return cases to King’s Bench, it may appear initially that Cheshire was microcosm for what was going on throughout England at a local level, where records of local quarter sessions do not survive. J.G. Bellamy and Alan Cameron both stated a concern that the loss of local records means there is no way of ascertaining how many cases of illegal livery there were.<sup>344</sup> Examining the distribution of cases in the palatine of Chester may partially alleviate these concerns. When the pattern and nature of cases is considered it is clear that Cheshire was not different in terms of the enforcement of the statutes of livery, but followed a similar pattern to the rest of England. Cases of illegal livery were not an annual occurrence in

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<sup>339</sup> Cunningham, ‘Henry VII, Sir Thomas Butler and the Stanley Family’, 220-4, quotation on 223.

<sup>340</sup> KB8/3/1 ms. 5.

<sup>341</sup> KB29/134 ms. 26.

<sup>342</sup> ‘Prominent’ families taken from Tim Thornton’s list of 39 elite Cheshire gentry families between 1480 and 1560: Thornton, *Cheshire and the Tudor State*, 30-1. For indictments see: CHES25/18 ms. 9, 13-14, 26, 28, 33.

<sup>343</sup> Consider, in particular, Thornton’s argument that ‘Henry VII’s policy in Cheshire was therefore to use the palatine to his own purposes, not to destroy it and replace it with subjection to central institutions’. Thornton, *Cheshire and the Tudor State*, 186.

<sup>344</sup> Bellamy, *Bastard Feudalism and the Law*, 4; Cameron, ‘The Giving of Livery and Retaining’, 26 fn. 8.

the palatine of Cheshire. The pattern of short periods of enforcement producing large clusters of cases followed by lengthy periods in which the statutes were seemingly not enforced – 65 years between the indictments of 1434 and 1499 – is consistent with the pattern experienced in many other counties. Similarly, there were no cases in the records of the other palatinate counties. Only one case has been identified from Lancashire which was a private suit, not a case brought by the crown and is therefore outwith the scope of this study.<sup>345</sup> Furthermore, no cases have been identified for Middlesex, a county for which the King’s Bench was the first court. Only one case of illegal livery is evident surviving justice of the peace proceedings, that against Thomas Grenfield in Hampshire in 1476, which is also in the records of the King’s Bench.<sup>346</sup> This evidence suggests that palatine counties did not differ from the rest of England at enforcing the statutes of livery. Therefore, the large number of cases in Cheshire cannot be attributed to a differing administrative system for which better records survive. Instead, the pattern in Cheshire is broadly similar to many other counties from the midlands and the north such as Yorkshire, Staffordshire and Derbyshire in which cases of illegal livery arose sporadically, in clusters, usually in conjunction with wider lawlessness.

### *Conclusions*

This chapter has surveyed the 334 surviving cases of illegal livery in the records of the King’s Bench between 1390 and 1530 and has highlighted the main trends regarding where and when they occurred and identified areas for further investigation. From this analysis it has been possible to draw several conclusions. Firstly, cases arose sporadically both in terms of where and when they occurred. There were long gaps in which no-one was charged such as the periods 1390-1414, 1423-33, 1440-49 and 1481-87. These long gaps were usually followed by an upsurge in the number of cases. It was during the reign of Henry VII and the early years of Henry VIII that witnessed the most sustained period of cases occurring. Likewise, there were many counties in which there was either a minimal number of cases or none at all. Even counties such as Yorkshire and Derbyshire which had large numbers of cases could experience no cases for decades at a time. When cases did arise they were, until the

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<sup>345</sup> PL15/2 rot. 2.

<sup>346</sup> *Proceedings Before the Justices of the Peace*, 249-50; KB29/106 rot. 24.

1504 act, usually concentrated in one of two counties rather than spread out over numerous counties.

Another conclusion that can be drawn from this examination of the cases is that parliamentary activity did not necessarily translate into judicial activity against illegal livery. However, a development can be traced from the late fourteenth and early fifteenth centuries in which commons petitions did not result in charges to the 1504 which did witness an increase in the number cases. Comparable research into the enforcement of other statutes is required to firmly place the statutes of livery in this wider context. What this examination does suggest is that there was a lag between the passing of a new statute and its enforcement. In many circumstances it seems that there needed to be a catalyst in the form of widespread disorder or judicial abuse to begin widespread enforcement of a new statute.

The most significant conclusion that can be drawn from this survey is that, especially until c. 1475, cases of illegal livery tended to occur during periods of disorder in particular localities. Feuding in Staffordshire prior to 1414 led to the first large cluster of cases. This trend is repeated throughout the period as seen in the 1450s when the numerous local feuds across England that contributed to the outbreak of the Wars of the Roses resulted in an upsurge in the number of cases. Similarly, the fact cases of riot occurred at the same time as livery in counties such as Devon, Leicestershire and Yorkshire, particularly in Henry VII's reign, further emphasises a connection between local disturbances and cases of illegal livery. Chapter Six examines the connection between those indicted for illegal livery and those involved in various other violent crimes in greater depth. Here, the important point is that lawlessness and indictments against the statutes of livery were, in many instances, inextricably linked.

In conclusion, an analysis of the distribution of cases between has shown that: the enforcement of the statute was sporadic since there were long period between cases occurring followed by an upsurge in cases; that parliamentary activity rarely translated into judicial activity; and cases usually arose during periods of disorder, especially in places that were experience violent disorder.

## Appendix 1 – Number of Cases per Reign

<b>Reign</b>	<b>No. Cases</b>
Richard II	1
Henry IV	0 <sup>1</sup>
Henry V	31
Henry VI	72
Edward IV	46
Edward V	0
Richard III	0
Henry VII	148
Henry VIII	36

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<sup>1</sup> This figure, as discussed in Chapter Two, excludes cases from private suits such as in Derbyshire in 1410: KB27/596 rot. 76 plea. Printed in *Select Cases in the Court of King's Bench Under Richard II, Henry IV and Henry V*, 192-4.

## Appendix 2 – Number of Cases in each County<sup>1</sup>

<b>County</b>	<b>No. Cases</b>
Bedfordshire	2
Berkshire	3
Buckinghamshire	0
Cambridgeshire	13
Cheshire	39
Cornwall	1
Coventry	1
Cumberland	0
Derbyshire	22
Devon	4
Dorset	1
Durham, Bishopric of	0
Essex	2
Gloucestershire	6
Hampshire	7
Herefordshire	20
Hertfordshire	14
Huntingdonshire	2
Kent	21
Lancashire	0
Leicestershire	3
Lincolnshire	3
London	1
Middlesex	0
Norfolk	3
Northampton	4
Northumberland	0
Nottingham, City of	1

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<sup>1</sup> Only cities administered independently of their county that have cases are included in this table.

Nottinghamshire	1
Oxfordshire	2
Rutland	1
Shropshire	10
Somerset	2
Staffordshire	25
Suffolk	13
Surrey	14
Sussex	10
Warwickshire	19
Westmorland	0
Wiltshire	1
Worcester	26
York, City of	1
Yorkshire	36

## Chapter Four: The Statutes

The acts of parliament dealing with livery and retaining have generated a significant amount of scholarship by historians interested in bastard feudalism and late medieval attitudes towards retaining. J.M.W. Bean and William Dunham discussed the statutes, their development and their significance chronologically.<sup>1</sup> Christopher Given-Wilson, likewise, discussed the early acts in relation to the royal affinity.<sup>2</sup> Rather than describing the context and specifics of each act individually, this chapter approaches the statutes thematically and provides a timeline of the statutes and their main provisions in an appendix. This chapter examines the terms of the statutes, the petitions that led to them and exemptions from them separately and considers them in their wider historical contexts.

Furthermore, this discussion needs to be considered in the context of the ‘new constitutional history’, originally advocated by Edward Powell and Christine Carpenter.<sup>3</sup> Central to the ‘new constitutional history’ is the notion that historical interpretation needs to take account of ideology as well as interests. Instead of employing the problematic phrase of ‘constitutional history’, with its Whiggish connotations, this chapter refers to the ideological and cultural contexts of the period. The tension regarding attributing either self-interest or ideology as the motivator of a person’s actions is not an exclusive problem for late medievalists. Steven Gunn argued that Tudor historians needed to reintegrate political principle back into historical discussion and refine their use of ‘the Namierite legacy’.<sup>4</sup> For the late medieval period, Michael Hicks has highlighted the fact that historians have mentioned ideas and idealism but then ‘ignore them when explaining what actually happened, which stemmed from self-interest, self-preservation and self-advancement’.<sup>5</sup> Despite relying on an outdated concept, the new constitutional history has been important in highlighting the fact that self-interest was not the only motivation for actions during the late medieval period. John Watts has argued that historians have ‘long troubled explaining the legislation on livery, maintenance and

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<sup>1</sup> Dunham, *Lord Hastings’ Indentured Retainers*, 67-89; Bean, *From Lord to Patron*, 200-30.

<sup>2</sup> Given-Wilson, *King’s Affinity*, 234-45.

<sup>3</sup> Carpenter, *Locality and Polity*, 628-47; Carpenter, ‘Political and Constitutional History: Before and After McFarlane’, 175-206; Powell, *Kingship, Law and Society*, 1-22; Powell, ‘After “After McFarlane”’, 1-16.

<sup>4</sup> Steven Gunn, ‘The Structures of Politics in Early Tudor England’, *TRHS*, 6<sup>th</sup> series, 5 (1995), 62.

<sup>5</sup> Michael Hicks, ‘Idealism in Late Medieval English Politics’ in *Richard III and His Rivals*, 41.

retaining' because of 'the extensive reliance of the landed classes on these devices'. Dr Watts believes that public discourses and rumours should have a role in these accounts, rather than an exclusive reliance on 'the putative interests of independent gentry, or confidently propagandist kings'.<sup>6</sup> Essentially, the problem posed by Watts is that, thus far, discussion of the specific acts against livery have been confined to the interests of individuals, or groups of individuals, rather than being viewed as an expression of social values.

Christian Liddy has commented that although the language of political discourse has been central to the new constitutional history, 'parliament, in contrast, does not appear to have much of a place'.<sup>7</sup> Parliamentary legislation and its development is the focus of the chapter and considers both interests and ideology. When examining parliamentary legislation of any period, it is vital to appreciate that laws were not enacted in a vacuum. Various social and political pressures led to the issue being discussed in parliament and the acts being passed. The wider social, political, ideological and cultural contexts need to be considered in conjunction with the terms of the statutes since they influenced what could and could not be legislated against.

### **Livery Distribution and Its Symbolism**

The primary objective of the statutes of livery was to regulate who could distribute livery and who could receive it. From 1468 onwards this was extended to include retaining by fees and indentures. Regulation, not prohibition, was the key aspect of the statutes. The distribution of livery was always permitted and was expected as part of good lordship. Distributing livery, as Rees Davies has noted, was the best way that the relationship between a lord and his servant could 'be celebrated publically so that all the world could take note of it'.<sup>8</sup> The practice continued long after the last act regulating livery in 1504, as shown in the household accounts of Robert Dudley, earl of Leicester which includes lists of liveries delivered to his household servants between 1559 and 1568.<sup>9</sup> In order to fully understand what was being made illegal, it

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<sup>6</sup> John Watts, 'The Pressure of the Public on Later Medieval Politics', in *Political Culture in Late Medieval Britain*, eds. Linda Clark and Christine Carpenter (Woodbridge, 2004), 180. See also: Watts, *Henry VI and the Politics of Kingship*, 1-12.

<sup>7</sup> Liddy, *War, Politics and Finance*, 17.

<sup>8</sup> Davies, *Lords & Lordship*, 65.

<sup>9</sup> *Household Accounts and Disbursement Books of Robert Dudley, Earl of Leicester*, ed. Simon Adams, Camden 5<sup>th</sup> Series, vi (1995), 419-28.

is necessary to identify the occasions in which livery was given and the personnel involved.

Grants of livery were primarily a method of rewarding servants and surviving indentures show livery being given as a reward for service. For example, an indenture between Humphrey Stafford, earl of Buckingham, and the knight Sir Philip Chetwynd included a provision by which Chetwynd would be given, among other things, Humphrey's livery.<sup>10</sup> It was also standard practice for the king to reward his servants with the gift of livery robes, as in 1482 when Guy Fairfax was given a robe of livery as part of his payment for being a judge on the King's Bench.<sup>11</sup> Members of the king's court also received livery. Around 40 livery collars in total were purchased for the court of Henry IV between 1401 and 1410.<sup>12</sup> The practice of distributing livery occurred further down the social scale. Peter Coss has stated that 'there is every reason' to expect that the gentry employed the same system as the great households with regards to distributing livery.<sup>13</sup> This is evident in an indenture from 1344 in which the Hampshire knight, Thomas de Coudray granted his brother, Ralph de Coudray, a robe of esquire's livery, along with 20s annual rent out of the manor of Sherborne Coudray.<sup>14</sup> Grants of livery in relation to land holdings also possessed a legal dimension, as attested to in a dispute over the lease of the manor of Coombe Neville, in which Robert Constable claimed that the lease had not been completed and used the fact that the prior of Merton had given him the gift of a gown of livery as evidence of the agreement.<sup>15</sup>

Like their secular counterparts, religious lords distributed livery to their estate officials and tenants since they too had large estates and required various types of service. During the 1480s, William Worsley, Dean of St Paul's Cathedral, annually bought cloth from a local draper for the purposes of making livery to distribute to his servants.<sup>16</sup> Bestowing livery and fees was also something religious institutions did, as

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<sup>10</sup> 'Private Indentures', no. 125.

<sup>11</sup> *CCR, 1476-1485*, no. 875.

<sup>12</sup> Jessica Lutkin, 'Luxury and Display in Silver and Gold at the Court of Henry IV', in *English and Continental Perspectives*, ed. Clark 163-4.

<sup>13</sup> Peter Coss, *Foundation of Gentry Life: The Multons of Frampton and Their World* (Oxford, 2010) 67.

<sup>14</sup> HRO, 44M69/C101. Similar examples from Cheshire and Lancashire are cited in: Morgan, 'Gentry Households in Fifteenth-Century Cheshire', 23, 25-6.

<sup>15</sup> C1/1489/54.

<sup>16</sup> *The Estate and Household Accounts of William Worsley Dean of St Paul's Cathedral, 1479-1497*, eds. Hannes Kleineke and Stephanie R. Hovland, London Record Society, 40 (2004), 45, 51, 62, 70, 76, 82, 88, 94.

evident in a complaint against the prior to Daventry in Lincolnshire for granting ‘to one John West of Daventry a yearly pension of twenty shillings and a gown of livery of the house without the consent of the convent’.<sup>17</sup> Ecclesiastical lords acted like their secular counterparts because they too had large estates which needed estate officials to run them.

The obvious benefit of distributing livery to a large number of men was security in the form of a collective display of strength and solidarity. During a crisis, liveries could be distributed to create or confirm support for a particular faction. This was the case in 1454 when Humphrey Duke of Buckingham reportedly had 2,000 Stafford knots ready for distribution to his followers for the protection of himself and the king, Henry VI.<sup>18</sup> The intention was to show strength and deter any possible attacks against Buckingham or any of his followers. As G.A. Holmes stated, livery was a much more visible mark of dependence to a great lord than the taking of a fee.<sup>19</sup> This visual aspect of livery was meant to impress as much as intimidate, particularly at events of international significance. When Richard II met his French counterpart, Charles VI, to discuss peace in 1396, he arrived at the meeting along with around a hundred knights wearing his livery.<sup>20</sup> The size of his liveried following was increased to around 400 knights and esquires the following day.<sup>21</sup> During the Emperor Sigismund’s visit to England in 1416 he was given a Lancastrian SS collar by Henry V which he wore ‘at every public assembly or occasion of importance’ thereafter.<sup>22</sup> This symbol of alliance, as Christopher Allmand has pointed out, compromised Sigismund’s ability to be regarded as an impartial negotiator at the Council of Constance.<sup>23</sup> The delicacy of peace negotiations meant that a fine balance had to be drawn between impressive displays of power and overt intimidation.

The reason why lords distributed livery to their servants, usually in large numbers, was the symbolic importance of clothing in pre-industrial society. Dress has been examined from anthropological perspectives, which have highlighted the symbolic importance of clothing in the medieval period. Susan Crane argued that ‘the

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<sup>17</sup> *Records of Visitations held by William Alnwick, Bishop of Lincoln, 1436-1449, Part I*, ed. A. Hamilton Thompson (London, 1919), 63.

<sup>18</sup> *PL*, i, 265.

<sup>19</sup> Holmes, *Estates of the Higher Nobility*, 59.

<sup>20</sup> *The St Albans Chronicle*, ii, 41.

<sup>21</sup> *Ibid*, 47.

<sup>22</sup> *Ibid*, 691.

<sup>23</sup> Christopher Allmand, *Henry V* (London, 1992) 244-5.

most obvious function of clothing is to express and enforce standards of appropriateness' and that 'dress had moral, legal and class significance throughout English and French culture' during the late medieval period.<sup>24</sup> Livery was the insignia of a lord that his retainers and wider affinity wore to identify themselves as his servants. The wearing of livery thus helped to create and cement a collective identity between a lord and his servants.<sup>25</sup> Richard III recognised the value of livery badges for fostering a sense of group identity. On 31 August 1483, in preparation for the investiture of his son as prince of Wales, Richard instructed the wardrobe of the royal household to supply him with, amongst other things, 13,000 livery badges bearing his device, the White boar, 'for distribution to friends, well-wishers and perhaps anyone who would wear one'.<sup>26</sup> Adam Usk used the livery badges as a metaphor for Henry IV's usurpation when he stated that although, according to the prophecy of John Bridlington which referred to Henry as an eaglet, 'he should rather be the dog, because of his linked collars of greyhounds ... and because he drove literally from the kingdom countless numbers of harts [i.e. supporters of Richard II]'.<sup>27</sup> Liveries were symbols of association which were designed for public display. Parliament needed to take account of the symbolic importance of livery, and dress more generally, when drawing up legislation.

Furthermore, livery was a sign of affiliation, indicating where a servant's predominant loyalty lay. When Sir William Bulmer wore Stafford livery while serving as a member of the royal household, Henry VIII is reported to have said, angrily:

'that he would none of his seruauntes should hang on another mannes sleue, and that he was aswel able to maintain him as the duke of Buckingham, and that what might be thought of his departing and what myght bee suppose be ye duke's retaining, he would not then declare'.<sup>28</sup>

Henry VIII's outburst was probably premeditated, orchestrated to emphasise the fact that he interpreted Bulmer's wearing of Stafford livery as a visible sign of loyalty to Stafford rather than the king. This was a publically staged event that countered

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<sup>24</sup> Susan Crane, *The Performance of Self: Ritual, Clothing and Identity during the Hundred Years War* (Philadelphia, 2002), 6-7, 11.

<sup>25</sup> Saul, 'Abolition of Badges', 306-7; Walker, *Lancastrian Affinity*, 96.

<sup>26</sup> *British Library, Harleian Manuscript 433*, ed. Rosemary Horrox and P.W Hammond, 4 vols. (Gloucester, 1979), ii, 42. Ross, *Richard III*, 150.

<sup>27</sup> *Chronicle of Adam Usk*, 53.

<sup>28</sup> *Hall's Chronicle*, 599.

Bulmer's public display of loyalty to Stafford.<sup>29</sup> Livery was also used for the purposes of undermining, as well as strengthening, royal authority. Humiliation and disrespect for royal justice were evident in Carmarthen in 1439 when royal justices sent to investigate instances of lawlessness connected to Gruffydd ap Nicholas were themselves arrested and sent back to London wearing Gruffydd's livery.<sup>30</sup> In both incidents the symbolic significance of wearing livery is clear: it was regarded as a visible means of displaying loyalty and contemporaries were aware of its symbolic significance, which they exploited.

Members of the peerage used livery to make themselves, and their followers distinctive. John of Gaunt, for example, used a livery collar, instead of badges, as a way of making his servants more distinct.<sup>31</sup> The sight of Gaunt's livery enraged the citizens of London when they rioted in 1377. According to Walsingham, one of Gaunt's knights, Sir Thomas Swinton, wished to endear himself to Gaunt and rode on horseback through the crowded streets of London wearing Gaunt's livery 'thus inflaming the anger of the people evermore'. It was only because the mayor was able to rescue him that meant he was not killed by the crowd for what Walsingham described as an act of 'unadvised rashness'.<sup>32</sup> Two points can be drawn from this story. First, Gaunt's livery and its design were well known to the inhabitants of London, meaning that the main purpose for having of livery was fulfilled. Second, attacking someone wearing Gaunt's livery was regarded as a symbolic attack upon Gaunt himself.

The symbolic importance of livery extended beyond the reciprocal relationship between lords and their servants and, in an urban context, displayed social cohesion and group identity. During royal entries, different crafts wore their liveries to distinguish themselves from each other.<sup>33</sup> The Guild of Saint Mary and All Saints in Norwich acknowledged this when they stated that the function of their livery was so that members could 'kennen ye bretheryn and systeryn'.<sup>34</sup> As Benjamin McRee has stated, 'a fraternity's annual march was its most visible activity, affording

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<sup>29</sup> K.J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge, 2003), 139.

<sup>30</sup> Ralph A. Griffiths, 'Gruffydd ap Nicholas and the Rise of the House of Dinefwr', *National Library of Wales Journal*, 13 (1964), 266-7 and 'Gruffydd ap Nicholas and the Fall of the House of Lancaster', *Welsh History Review*, 8 (1976), 15.

<sup>31</sup> Walker, *Lancastrian Affinity*, 94-5.

<sup>32</sup> *St Albans Chronicle*, i, 93.

<sup>33</sup> Murphy, 'Receiving Royals', 254.

<sup>34</sup> C47/44/307.

the organization a unique opportunity to shape its public image'. Livery therefore had the ability 'to emphasize the ties that bound their members together'.<sup>35</sup> The guild of St George in Norwich had ordinances that required their members to wear the livery of the guild during the procession on St George's day.<sup>36</sup> The guild also ordered that the aldermen and masters of the guild were to give 'no clothing to no persone in the mornyng the pryce of ye lyuery with oute consent of je xxiiij chose for the assemble'.<sup>37</sup> The wearing of the correct livery was something that merchant guilds took seriously. In London in 1415, Richard Merlawe, alderman, was charged with contravening the statute against livery made by Henry V earlier that year by accepting the livery of two guilds, the ironmongers and the fishmongers.<sup>38</sup> Urban elites also used livery to distinguish themselves from the rest of the population, as at Exeter in 1483 when new red gowns were acquired for the each of the city's twenty-four council members just a year after the council passed an ordinance that the city receiver was to be distinguished from other stewards by a scarlet gown like the mayor's.<sup>39</sup> Civic groups used livery for similar purposes as bastard feudal retainers – i.e. to distinguish themselves and display collective solidarity.

Cities recognised the importance of having their important citizens dressed in the appropriate livery for royal visits. Neil Murphy has shown that in York royal visits were an opportunity for the citizens and civic groups to display unity and advance their interests.<sup>40</sup> Livery was an important part of the spectacle associated with this.<sup>41</sup> The same can be said for Salisbury, which provides the archetypal example of essential livery. Prior to Henry VI's visit to Salisbury in 1447, the citizens agreed that all were 'to have a blue gown, as in the mayoralty of W. Swan'.<sup>42</sup> The following year

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<sup>35</sup> Benjamin R. McRee, 'Unity or Division? The Social Meaning of Guild Ceremony in Urban Communities', in *City and Spectacle in Medieval Europe*, eds. Barbara A. Hanawalt and Kathryn L. Reyerson (Liverpool, 1994), 192.

<sup>36</sup> *Records of the Gild of St George in Norwich, 1389-1547*, ed. Mary Grace, Norfolk Record Society, 9 (1937), 34, 37-8.

<sup>37</sup> *Ibid.*, 37.

<sup>38</sup> *Calendar of Letter-Books of the City of London, I: 1400-1422*, ed. Reginald R. Sharpe (London, 1909), 149.

<sup>39</sup> Hannes Kleineke, 'Pe Kynes Cite: Exeter in the Wars of the Roses' in *Conflicts, Consequences and the Crown in the Late Middle Ages* ed. Linda Clark (Woodbridge, 2007) 151-2, citing Devon Record Office, Exeter receiver's acct. 1-2 Ric. III; ECA 51, f. 321.

<sup>40</sup> Neil Murphy, 'Receiving Royals in Later Medieval York: Civic Ceremony and the Municipal Elite, 1478-1503', *Northern History*, 43 (2006), 241-55.

<sup>41</sup> The legal exemption of certain ceremonies from the statutes is discussed later in this chapter (p. 137-40).

<sup>42</sup> *The First General Entry Book of the City of Salisbury, 1387-1452*, ed. David R. Carr, Wiltshire Record Society, 54 (2001), no. 411.

the citizens again agreed that ‘all citizens and all of enough wealth’ were to have a blue gown and a red hat for the king’s visit and failure to do so would incur a fine of 13s. 4d.<sup>43</sup> Provisions became more elaborate in 1451 when the stewards of all the guilds in the town were to draw up a list of those that were obliged to wear livery, which was to be made of a green cloth. Again, failure to wear the appropriate livery would result in a fine of 13s. 4d.<sup>44</sup> Royal entries were thus an opportunity in which both the royal household and the civic community were able to project their group identity by wearing their collective livery.

Distinctive clothing like livery was integral to the way in which medieval society operated. ‘The most familiar mechanisms of social closure’, Philip Morgan argued, ‘were laws which attempted to control the external signs of social mobility, wages, dress, and consumption’.<sup>45</sup> Dress possessed a social significance and consequently parliament had a record prior to 1390 of regulating certain form of dress, as was expressed in the Sumptuary Laws of 1363. These laws acknowledged the connection between dress and social statutes by setting out in meticulous detail who was allowed to wear what. A clear connection was made between a person’s income and social status and the value of cloths they were permitted to wear. For instance, knights with an annual income from rent up to the value of two hundred marks were permitted to wear cloths valued at six marks and under. This legislation was enacted after Commons complained that many people were wearing cloths ‘not appropriate to their estate’. They complained, amongst other things, that ‘poor clerks wear clothes like those of the king and other lords’. However, unlike the petitions regarding livery which were about combating lawlessness, the motivation for this petition was economic and a concern about standards. According to the petition, people not wearing clothes appropriate to their estate had caused an increase in the price of such apparel beyond acceptable standards.<sup>46</sup> Despite the differing motivations behind the livery and sumptuary laws, they both attest to the fact that contemporaries found it perfectly acceptable to legislate about what people were and were not allowed to wear. In this respect, the statutes of livery were operating within existing conceptual and cultural boundaries.

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<sup>43</sup> Ibid, no. 417.

<sup>44</sup> Ibid, no. 441.

<sup>45</sup> Philip Morgan, ‘Ranks of Society’, in *The Fourteenth and Fifteenth Centuries*, ed. Ralph Griffiths (Oxford, 2003), 67.

<sup>46</sup> *PROME*, v, 165-8.

Livery was a symbolic means by which groups were able to display cohesions and solidarity. Nobles used livery as a means of demonstrating their power and potential military strength. Civic communities used livery as a means of displaying social cohesion and group affinity in an urban context that was not the traditional bastard feudal context traditionally associated with the granting of livery. When parliament legislated on the issue of livery and retaining it needed to take into consideration these social facts and ideals and draft legislation appropriately.

### **European Context**

English historiography has thus far examined bastard feudalism and its associated problems from an insular perspective. Historians of other late medieval states, in contrast, have noted the development from land based forms of reward to the use of fees and robes, akin to the discussions of bastard feudalism in England. Erik Opsahl has discussed 'the European contract system' of the later Middle Ages in relation to Norway. Professor Opsahl, however, argues that 'the Norwegian retainer institution cannot be regarded as a Norwegian variant of bastard feudalism' but that 'it does show important similarities with the European contract system as regards its content as well as its functional context'.<sup>47</sup> For France, P.S Lewis discussed the decaying of the feudal system, highlighting the fact that 'in France the pattern of 'non-feudalism' emerges much as in England in the later middle ages'.<sup>48</sup> For Scotland, Jennifer Wormald discussed bonds of manrent which enabled lords to obtain servants and servants to obtain lords in a post-feudal society.<sup>49</sup> For northern Italy, Trevor Dean

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<sup>47</sup> Erik Opsahl, 'Bastard Feudalism or Sub-vassality in Medieval Norway?' *Collegium Medievale*, 4 (1991/2), 177-208, quotation on 194.

<sup>48</sup> P.S. Lewis, 'Decayed and Non-Feudalism in Later Medieval France', *BHIR*, 37(1962) 157-84, quotation on 176. See also: P.S Lewis, *Late Medieval France: The Polity* (London, 1968) 199-201. It should be noted, however, that Lewis did not instigate a change in the research interests or methods of French historiography. Garreth Prosser highlighted the lack of discussion in French historiography of bastard feudalism indicating that 'K.B. McFarlane has not crossed the Channel'. Gareth Prosser, 'Decaysed Feudalism' and 'Royal Clienteles': Royal Office and Magnate Service in the Fifteenth Century' in *War, Government and Power in Late Medieval France*, ed. Christopher Allmand (Liverpool, 2000) 177.

<sup>49</sup> Jennifer Wormald, *Lords and Men in Scotland: Bonds of Manrent, 1442-1603* (Edinburgh, 1985), especially 168-415 for a calendar of all the bonds identified in her study. See also: Alexander Grant, 'Service and Tenure in Late Medieval Scotland, 1314-1475' in *Concepts and Patterns of Service*, eds. Curry and Matthew 145-79, esp., 179 for Grant's conclusion that whether or not 'late medieval Scottish landowning society should be regarded as "feudal," as "bastard feudal" or as something else is a question which I, for one, would prefer to leave unanswered'. For an earlier interpretation of bastard feudalism in Scotland see: Ranald Nicholson, *Scotland: The Later Middle Ages* (Edinburgh, 1974), 206-13, 286. For a study of an aristocratic family similar to many English studies in terms of theme see: Michael Brown, *The Black Douglases: War and Lordship in Late Medieval Scotland, 1300-1455*

classed the *accomandigia*, which was ‘a loose, non-feudal contract of protection and military aid’ in this wider European context of post-feudal bonds.<sup>50</sup> These similarities should not be exaggerated because, during the fifteenth century, Italy was going through a period of ‘refeudalisation’ whereby capital was shifting from trade to land.<sup>51</sup> Parallels to the English bastard feudal system have been highlighted for Hungary, a country in which the feudal system never developed, by Martin Rady. According to Rady, the Hungarian system of *familiarites* – whereby relations between lords and *familiares* was expressed through a hierarchy of service and on office holding, rather than ‘through the nexus of property’ – resembled the English bastard feudal system, even ‘including the occasional contracts of retaining’.<sup>52</sup> Again, similarities should not be exaggerated since nobility was more widely defined in Hungary than in the Western Europe.<sup>53</sup> Steven Ellis argued that similar relations existed in Tudor Ireland which enabled the earl of Kildare to gain supporters for his rebellion in 1536.<sup>54</sup> Throughout late medieval Europe the traditional feudal land-based system was being replaced by a contract system based on monetary rewards. While present research indicates that there were no identical comparisons, retaining was evidently becoming an increasing feature of late medieval social and political relations throughout Europe, in various different types of state.

The practices of retaining, wearing livery and distributing it for various reasons were common features of life throughout late medieval Europe. Rulers across Europe gave livery to their household, and such a list survives in the financial records of James IV in Scotland.<sup>55</sup> Chivalric orders also had their own distinct livery. The statutes of the Order of the Golden Fleece, drawn up in 1430, obliged members of the order to wear the ‘golden collar bearing our device’ every day on pain of a fine, further stipulating that the collar was not to be altered in any way.<sup>56</sup> Evidently, Philip

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(East Linton, 1998), although it should be noted that Brown avoids the use of the term ‘bastard feudalism’ throughout this study.

<sup>50</sup> Trevor Dean, *Land and Power in Late Medieval Ferrara* (Cambridge, 1988), 7, 167-8.

<sup>51</sup> *Ibid.*, 9.

<sup>52</sup> Martyn Rady, *Nobility, Land and Service in Medieval Hungary* (Basingstoke, 2000), 4-7, 110-31, 182-3, quotations on 7.

<sup>53</sup> Pál Engel, *The Realm of St Stephen: A History of Medieval Hungary, 895-1526*, trans. Tamás Pálosfalvi, ed. Andrew Ayton (London, 2005), 83-5, 338-44.

<sup>54</sup> Steven G. Ellis, *Ireland in the Age of the Tudors, 1447-1603: English Expansion and the End of Gaelic Rule* (London, 1998) 105-6; Ellis, ‘Bastard feudalism and the Kildare Rebellion’, 213-32.

<sup>55</sup> *Accounts of the High Treasurer of Scotland: Volume 1, 1473-1498*, ed. Thomas Dickson (Edinburgh, 1877), 191-7.

<sup>56</sup> ‘The Statutes of the Order’ printed in *Court and Civic Society in the Burgundian Low Countries, c. 1420-1530*, eds. Andrew Brown and Graeme Small (Manchester, 2007) 138.

the Good desired uniformity and a symbolic display of unity by members of his order. Likewise, after the Treaty of Arras in 1435, Philip, needing good coastal defences on his northern and coastal towns, began 'requesting' shooting guilds across Flanders to wear his insignia as a means of encouraging and fostering loyalty.<sup>57</sup> Gifts of livery, like Henry V to Sigismund, were given by other kings during diplomatic visits. Treasurer's accounts from Scotland show that James III gave a livery collar to a Danish squire sent on a diplomatic mission in 1474.<sup>58</sup> Livery was integral to the workings of many other European rulers, not just kings of England.

Furthermore, the requirement to demonstrate power and authority in the localities was recognised by nobles across Europe. Since a prolonged absence from his duchy could increase internal instability, combined with the fact that he was a keen traveller and crusader, Duke William of Guelders travelled around with a large retinue of men his duchy when he returned from crusade in 1389.<sup>59</sup> The military elite distributed livery *en masse* to display collective strength. When Philip the Bold met with John of Gaunt in 1375 to discuss peace, he took with him a large retinue of men wearing livery specially designed for the occasion.<sup>60</sup> Further down the social scale livery was worn by members of a guild to display collective pride during large-scale celebrations. During celebrations in Paris in 1313 to mark the knighting of Philip the Fair's three sons, the members of various Parisian crafts marched in a parade, each wearing the distinctive livery of their guild.<sup>61</sup> These scattered examples are neither exhaustive nor comprehensive. Rather, they illustrate that the distribution of livery and the use of large groups of retainers to demonstrate strength were common features across Western Europe during this period.

Symbolism was associated with livery across Europe too, particularly in the civil wars in France during the early fifteenth century. Emily Hutchison has shown that in the war between the Burgundians and Armagnacs in France both sides used

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<sup>57</sup> Laura Crombie, 'Defence, Honour and Community: The Military and Social Bonds of the Dukes of Burgundy and the Flemish Shooting Guilds', *Journal of Medieval Military History*, 9 (2011), 87.

<sup>58</sup> *Accounts of the High Treasurer of Scotland*, i, 68.

<sup>59</sup> Gerard Nijsten, 'The Duke and His Towns: The Power of Ceremonies, Feasts and Public Amusement in the Duchy of Guelders (East Netherlands) in the Fourteenth and Fifteenth Centuries', in *City and Spectacle*, eds. Hanawalt and Reyerson 249-50.

<sup>60</sup> Richard Vaughan, *Philip the Bold: The Formation of the Burgundian State*, new edition (Woodbridge, 2002) 10.

<sup>61</sup> Elizabeth A.R. Brown and Nancy Freeman Regalado, 'Le grant feste: Philip the Fair's Celebration of the Knighting of His Sons in Paris at Pentecost of 1313', in *City and Spectacle*, eds. Hanawalt and Reyerson, 70-1.

livery badges to foster and display their group identity and ideology.<sup>62</sup> The symbolic importance of livery is evident in Monstrelet's description of the seizure of Paris by John the Fearless in 1407. After the city had been taken all the Parisians wore the duke of Burgundy's badge 'which had of late been held in much contempt'.<sup>63</sup> The anonymous Parisian diarist stated that by 1411 over 100,000 Parisians wore the livery of the Duke of Burgundy and that no-one left the city without wearing it, although a change in the political climate meant that in 1413 they began wearing white hoods instead.<sup>64</sup> Humiliation on a greater extent to that suffered by the royal commissioners sent to Carmarthen in 1439 who were sent back to London wearing the livery of Gruffydd ap Nicholas, was evident in the execution on 17 October 1409 of Jean de Montagu, who was beheaded wearing his own livery.<sup>65</sup> The use of livery in the Burgundian-Armagnac conflict in early fifteenth-century France was thus similar to its use in England during the late medieval period. It had a symbolic importance, particularly in times of civil unrest and could help foster and display solidarity for a particular faction.

England, moreover, was not the only late medieval state that had laws limiting the distribution of livery and retaining fees. While a detailed examination of every other state in late medieval Europe is beyond the scope of this study, an overview of other European states further contextualises the English legislation. The earliest parallel that has been identified is an ordinance made in Oslo on 18 December 1322 by the Norwegian king, Magnus VII Eriksson which stated that only barons and those of a high rank were permitted to have housecarls or sworn retainers, 'not exceeding a stated number'.<sup>66</sup> The closest parallel to English legislation comes from the Burgundian Low Countries. An ordinance given in Ghent on 13 March 1431 by Philip the Good confined the distribution of livery to 'genuine relatives, officers, familiars and domestics'.<sup>67</sup> A similar ordinance was again made by Philip in 1453.<sup>68</sup> His father,

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<sup>62</sup> Emily J. Hutchison, 'Partisan Identity in the French Civil War, 1405-1418: Reconsidering the Evidence on Livery Badges', *Journal of Medieval History*, 33 (2007), 250-74.

<sup>63</sup> *The Chronicles of Enguerrand de Monstrelet*, 2 vols., trans. Thomas Johnes (London, 1867), i, 397.

<sup>64</sup> *A Parisian Journal*, trans. Janet Shirley (Oxford, 1968) 56, 72.

<sup>65</sup> *Ibid.*, 51. Compare with Griffiths, 'Gruffydd ap Nicholas and the Rise of the House of Dinefw', 266-7.

<sup>66</sup> Printed in Opsahl, 'Bastard Feudalism or Sub-vassality', 180-1.

<sup>67</sup> *Cartulaire des comtes de Hainaut de 1337 à 1446*, ed. Léopold Devillers, 6 vols. (Brussels, 1881-96), v, 137-9. A translation is printed in: Richard Vaughan, *Philip the Good: The Apogee of Burgundy*, new edition (Woodbridge, 2002), 195. Vaughan did not discuss the legislation itself but uses it as a typical example of contemporary legislation.

John the Fearless, set a precedent for this in 1412 when he forbade nobles from giving ‘*livrees de robe*’ to commoners so that they could be deployed ‘as a kind of shock troops’.<sup>69</sup>

Scotland too had legislation designed to curb similar abuses and limit retinue sizes. An ordinance from 1366 stated that no lord was ‘to ride to the destruction of a district, with a greater household in people or horses than is fitting for his status’. Lords could not take archers or lancers with them when riding through a district ‘unless he maintains them for a reasonable cause’.<sup>70</sup> Similar acts were passed in 1397<sup>71</sup> and 1424.<sup>72</sup> An act from 1428 stated that no-one was permitted to attend a court or an assembly with a multitude of men or with arms. In a similar vein to English laws, only necessary councillors and lawyers were permitted to attend.<sup>73</sup> A further ordinance from 1491 stated that no-one was to enter into bond or leagues, or ride with anyone except the king, or their local lord.<sup>74</sup> In the northern Italian city-states, various decrees were enacted to curb noble power in the town and county. In 1386, Giangaleazzo Visconti, duke of Milan, passed a decree against nobles using their retinues to intimidate officials.<sup>75</sup> Anti-magnate campaigns in many northern Italian cities also led to prohibitions being issued regarding the wearing of ‘devices’.<sup>76</sup> In Hungary, a different tactic was employed in order to curb the abuses of noble retinues. In a law from 1486, responsibility for dealing with the lawless retainers was given to their lord who was required ‘to administer justice and give satisfaction to the injured and repair all damages caused’.<sup>77</sup> Like the English acts, laws from Scotland, Italy, the Burgundian Low Countries and Hungary were attempting to regulate, limit and control the opportunities for large retinues of men to cause disruptions to the peace of the realm. France, in contrast, had no laws against, or complaints regarding, the giving and receiving of livery akin to those found elsewhere<sup>78</sup> although there were

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<sup>68</sup> Jonas Braekevelt, Frederik Buylaert, Jan Dumolyn and Jelle Haemers, ‘The Politics of Factional Conflict in Late Medieval Flanders’, *Historical Research*, 85 (2012), 23.

<sup>69</sup> *Ibid.*

<sup>70</sup> *The Records of the Parliaments of Scotland to 1707*, K.M. Brown et al eds (St Andrews, 2007-2012), 1366/7/15. [www.rps.ac.uk/trans/1366/7/15] [Last Accessed: 1 December 2012]

<sup>71</sup> *Ibid.*, 1397/1 [www.rps.ac.uk/mss/1397/1].

<sup>72</sup> *Ibid.*, 1424/5 [www.rps.ac.uk/mss/1424/5].

<sup>73</sup> *Ibid.*, 1428/3/11. [www.rps.ac.uk/mss/1428/3/11].

<sup>74</sup> *Ibid.*, 1491/4/21. [www.rps.ac.uk/mss/1491/4/21].

<sup>75</sup> Deny Hays and John Law, *Italy in the Age of Renaissance, 1380-1530* (London, 1989), 64.

<sup>76</sup> Dean, *Land and Power in Late Medieval Ferrara*, 3-4.

<sup>77</sup> *The Laws of the Medieval Kingdom of Hungary, Volume 3, 1458-1490*, trans and eds. János M. Bak, Leslie S. Domonkos and Paul B. Harvey Jr. (Los Angeles, 1996), 56.

<sup>78</sup> *Ordonnances des Rois de France*, 21 vols. (Paris, 1723-1849).

laws, such as that of the duc de Guienne in 1412 that ordered the breaking of magnate *alliances*, and the great military *ordonnance* of 1439 that forbade private companies.<sup>79</sup> Although not specifically regulating retaining or the distribution of livery, these French laws were dealing with problems similar to those in England. German-speaking regions suffered the problem of out-of-work knights forming companies or retinues that wore the same insignia and caused problems for local communities,<sup>80</sup> although it has not been possible to identify any analogous laws from these lands.

One area in which the line of demarcation between European and English contexts is unclear is in areas, other than England, in which English kings were in control. Two examples fall within the chronological scope of this study: Lancastrian Normandy and Ireland. When Henry V invaded France, he claimed that he was the rightful French king and that he would rule in the French manner, not imposing English laws and customs on the country. After conquering Normandy he did not impose any English-style institutions on the duchy, but rather worked within existing frameworks. Towns became central to his rule over Normandy, particularly Rouen.<sup>81</sup> After Henry V's death, the English regents remained in control of Normandy. In 1424, during the English occupation of Normandy, an ordinance was passed in Rouen, similar to many English ordinances, prohibiting the urban bourgeois from wearing the livery of magnates.<sup>82</sup> As already discussed, there were similar laws regulating the distribution on continental Europe. The existence of this ordinance in English-occupied Rouen suggests that the regulation of livery was not peculiarly English, but rather something that was common in many northern European towns at this time.

Ireland, in contrast, was a place where English livery laws were exported to and imposed on the indigenous population. Despite being overlord of Ireland, no English king imposed any laws regulating the distribution of liveries or fees in Ireland prior to Henry VII at the 1494-5 Parliament.<sup>83</sup> Even here the law was modified due to

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<sup>79</sup> Lewis, 'Decayed and Non-Feudalism', 177.

<sup>80</sup> F.H.R. Du Boulay, *Germany in the Later Middle-Ages* (London, 1983), 69, 73.

<sup>81</sup> Allmand, *Henry V*, 187, 202; Anne E. Curry, 'Towns at War: Relations between the Towns of Normandy and their English Rulers, 1417-1450', in *Towns and Townspeople*, ed. Thomson, 148-9, 157-60. For towns in other northern French provinces see: Neil Murphy, 'Between France, England and Burgundy: Amiens under the Lancastrian Monarchy, 1422-35', *French History*, 26 (2012), 152-3.

<sup>82</sup> *Rouen au temps de Jeanne d'Arc et pendant l'occupation anglaise (1419-1449)*, ed. P. Le Cacheux (Société de l'Histoire de Normandie, Rouen, 1931), 60.

<sup>83</sup> *Statutes and Ordinances, and Acts of the Parliament of Ireland, King John to Henry V*, ed. Henry F. Berry (Dublin, 1907); *Statute Rolls of the Parliament of Ireland, Reign of King Henry VI*, ed. Henry F.

Irish peculiarities. The needs of defence took precedence over the elimination of private warfare and retaining was only permitted on condition that Lords certified who was in their retinue and answered for their conduct. Urban autonomy was maintained by prohibiting magnates from retaining citizens and burgesses.<sup>84</sup> In contrast to Rouen in 1424, the Irish retaining legislation was an example of English laws being imported to an area where the king of England was sovereign.

Livery, retaining and the problems associated with them were part of late medieval European society, not just English society. As yet, there has been no comparative analysis between the livery statutes in England and their European parallels. One likely reason is that parliamentary historians tend to emphasise the difference in administration and constitutional power between legislative bodies across Europe. Another is that, in the wake of K.B McFarlane, many historians of England have been able to focus on local political society while continental historians, who do not enjoy the same richness of source material, have had to limit their prosopographical studies to central elites.<sup>85</sup> In this respect there is clear discrepancy between the types of questions addressed by historians of different states. There were clear differences between the English state and many others, such as the inability to wage private war legally in England compared to Germanic lands for instance,<sup>86</sup> or the absence of autonomous city states as was the case in Italy. Nevertheless, many of the problems that require legislative response, such as plague, famine, economic recessions and unregulated affinities, arose independently of political border and structures. The abolition of the visible displays of unity and lordship were as unrealistic in a European context as they were in a purely English context. Regulation was the key in the laws of all states that had similar legislation to the English statutes

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Berry (Dublin, 1910); *Statute Rolls of the Parliament of Ireland, First To the Twelfth Years of the Reign of King Edward IV*, ed. Henry F. Berry (Dublin, 1914); *Statute Rolls of the Parliament of Ireland, Twelfth and Thirteenth to the Twenty-First and Twenty-Second Years of the Reign of King Edward IV*, ed. James F. Morrissey (Dublin, 1939).

<sup>84</sup> Ellis, *Ireland in the Age of the Tudors*, 93-4, although it should be noted that the statute rolls for Ireland for this parliament have been subsequently destroyed, meaning Ellis's discussion is derived from English sources. *Statute Rolls of the Irish Parliament, Richard III-Henry VIII*, ed. Philomena Connolly (Dublin, 2002), 344.

<sup>85</sup> Steven Gunn, 'Politics History, New Monarch and State Formation: Henry VII in European Perspective', *Historical Research*, 82 (2009), 389.

<sup>86</sup> Otto Brunner, *Land and Lordship: Structures of Governance in Medieval Austria*, trans. Howard Kaminsky and James Van Horn Melton (Philadelphia, 1992), 1-14, translated from the 4<sup>th</sup> German edition of 1959. Peasants were also permitted to wage feud in accordance with legal norms: Christine Reinle, 'Peasants's Feuds in Medieval Bavaria (Fourteenth and Fifteenth Century)' in *Feud in Medieval and Early Modern Europe*, eds. Jeppe Büchert Netterström's & Björn Poulsen (Aarhus, 2007), 161-74.

of livery. English diplomats and merchants mixed with their European counterparts who also wore livery. Preventing them from wearing livery would have contravened contemporary social conventions. England's uniqueness primarily lies in the widespread attention that statutes against forms of retaining and livery distribution have received by contemporaries and modern scholars alike. To adapt John Maddicott on the development of parliament: we may freely acknowledge the statutes of livery to have been part of a general European pattern. All the same, we need not balk at the notion of English exceptionalism.<sup>87</sup>

### **Provisions of the Statutes**

In England livery laws were initially intended to address maintenance of lawsuits. In 1377 the Commons complained that while it was customary for magnates to retain men and give them their livery, it was also becoming common for them 'to support both reasonable and unreasonable suits, to the great injury of the people'. They therefore requested an 'adequate remedy to be ordained' to deal with the problem. The subsequent statute of 1377 stated that 'no livery of hoods, nor any other, shall henceforth be given for the maintenance of lawsuits'.<sup>88</sup> This statute was not an attack on the convention of distributing livery to a large number of retainers, hence why the examination of the legal records for this study was from 1390 onwards. Instead of targeting retaining, its focus was narrower, confined to maintenance and the corruption of justice. Its significance is that it set a precedent that began the process whereby the granting of livery became an issue for parliamentary debate.

Specific forms of retaining only became the subject of criticism after a more radical petition was submitted by the Commons in September 1388 requesting the abolition of badges. The petition finished by stating that such liveries were not to be worn or distributed 'upon the pain specified in this present parliament'. Richard II is reported to have responded by stating that the problem would be considered and discussed at the following parliament.<sup>89</sup> There does, however, seem to have been some sort of law made at this parliament. A petition from 1390 states that after the 1388 petition about the problem of liveried retainers, the king and lords 'ordained

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<sup>87</sup> John Maddicott, *The Origins of the English Parliament, 924-1327* (Oxford, 2010), 453.

<sup>88</sup> *PROME*, vi, 50; *Stat. Realm*, ii, 3.

<sup>89</sup> *Ibid*, vii, 124. It should be noted that the rolls do not survive from this parliament. The petition is known from: *The Westminster Chronicle, 1381-1394*, eds. and trans. L.C Hector and Barbara F. Harvey (Oxford, 1982), 354-7.

such a remedy'.<sup>90</sup> The lack of any specific law on the statute rolls<sup>91</sup> suggests that this was an ordinance that was meant to be 'a provisional remedy ... which was to be in effect for a trial period until the next parliament'.<sup>92</sup> Therefore, the petition of 1388 and the subsequent ordinance were a development of the process that began in 1377 which led to the regulation of livery.

At the following parliament of 1390, two petitions were made about the problem of badges and of liveries. Out of these petitions came the first statute that prohibited certain forms of retaining. Badges were only permitted to be worn by men who 'were with the same lord for the term of his life, both in peace and war, and that by indentures sealed under their seals without fraud or ill intent'. Valets and archers were permitted to wear livery if they dwelt in the lord's household for the full year.<sup>93</sup> Livery of cloth could only be distributed to a lord's 'familiaris of his household, his kin and allies, his steward, his council, or his bailiffs on their manors'. This was a key aspect of the legislation because it was always socially acceptable, and even necessary, for a lord to distribute livery to his servants, both within his household and his estate officials. Contemporary attitudes made it necessary to permit lords to give their servants livery as a part of their reward for service and it was in the interests of both lords and servants to allow this aspect of the system to continue. Breaches of this statute were to be punishable by imprisonment for a year for receiving illegal livery and a fine of £100 for anyone illegal distributing livery. Proclamations were to be made in every city, market town, borough and all other public places.<sup>94</sup> The 1390 statute was the first attempt to regulate livery in a way which acknowledged social practices and expectations and was enforceable.

As discussed in Chapter Three, the 1390 act failed to produce a wave of prosecutions for illegal livery. At the parliament of 1393 a Commons petition complained that the statutes were not being enforced. This was the first petition that records a specific answer from the king affirming the fact that no one under the rank of esquire was to wear any livery unless he was a permanent member of a lord's household staff. In addition, the statute stated that justices of the peace and assizes had the power to investigate the distribution of liveries and inform the king and Lords

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<sup>90</sup> *PROME*, vii, 149.

<sup>91</sup> *Stat. Realm*, ii, 55-60.

<sup>92</sup> Given-Wilson, *King's Affinity*, 239.

<sup>93</sup> *PROME*, vii, 149.

<sup>94</sup> *Ibid*, 150.

about any such infringements.<sup>95</sup> It is unclear if there was any confusion regarding who was allowed to hear cases of illegal livery or if cases were not being prosecuted because of the uncertainty over jurisdiction. More likely, the addition of the clause making explicit who could hear the cases was the formalisation of an implicitly understood clause.

While livery was discussed at the parliament of January 1397,<sup>96</sup> no new act against liveries was passed. After 1393, the next parliament to legislate on the distribution of livery was the first parliament of Henry IV's reign in October 1399. Supporters of Richard II who suffered forfeiture were prohibited from giving livery or creating retinues that did not consist solely of 'necessary officers'.<sup>97</sup> A further act was passed that developed the existing legislation, particularly in relation to royal retaining, which had been a major source of criticism against the deposed Richard II. Unlike earlier acts there is no known petition from the Commons. The preamble to the act stated its aim was 'to abolish maintenance, and to nurture love, peace and tranquillity everywhere in the realm' which suggests it was part of the new regime's attempts to restore order to the realm. Lords of all ranks were banned from distributing livery badges of company to any knight, esquire or valet. Presumably, they were entitled to continue distributing other types of liveries such as robes, collars and hoods. This was also the first act to explicitly state that archbishops, bishops, abbots and prelates were bound by the statute, although earlier acts had spoken about lords both spiritual and temporal. In response to the final years of Richard II's reign, restrictions were placed upon royal retaining. The act permitted the king to give livery to any temporal lord whom he pleased. The knights and esquires to whom the king could give his livery were restricted to those who were in his household or who were in receipt of an annual fee from him. Those knights and esquire, in turn, were only allowed to wear the king's livery in his presence and were prohibited from wearing it in their own localities. The punishment for any knight or esquire who contravened the statute was the permanent loss of livery and fee.<sup>98</sup> The actions of Richard II's retainers were the most probable reason for this clause. Adam Usk described Richard's Cheshiremen as 'men of the upmost depravity who went about doing as

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<sup>95</sup> Ibid, 239-40.

<sup>96</sup> Ibid, 313-14. Discussed in 'Petitions' section.

<sup>97</sup> Ibid, viii, 11-12. The chronicler Adam Usk noted the passing of this act, although his description is inaccurate: *Chronicle of Adam Usk*, 82-5.

<sup>98</sup> For the remainder to this paragraph, unless stated otherwise: *PROME*, viii, 38.

they wished, assaulting, beating, and plundering his subjects with impunity ... committing adulteries, murders and countless other crimes'.<sup>99</sup> These were the same criticisms that the Commons were making about the retainers of lords committing crimes that subsequently went unpunished. For this reason, a further clause was added to the statute which prevented yeomen from taking royal livery on pain of imprisonment and a fine, payable to the king. Therefore, the 1399 act differed from earlier acts because its primary focus was on royal retaining, not that of the gentry, which was a response to the recent deposition of Richard II by Henry IV and the criticisms of Richard II's retaining policy.

In 1401 a Commons petition about the issue of liveries led to the king stating that the current statutes were to be upheld and preserved.<sup>100</sup> The precise nature of the petition is discussed below. Here, the pertinent point is that the subsequent act relaxed certain aspect of the 1399 act while strengthening legal procedures. Local justices had the power to 'hear and determine' cases (i.e. *oyer et terminer*), thus strengthening the procedures for the enforcement of the statutes. In addition, the Prince of Wales was permitted to give his livery to his gentle-born servants, while lords were able to wear the Prince's livery as they would the king's. Richard II's lack of an adult heir meant there had been no imperative to legislate for one during his reign. It was only with the Lancastrian usurpation that it became necessary to explicitly state in law that the Prince of Wales was permitted to distribute his livery to whoever he pleased. The retaining practices of the royal family were the focus of another clause which altered a provision of the 1399 statute that knights and esquires who were given livery by the king could only wear the livery in his presence. Instead, knights and esquires were allowed to wear the king's livery when travelling to and from the royal household and in their own county. Minor adaptations of legislation like this were a response to practical difficulties. In this instance, difficulties experienced by royal household members going to and from the royal household, or by local justices attempting to enforce the statutes. Alternatively, they acknowledged an opinion that the 1399 act was overzealous in its wholesale attack against royal retainers. The 1399 act was relaxed by a further clause that permitted 'dukes, earls, barons and bannerets' to wear their livery 'in their county and elsewhere'. By 1401 the situation with regards to

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<sup>99</sup> *Chronicle of Adam Usk*, 49.

<sup>100</sup> For this paragraph see: *PROME*, viii, 148-9.

livery was not as pronounced as it had been in 1399 and therefore the statute were partially relaxed.

A further statute from 1406 predominantly reiterated previous legislation and introduced larger fines.<sup>101</sup> Those illegally distributing livery were to be fined 100s for each person to whom they had given livery, and those who received livery were to be fined 40s. The large discrepancy in fines between those granting and those receiving illegal livery acknowledges two important aspects about the lord servant relationship. First, the differing economic backgrounds between those giving and receiving illegal livery, since it was the wealthier Lords who were being hit with larger fines. Second, by fining those distributing livery illegally for each person illegally given livery, it was possible to hit those who liveried large retinues with very large fines that could damage their local standing and ability to continue retaining. The focus was therefore directed towards those distributing the livery more than on those receiving it. In addition to the increased punishment, reporting the crime was incentivised by giving anyone who wished to bring about a suit on behalf of the king half of the fine ‘for his labour’. In a connected move to ensure prosecutions, penalties were not to ‘in any way be pardoned’. An attempt was made to limit the amount of livery being made, with the statute stating that ‘no congregation or company’ was to ‘make for itself a livery of cloth or of hoods at the personal expense of the same congregation or company’. The punishment for anyone breaking this was a fine of 40s. The 1406 act therefore increased both provisions for enforcing the statutes and the fines for contravening the statute which ‘were by no means low’ and therefore gave kings ‘a weapon’ against lawless nobles.<sup>102</sup> After a petition similar to that of 1406 the statutes were again reiterated in 1411.<sup>103</sup>

The statutes then remained static and the issue was not debated in parliament again until 1427 when, after a petition from the Commons, it was stated that the existing statutes were to be upheld.<sup>104</sup> Two years later, in 1429, a second petition was more successful in expanding the legislation. The statute was the first to state that the statutes were to be enforced in the palatinates of Cheshire and Lancashire and that

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<sup>101</sup> For this paragraph see *PROME*, viii, 400-1.

<sup>102</sup> Bean, *From Lord to Patron*, 208.

<sup>103</sup> *PROME*, viii, 547-8.

<sup>104</sup> *Ibid*, ix, 354-5. This, however, was not recorded in the statute rolls: *Stat Realm*, ii, 240-1.

ladies too were bound by the statute.<sup>105</sup> Previously, it was believed that the 1429 act extended the legislation to the palatinate counties<sup>106</sup> but when the indictments for Cheshire are examined, it is clear that nothing new came from this statute. The palatinates of Cheshire and Lancashire had never been exempt from the statutes, as evident by the fact that a case of illegal livery from Cheshire can be identified from 1415<sup>107</sup> along with a further 14 cases from 1428,<sup>108</sup> although none can be identified for Lancashire.<sup>109</sup> Similarly, Elizabeth Neville, mother of the earl of Westmorland, had been indicted for giving livery illegally to three yeomen in 1423.<sup>110</sup> The law was not being extended to cover women or the palatinate counties, since they were already bound by the statute, but was, instead, making the provisions more explicit. Rather than extending the jurisdiction of the law, the 1429 statute formalised existing practice and clarified the precise terms of the statutes.

In addition, the 1429 act included more stringent measures for enforcement and punishment. Fines were imposed per offence rather than per item of livery distributed or received, although this remained at 100s for distributing and 40s for receiving. Anyone purchasing cloth and fraudulently making the livery of a peer for the purpose of maintenance in a lawsuit was to be convicted under the terms of the statute, echoing the problems addressed by the 1377 act. It was under this clause that cases from the Tudor era in which men fraudulently wore the livery of someone who was not their lord were prosecuted.<sup>111</sup> In a similar vein, lords were prohibited from giving livery to, or keeping in their household, known felons. Lords were required to abandon such men ‘without delay’ thus attempting to ensure that they could be brought to justice. Finally, provisions were made for more rigorous enforcement of the statutes. Justices were given the power ‘to award writs of attachment and distraint’ against those contravening the act. This was to be given to the sheriff and if returned ‘*capias and exigent*’ was to be awarded against them in the same manner it was against those who committed trespass against the king’s peace with force and arms.

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<sup>105</sup> For the next two paragraphs, unless states otherwise, see: *PROME*, ix, 402-3. For an early bill for this statute which is a verbatim copy of the parliament rolls see: C49/19/8.

<sup>106</sup> Griffiths, *The Reign of Henry VI*, 134; Thornton, *Cheshire and the Tudor State*, 2 fn. 5, 120 fn. 3.

<sup>107</sup> CHES25/25 ms. 14.

<sup>108</sup> CHES25/12 ms. 16-17.

<sup>109</sup> It should be noted that only two plea rolls survive for Lancashire prior to 1429: PL15/1-2. This is also true of the palatinate of Durham, although it should be noted that only three rolls survive between 1390 and 1429: DURH13/224-6.

<sup>110</sup> KB29/56 rot. 25.

<sup>111</sup> KB9/390 ms. 47; KB9/434 ms. 18, 21; KB9/436 ms. 7-9, 14; KB27/1013 rot. 8 rex.

These measures were both a statement of intent and an attempt to obtain more prosecutions for illegal livery.

The issue of livery remained absent from the official parliamentary records for over three decades but that does not mean that the issue was never discussed in parliament. A seventeenth-century copy of a parliamentary debate from the Winchester Parliament of 1449 states that ‘The Lord Sturton thinketh that ther wold be certain comysshioners of oyer et terminer to enquire of murders and ryottes don ageinst the peace and *also of lyveries* and that every shireve certify therof’.<sup>112</sup> Despite being a copy made over 150 years after the event, and probably heavily abbreviated, A.R Myers argued that there was no reason to question its authenticity since the man who made the copy, Sir William Dethick, had no reason to fabricate anything in it that would have advanced his career.<sup>113</sup> Commenting on the precise nature of the report, Ralph Griffiths described it as ‘a frank and open debate among lords in Parliament itself’.<sup>114</sup> This discussion of livery in this report suggests parliamentary impetus for enforcing the statutes since, as highlighted in Chapter Three, the statutes were again being enforced, especially against men associated with much of the lawlessness and feuding during the 1450s. The lack of similar surviving documentation prevents any firm conclusions to be drawn about whether this was a standard issue discussed in parliament during this period that was rarely recorded, or if it was discussed due to specific problems. What is clear is that, on this occasion, discussion of the event in parliament did not lead to new legislation.

Despite the fact that cases arose during the 1450s and that the issue was mentioned in a petition at the Coventry Parliament of 1459,<sup>115</sup> it was not until Edward IV’s reign that parliament began legislating about livery again. Edward IV’s first parliament in 1461 addressed the issue of livery, reiterating the terms of the previous statutes and adding several other clauses.<sup>116</sup> It was commanded that ‘no lord or other

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<sup>112</sup> The report has been edited and published five times: *E.H.D.*, iv, 468-9; A.R Myers, ‘A Parliamentary Debate of the Mid-Fifteenth Century’, *Bulletin of the John Rylands Library*, 22 (1938), 402-3; William H. Dunham, ‘Notes from the Parliament at Winchester, 1449’, *Speculum*, 13 (1942), 402-4; A.R Myers, ‘A Parliamentary Debate of 1499’, *BIHR*, 51 (1978), 81-3; Ralph Griffiths, ‘The Winchester Session of the 1449 Parliament: A Further Comment’, *Huntingdon Library Quarterly*, 42 (1979), 189-91. [My italics]. The fact that this one scrap of documentation has been deemed significant enough to be the subject of four scholarly articles is itself indicative of the lacunae that exist with regards to the records of the medieval parliament.

<sup>113</sup> Myers, ‘A Parliamentary Debate’, 392-3.

<sup>114</sup> Griffiths, ‘The Winchester Session of the 1449 Parliament’, 186.

<sup>115</sup> *PROME*, xii, 499-500.

<sup>116</sup> *Ibid.*, 499-500.

person of lower estate or degree [i.e. gentry], spiritual or temporal' was to distribute 'any livery of badge, mark or token of retainer' unless commanded to by the king. It was only the distribution badges – as opposed to robes, gowns, collars or caps – that was regulated here. The events of the 1450s made the new king acutely aware of the problems that could be caused by large retinues created in a short space of time. It was therefore in the king's interests to attempt to regulate this practice. In addition, contrary to Bean's assertion that the 1390 statute was the first statute to prevent esquire and lesser knights from distributing livery,<sup>117</sup> this was the first statute to prevent certain people from giving certain types of livery. The 1390 statute, instead, regulated those who were allowed to give livery.<sup>118</sup> They were still permitted to distribute liveries of cloth to the permanent household servants. Like the 1429 act lords were not permitted to give livery to felons or keep them in their household. Previous statutes and their punishments were also to be maintained.

While the statutes between 1390 and 1461 demonstrate gradual development and refinement, the 1468 act was a more radical development with the impetus coming directly from the king, Edward IV.<sup>119</sup> The preamble stated that the king was mindful about the previous statutes regarding the distribution of livery but that nevertheless many people 'not fearing those penalties or forfeitures, still daily offend against the terms of the same [statutes]'. The statute was passed during the third session of the 1467-8 parliament, just after an *oyer et terminer* commissions in Derbyshire prosecuted several instances of illegal livery in connection with various other crimes.<sup>120</sup> These cases presumably prompted Edward to act on the matter. The most radical aspect of the statute is that it was the first statute to include retaining by indenture, not just retaining by livery, stating that no-one was to give any 'livery or badge, or retain any person ... by oath, document or promise' except lawyers, household servants and estate officials. All existing indentures contrary to this statute were declared void, although it was still permitted to retain men for 'lawful service'. Lord Hastings, for instance, continued to enter into indentures of retainer after 1468 that were permitted by the 'lawful service' clause.<sup>121</sup> In addition, larger fines were

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<sup>117</sup> Bean, *From Lord to Patron*, 203.

<sup>118</sup> *PROME*, vii, 150.

<sup>119</sup> For the next two paragraphs see: *PROME*, xiii, 384-5.

<sup>120</sup> KB9/11 ms. 20-3, 63.

<sup>121</sup> Dunham, *Lord Hastings' Indentured Retainers*, 119-20. It should be noted, as Michael Hicks has highlighted, that Hasting's retinue was unique throughout England since it was 'essentially the king's.' Michael Hicks, 'Lord Hastings' Indentured Retainers?' in *Richard III and his Rivals*, 245.

introduced for those who received livery illegally or fees. Those receiving livery or fees were to be fined 100s per offence, the same as those distributing illegal livery. Considering those with an income of 40s were deemed to be of sufficient standing to vote in shire election,<sup>122</sup> such large financial penalties against peasants would have been a major financial burden for them, suggesting that illegal retainers were being targeted as well as those distributing illegal livery. This policy was a development from earlier legislation in which financial penalties were more stringent against the gentry and nobility who were doing the illegal retaining.

Extra powers were given to judges who were given discretion with regards to what evidence they could accept. Connected to the increase in judges' powers was the fact that the statute repeated a clause from the 1406 statute which gave half of the fine to anyone who brought forth a case on the king's behalf. The number of courts that could hear the cases was also increased. In addition to JPs, *oyer et terminer* commissions, gaol delivery and the king's justices in the palatinates of Cheshire and Lancashire, jurisdiction was given to ecclesiastical courts, namely the Archbishop of York's court in Hexhamshire and the Bishop of Durham's court. The power to hear cases was further extended to the relevant civic officials in 'every corporate city, borough, town and port'. Again, these clauses were the formalisation of existing practices. Earlier royal charters had given the right to hear and determine livery cases to specific cities, namely: Norwich in 1452<sup>123</sup>; Canterbury in 1453<sup>124</sup>; Derby in 1459<sup>125</sup>; Rochester in 1462<sup>126</sup>; and Colchester in 1462.<sup>127</sup> The statute also has various exemptions, discussed below, that indicate that the 1468 statute was, predominantly, formalising informal practices.

The first Tudor parliament in 1485 was the next to discuss livery. An oath was sworn in parliament in which the attending Lords, both secular and ecclesiastical, stated that they would not harbour any known felons nor give livery or retain anyone contrary to the statutes.<sup>128</sup> This was not a new statute, but was still an attempt to use the law to limit retaining and was integral to wider parliamentary activity against

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<sup>122</sup> *PROME*, x, 405-6.

<sup>123</sup> *Calendar of Charter Rolls Preserved in the Public Record Office, Volume VI, 1427-1516* (London, 1927), 115.

<sup>124</sup> *Ibid*, 124.

<sup>125</sup> *Ibid*, 132.

<sup>126</sup> *Ibid*, 151.

<sup>127</sup> *Ibid*, 179.

<sup>128</sup> *PROME*, xv, 131-2.

unregulated livery. The preamble to the oath stated that one of the reasons for making the oath was due to ‘certain outrageous and unheard of crimes committed in the realm of England’. Similar rhetoric had been used in the preamble of earlier legislation and discussion of livery in parliament. At the Coventry Parliament of 1459, prior to the statutes being restated, the preamble to the petition stated that the wide-scale distribution of livery had resulted in numerous ‘robberies, ravishments, extortions, oppressions, riots, unlawful assemblies and wrongful imprisonments’.<sup>129</sup> Likewise, in 1461 the preamble stated that illegal livery had led to ‘great disturbance and disquiet’.<sup>130</sup> Problems associated with livery in these situations were appealed to as being one of the primary causes of the violence and lawlessness occurring throughout England.

While the 1485 oath was not a new statute or a means of refining previous legislation, it did signal another crown-driven attack on livery. Over one third of the cases of illegal livery identified occurred during Henry VII’s reign. Henry VII’s attack on retaining continued at the 1487 parliament. The parliamentary rolls state that Henry was mindful that the good governance of the realm had ‘been almost overwhelmed by unlawful maintenance, the granting of liveries, badges and tokens, and retainders by indenture, promises, oaths in writing or otherwise’ along with numerous other lawless acts such as riots, unlawful assemblies, dishonest sheriffs and the bribery of juries.<sup>131</sup> As a result, previous legislation on livery was reiterated. The main contribution of this act was to formalise the law with regards to the king’s men. This can be seen as Henry making explicit in law what Richard III had ordered in his letter to Tutbury on 2 October 1484.<sup>132</sup> The preamble stated that the king was aware of the problem ‘negligence and unlawful behaviour’ of royal officials in his land, which was having a detrimental effect on the king and his progenitors. Consequently, it was made illegal to retain the king’s men (i.e. estate officials) and the tenants on his land were only allowed to assemble wearing the royal livery on his command.<sup>133</sup> The act also covered the neglect of duty by royal officials stating that all grants made to them would be void if they failed to muster ‘in times of trouble and war’. The statute was a means by which Henry VII could ensure and garner support. As a usurper he

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<sup>129</sup> Ibid, xii, 499.

<sup>130</sup> Ibid, xiii, 65.

<sup>131</sup> Ibid, xv, 371.

<sup>132</sup> *Letters and Papers Illustrative of the Reigns of Richard III and Henry VII*, i, 79-81; *Harleian* 433, iii, 116-17.

<sup>133</sup> For the remainder of this paragraph see: *PROME*, xv, 375-6.

could not be confident of the loyalty of his new subjects. Ensuring that his men were not being retained by other, potentially rebellious, lord he could retain the military support he required. Maintaining support and ensuring his personal powerbase was a continual concern of Henry VII's, which is evident in other aspects of his kingship. The company of the king's spears – a chivalric institution that, like the Order of the Garter, blended chivalry and politics – required its members to swear on the gospels not to be retained by any other lord except the king.<sup>134</sup> Preventing his men from being retained by other lords was one aspect of Henry VII's attempt to maintain and develop his own personal powerbase.

The final, and most detailed, act against retaining was the 1504 act.<sup>135</sup> Again, the statute began by confirming all previous statutes on the matter and declaring that they were to be upheld and on previous legislation. Like the 1468 act, any existing indentures that contravened the act were to be declared void. The act was to take effect from 'after Whitsun next' and was to last only for the life of the king. The most notable innovative feature was that retinue leaders were required to possess a licence. Few of these licences survive, most notably one for the king's mother, Margaret Beaufort alongside a pardon for illegal retaining<sup>136</sup> and one for Simon Lovell permitting him to retain 1,365 men.<sup>137</sup> It has been speculated that close associates of Henry VII such as the earl of Oxford as well as Edmund Dudley and Richard Empson must have been in possession of a licence that is now lost.<sup>138</sup> There are surviving licences from after Henry VII's death that suggests that this particular aspect of the act was considered to be permanent and last beyond the reign of Henry VII.<sup>139</sup> In a further attack on those retaining and being retained illegally, fines were made more severe. Fines now took account of how long the illegal retaining had been occurring. The fine for illegally giving livery was set at 100s for every person illegally retained

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<sup>134</sup> Steven Gunn, 'Chivalry and the Politics of the Early Tudor Court' in *Chivalry in the Renaissance*, ed. Sydney Anglo (Woodbridge, 1990), 116-17 citing BL. Cotton MS A XIII fols. 189-90.

<sup>135</sup> For the next two paragraphs see: *PROME*, xv, 365-7.

<sup>136</sup> KB27/976 rot. 3 rex.

<sup>137</sup> HMC, *Report 24: Manuscripts of His Grace the Duke of Rutland*, iv (1908), 559-66. Gunn, 'Sir Thomas Lovell', 119 n. 12 and Cameron, 'Giving of Livery and Retaining', 24 both note that this is the only known extant list of retainers under the 1504 statute.

<sup>138</sup> Steven Gunn, 'The Accession of Henry VIII', *Historical Research*, 64 (1991), 286; Ross, *John de Vere*, 142.

<sup>139</sup> As yet, there has been no thorough analysis of any of these licences. For surviving licences see: HRO, 5M53/150; Dunham, *Lord Hastings' Indentured Retainers*, 67-89; Bean, *From Lord to Patron*, 148-57. A list of those given licences during the reign of Queen Mary and the early years of Elizabeth I survives in: BL, Lansdowne, 14, fol. 2. The list indicates that 38 licences were given during Mary's reign as opposed to only 13 during the first thirteen years of Elizabeth's reign.

for every month that they were retained illegally. Similarly, those who were illegally retained were given the severe penalty of 100s for each month that they had been retained or worn the livery that they were not entitled to.

In addition, the statute covered those pretending to be retained by a lord or buying the livery of a lord when they were not his servant. This combated the problem of former servants continuing to wear their old lord's livery after being dismissed from his or her service and using it as a shield against various crimes, as well as the problem of people making their own livery for the same purposes. In essence, this was a restatement of a clause from the 1429 act which was cited, as opposed to the 1504 act, in Rutland in 1510 when two husbandmen were indicted for illegally wearing the livery of the earl of Surrey.<sup>140</sup> To ensure that the statutes were enforced, the law was extended to punish local justices and juries who failed to convict those breaking the terms of the statute by fining them '£10 each time such a juror shall be sworn'. Concealing evidence from court, or giving false evidence likewise resulted in a fine of 6s 8d or imprisonment. These conditions were to ensure that the statutes were enforced in the localities. At the centre, the chancellor or keeper of the privy seal was allowed to hear cases in the Star Chamber. The purpose of this was likely to make it easier to prosecute members of the peerage, such as Lord Bergavenny, when they were illegally retaining large groups of men who could potentially overawe sessions of the local court and intimidate local jurors and justices of the peace. As was the case with earlier acts, informers were to be rewarded, although rather than promising half of the fine they were to be rewarded 'reasonably'. Any costs incurred by an informer were to be recouped from the person convicted. This clause was part of Henry VII's wider fiscal policy which attempted to bring more money into the crown via the legal system.<sup>141</sup> Ambiguity over the amount to be paid to an informer would mean a higher share of the original fine for the crown. The informer's overall amount of money would not have been affected if they could gain enough money from the person prosecuted who would, effectively have ended up being fined even more money for illegally retaining. The 1504 act, therefore, built on precedents built up since 1390 and, like all legislation, attempted to ensure more prosecutions via a combination of stricter definitions of the rules, more varied methods of enforcement, economic incentives for informers and punishment for those failing to enforce the statutes.

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<sup>140</sup> KB27/1013 rot. 8 rex.

<sup>141</sup> See e.g. Cavill, *English Parliaments of Henry VII*, 92-100.

Professor Given-Wilson described the 1399 statute as ‘the high water mark of anti-livery legislation’,<sup>142</sup> an interpretation resultant from the focus of his study, namely the royal affinity. From a crown-orientated perspective the 1399 statute is the most important for understanding the regulation of royal retaining practices, but this narrow view distorts the long-term evolution of the statutes. Chapter Three demonstrated that there were no cases of illegal livery being prosecuted at this time, which doubts the effectiveness of the statutes since it was not implemented. A.L. Brown noted that although a statute was permanent, it was not an ‘unchangeable piece of legislation’,<sup>143</sup> which is evident in the provisions of the statutes of livery. The provisions of the statutes developed between 1390 and 1504 as a consequence of changing circumstances and expectations. On various occasions the terms of the statutes made implicit consequences of the statutes explicit, such as in 1429 when the palatinate counties and women were included in the terms of the statute. Other laws formalised existing practice like in 1468 when it was stated that certain towns could hear cases. Therefore, rather than singling out any specific statute as being a ‘high water mark’ each statute was a development of earlier legislation in response to changing circumstances and expectations.

### **Petitions**

Parliamentary petitions provide an insight into the process of how and why medieval laws were created and developed. They are, however, problematic because they do not state the identity of the petitioner or petitioners. Petitions to the king from the Commons began with the generic phrase ‘we the commons pray’ implying uniformity from the Commons which may, or may not, have existed. Professor Myers identified several problems inherent in commons petitions, namely: Commons petitions sometimes appear before the caption on the rolls stating ‘*Les communes petitions*’; some Commons petitions were not enrolled; and some were not necessarily compiled by the Commons at all.<sup>144</sup> Recently, Gwilym Dodd has argued that, during the fourteenth century, Commons petitions began to incorporate what would earlier have been regarded as private grievances. Dr Dodd thus stated that the only observable common link between Commons petitions was ‘that each *purported* to seek change

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<sup>142</sup> Given-Wilson, *King’s Affinity*, 240.

<sup>143</sup> A.L. Brown, *The Governance of Late Medieval England* (London, 1989), 219.

<sup>144</sup> A.R. Myers, ‘Parliamentary Petitions in the Fifteenth Century’, *EHR*, 52 (1937), 388-8, 590-5.

which benefited the common interest'.<sup>145</sup> Little can be discerned about the identity of Commons petitioners. A petition may have come from only one or two MPs, or they may have come from all the MPs in the Commons. The absence of parliamentary journals for the middle ages or any records of the day-to-day proceedings also mean that it is difficult to gauge how long a specific petition was discussed in parliament. Despite these concerns, parliamentary petitions remain indispensable for determining the perceived problems that the statutes were addressing and the various interests and ideologies that were being served by the legislation. Nigel Saul highlighted the tension between interests and ideology with regards to the Commons campaign against badges at the end of the fourteenth century, arguing that although 'their preoccupation with liveries was ... a by-product of their concern for their own social position', portraying them exclusively as 'a threatened interest group' risked misrepresentation.<sup>146</sup> It does not follow from the fact that there were practical reasons for regulating the distribution of livery that the campaigns against liveries did not genuinely wish to curb the lawlessness and disorder associated with them.

To contemporaries, there was nothing intrinsically abhorrent about lords distributing livery to their servants. Grants of livery to servants were an expected aspect of lordship. Lords ordering their servants to commit various crimes was the problem, as highlighted in various petitions. A petition from Henry Popham, esquire, to the Lords of parliament in c.1404-5 illustrates the problem caused by liveries in relation to the execution of justice. Popham complained about an attack upon him by Lord Lovell and that, because some of the JPs in Wiltshire receive Lovell's fees and robes, they were partial in his favour.<sup>147</sup> Another petition from around 1400 mentioned how the introduction of livery badges into England had resulted in divisions and maintenance.<sup>148</sup> The ability of livery to embolden retainers to commit various crimes is evident in a petition from 1481 addressed 'to the right honorable and discrete lordes and other of the nobull counsell of my lord Edward prince of England', complained that John Abrey of South Weston wore the livery of the prince and used it to commit 'robberyes escapes of felons wronges and grete extorcions'.<sup>149</sup> The statutes of livery were a response to these specific, interconnected, problems.

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<sup>145</sup> Gwilym Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford, 2007), 126-55, quotation on 127.

<sup>146</sup> Saul, 'Abolition of Badges', 313.

<sup>147</sup> SC8/135/6710.

<sup>148</sup> SC8/100/4985. Printed in Saul, 'Abolition of Badges', 314-15.

<sup>149</sup> SC8/344/E1306.

MPs were drawn from the same class of people who were also local justices and were aware of the problems associated with liveried retainers in terms of lawlessness, creating partisan juries composed for a lord's retainers, and the fact that wearing a lord's livery could embolden his retainers to commit various crimes. Paradoxically, members of parliament were also the same lords that were heads of these problematic retinues. It is in this context, therefore, that discussion of the parliamentary process, and specifically the petitions that led to the statutes, need to be considered.

Maintenance – the ‘support of own or another’s legal case in lieu of allowing the law to take its course’<sup>150</sup> – was the first bastard feudal abuse which the Commons complained about and wanted regulated. In light of the problems caused by unregulated maintenance the Commons petitioned parliament for the first time in 1377 when the Commons asked for a remedy to the problem of lords giving ‘support both reasonable and unreasonable’ in lawsuits ‘to the great injury of the people’.<sup>151</sup> The support of unjust litigation in return for a share of the winnings was illegal by the reign of Edward I. In the parliament of 1293 proceedings were enacted against Ellis de Hauville for maintaining a plea Hugh de Bray and John de Grey and Andrew de Jarpenville regarding tenements in both Buckinghamshire and Northamptonshire in return for a share of the profits.<sup>152</sup> The petition of 1377 indicates that this problem was being exacerbated by the unregulated distribution of livery. The problem in this instance was not the practice of granting livery or retaining large groups of men, but the consequence of such actions, namely the fact that large groups of men in the livery of a single lord could intimidate juries, overawe session of court and be disruptive to the process of law. As a result of this petition, the wearing of livery for the purpose of maintenance was banned in 1377.

A further, more radical, petition was made by the Commons in 1388 which began the movement towards the regulation of livery. The loss of the original roll means that information regarding the petition comes from chronicle evidence, notably *The Westminster Chronicle*.<sup>153</sup> According to the chronicler, the petition called for the abolition of badges and ‘all other lesser liveries’.<sup>154</sup> The chronicle also alludes to tension between the Lords and the Commons over the issue, stating that ‘the

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<sup>150</sup> Hicks, *Bastard Feudalism*, 227.

<sup>151</sup> *PROME*, vi, 50.

<sup>152</sup> *Ibid*, i, 564-5.

<sup>153</sup> *Ibid*, vii, 24.

<sup>154</sup> *Westminster Chronicle, 1381-1394*, 357.

commons complained bitterly about the badges issued by lords'. The Lords' responded by offering to punish those who committed various crimes and perverting justice 'so that their colleagues would be scared off similar behaviour', but this did not satisfy the Commons who continued to demand the wholesale dropping of badges. Richard II responded by allowing lords to continue granting badges to their followers until the next parliament,<sup>155</sup> although a temporary ordinance was probably introduced during this parliament.<sup>156</sup> These events echoed earlier discussion from 1384 in which John of Gaunt responded to complaints from the Commons about the abuses of liveried retainers, stating that he could discipline his own men and that a statute was not required.<sup>157</sup> While it is possible that the chronicler was exaggerating the split between the Commons and the Lords, there was at least a crude distinction regarding beliefs about the continued use of badges: the Commons wished to reform the system, while the Lords were happy for the unregulated system to continue. Evidently, the initial drive to curb the abuses of liveried retainers came from the Commons, rather than the Lords.

Discussion about the problems of liveried retainers occurred again during the parliament of 1390. With regards to badges, the petition of 1388 was restated, before stating the terms of the 1390 statute that restricted the distribution of badges to a lord's immediate family, life-retainers and menial household servants.<sup>158</sup> In addition to badges, a second petition requested that the law be extended to include liveries of suits (or gown) and cloth. Moreover, they requested measures be put in place to ensure that the statutes were to be enforced. They requested that proclamations about the statutes be made in every borough and town in England and that offenders should forfeit one hundred pounds to the king.<sup>159</sup> These requests indicate that the Commons wanted to ensure that the statutes were known by all the local justices in England and that they would be enforced. As in 1388, chronicle evidence suggests tension between the Lords and the Commons. Thomas Walsingham stated that 'the commons again and again petitioned' about the problem of livery. Furthermore, it was only 'after many disputatious debates', the Lords agreed to the 1390 act.<sup>160</sup> In 1393 the Commons again petitioned about the issue of liveries, in all likelihood due to the

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<sup>155</sup> *Ibid*, 365-7.

<sup>156</sup> Discussed above.

<sup>157</sup> *Westminster Chronicle, 1381-1394*, 83.

<sup>158</sup> *PROME*, vii, 149.

<sup>159</sup> *Ibid*, vii, 150.

<sup>160</sup> *St Albans Chronicle*, i, 897.

failure of the 1390 statute to produce a wave of prosecutions. The petition of 1393 was the first to complain about the abuses of artisans such as ‘tailors, drapers, cobblers, tanners, fishmongers, butchers and other artificers’ in addition to those of knights, esquires and their retainers.<sup>161</sup> Extending the number of occupations that were accused of causing these problems is likely to have been a means for the petitioners to drive-home how widespread the problem was across society. It was not just knights and peasants that were thought to be problematic, but also artisans, tradesmen and townsmen more generally.<sup>162</sup> The persistent petitioning by the Commons during this period regarding livery indicates that it was the Commons, or at least some members of the Commons, who were the driving force behind the early anti-livery legislation.

The records of the parliament of January 1397 again indicate that the Commons were unhappy about the enforcement of the statutes. According to the records, Richard II summoned his Lords, both spiritual and temporal, to him at Westminster. Richard then stated that he had heard that the Commons had been speaking to the Lords the previous day about ‘various matters, some of which it seemed to the king were contrary to his regality and estate and his royal liberty’. The third of these matters was that the Commons wished for the statutes of livery to be upheld and enforced,<sup>163</sup> which is consistent with the lack of cases identified in this period in the previous chapter. When considered in conjunction with the other matters that Richard found to be impeding upon his royal rights, it is clear that the problem of livery was integrated with wider criticisms of Richard II’s kingship. The security of the Scottish border was another significant concern. Anglo-Scottish truces during this period were never certain and border raiding by magnates from southern Scotland was a continual threat. Ultimately, the duty of protecting the border lay with the king. The effects of Scottish raiding are evident in a letter patent to the bishop of Carlisle and his tenants in Cumberland which mentions ‘the great destruction sustained by them from the king’s enemies the Scots’.<sup>164</sup> The final matter was that the king’s household should be reduced. Over the fourteenth century the size of the royal household had

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<sup>161</sup> *PROME*, vii, 239-40.

<sup>162</sup> See ‘Townsmen’ section of Chapter Six for a full discussion.

<sup>163</sup> *PROME*, vii, 313-14. The petition itself has become referred to as Haxey’s Petition after the clerk who allegedly drafted it, see especially: A.K McHardy, ‘Haxey’s Case, 1397: The Petition and its Presenter’, in *The Ages of Richard II*, ed. James L. Gillespie (Stroud, 1997), 93-114.

<sup>164</sup> *CPR, 1396-1399*, 5.

continually grown and had become a source of criticism for Richard II.<sup>165</sup> Therefore, the inclusion of the problem of the enforcement of the statutes of livery in his complaint to Richard suggests that the problem of livery was viewed as one of many problems facing England at that time.

Another radical petition regarding livery came in the parliament of 1401. The Commons requested that 'all types of liveries and badges should be utterly abolished' with the exception that 'all the king's sons, dukes, earls, barons and bannerets' could wear the king's livery. Similarly, 'other knights and squires' could wear the king's livery 'solely in the presence of the king and not in his absence'.<sup>166</sup> It was also requested that the king should be allowed to give his livery to only 'his household servants, his officers, his counsellors, justices of one bench and the other, his clerks of the chancery, the barons of the exchequer, and other people of his council learned in the one law or the other'. The petition did request that livery could still be distributed to permanent household servants and lawyers. An incident from the parliament of 1404 suggests, however, that certain sections of the Commons may have wished the legislation to go further. The speaker, Sir Arnold Savage, who had also been speaker in 1401, denied in his opening address that he had requested the total abolition of liveries during the 1401 parliament, and that he only requested that lords adhere to the statute.<sup>167</sup> Although no such request was recorded in the official parliamentary records, the fact that the speaker later had to deny making such a request suggests that some MPs were keen for the abolition of livery badges, although not necessarily the abolition of other form of livery such as gowns and hoods. Professor Coss has argued that there were some who wanted to do more than eradicate the worst abuses of the system and that opposition to livery and maintenance 'was by no means confined to moralists and satirists'. His evidence for this claim is the episode of the 1384 parliament involving John of Gaunt, rather than this radical petition.<sup>168</sup> The fact that Commons petitions fail to name the petitioner means that it is not possible to say whether or not complaints against livery were confined to a small group of people whose activities and ideology can be traced through the surviving records.

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<sup>165</sup> Given-Wilson, *King's Affinity*, 39-41, 278; Harriss, *Shaping the Nation*, 472; Saul, *Richard II*, 259, 369-7, 439.

<sup>166</sup> For this paragraph see: *PROME*, vii, 148-9.

<sup>167</sup> *PROME*, viii, 230. See also: Given-Wilson, *King's Affinity*, 240.

<sup>168</sup> Coss, 'Bastard Feudalism Revisited', 58-9.

Social conventions and structures prohibited the abolition of all liveries. If there was such a radical petition in 1401 to abolish all livery badges, it may be indicate of an increased confidence in the Commons in the ability to pass new radical laws. Alternatively, such a request may have been deliberately extreme and used as the starting point for negotiation. There was a definite performance element in medieval petition that should be regarded as part of a wider conversation that took place between subject and king.<sup>169</sup> In the case of this particular petition, the conversation took the form of a negotiation. Starting from an extreme position could have allowed room for negotiation regarding the terms of any specific law. The fact that they wished greater enforcement of the existing law is clear enough in their request that JPs were to have the power of *oyer et terminer* in matters regarding livery which would have given them greater powers to deal with those contravening the statutes. Another clause in the petition requested that anyone suing on behalf of the crown should obtain half the fines – which was not made law until 1406 act – suggests an element of self-interest. That said there is still much in the petition to suggest that the problem of livery was something the Commons wanted remedied, and the incident was not an attempt to profiteer from the law. The Commons were likely aware of the inability the statutes were having at producing prosecutions and wanted the situation remedied.

A further petition against livery was made in 1406. Despite discussing abuses made by secular lords, the focus of this petition was ecclesiastical lords who were included in the statute of 1399, but not mentioned in the ordinance.<sup>170</sup> The petition began by stating that no archbishops, abbots, priors or any other church men ‘or temporal person’ was to grant livery to anyone except their household servants, estate official or lawyers under the 1399 act. Thereafter the petition stated that, contrary to the previous statutes against livery, lords were still illegally distributing to, in some cases, over 300 followers illegally. The lack of knowledge about who was exactly making the petition, the failure to name a specific lord and the absence of any resultant cases means it is uncertain if the petitioners were discussing a specific incident, or exaggerating the number for rhetorical effect. After the preamble, the Commons requested that the king ordain that ‘no archbishop, bishop, abbot, or prior,

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<sup>169</sup> W. Mark Ormrod, ‘Voicing Complaint and Remedy to the English Crown, c.1300-c.1460’ in *Medieval Petitions: Grace and Grievance*, eds. W. Mark Ormrod, Gwilym Dodd and Anthony Musson (Woodbridge, 2009), 135-55, especially 155.

<sup>170</sup> *PROME*, viii, 38.

or any other man of holy church, or temporal person, of whatever status or condition he may be, shall give any such livery of cloth to anyone contrary to the form of the aforesaid statute'.<sup>171</sup> Again, an absence of source material means it is impossible to state if any specific religious institution had been distributing livery illegally or if it had become apparent that the actions of retainers of religious lords had not been sufficiently dealt with. A further petition in 1411 essentially repeated the 1406 petition.<sup>172</sup> These petitions indicate an attempt to ensure that livery was being prosecuted which, an examination of the records of the King's Bench has shown, was not happening.

Thereafter, the issue of livery was not discussed in parliament until 1427. The enforcement of the statutes during Henry V's reign seems to have satisfied that section of the Commons that was initially concerned about the unregulated distribution of livery. The 1427 petition indicates that enforcement of the statutes was lapsing, stating that the statutes had 'not been duly observed because those who act contrary to the said ordinances are unable to be indicted before the said justices on account of the great maintenance had in this matter'. Therefore, the Commons requested that the justices of assize and justices of the peace in each county in England were to have the power to hear and determine all cases of illegal livery.<sup>173</sup> A further clause in the petition stated that the laws should not apply to 'mayors for their time in office',<sup>174</sup> which is noteworthy particularly because the following year the former mayor of Chester, John Hope was indicted for illegally giving livery to two men in Chester.<sup>175</sup> Cheshire did not return MPs to Westminster until 1543. It is possible that many MPs in other shires had Cheshire connections by means of land or marriage but out of approximately 2,600 known MPs between 1439 and 1509 fewer than 50 had 'even the most tenuous Cheshire links'.<sup>176</sup> There is no reason to suppose that any special interest in the actions of Hope impacted upon drafting of this petition. Indeed, it is difficult to determine conclusively whether or not the distribution of illegal livery in Cheshire around this time impacted upon the drafting of the 1427

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<sup>171</sup> Ibid, 400.

<sup>172</sup> Ibid, 547-8.

<sup>173</sup> Ibid, ix, 354.

<sup>174</sup> Ibid, viii, 547.

<sup>175</sup> CHES25/12 ms. 16.

<sup>176</sup> Thornton, *Cheshire and the Tudor State*, 122 using Josiah C., Wedgwood, *History of Parliament: Biographies of the Members of the Commons House, 1439-1509* (London, 1936).

petition given Cheshire's level of autonomy during the fifteenth century. However, the chronology of events – a Commons petitions in 1427 and 1429 enveloping fourteen cases from the county in 1428 – does suggest at least some communication between MPs at Westminster and justice in Cheshire. The petition was probably a means for the Commons to express their displeasure at the ineffectiveness of the legal system to deal with livery offences and was attempting to extend the number of courts that could deal with cases. This is again evident in a petition from the 1429 parliament which reiterated the petition of 1427.<sup>177</sup> The petitions of 1427 and 1429 indicate that the Commons were aware of the failure of the King's Bench to prosecute illegal livery and were keen to rectify the problem of enforcement.

Livery was included in a petition at the Coventry Parliament of 1459. The pro-Lancastrian parliament stated, in their petition to Henry VI, that livery was being given illegally 'to such a multitude of robbers, rioters and wrongdoers, who in a riotous and violent manner trouble and hinder your assize judges as well as justices of the peace in every part of this your realm'.<sup>178</sup> As shown in Chapter Six, the 1450s witnessed many retainers of Richard, duke of York, being indicted for illegal livery. After the events preceding the Coventry Parliament, and the fact that many leading Yorkist were attainted in this parliament, it is clear that the men being referred to as giving illegal livery were Yorkists supporters and sympathisers. In this respect livery was associated with the problems of lawlessness and feuding that had been a distinguishing feature of the 1450s.

The final parliamentary petition that mentioned livery was at Edward IV's final parliament in January 1483 in which the Commons requested that in order to 'achieve better and more reliable observance of the truth among the Commons' various laws, including the statutes of livery, should be 'proclaimed and their proper execution demanded'.<sup>179</sup> Complaints by the Commons about levels of lawlessness were a common occurrence during Edward IV's parliaments.<sup>180</sup> The connection between livery and lawlessness was still being made almost a century after the issue was first debated in parliament. However, it would be unwise to cite these petitions as evidence of the failure of the legal system. During the fifteenth century, abuses caused by the unregulated distribution of livery had become a standard clause in complaints

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<sup>177</sup> *PROME*, ix, 402.

<sup>178</sup> *Ibid*, xii, 499-500.

<sup>179</sup> *Ibid*, xiv, 413.

<sup>180</sup> Ross, *Edward IV*, 405.

about lawlessness. By the late fifteenth century livery had been incorporated into the vocabulary of petitions complaining about lawlessness and disorder.

Petitions against livery reveal several important aspects about attitudes to livery and who was pushing for the legislation. Livery became associated with lawlessness throughout the period covered in this thesis and became a standard feature of complaints about high levels of lawlessness. Many preambles described the ‘unbearable oppressions’ and other hardships caused by liveried retainers. When requesting the regulations of liveries, the petitioners needed to explain why such measures needed to be taken and thus livery and lawlessness became linked in the rhetoric of many Commons petitions and preambles to act of parliament relating to livery. As Mark Ormrod has highlighted, medieval petitions were ‘artful constructs designed to get something done’ rather than just ‘the outpouring of real-life, hard-luck stories’.<sup>181</sup> The petitions discussed here were constructed in order to pass legislation regulating the distribution of livery. In order to get legislation passed it was necessary to emphasise, and even exaggerate, the problems that required remedying. Therefore, much of the language used in petitions emphasised the problems of liveried retainers and the havoc they could wreck upon society. Several petitions appealed to the royal prerogative stating that the reason for the petition was that earlier law – the king’s laws – were not being duly observed and adhered to. Attempts by petitioners to tie their grievances in with the interests of the crown were evident in many private petitions, such as that of Thomas Paunfield. In his dispute with Barnwell priory he accused the priory, in 1414, of infringing upon the king’s rights and prerogative by overturning ‘the usages and customs of ancient demesne land as originally laid down by the crown’.<sup>182</sup> Appeals to royal interests and the incorporation of livery into the vocabulary used to decry widespread lawlessness was the rhetoric used by petitioners in order to ensure legislation was passed regulating the distribution of livery. Furthermore, the distribution of petitions suggests that the impetus for legislation began as a ‘bottom-up’ process during the reign of Richard II, but by the time of Henry VII it had become a ‘top-down’ directive from the king. While the early legislation was predominantly precluded by Commons petitions, the more complex

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<sup>181</sup> W. Mark Ormrod, ‘Introduction: Medieval Petitions in Context’, in *Medieval Petitions*, eds. Ormrod, Dodd and Musson, 11.

<sup>182</sup> Gwilym Dodd, ‘Thomas Paunfield, the ‘heye Coirt of rightwisenesse’ and the Language of Petitioning in the Fifteenth Century’, in *Medieval Petitions*, eds. Ormrod, Dodd and Musson, 231. For the petition see: SC8/23/1143A, SC8/23/1143B.

legislation from 1468 and 1504 were not the product of pressure from the Commons. Later acts were an aspect of royal policy directed against lawlessness and rebellion, in contrast to earlier acts that were primarily a means of pacifying the Commons.

### **Provisos**

Stanley Chrimes argued that amendments to laws which, among other things, exempt certain persons or groups ‘cannot be dismissed as insignificant’.<sup>183</sup> The statutes of livery are the archetypal case study for explaining the significance of exemptions from legislation. Exemptions help to explain wider social practices and expectations and highlight the precise problems that the statutes were attempting to address. This section considers exemptions from the statutes showing how ideals and practicalities with regards to retaining and the granting of were accommodated in the statutes.

At all times a lord’s permanent household servants, estate officials, his lawyers and members of a lord’s family were permitted to wear his/her livery or, later, receive fees from them. These are not, strictly speaking, exemptions but rather part of the main thrust of the legislation. The statutes always explicitly stated that it was acceptable to give livery to these groups. Granting livery to one’s household servants and permanent retainers was a standard expectation of medieval lordship. Retaining was only ever regulated because contemporaries found it acceptable and had no wish to abolish it. Similarly, the practicalities of the legal profession meant that lawyers also needed to be exempted. A lawyer-client relationship was qualitatively different than that of a lord-retainer relationship, with lawyers serving numerous clients. A surviving agreement from 1402 shows Elizabeth la Zouche granting her lawyer, John Bore, livery of fur along with 5 marks per annum as wages.<sup>184</sup> The surviving livery roll for Edward Courtney reveals that he gave livery to thirteen men-at-law in 1384.<sup>185</sup> The legal process and contemporary conventions meant that it was expected that lawyers would wear the livery of their clients in court. Since lawyers represented multiple clients, restricting the number of people who could retain them would have seriously affected their income. Coupled with the increase in the number of lawyers

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<sup>183</sup> Stanley Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1936), 163.

<sup>184</sup> E210/697.

<sup>185</sup> BL, Add. Ch. 64320.

that became MPs during the late medieval period<sup>186</sup> it is clear from both the basis of contemporary social views about livery and the self-interest of MPs that lawyers were permitted to be retained by more than one lord.

Other exemptions were made for specific occasions and for specific reasons to those who were not permanent household servants, estate officials, family members and lawyers. The first explicit exemption is from the ordinance of 1399 and provides an insight into social attitudes and military expediencies pertaining to the distribution of livery. One of the primary arguments in favour of preventing lords and nobles being able to retain men quickly was that it could lead to local disorder, violence and even rebellion. Internally, these factors could lead to civil war. The requirements of foreign war, however, meant that being able to retain a large number of men quickly was beneficial, particularly in response to border raids or rebellion. Military expediency was expressed by the fact that the statutes exempted the constable and marshal of England. The 1399 statutes stated that the constables of the wardens of the march were permitted to 'use the said king's livery on the frontiers and the march of the realm in time of war'.<sup>187</sup> Earlier acts had not specifically stated that the wardens of the march were to be exempt. It was only after further contemplation that this proviso was included in the livery laws, which is indicative of the wider process whereby the laws were refined according to circumstances. While full-scale Anglo-Scottish warfare was rare from the 1330s onwards, border raiding and skirmishes remained a constant threat during the late medieval period. The wardens of the marches were well paid and expected to recruit men rapidly in times of war for the defence of the realm.<sup>188</sup> During Edward IV's reign, this proviso was also part of the 1461 and 1468 acts.<sup>189</sup> Edward was acutely aware of the fact that deposed Lancastrian regime had taken refuge at the Scottish court and enjoyed much support in the north.<sup>190</sup> Therefore, it was useful to emphasise the need to permit his prominent northern magnate to retain men for national defence. Later, Henry VII emphasised the importance of the north for the defence of the realm stating in his general pardon to the north after Bosworth

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<sup>186</sup> Simon Payling calculated that in 1395 around 15% of MPs can be classed as lawyers compared to 20% in 1442 and 24% in 1491: S.J. Payling, 'The Rise of Lawyers in the Lower House, 1395-1536' in *Parchment and People in the Middle Ages*, ed. Linda Clark (Edinburgh, 2004), 104-5.

<sup>187</sup> *PROME*, viii, 38.

<sup>188</sup> For a full discussion of the position of Warden of the Marches see: R.L. Storey, 'The Wardens of the Marches of England towards Scotland, 1377-1489', *EHR*, 72 (1957), 593-615.

<sup>189</sup> *PROME*, xiii, 65, 386;

<sup>190</sup> Norman MacDougall, *James III*, 2<sup>nd</sup> edition (Edinburgh, 2009) 44-6.

that part of their duty was to ‘defend this land against the Scots’.<sup>191</sup> It was always necessary to permit those entrusted with defending the Scottish border to be able to retain and give livery to large groups of men very quickly. The statutes of livery were partly an attempt to prevent lords raising private armies, but in the case of border raiding private armies were necessary.

The exemption of the king from the statute of October 1399<sup>192</sup> was a response from Henry IV to the deposition of Richard II. The gentry were integral to the households of both Richard II and Henry VII and, consequently, their retaining policy demonstrated the ‘need for the king to harness their skills and influence to his cause’.<sup>193</sup> Richard II’s policy of retaining a large number of Cheshire men was a source of criticism during his final years. The Cheshire men were described by contemporaries as ‘malefactors’ and ‘evil doers’ who committed various violent crimes which went unpunished.<sup>194</sup> Richard’s use of his retinue and their crimes was one of the thirty-three charges for which he was deposed.<sup>195</sup> The legacy of the Cheshire archers during Richard’s final years is apparent in other clauses of the statute. The king’s men were prohibited from wearing the royal livery in their own counties, with the punishment for contravening this statute being a life-long ban from receiving any further royal livery or fees. Yeomen, and others below gentry status were also prohibited from receiving royal livery. Royal exemption from the statutes during Henry IV’s first parliament was the result of two political expedients. First, Richard II’s later retinue had a reputation for lawlessness and was one of the contributing factors in opposition against him in 1398-9. Kings could therefore not be allowed to have such large retinues of lawless men. Second, gentry were becoming more important to the crown for their administrative abilities in both central and local government and it was therefore desirable that the king would be able to retain such men. This exemption satisfied both criteria. Political expediency was therefore the reason for the king being formally exempted from the statutes of livery in 1399.

Aristocratic ideals were evident in the 1399 act in addition to political and military expedience. The act states that ‘those who wish to travel and cross the sea to

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<sup>191</sup> *Tudor Royal Proclamations*, i, 3-4.

<sup>192</sup> For this paragraph see *PROME*, viii, 11-12.

<sup>193</sup> Given-Wilson, ‘King and the Gentry’, 99.

<sup>194</sup> *Chron. Rev.*, 65-6, 73-4, 123-4, 154, 158, 193.

<sup>195</sup> *Ibid*, 174.

lands abroad to seek honour, may use the same livery in those regions'.<sup>196</sup> The 'honour' being referred to was clearly chivalric honour. Chivalry remained an integral facet of noble life during the later middle ages. In *The Book of Chivalry*, Geoffroi de Charny described the honour bestowed upon a knight who participated in warfare and that those who travel to foreign lands for such adventure should be honoured and respected.<sup>197</sup> The international aspect of chivalric culture and the shared cross-Channel experiences of the French and English nobilities meant that Charny's views would have been shared by many in the English aristocracy during this period. According to Charny, nobles could travel to foreign lands to gain honour and demonstrate their military prowess in two ways: tournaments and foreign war, especially crusade. Both required the wearing of livery, and were a feature of noble life and ambitions throughout the later middle ages. Crusades were military enterprises and nobles going on crusade needed to distribute their livery or coats of arms to their followers. Tournaments required their participants to display the four quarters of their nobility on the arms prior to competing in tournaments. Malcolm Vale has highlighted the fact that as time progressed simpler methods of identification were required such as a personal badge.<sup>198</sup> Preventing a noble from being able to travel outside of England from wearing his livery and giving it to his attendants would have gone against many of the expectations of the nobility. Therefore, the chivalric ethos of the aristocratic warrior elite was taken into consideration in these exemptions from the statutes.

Cultural concerns were expressed in several statutes that led to various ceremonies and events being exempt. Spectacle and ceremony were integral to medieval life and therefore the wearing of a distinct livery to distinguish oneself or organisation was necessary. The petitions regarding liveries from 1427 and 1429 included several instances, particularly in a civic context, in which the statutes were not to be enforced. One provision covered 'mayors for their time in office'.<sup>199</sup> Livery was part of many mayoral events. In London, at the elections of new mayors and sheriffs, the members of the city council were required to attend in their livery.<sup>200</sup> In

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<sup>196</sup> *PROME*, viii, 38.

<sup>197</sup> Geoffroi de Charny, *The Book of Chivalry of Geoffroi de Charney: Text, Context and Translation*, ed. and trans. Richard W. Kaeuper and Elspeth Kennedy (Philadelphia, 1996), 87-93.

<sup>198</sup> Malcolm Vale, *War & Chivalry* (London, 1981), 96-7.

<sup>199</sup> *PROME*, viii, 547.

<sup>200</sup> *Calendar of letter-books of the city of London, L: Edward IV to Henry VII*, ed. Reginald R. Sharpe (London, 1932), 73.

1428, however, the mayor of Chester had been indicted for illegally distributing livery to two yeomen.<sup>201</sup> The inclusion of this proviso may have been a consequence of this particular case. Later acts exempted more ceremonies. The 1468 act did not cover livery given at the coronation of the king or queen, the enthronement of an archbishop or bishop, the inception of university clerks or when someone was made a knight or made a serjeant-at-law.<sup>202</sup> Numerous examples attest to the fact that livery was an integral aspect to these ceremonies. For the coronation of Henry V in 1413 livery was distributed to 601 men for the occasion.<sup>203</sup> When Robert Hallum was made Bishop of Salisbury in 1408, it was agreed that the citizens should wear their common livery and give the bishop 40 marks.<sup>204</sup> The ordinances of various London guilds required their members to attend mass either once or twice a year in their livery.<sup>205</sup> Civic occasions and ceremonies were instances in which livery was a fundamental aspect of the spectacle and it would have been unthinkable to ban it.

The fact that Edward IV took steps that legally enabled the widespread use of livery at ceremonial occasions is unsurprising considering Edward's penchant for extravagant court culture. Charles Ross noted that Edward's 'awareness of the political value of display is evident from the very beginning of his reign' since at his coronation 'no expense was spared'.<sup>206</sup> When the Bohemian nobleman Leo of Rozmital travelled to England in 1466 his companion, Gabriel Tetzl, was suitably enough impressed by Edward's court to label it 'the most splendid court that could be found in all Christendom',<sup>207</sup> an impressive compliment considering they had just visited at the court of Philip the Good.<sup>208</sup> During the festivities Edward gave all the knights in Rozmital's retinue a gold livery badge and all other a silver livery badge.<sup>209</sup> Livery was integral to late medieval ceremonies and had particular importance in the context of the royal court that Edward IV wished to develop. Those drafting the legislation recognised this and took it into account.

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<sup>201</sup> CHES25/12 ms, 16.

<sup>202</sup> *PROME*, xiii, 386.

<sup>203</sup> Northamptonshire Record Office, FH4229. Note: this is seventeenth-century copy of an earlier manuscript that is now, presumably, lost.

<sup>204</sup> *Salisbury First General Entry Book*, no. 31.

<sup>205</sup> *Calendar of letter-books of the city of London, L*, 183-4, 201, 291.

<sup>206</sup> Ross, *Edward IV*, 258.

<sup>207</sup> *The Travels of Leo of Rosmital*, ed. Malcolm Letts, Hakluyt Society, 2<sup>nd</sup> series, 108 (1957) 45.

<sup>208</sup> *Ibid*, 26-42. On Philip the Good's court see: Vaughan, *Philip the Good*, 127-63.

<sup>209</sup> *The Travels of Leo of Rosmital*, 45, 53.

Furthermore, by the terms of the 1504 act, an exemption was given to the executors of someone's estate at their burial 'as mourning array'.<sup>210</sup> In the years prior to this statute being passed England witnessed two high profile royal funerals, those of the queen and Arthur, Prince of Wales. At this time, in 1503, the king's mother, Margaret Beaufort, drew up a list of funeral ordinances specifying in minute detail the size and types of hood and mourning apparel to be worn.<sup>211</sup> In the immediate context of the 1504 act, therefore, there were incidents that are likely to have brought the issue of mourning livery to the forefront of the king's thoughts when the act was being drafted. By the reign of Henry VII mourning livery had a long history. Exchequer records indicate that for the funeral of Edward III in 1377 there were around 950 men in black mourning livery.<sup>212</sup> Over a century later, for the burial of Edward IV in 1483, William Worsley, Dean of St Paul's Cathedral, paid £4 9s. for black woollen cloth in order to make livery for his servants attending the burial.<sup>213</sup> For Henry VII's own funeral a combined total of 18,311¾ yards of cloth were used for mourning livery.<sup>214</sup> Royal funerals were not, however, unique in their use of livery at funerals. For the funeral of the Earl of Oxford in 1513 as many as 900 black gowns were distributed and up to 1900 liveries were distributed for the funeral of the Duke of Norfolk in 1524.<sup>215</sup> Guilds mandated that their members wore their livery at funerals. The weavers of London, for example, had an ordinance that on the death of one of their own all other guild members were to attend the funeral of the deceased members, with a fine of 8d for disobeying the ordinance.<sup>216</sup> One London salter, Thomas Browne, stated in his will that his fellow salters were to attend the obit in the clothes of the salter's guild.<sup>217</sup> Likewise, the will of Henry Barton, skinner, from 1436 included a provision for a livery gown to be provided to the chaplain of his fraternity for the festival of Corpus Christi and 'for the purpose of observing the obit or

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<sup>210</sup> *PROME*, xvi, 367.

<sup>211</sup> BL, Add MS. 45133 fol. 141. Discussed in: Jones and Underwood, *King's Mother*, 78, 187.

<sup>212</sup> E101/397/20 mm. 30-2; E101/398/9 fol. 31-2. Discussed in Christopher Given-Wilson, 'The Exequies of Edward III and the Royal Funeral Ceremony in Late Medieval England', *EHR*, 124 (2009), 263, 268.

<sup>213</sup> *Estate and Household Accounts of William Worsley*, 70.

<sup>214</sup> *L&P*, i, no. 20. For a sixteenth-century account of Henry VII's funeral describing the use of black mourning livery see: *Hall's Chronicle*, 506.

<sup>215</sup> Ross, *John de Vere*, 224.

<sup>216</sup> *Calendar of letter-books of the city of London*, L, 290.

<sup>217</sup> Salter's Company Archives, Will of Thomas Browne.

anniversary of any brother or sister of the same'.<sup>218</sup> Wearing livery at funerals was an expected aspect of late medieval life and therefore an outright ban was in direct opposition to contemporary views on acceptable livery.

Exemptions from the statutes also conformed to contemporary ideals about royal blood and the special position in society afforded to not only the king, but his wider family, especially his heir. In 1401, the Prince of Wales was permitted to distribute his livery in the same way as the king.<sup>219</sup> The lack of an adult male heir for the majority of the fifteenth century explains why the issue was rarely mentioned in the statutes, since there was rarely an imminent problem needing remedying. The status of the Prince of Wales with regards to retaining did not arise again until Edward IV wished that his son, Edward Prince of Wales 'be as free to retain any person and give his badges and liveries as widely as any prince who was the first-begotten son of any of his progenitors or predecessors has been in the past'. An exemption against the statutes of livery was therefore given to the Prince of Wales in 1474-5, during the third session of the parliament initially summoned in 1472.<sup>220</sup> The fact that the statute alludes to previous Princes of Wales indicates that they were always exempt and that the statutes was a formalisation and reiteration of an existing practice. Moreover, it was necessary for kings to have good relations with the gentry and nobility during this period in order to run the country. By exempting the future king from the statutes, it was possible for him to build up his own affinity of followers who could then do this when he became king. There was both a practical aspect pertaining to the good governance of the county and an ideological aspect regarding the special position afforded to royal blood for exempting the Prince of Wales from the statutes of livery.

Urban groups were also exempt from certain aspect of the legislation. Given what has already been argued about the use of livery by civic organisations and guild this should be unsurprising. Guilds and fraternities used their livery to distinguish themselves within their community.<sup>221</sup> Consequently, the 1406 act stated that guilds, fraternities and 'of those mysteries of the cities and boroughs of the realm' were exempt from the clause which stated that 'no congregation or company shall make for itself a livery of cloth or of hoods at the personal expense of the same congregation or

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<sup>218</sup> *Calendar of Wills Proved and Enrolled in the Court of Husting, London: Part 2, 1358-1688*, ed. Reginald R. Sharpe (London, 1890), 477.

<sup>219</sup> *PROME*, viii, 148-9.

<sup>220</sup> *Ibid*, xiv, 324-5.

<sup>221</sup> See 'Livery Distribution and Its Symbolism' section of this chapter.

company'.<sup>222</sup> Thus, civic groups were able to use their livery in the accustomed manner and illustrates that it was the use of livery by the nobility, not civic groups, that was the reason for the enactment of the statutes of livery.

Exemptions to the statutes show that laws were never absolute. Legislation needed to conform to social expectations along with political and military practicalities. Therefore, various people, occasions and events were exempt from the statutes. These exemptions demonstrate that livery was an important aspect of late medieval life and the fact that many forms of livery were found acceptable by medieval society and consequently were not legislated against. The fact that exemptions in the 1468 and 1504 correspond with royal policy towards ceremony gives further credence to the argument that while the earlier statutes were the product of pressure from the commons as demonstrated by the existence of petitions, the later acts for which no commons petitions can be identified, were crown-driven affairs. Taken together, the exemptions demonstrate the variety of occasions in which livery needed to be distributed – for military campaigns, to household servants, to lawyers, for funerals and other ceremonies Livery was too engrained into late medieval society to be abolished.

## **Conclusion**

In their articles on specific acts, Professors Hicks and Saul highlighted the fact that the wholesale banning of the granting of livery, or the practice of retaining, was never the objective of the legislation. The focus of the legislation was in regulating livery and outlawing what they believed was the unacceptable use of livery.<sup>223</sup> This argument remains valid by this analysis but should be made stronger. The abolition of livery in both theory and practice was not, and could never be, possible in late medieval. Livery was an important way to reward loyal servants and had symbolic importance for both lord and retainer: the lord benefited from the prestige of having servants in his livery; the retainer benefited from being associated with powerful men in their community. Moreover, there were ideological barriers to banning livery. Good lordship expected lords to reward their servants generously and grants of livery were part of this. In terms of both interests and ideology livery was too engrained into society to ban.

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<sup>222</sup> *PROME*, viii, 400-1.

<sup>223</sup> Hicks, '1468 Statute', 15; Saul, 'Abolition of Badges', 312-3.

Furthermore, the preceding analysis has demonstrated that the statutes evolved over time, responding to developing circumstances, concerns and expectations. The statutes were an example of legislative evolution, not revolution. Various clauses in many of the statutes explicitly stated what had been implicit in earlier legislation, while other laws formalised existing practices. The statutes were part of wider movements, nationally and internationally, that were concerned about appropriate standards of behaviour and attempting to regulate the actions of lawless retainers. Rather than being an unwieldy attack upon an integral feature of society, legislation against livery was targeted at specific practices deemed unacceptable by late medieval society and allowed acceptable instance of granting livery and retaining to continue.

In summary, this chapter has shown how the statutes of livery developed and evolved between 1390 and 1504. They responded to legal practicalities, changing circumstances and took account of developing social values, particularly with regards to what was deemed acceptable and unacceptable.

## Appendix 3 – Timeline Summary of the Statutes

1377<sup>1</sup>

### *Petition*

- States that it is customary in parts of England for people ‘with small holdings of land or rent to perform great maintenance in lawsuits, and keep retinues of men’ and give them their livery.
- Problem that they agreed to maintain these men in ‘any reasonably or unreasonable suit, to the great injury of the people.’
- Request that a remedy be found for these problems.

### *Response*

- There are already statutes pertaining to maintenance that were to be enforced.
- No liveries to be given for the ‘maintenance of lawsuits, or any other confederacy, on pain of imprisonment and heavy forfeiture.’
- Justices of assize to enquire about these abuses and punish those guilty.

1384<sup>2</sup>

- Report in the *Westminster Chronicle* about a dispute between the commons and the lords over the issue of badges during which John of Gaunt claimed that he was able to discipline his own men and that there was no need for a statute on the issue.

1388<sup>3</sup>

- No surviving parliament roll, but information in the *Westminster Chronicle* of a petition regarding the distribution of livery.

### *Petition*

- Request from the commons that all badges and other less liveries such as hoods should ‘henceforward not be given or worn but shall be abolished upon the pain specified in this present parliament.’

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<sup>1</sup> *PROME*, vi, 50.

<sup>2</sup> *The Westminster Chronicle, 1381-1394*, 80-3.

<sup>3</sup> *PROME*, vii, 124.

- *Response*
- Richard II stated that ‘the matter touching this article shall be continued in its present state until the next parliament in the hope that in the meantime amendment will be effected by him and the lords of his council.’
- Possible ordinance in this parliament, since at the parliament of 1390 the commons stated that ‘the king and lords have ordained a remedy.’<sup>4</sup>

### 1390<sup>5</sup>

- First statute arising from Commons campaign against distribution of livery.

#### *Petition*

- Complaint that wearers of the badges of lords ‘inflicted great and unbearable oppressions and extortions on the common people.’
- Refers to complaints made by at the Cambridge Parliament of September 1388, stating that they were waiting for a final judgement to be made on the issue.
- Request that no valet or archer ‘shall wear any lord's badge unless he be a menial dwelling with him in his household for a whole year.’

#### *Response*

- ‘The king will consider it further with his council, and ordain such a remedy as shall seem best to him for the peace and quiet of his people.’

#### *Petition*

- The distribution of liveries should be confined to a lord’s family, menial household servants residing in his household for a whole year and ‘his steward, his council, or his bailiffs on their manors.’
- Lord defined as ‘temporal or spiritual, or any other of lesser estate’ – presumably this covered peers, gentry, and ecclesiastical lords such as abbots, archbishops, bishops etc.

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<sup>4</sup> *PROME*, vii, 149. See also comments in Given-Wilson, *King’s Affinity*, 239.

<sup>5</sup> *PROME*, vii, 147-50. Also printed in *EDH*, iv, 1116.

- All to be withdrawn within half a month of parliament ending.
- Anyone who takes livery contrary to the statute should be imprisoned for a year without redemption.
- ‘No livery be given by colour of gild, fraternity, nor any other association.’
- Loss of franchise for any gild or fraternity breaking the statute or fine of £100 to the king if they have no franchise.
- Proclamations to be made ‘throughout all the boroughs and towns in the kingdom’ as soon as possible.
- Fine of £100 to the king for anyone giving livery in contravention of the statute.

*Response*

- ‘The king will consider it further with his council, and ordain such remedy as shall seem to him best for the ease and quiet of his people.’

**1393<sup>6</sup>**

*Petition*

- Despite previous legislation ‘many tailors, drapers, cobblers, tanners, fishmongers, butchers and other artificers, and also serving men like squires and valets who have small livelihood, wear liveries and signs within the kingdom.’ Results in oppression of the common people.
- Request that justices of the peace and assizes to enquire into those contravening the statutes.

*Response*

- No yeoman or anyone else below the rank of esquire to use livery henceforth, unless he is a permanent household servant.
- Justices the peace and assize have power to enquire into those contravening the statutes and punish at their discretion.

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<sup>6</sup> *PROME*, vii, 239-40.

### 1397<sup>7</sup>

- Commons petition asking for the statutes to be upheld, as part of a wider petition (Haxley's petition) complaining also about the size of the royal household, the state of the Scottish marches and that sheriffs and escheators were not of sufficient standing.
- Richard II sidestepped the issue of livery but addressed the other three issues.

### 1399<sup>8</sup>

- First statute to discuss royal retaining policies.
- No corresponding Commons petition.
- No lord of any rank permitted to distribute livery badge of company to any knight, esquire or valet. Presumably, it remained legal to distribute other types of livery provided it was in accordance with earlier statutes.
- King permitted to distribute his livery to any temporal lord he pleases.
- King permitted to give livery to knights and esquires of both his household and his retinue who are in receipt of an annual fee for them for their life.
- King's knights and esquires were prohibited from wearing the royal livery in their own counties and were only allowed to wear it in the king's presence.
- Permanent loss of livery and fee for anyone contravening the statute.
- Yeomen prohibited from taking royal livery on pain of imprisonment and a fine, payable to the king.
- Constable and marshal of England permitted to distributed livery during times of war.
- King's livery permitted to the constable and marshal of the marches and those 'crossing the sea ... to seek honour.'
- First statute to explicitly state ecclesiastical ranks – bishops, archbishops, abbots and priors (although ecclesiastical lords were covered by previous acts).
- Livery could be given by lords, spiritual or temporal, 'only [to] his servants and officers, and those who are of his council, both spiritual and temporal, learned in one law or the other.'

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<sup>7</sup> *PROME*, vii, 313-14.

<sup>8</sup> *PROME*, viii, 38.

- Ordinance to take effect from 2 February 1400.

## 1401<sup>9</sup>

### *Petition*

- Request that all types of liveries and badges should be ‘utterly abolished.’
- Only livery that could be worn was the king’s and even then it should be restricted to ‘all the king’s sons, dukes, earls, barons and bannerets,’ who could wear the said livery in both the king’s absence and his presence.
- Certain other knights and esquire – presumably those that were life retainers of the king – could wear the king’s livery only in his presence. The presence of the king was adjudged to be within a twelve mile radius of him.
- ‘All other lords spiritual and temporal and other people of lesser estate should be able to give their cloth of livery to all their household servants and officers and counsellors learned in the one law or the other, and to no other person.’
- Sets out how much dukes, earls and barons should be fined: ‘if he be a knight of lesser estate than a duke, earl or baron, he shall pay £40, and a squire £20, and a yeoman or valet £10.’
- If attainted at the suit of the king, then all the proceeds of the fine go to the crown; if attainted by a private suit, half the fine goes to the crown and half to the person suing.
- Requested that JPs have ‘power of *oyer et terminer* in this matter.’
- Request that those learned in law be exempted from the statutes.

### *Response*

- The statutes already made were to be ‘upheld and preserved.’
- Statutes to be upheld and justices of the peace and assize given power to hear and rule on such cases (although nothing about them having power of *oyer et terminer*).
- Dukes, earls, barons and bannerets allowed to wear their livery ‘in their county and elsewhere’.

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<sup>9</sup> *PROME*, viii, 148-9.

- King's knight's and esquires were allowed to wear his livery going to and from the royal household. Although they were not permitted to wear the king's livery in the county or region where they lived.
- Prince of Wales, like the king, permitted to give his livery to his 'gentle-born servants.' Similarly lords may wear his livery in the same manner that they wear the king's livery.

1406<sup>10</sup>

*Petition*

- Complaint that, despite legislation being passed during the first parliament of the reign, the statutes were not being upheld and that large numbers, up to 300, were being livered illegally.
- Those wearing livery were committing 'numerous homicides, thefts, murders, felonies, rapes of women, extortions, oppressions and injuries, suits, musters and assemblies against the people in many parts of the kingdom.'
- Request that statutes should be upheld and maintained.
- Request that any lord breaking the statute should be fined £100.
- Request that anyone receiving livery illegally was to be fined 40s per cloth or hood.
- Local justices of the peace and of assise to have power to enquire into those breaking the statutes.
- Anyone who wished to sue on behalf of the king to receive half of any fine for their labours

*Response*

- The statutes were to be upheld and maintained, including those made against the giving of liveries of hood during the reign of Richard II.
- Anyone giving livery illegally was to be fined 100s per cloth or hood.
- Anyone receiving livery illegally was to be fined 40s per cloth or hood as request.
- Anyone suing on behalf of the king to receive half of any resultant fine, as requested.

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<sup>10</sup> *PROME*, viii, 400-1.

- No ‘congregation or company’ permitted to make a livery of cloth of hoods for itself at its own expense. Punishment for breaking his law is a fine of 40s to the king.
- Exemption given to the guilds and fraternities, and ‘the people of those mysteries of the cities and boroughs of the realm which have been founded or ordained for a good intention and purpose.’
- Justices of assize given power to hear cases at their sessions and report them to King’s Bench.
- Beadles (i.e. Heralds) were to ‘be prohibited from the above on the same penalty.’
- Exemption during times of war for those lords, knights and esquires who are involved.

#### 1411<sup>11</sup>

##### *Petition*

- Largely a reiteration of records from the 1406 parliament with the additional request that ‘no community or company should make any such livery of cloth or hoods at the expense of that community or company, upon penalty that each man of that community or company who acts contrary to this statute or ordinance should pay 40 s. to the king.’ Guilds, fraternities and those of mysteries of cities and boroughs to be exempt from this.

##### *Response*

- ‘The king wills it.’

#### 1414<sup>12</sup>

- Pardon given to anyone who contravened the statutes prior to 8 December 1414, ‘at the request of the commons assembled.’

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<sup>11</sup> *PROME*, viii, 547-8.

<sup>12</sup> *PROME*, ix, 80-1.

1427<sup>13</sup>

*Petition*

- Complaint that the statutes were not being upheld ‘because those who act contrary to the said ordinances are unable to be indicted before the said justices on account of the great maintenance had in this matter.’
- Justice have the power ‘to award writs of attachment and distraint’ against all those who contravene the act, which was to be addressed to the sheriffs of the county and returned to the justices at their sessions
- If returned by the said sheriff ‘then let *capias* and *exigent* be awarded against them’ in the same manner as done against those indicted for trespasses committed with force and arms against the king’s peace.
- Anyone giving illegal livery should be fined 100s per offence.
- Anyone receiving illegal livery should be fined 40s per offence.
- First explicit mention that the statutes should be enforced in the palatines of Chester and Lancaster and authority to examine such cases.
- Request also that the statutes that had hitherto been made should not be repealed.
- Provision in the petition that statute ‘should not apply as regards the carrying out of examinations by sheriffs of London, mayors for the time that they are in office, serjeants of the law at the time they assume the same rank, and entrants to the universities within the realm of England at the time of their entries, or to those who took liveries from them for the aforesaid time.’

*Response*

- ‘Let the statutes made before this time in this regard be upheld and observed and duly enforced.’

1429<sup>14</sup>

*Petition*

- Largely a reiteration of 1427.
- Commons petition complaining that the statutes were not being upheld.

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<sup>13</sup> *PROME*, ix, 354-5.

<sup>14</sup> *PROME*, ix, 394, 402-3.

- Request that lords be prohibited from harbouring felons in their households and banning them from aiding, supporting or maintaining ‘as by word, by message, or by writing, to any officer, judge, jury, or to a party, or by gift of his clothing and livery, or by taking the party into his service.’ Requirement to abandon such people ‘without delay.’
- Permissible for livery to be continued to be used in times of war.
- New act should come into effect from the next Christmas.
- Anyone buying liveries for such purposes should likewise be indicted for contravening the statutes.

*Response*

- ‘Let it be done as it is desired by the petition.’

**1437**<sup>15</sup>

- All offences against the statutes prior to 2 September 1431 included in a general pardon.

**1449**<sup>16</sup>

- A surviving copy of a parliamentary debate from the Winchester sessions of this parliament states that ‘The Lord Sturton thinketh that ther wold be certain comyssoners of oyer et terminer to enquire of murders and ryottes don against the peace and *also of lyveries* and that every shireve certify therof.’ Not included in parliament rolls.

**1455**<sup>17</sup>

- Included in a long list of offences in a general pardon for crimes committed prior to the opening of parliament.

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<sup>15</sup> *PROME*, xi, 220-22.

<sup>16</sup> *E.H.D.*, iv, 468-9.

<sup>17</sup> *PROME*, xii, 346-7.

1459<sup>18</sup>

*Petition*

- Complaint about the state of lawlessness throughout the realm.
- Many of those committing the various misdeeds were ‘supported and assisted by persons of great might, who have given their livery’ expressly against the form of the statutes.
- Two bills appended with list of wrong-doers, some of which were indicted for illegal livery. Request that they appear before chancery to answer these charges.

*Response*

- The king wills it.

1461<sup>19</sup>

- No known petition.
- Preamble stating that the king wished to remedy the troubles that had been brought about by livery.
- Command that ‘no lord or other person of lower estate or degree, spiritual or temporal, shall henceforth give any livery of badge, mark or token of retainer, but only when he has been specially commanded by the king to raise people to assist him, resist his enemies or repress riots within his land.’
- Still permitted to distribute livery of cloth to ‘household men, officers and learned counsellors, spiritual and temporal.’
- Wardens of the Marches of Scotland exempt from north of the Trent ‘whenever it is necessary to raise people for the defence of the marches.’
- Punishments set out in previous statutes to remain.
- No lord to receive, or keep, in their household, or maintain, or give livery to ‘pillagers, robbers, oppressors of the people, murderers, felons, outlaws, ravishers of women and other known and notorious offenders against the law, unlawful hunters in forests, parks or warrens, breakers of pounds and other

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<sup>18</sup> *PROME*, xii, 499-500.

<sup>19</sup> *PROME*, xiii, 65.

rioters, or any publicly named or reputed as such' until their innocence to proven.

**1468**<sup>20</sup>

- No known petition.
- Ordinance stating that from 24 June 1468 onwards no-one 'shall give any such livery or badge, or retain any person other than his household servant, officer, or man learned in one law or the other, by any document, oath or promise.'
- First statute that regulated forms of retaining in addition to distribution of livery.
- Fine of 100s per livery badge given or person illegally retained.
- Fine of 100s per month for persons illegally receiving livery or being illegally retained.
- King ordained and decreed that that cases can be heard 'that before the king in King's Bench as well as before the justices of the common bench, justices of *oyer et terminer* and gaol delivery, justices of the peace in their common sessions.'
- Authority confirmed in these matters to the king's justices in the palantines of Lancaster and Chester.
- First time that authority to hear cases is given to ecclesiastical courts – Archbishop of York's court in Hexhamshire and Bishop of Durham's court.
- Judges given discretion whether to accept evidence and hear complaints in private suits.
- Judges in courts have power to examine cases and summarily convict.
- 'And that no sheriff or coroner shall return on any sufficient defendant returned sufficient in any suit based on any of the foregoing, any smaller or lesser issues than 20s. on the first day of distraint, and 30s. on the second day, and 40s. on the fourth day, and increasing by 10s. every day thereafter; and if any sheriff or coroner acts to the contrary that he shall then forfeit 20s. for every such return made contrary to the aforesaid form.'

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<sup>20</sup> *PROME*, xiii, 384-6.

- Power to hear and determine personal pleas ‘in every corporate city, borough, town and port’ given to the relevant ‘mayor, sheriffs, sheriff, bailiff or bailiffs, or other chief officer.’
- All indentures contrary to the act were to be declared be void – i.e. all except those given to permanent household servants, officers and legal council.
- King to receive half of all the said penalties and forfeitures ‘except in cities, boroughs, towns and other places where any person or persons have such forfeitures and penalties by reason of privilege, liberties, franchises or grants; and that each such person and persons shall have half of the said forfeitures and penalties made by this act according to their said privileges, liberties, franchises and grants as the king should have had if the said privileges, liberties, franchises and grants were not held, granted or made.’
- Exemption given ‘to any person or persons, for their counsel given or to be given, and their lawful service done or to be done, and not for any other unlawful cause, or with any other unlawful purpose.’ Although, there was no requirement to be a trained lawyer.
- No exigent given to the justices in the ‘county palatine of Lancaster and Chester, or either of them, or in the said bishopric of Durham, against any person or persons, by, on, or upon any information, suit or process to be made by force of this ordinance.’ If any exigent is awarded, or any outlawry pronounced then the outlawry is void.
- Exemption ‘to any livery given or to be given at the coronation of the king or queen, or at the enthronement of an archbishop or bishop, or at the elevation, creation, or marriage of any lord or lady of title, or at the making of any knights of the bath, or at the inception of any clerk in any university, or at the making of sergeants-at-law, or to be given by any corporate guild, fraternity or craft, or by the mayor or sheriffs of London, or any mayor or sheriff or other chief officer of any city, borough, town or port.’
- Exemption for ‘any badges or liveries given in the defence of the king and of this realm’ such as the constable and marshal and the wardens of the marches towards Scotland north of Trent ‘when it shall be necessary to raise people for the defence of the said marches, or any of them.’
- Ends with the statement: ‘The king wills it.’

### 1472-1475<sup>21</sup>

- Prince of Wales exempt from the statutes, during the 3<sup>rd</sup> session (June 1474 to March 1475)

### 1483<sup>22</sup>

- Commons request that the statutes of livery, along with the first statute of Westminster, the statutes of Winchester, the statutes of weights and measurements and the statutes of servants and labourers, mendicants and vagabonds are upheld and enforced.

### 1485<sup>23</sup>

- The attending ecclesiastical and secular lords swore and article, in parliament, that they will not harbour any known felons nor given livery or retain anyone contrary to the statutes.

### 1487<sup>24</sup>

- Livery included in preamble as one of the things that the King was 'mindful' that had 'overwhelmed' the governance and good rule of the realm.
- Act against retaining the king's men – illegal to retain any of the king's officials.
- Tenants, inhabitants or the king's farmers were only allowed to assemble and wear the king's livery on his command along.
- If an officer failed to come to the king when commanded during times of trouble and war then 'all grants then made or had to him by the king or by any of the king's progenitors or predecessors of any of the said offices shall then be entirely void and of no effect.'
- Any of the king's men that wear the livery of someone else or are retained by them were to be punished by making void any grants or lands given to them.

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<sup>21</sup> *PROME*, xiv, 324-5.

<sup>22</sup> *PROME*, xiv, 413.

<sup>23</sup> *PROME*, xv, 131-2.

<sup>24</sup> *PROME*, xv, 371-2, 375-6.

1504<sup>25</sup>

- Preamble stating that despite numerous statutes being made, the problems associated with livery and retaining continues.
- All previous statutes to ‘be fully observed and kept and put into proper execution.’
- Retinue leaders required to possess a license.
- A lord can only give livery to, or retain a person ‘to whom he gives household wages without fraud or deception, except to his menial servant or his official or man learned in one law or the other.’
- All indentures previously made which contravene the act were to be declared void.
- 100s fine for every badge, collar etc illegal distributed or person retained.
- 100s fine per month for anyone illegally being retained or receiving livery.
- No-one was permitted to ‘name or cause himself to be named as a servant or retained to or with any person, or buy or cause to be bought or wear any gown as a livery gown, sign or token of the suit or livery of any person, or any badge, token or sign of any person.’
- 60s fine for each day and occasion that he does so.
- Further punishment – ‘imprisonment at the discretion of the judges or of the person before whom he shall be convicted of this, without bail or mainprise.’
- Justices of the peace ‘each of them to have lands and tenements to the yearly value of £5 or 40s. at least’ to investigate cases.
- Constables and bailiffs to appear before sessions of the justices of the peace and give evidence.
- Fine of 6s 8d and possible imprisonment for anyone concealing evidence or giving false evidence.
- Powers to justices of the peace to fix the time for the jury at the next general sessions or give their verdict at their discretion.
- ‘If the said jury ... do not find all such unlawful retaining and unlawful behaviour [and it is occurring] ... then every justice of the peace dwelling in the same county, present there at the sessions ... shall forfeit to our sovereign lord £10 each time such a juror shall be sworn.’

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<sup>25</sup> *PROME*, xvi, 365-8.

- Justices of the peace given power to make anyone they suspect appear at their open sessions and investigate ‘all such retaining contrary to this act’
- Justices of the peace to inform the king via King’s Bench of those whom they have examined and also those who have been accused of contravening the act.
- Fine of £100 each if they break this law.
- Informers were to be rewarded reasonably from ‘whatever comes to the king through his complaint.’
- Person convicted responsible for ‘all costs incurred in the case’ by the informer
- Act to come into effect ‘only after Whitsun next.’
- The act is only to be law during the life of Henry VII.
- Chancellor or keeper of the great seal, justices or council, given full authority ‘to summon by writ, subpoena, privy seal, warrant or otherwise, at their discretion, any person or persons offending or acting contrary to the foregoing’ and examine and judge those cases.
- Exemption for livery given by ‘any serjeant-at-law at his making or creation, or given by executors at the burial of any person as mourning array, or given by any guild, fraternity or craft corporate, or by the mayor and sheriffs of the city of London, or by any other mayor or sheriff, or chief officers of any city, borough, town or port of this realm of England, during their term of office and by reason of the same, or given by any abbot, or prior, or other chief head, governor, or officer of any monastery, abbey or priory or any other place corporate to their farmers or tenants or otherwise according to the use and custom of the same monastery, abbey or priory.’

## Chapter Five: The Legal Process

This chapter focuses on how the legal system enforced the statutes of livery. When considering the operation of the legal system, the crucial point to appreciate is that late medieval law enforcement was ultimately the king's duty, which he delegated to his subordinates. The late medieval justice system had several flaws that made enforcing legislation difficult. These problems were recognised at the time, as illustrated by a report from 1485 in which Chief Justice William Hussey stated that 'the law would never be carried out properly until the lords spiritual and temporal are of one mind for the love and fear they have of God, or the king, or both, to carry them out effectively'. Hussey then recalled how just an hour after the 1461 oath, he witnessed lords retaining men 'by oath, and swearing, and doing other things contrary to the above mentioned promises and oaths'.<sup>1</sup> Getting people to adhere to the statutes and getting justices to enforce them were, at times, problematic.

Previous studies have examined crime in either a particular locality, such as Philippa Maddern's work on crime in East Anglia,<sup>2</sup> or over a specific chronological span, like Edward Powell on the reign of Henry V.<sup>3</sup> J.G. Bellamy's *Bastard Feudalism and the Law* is thus far the only monograph to discuss the issue of the legal system's response to the potential problems of bastard feudalism affinities. However, the book is focused on the use of retainers by nobles to illegally occupy the lands of other nobles.<sup>4</sup> Rather than looking at the uses of retainers, this chapter examines the ways in which the law dealt with illegal livery/retaining. Numerous articles have dealt with illegal livery, although usually only over a short chronological span.<sup>5</sup> Similarly, specific articles have examined specific crimes or specific laws such as murder,<sup>6</sup> treason<sup>7</sup> and praemunire<sup>8</sup> and placed them within their wider political, social and legal

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<sup>1</sup> *EHD*, v, 532-4.

<sup>2</sup> Maddern, *Violence and Social Order*.

<sup>3</sup> Powell, *Kingship, Law and Society*.

<sup>4</sup> Bellamy, *Bastard Feudalism and the Law*.

<sup>5</sup> Cameron, 'The Giving of Livery and Retaining', 17-35; Hicks, '1468 Statute of Livery', 15-28; Saul, 'Abolition of Badges', 302-15.

<sup>6</sup> E.g.: Simon Payling, 'Murder, Motive and Punishment in Fifteenth Century England: Two Gentry Case-Studies', *EHR*, 113 (1998), 1-17; James Ross, "'Mischievously Slew' John, Lord Scrope, the Dukes of Norfolk and Suffolk, and the Murder of Henry Howard in 1446" in *Parliament, Personalities and Power*, ed. Hannes Kleineke (Woodbridge, 2011), 75-96.

<sup>7</sup> E.g.: Michael Hicks, 'The Case of Sir Thomas Cook, 1468', *EHR*, 90 (1978), 82-96; Matthew Strickland, 'Treason, Feud and the Growth of State Violence: Edward I and the 'War of the Earl of Carrick', 1306-7', in *War, Government and Aristocracy in the British Isles, c.1150-1500*, eds. Christopher Given-Wilson, Ann Kettle and Len Scales (Woodbridge, 2008), 84-113. More generally: J.G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge, 1970).

contexts. This chapter takes one crime, illegal livery, and examines how effective the legal system was at dealing the problem over a long period. Chapter Three demonstrated that the statutes were usually enforced either due to local disorder or in the context of wider national politics. This chapter focuses upon how the statutes were received and enforced at a local level and how cases were resolved.

### **Legal Terminology**

There were three types of offences that people were indicted for: illegal livery, illegal retaining and the fraudulent wearing of livery. The vast majority of cases involved the illegal distribution of livery, either of cloth, robes or badges, although there were seventeen cases pertaining to the fraudulent wearing of a noble's livery during the reigns of Henry VII and Henry VIII. Sixty-five cases state that the indictment was for illegal retaining as opposed to illegal livery. The distinction was that illegal retaining involved the distribution of a retaining fee instead of the distribution of a noble's livery. Fees were regulated by the 1468 statute, but it was not until 1480 in Shropshire when the phrase '*contra de statuti de retentatoribus*'<sup>9</sup> was used in an indictment instead of '*contra de statute de liberate pannorum*'. Retaining by fees was mainly prosecuted during the early Tudor period, although even during the reign of Henry VIII men were still being indicted for illegally receiving and distributing livery.<sup>10</sup> The precise type of livery given varied from case to case. The indictment against Sir Richard Vernon in 1434 stated that he had illegal given gowns, whereas the other cases indicted by the commission were for the illegally distribution of cloth.<sup>11</sup> A case from Hampshire in 1449 was for the distribution of a gown and a cap,<sup>12</sup> while the indictment against the earl of Shrewsbury in 1468 was for illegal distributing badges.<sup>13</sup> The majority of cases involving livery, however, used the generic, if ambiguous, phrase 'livery of cloth', which had the advantage of being broad enough to include most infringements of the statutes while remaining sufficient in law.

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<sup>8</sup> E.g.: Christopher Given-Wilson, 'The Bishop of Chichester and the Second Statute of Praemunire, 1365' *Historical Research*, 63 (1990), 128-42; Cavill, 'The Enemy of God and His Church', 127-50; Martin, 'Prosecution of the Statutes of Provisors and Praemunire', 109-23.

<sup>9</sup> KB29/110 rot. 16.

<sup>10</sup> KB29/148 rott. 12, 16, 40, 50; KB29/150 rott. 16, 21-2.

<sup>11</sup> KB9/11 ms. 15, 17.

<sup>12</sup> KB27/764 rot. 24 rex.

<sup>13</sup> KB9/13 ms. 23.

The specific act under which someone was indicted varied according to the specific offence committed. These differences, however, should not be overemphasised. Few indictments cited a specific act and there is little in the formulaic records to distinguish why the specific act was cited as opposed to others. From 1390 onwards it was always illegal to give livery to non-permanent household servants and the majority of cases would be illegal under this act. The indictments against the Savage family in Worcestershire and Gloucestershire were the most precise, distinguishing between offences committed under the 1468 act, the 1487 act that prohibited the retaining of the king's men, and the failure to report breaches of the statutes.<sup>14</sup> Many other indictments, however, fail to cite a specific statute. These included the indictment against George Neville, Lord Bergavenny in 1507 which stated that the indictment was against the form of the statutes of retaining, although did not specifically state whether it was the 1468 or 1504 statutes.<sup>15</sup> Other indictments, in contrast, indicate precision by citing specific statutes. In Rutland in 1510, two husbandmen were indicted under the 1429 statute for fraudulently wearing the livery of the earl of Surrey.<sup>16</sup> This is the only occasion in which this specific act was cited in the records of the King's Bench. The 1429 act had prohibited the purchasing of liveries,<sup>17</sup> but the act was not alluded to in similar cases such as the one against John Whitnall, yeoman, for illegally wearing the livery of the earl of Oxford in 1505.<sup>18</sup>

It was therefore rare for a specific act to be cited in the indictments or pardons for illegal livery. Local boroughs and justices kept books of relevant statutes close at hand.<sup>19</sup> When drafting an indictment it is likely that the clerk consulted his own copy and then cited the first relevant act pertaining to the offence. The statutes did, of course, evolve, but in all giving livery to non-permanent household servants was illegal and therefore when there was doubt about the precise statute, the clerk drafting the indictment used a generic phrase to ensure the indictment remained sufficient in law.

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<sup>14</sup> KB27/1028 rott. 33-4 rex.

<sup>15</sup> KB27/985 rott. 7-8 rex. Presumably, it was under the 1504 statute.

<sup>16</sup> KB27/1013 rot. 8 rex; KB29/142 rot. 24.

<sup>17</sup> *PROME*, ix, 402-3.

<sup>18</sup> KB27/975 rot. 6 rex.

<sup>19</sup> It is from such a book that a missing statute relating the re-marriage of dowager queens has been identified: Ralph Griffiths, 'Queen Katherine of Valois and a Missing Statute of the Realm', *Law Quarterly Review*, 93 (1977), 248-58.

## Letters, By-Laws and Proclamations

One means by which royal government was able to influence the actions of local law enforcers was by writing letters to towns ordering them to enforce a particular law. There are 18 surviving letters dated to the period discussed in this thesis from royal government to various towns and cities regarding illegal retaining.<sup>20</sup> In all of the letters the king, for varying reasons, ordered the town to either enforce the statutes or make an ordinance against anyone retaining or distributing livery in that town or city. Rosemary Horrox has stated that ‘many royal letters against livery and maintenance in towns were almost certainly issued at the towns’ own request’,<sup>21</sup> although this claim is asserted rather than proven. The following examination of the letters that were sent to towns demonstrates that, when considered in their wider context, many of the letters to towns suggest a crown-driven approach to limit retaining in towns as much as any desire from civic elites.

The main problem for any examination of letters sent by the crown to towns is that it is impossible to estimate how representative the surviving letters are from what was originally sent. That nine out of the 18 letters identified are from Harleian 433 is due to the fact that the manuscript is a unique survival. It is likely that analogous collections of letters and grants from the signet office existed for other reigns but were destroyed in the Banqueting House fire of 1619. Many of the letters and warrants of the signet are only known from copies received by the recipients.<sup>22</sup> The number of lost letters is impossible to quantify but it is clear that many other letters were sent. What Richard III’s signet book demonstrates is that letters were not sent to every town on every occasion. Instead, they were sent to specific towns and specific times, presumable for specific reasons.

One letter in particular, from the reign of Henry VII, indicates that more letters must have been sent out. On 15 February 1498 Henry VII wrote to the mayor and brethren of Carlisle regarding a potential Scottish invasion.<sup>23</sup> The letter reveals Henry’s concern about a potential Scottish invasion and details an ordinance preventing men in the city being retained. Carlisle’s importance in terms of national security is stated in the preamble when Henry stated that the city was ‘oon of the chief

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<sup>20</sup> See Appendix 4 for a list of letters sent to towns that have been identified predominantly from published local and civic records.

<sup>21</sup> Rosemary Horrox, ‘Urban Patronage and Patrons in the Fifteenth Century’, in *Patronage, The Crown and The Provinces*, ed. Griffiths, 165 fn. 78.

<sup>22</sup> *Harleian 433*, i, xvi.

<sup>23</sup> For this paragraph see: CRO, Ca2/150. A transcription of this letter is given in Appendix 6.

keyes and fortseessies to the defense of this our Realm'. As a result, no one living in the city was to 'hensfurthe [be] retheyned with any man be he spiritual or temporall lord or other by lyveree baggnen clothing cognoissance or any other wise'. This was an act brought about by military expediency. Nobody was to ride out of the city to become involved in local disorder, but were instead 'to be abiding and attending at all seasons bothe of warre and of peax in the same oure citie for the defens and suretie therof'. In attempt to ensure compliance, the Bishop of Carlisle was required to take sworn oaths that they would not break the ordinance. When considered in the wider history of Anglo-Scottish warfare and Henry VII's attitude towards retaining, this letter highlights the seriousness that retaining in the north was taken by Henry VII.

For centuries border raids by both Scottish and English armies tended to enter the opposing country via the east and exit via the west.<sup>24</sup> Similar letters, now lost, were surely sent to other northern towns and cities like Berwick, Durham and York. Considering Henry's relations with the north, an area inhabited by many Ricardians and prone to rebellion, the connection between concerns about rebellious nobles retaining large numbers of men with the potential of allying themselves with an invading Scottish army is apparent. Henry had recently quelled rebellions in both the South-West and, more significantly, in Yorkshire.<sup>25</sup> The north remained a rebellious area that Henry found difficult to control. It is likely that the influence of the Stanley family in the north-west was the reason that Margaret Beaufort wrote to her son, Henry VII, stating that she would not permit any of her tenants to be retained by anyone except the duke of York (later Henry VIII).<sup>26</sup> This was an attempt to maintain the personal powerbase of the Tudor dynasty in a distant and potentially rebellious region. Henry's problems were exacerbated by Scottish opportunism in English domestic strife in the second half of the fifteenth century. During the Wars of the Roses, Scotland maintained a consistent policy of providing support to the main opposition to the English government. Many prominent Lancastrians such as Margaret of Anjou and Sir John Fortescue fled to the Scottish court after Edward IV's

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<sup>24</sup> Maps detailing likely invasion routes during the First War of Scottish Independence which indicate a tendency to focus on the east coast rather than the west coast are found in: G.W.S Barrow, *Robert Bruce and the Community of the Realm of Scotland*, 4<sup>th</sup> edition (Edinburgh, 2005) 94, 129, 164, 306. These were likely to have remained standard invasion routes during the late medieval period.

<sup>25</sup> *Anglica Historia of Polydore Vergil*, 90-8.

<sup>26</sup> Printed in: C.H Cooper, *The Lady Margaret: A Memoir of Margaret, Countess of Richmond and Derby*, ed. J.E.B Mayor (Cambridge, 1874), 66-7. Also quoted in: Rachel R. Reid, *The King's Council in the North* (London, 1921), 88; Jones and Underwood, *King's Mother*, 122.

usurpation in 1461.<sup>27</sup> More recently, James IV had supported and aided Perkin Warbeck, the pseudo Richard IV.<sup>28</sup> Moreover, the Wars of the Roses were part of a longer process and it is only with hindsight that Bosworth can be regarded as final dynastic change of late medieval England. For contemporaries, a further usurping dynasty was perfectly conceivable,<sup>29</sup> hence the concern about a Scottish invasion.

Carlisle was the logical centre to coordinate defences against any potential Scottish invasion from the west coast. On 19 July 1488 a commission of array was given to John Cutte and Richard Gough for ‘the town and castle of Berwick and parts adjoining Scotland’ was ‘to be fortified and ready with able-bodied men for war’. Similar orders were sent to other towns and castles on the border, including Carlisle.<sup>30</sup> In 1497 Henry issued two proclamations, mainly to northern counties, ordering the mustering of forces to repel a Scottish invasion.<sup>31</sup> During 1497 Carlisle became a closed town as the north was placed under martial law.<sup>32</sup> Rebellion and a potential Scottish invasion were important considerations for Henry when he wrote to Carlisle in February 1498. Taken as whole, Henry VII’s letter to Carlisle indicates a fear that hostile northern lords would retain large groups of men to act as a fifth column in any potential Scottish invasion.

Just over a month later, on 20 March 1498, Henry sent a similar letter to Leicester. Unlike the letter to Carlisle that discussed the problem of rebellion or a potential Scottish invasion, Henry mentioned that Leicester was ‘parcell of our duchie of Lancastre’ and stated that no one was to be retaining by ‘cloth, cognisaunce, othe or otherwise, contrarie to our said lawed & statutz’.<sup>33</sup> It is likely that Leicester’s distance from the border is the reason why no mention was made about the threat of a Scottish invasion. Potential rebellion remained a concern of Henry’s and was undoubtedly a factor influencing the sending of the letter, but there is nothing in the letter to suggest that this was a copy of a standardised letter. Not every town was sent a letter forbidding retaining within its wall every time the king was anxious about retaining. Instead the towns that letters were sent to were targeted for specific reasons,

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<sup>27</sup> *The Exchequer Rolls of Scotland, vol. 7, 1460-1469*, ed. George Burnett (Edinburgh, 1884), 72 records a payment of £17 7d paid to ‘Duncan of Dundee’ for bringing Margaret of Anjou to Scotland.

<sup>28</sup> Norman MacDougall, *James IV* (East Linton, 1997), 117-32 passim.

<sup>29</sup> Hicks, *Wars of the Roses*, 233.

<sup>30</sup> *Calendar of Documents Relating to Scotland, Volume 4: 1357-1509*, eds. Joseph Bain (Edinburgh, 1888), no. 1542.

<sup>31</sup> *Tudor Royal Proclamations*, i, 40-1.

<sup>32</sup> Sean Cunningham, *Henry VII* (London, 2007), 86.

<sup>33</sup> *Records of the Borough of Leicester, Volume 2: 1327-1509*, ed. M. Bateson (London, 1901), 354.

a practice that by 1498 had several precedents. A royal ordinance in Northampton, dated 25 May 1460, forbade anyone in the town from taking ‘eny maner [of] Clotyng or Synges of eny lorde squyer or any other person unfraunchesed excepte the kyng’ on pain of imprisonment. The ordinance also stated that no-one was to enter into any unlawful oath, promise or assurance with anyone without the king’s permissions.<sup>34</sup> Two months later the Yorkists were victorious at the battle of Northampton, capturing Henry VI and killing several prominent Lancastrians.<sup>35</sup> The ordinance was an attempt to prevent townsmen from being retained by Yorkists, thus reducing their potential manpower. An ordinance given in London on 23 September 1467 prohibited the citizens of London from receiving the livery of any magnate with the punishment being the permanent loss of office, which is suggestive of the earl of Warwick’s growing isolation in these years and worries about him retaining men in the capital.<sup>36</sup>

Similar concerns explain the letters sent by Richard III during his two year reign since Richard had the threat of Henry Tudor, who eventually usurped the throne, albeit with a force comprised of foreign mercenaries rather than magnate retainers. The first two letters that sent by Richard – to Northampton on 3 August 1483<sup>37</sup> and to Southampton on 12 September 1483<sup>38</sup> – occurred between his usurpation and the duke of Buckingham’s rebellion. Both letters mention that liveries had ‘caused oftentimes gret divisione & geoperdie’ as well as ‘gret divisions troubles descencions and debates’. It was therefore ordained in both towns that the inhabitants of the town were not to be retained contrary to the statutes, suggesting that Richard was concerned about a potential rebellion in the aftermath of his usurpation. In sending such letters Richard was consistent with earlier practices such as Edward IV’s letter to the mayor and sheriff of Coventry on 11 February 1472 ordering them to uphold the statutes.<sup>39</sup> Many similar letters, now lost, were likely to have been sent by earlier kings. It is in Richard’s reign, however, that the first examples of a king writing to his own estate officials prohibiting anyone from retaining the king’s men in letters to Tonbridge,<sup>40</sup>

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<sup>34</sup> *Records of the Borough of Northampton*, ed. C.A Markham, 2 vols. (London, 1898), i, 297-8.

<sup>35</sup> *An English Chronicle*, 90-1.

<sup>36</sup> *Calendar of letter-books of the city of London*, L, 73, and 73 n. 1; Dunham, *Lord Hastings’ Indentured Retainers*, 81.

<sup>37</sup> *Harleian 433*, ii, 10.

<sup>38</sup> *Ibid*, 19.

<sup>39</sup> *The Coventry Leet Book or Mayor’s Register, 1420-1555*, ed. M.D Harris (Early English Text Society, 1907-1913), 373-5.

<sup>40</sup> *Harleian 433*, ii, 81.

Field Dalling (Norfolk)<sup>41</sup> and Tutbury.<sup>42</sup> Henry VII approved an act of parliament in 1487 ensuring that no one was to retain the king's men<sup>43</sup> and also sent letters to his lordships ordering that none of his tenants were to be retained by anyone else.<sup>44</sup> Letters such as these were an attempt by kings whose position was insecure to ensure the continued loyalty of their tenants during any future rebellion.

To regard all letters to towns regarding retaining as being purely the product of governmental concern about rebellion is, however, simplistic, as the letter of Margaret of Anjou to Leicester, in 1449, demonstrates. Margaret stated that she had heard that 'that certeyn persones in Leycestre had taken clothyng of diuverses persones ayenst the forme of the statut', notably Viscount Beaumont and Lord Ferrers. Furthermore, she had heard that Ferrers and his men had been illegally hunting in the lordship of Leicester and that her tenant, William Newby, had been assaulted by them. It was therefore ordained that no one was to 'geve any clothyng or lyverey to any persone dwellyng within our said lordship'.<sup>45</sup> The honour of Leicester was part of Margaret's dower when she became queen. This letter was a private document, not a governmental one. Eric Acheson noted that Margaret was interested in and concerned about her tenants which, in turn, enhanced their loyalty to the Lancastrian regime.<sup>46</sup> Margaret's actions are an example of her exercising good lordship by attempting to aid her tenants. Her letter was a response to local circumstances and problems caused by illegal retainers. Furthermore, the letter was written five months prior to the Winchester session of the 1449 Parliament in which a prominent Lancastrian, Lord Sturton, argued for *oyer et terminer* commissions to deal with, among other things, the problem of livery in the localities.<sup>47</sup> The letter was sent when Margaret and presumably other prominent Lancastrians were concerned about the problem of liveried retainers. Crucially, this was before Richard, duke of York's, sudden return to England in 1449, when there was less likely to have been a direct impetus to put in place measures to limit the size of noble affinities. Similarly, Richard III's letters to Tutbury and Tonbridge were to places where he held land, and

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<sup>41</sup> Ibid, 159.

<sup>42</sup> Ibid, iii, 116-17.

<sup>43</sup> *PROME*, xv, 375-6.

<sup>44</sup> H.M.C, 6<sup>th</sup> Report (London, 1877), 444.

<sup>45</sup> *Records of the Borough of Leicester*, ii, 256-7.

<sup>46</sup> Acheson, *A Gentry Community*, 4, 99.

<sup>47</sup> *EHD*, iv, 468-9.

therefore had legal tenants.<sup>48</sup> The salient point here is that these letters were sent not because the town wanted a royal letter on the issue of retaining, but because Richard III and Margaret of Anjou were both concerned about the problem in their own land.

To view towns as being passively receptive to royal letters, however, is mistaken. Towns were protective of their autonomy and were hostile to outside interference from the rural nobility. The effect of these letters to local communities is difficult to judge, particularly since the majority of letters have almost certainly been lost. Local reception to legislation depended on local circumstances and the willingness of civic elites to adopt and enforce legislation. Paul Cavill has argued that 'national legislation strengthened communities' own efforts to tackle problems and spurred them on to tighten up their own regulations'.<sup>49</sup> Several towns and cities included by-laws prohibiting the distribution of livery within the town.<sup>50</sup> In the years immediately preceding Edward IV's statute on retaining, Worcester and Leicester both prohibited the distribution of livery.<sup>51</sup> During Henry VII's reign, the city of York passed an ordinance regarding livery in 1503, while Gloucester enacted similar legislation in 1504, the same year as Henry VII's most rigorous act on retaining.<sup>52</sup> Surviving borough records, however, do not provide any examples of a royal letter directly preceding local by-laws on retaining. In these circumstances a royal letter was sufficient. Certain English towns did not want the problems brought about by unregulated retaining within their walls, irrespective of royal sentiment.

A further means by which the crown was able to communicate with the localities was by having a public proclamation stating the statutes were to be enforced. Proclamations covered a range of issues and subjects, including encouraging certain types of action or sending specific orders to the localities.<sup>53</sup> They were an efficient means by which royal government was able to communicate to the whole population,<sup>54</sup> possessing immense value in terms of propaganda. For the

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<sup>48</sup> *Letters and Papers Illustrative of the Reigns of Richard III and Henry VII*, i, 79-81; ii, 288.

<sup>49</sup> Cavill, *Parliaments of Henry VII*, 182.

<sup>50</sup> A full list is given in Appendix 5.

<sup>51</sup> *English Gilds: The Original Ordinances of more than one hundred early English Gilds, together with Pe olde usage of Pe Cite of Wynchester; the Ordinances of Worcester; the Office of the Mayor of Bristol; the Costomary of the Manor of Tettenhall*, ed. Toulmin Smith (London, 1870), 388; *Records of the Borough of Leicester*, ii, 293.

<sup>52</sup> *York Civic Records*, ii, 181; H.M.C., *12<sup>th</sup> Report, Appendix, Part IX: The Manuscripts of the Duke of Beaufort, K.G., The Earl of Donoughmore, and Others* (London, 1891), 436.

<sup>53</sup> James A. Doig, 'Political Propaganda and Royal Proclamation in Late Medieval England', *Historical Research*, 71 (1998), 254-5.

<sup>54</sup> Steven Gunn, *Early Tudor Government, 1485-1558* (Basingstoke, 1995), 188.

fourteenth century, John Maddicott argued that proclamations was the primarily means by which the government could influence public opinion to its own needs.<sup>55</sup> Several statutes concerning livery ended by stating that the laws were to be proclaimed.<sup>56</sup> Henry V's campaign against lawlessness included sending a writ to the sheriffs in London to proclaim that the statutes of livery were to be upheld and observed.<sup>57</sup> In April 1457 proclamations were made in Dover, Worcester, and elsewhere, ordering that no-one was to take the livery of any lord of gentleman.<sup>58</sup> A year after the passing of the 1468 act, a proclamation was made in the city of Nottingham.<sup>59</sup> Determining the effect, if any, that these proclamations had on either the enforcement of the statutes or the practice of illegal retaining is not possible from the surviving records. Moreover, it is uncertain how many proclamations there were that are unknown to modern historians. Mark Ormrod questioned the effectiveness of royal proclamations during the Hundred Years War,<sup>60</sup> but the continued use of proclamations into the Tudor period suggests that they did have an impact. Some proclamations were sent to the whole kingdom while others were targeted to specific places.<sup>61</sup> The fact that letters regarding illegal livery and retaining were targeted to specific places suggests that proclamations regarding illegal livery and retaining were similarly targeted to specific places and for specific reasons.

Tudor monarchs used proclamations with increasing regularity, developing a system began by their late medieval predecessors.<sup>62</sup> The problem of livery and/or retaining was included in an elaborate preamble along with various other crimes because it had become a standard problem that kings claimed to be combating. Henry VII included unlawful retainers in a long list of crimes in the preamble to a proclamation stating that JPs were to execute all statutes.<sup>63</sup> Considered in conjunction with the 1495 statute empowering JPs to hear information on any current statute,<sup>64</sup> the proclamation is indicative of Henry's desire to increase the role of JPs in local

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<sup>55</sup> John Maddicott, 'The County Community and the Making of Public Opinion in Fourteenth-Century England', *TRHS*, 5<sup>th</sup> series, 28 (1978), 34.

<sup>56</sup> E.g. 1390 and 1399: *PROME*, vii, 150; viii, 11-12.

<sup>57</sup> *Calendar of letter-books of the city of London*, I, 119.

<sup>58</sup> H.M.C., 5<sup>th</sup> Report (London, 1876), 492, 521; *CCR, 1454-1461*, 205.

<sup>59</sup> *Records of the Borough of Nottingham*, ii, 425.

<sup>60</sup> W.M Ormrod, 'The Domestic Response to the Hundred Years War' in *Arms, Armies and Fortifications in the Hundred Years War*, ed. A. Curry and M. Hughes (Woodbridge, 1994), 97.

<sup>61</sup> Doig, 'Political Propaganda and Royal Proclamation', 256.

<sup>62</sup> Gunn, *Early Tudor Government*, 189.

<sup>63</sup> *Tudor Royal Proclamations*, i, 18-19.

<sup>64</sup> *PROME*, xvi, 240.

government. Henry VIII ordered the sheriffs of London and Middlesex to make a proclamation ‘that by reason of murders, riots, routs, unlawful assemblies, maintenance and embraceries due to neglect of the statutes against liveries and retainers, these statutes will henceforth be strictly enforced’.<sup>65</sup> A similar proclamation was made in Leicester in 1520.<sup>66</sup> Later proclamations during the reign of Elizabeth I similarly highlighted the problems associated with retaining and ordered their suppression.<sup>67</sup> Proclamations were the means by which central government, over a number of centuries, communicated its wishes to the general population and display its authority. In many cases, livery was one of many crimes included in proclamations responding to local disorder.

Letters and proclamations were the means by which royal government could express and communicate its will towards the localities. That letters were sent out at certain times and to specific places shows that areas were targeted for specific reasons. In some cases there were genuine concerns about the levels of lawlessness in a locality caused by unregulated noble affinities. In other situations, such as Carlisle in 1498 and Northampton in 1460, they indicate a concern on the part of royal government about potential rebellions, composed primarily of unlawful retainers. Towns were, by contemporary standards, densely populated and therefore an ideal recruiting ground for rebel leaders. One consequence of these letters and proclamations was that towns themselves were able to utilise them to deal with their own problems. The initial impetus was normally from the crown, but thereafter towns and cities were able to exploit this impetus to help combat local concerns.

### **Who Heard the Cases?**

When considering the effectiveness of the late medieval system in regards to illegal livery, it is necessary to establish who heard and prosecuted cases of illegal livery. There were two types of justices that could hear cases for which records survive: commissions of *oyer et terminer* and local JPs. Commissions of *oyer et terminer* were advantageous because they imported powerful nobles and judges into a locality who were independent of the county’s internal power structures and were thus ‘the most

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<sup>65</sup> *L&P Hen. VIII*, i, no. 3353.

<sup>66</sup> *Records of the Borough of Leicester*, iii, 12.

<sup>67</sup> *Tudor Royal Proclamations*, ii, 350-2, 495-7.

powerful instrument the king possessed'.<sup>68</sup> JPs, in contrast, were drawn primarily from the local gentry, although peers were given commissions that are likely to have been honorific. JPs were embedded within the county where they heard cases, and were part of the wider political and social structures of the county. In total 99 cases can be identified as arising from *oyer et terminer* files, compared with 85 heard by JPs. It has not been possible to positively identify where the remaining cases arose, although it is likely that most of those unidentified were initially heard by JPs.

Commissions of *oyer et terminer* could arise from either a private request, in which someone requested a commission due to local difficulties, or were initiated by the crown after reports of disorder in a particular county, or counties. The nature of commissions of *oyer et terminer* could, however, be biased in favour of a certain faction within the county. Discussing the Percy-Neville feud, John Watts has stated that '*oyer et terminer* commissions to local notables were entirely ineffective as a means of asserting central authority' because 'most of the commissioners with muscle were already belligerents; those without were soon drawn in'.<sup>69</sup> The Yorkshire commissions were particularly one-sided. Despite the fact that most of those named on the commissions were neither Percy nor Neville adherents, there were enough Neville adherents 'to weight the investigation in their favour', with Richard, duke of York, a friend of the Nevilles, also hearing the cases.<sup>70</sup> In addition, the commission explicitly stated that illegal livery was one of the offences into which they were to enquire.<sup>71</sup> The fact that two members of the Percy family were indicted for illegal livery,<sup>72</sup> while no members of the Neville faction were, suggests that the Percy family was targeted more extensively by the commission. It may be that the Nevilles only gave livery to legal retainers during this period, which is plausible given the extensive landholding the Nevilles enjoyed in Yorkshire during the period.<sup>73</sup> The propensity of other magnates, such as the Percies, to artificially increase their affinities during times of upheaval suggests that this was widespread practice that the Nevilles may have been doing as well but the commission was willing to overlook their livery offences. The effectiveness of the commission's ability to deal with the offences is further

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<sup>68</sup> Bellamy, *Crime and Public Order*, 99.

<sup>69</sup> Watts, *Henry VI and the Politics of Kingship*, 301.

<sup>70</sup> Griffiths, 'Local Rivalries and National Politics', 594-5.

<sup>71</sup> *CPR, 1453-1461*, 121-3.

<sup>72</sup> KB9/149/1 ms. 20-1, 49, 53; KB9/148/2 ms. 31, 38, 54-5. Discussed below.

<sup>73</sup> At this time there were four major landowners in Yorkshire: The Neville, the Percies, the duke of York and the king, as duke of Lancaster: Griffiths, 'Local Rivalries and National Politics', 589-90.

questioned by the fact that several writs of *venire facias* were sent out concerning these offences four years later.<sup>74</sup>

Not all commissions of *oyer et terminer*, however, were one-sided affairs. The Staffordshire cases of 1414 arose from a commission resulting from parliamentary petitions from both Hugh Erdeswyk and Edmund Ferrers about the lawless activities of the other. The subsequent indictments against Ferrers, Erdeswyk, their retainers, and others in the county were a result of their own complaints.<sup>75</sup> They were indicted by an *oyer et terminer* commission that they themselves helped to set up. In contrast, the cases that arose in Derbyshire in 1468 came about due to Edward IV's 'alarm' at the violence occurring in the county after the murder of Roger Vernon.<sup>76</sup> The commissions included prominent nobles such as the king's two brothers, the dukes of Clarence and Gloucester, the king's father-in-law, earl Rivers and the earl of Warwick.<sup>77</sup> The cases of illegal livery that arose were not the product of an overtly political commission of *oyer et terminer*, but rather one that was focusing on local lawlessness and trying to impose law and order.<sup>78</sup> In many cases, there was no overt partisanship on the part of the commission. Politics were rarely so polarised and the justice system so politicised as they were during the 1450s. The partisan nature of illegal livery cases that came during the 1450s Yorkshire were the product of the political turmoil and upheaval of the period and are not evidence that *oyer et terminer* commissions necessarily produced partisan results.

Although only 85 cases can positively be identified as originating from JPs rather than commissions of *oyer et terminer*, it is likely that this figure was significantly higher and that more cases were heard by local JPs rather than commissions of *oyer et terminer*. Proportionately, this was significantly fewer than commissions of *oyer et terminer*. Assuming that every county heard four sessions of the peace per annum over the 130 years covered by this study then there should have been 17,680 sessions of the peace.<sup>79</sup> Illegal livery was rarely heard by sessions of the peace. Christopher Given-Wilson suggested that the Commons would have wanted the statutes of 1399

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<sup>74</sup> KB29/89 rott. 5-6, 32.

<sup>75</sup> 'Extracts from the Plea Rolls of the Reigns of Henry V and Henry VI', 3-4; KB9/113 mm. 2, 11, 28, 40-3.

<sup>76</sup> Hicks, '1468 Statute of Livery' 18.

<sup>77</sup> CPR, 1467-1477, 69-70.

<sup>78</sup> KB9/13 ms. 11, 19-23, 63.

<sup>79</sup> 34 counties returned cases to King's Bench (i.e. all 37 except the palatinates of Cheshire, Lancashire and county Durham).  $34 \times 4 \times 130 = 17,680$ .

and 1404 enforced, a desire aided by the fact that JPs, who were drawn from the same social class as the Commons, had the ability to hear and determine cases.<sup>80</sup> This supposition, however, fails to appreciate that Commons and the JPs were drawn from the same class of people that distributed illegal livery. Discussing commissions of *de mutuo faciendo* in Henry VI's reign, Hannes Kleineke has stated that because the commissions were drawn from the county gentry they 'had a vested interest in sparing their fellows' who did not lend to the crown. The reason for this was self-interest because 'no guarantee that a man whom they put under pressure to lend would not himself be a commissioner at the time of the next commission and [be] ideally placed to exact his revenge'.<sup>81</sup> Similar informal understandings probably existed with regards to the legal system, particularly in regards to practices of legal and illegal retaining. While it is excessively cynical to argue that every, or even the majority, of JPs were illegally retaining men and flagrantly ignoring the illegally retaining of their fellow gentry, it is equally naive to assume that such abuses never occurred.

Furthermore, JPs later heard a wide range of cases of illegal livery, particularly during the reign of Henry VII, which is indicative of Henry VII's campaign against illegal retaining. Cases had arisen from quarter sessions in earlier reigns, but prominent nobles only seem to have been indicted by commissions of *oyer et terminer*, such as the dukes of Norfolk and Suffolk.<sup>82</sup> Sessions of the peace were, at times, able to indict prominent nobles. Lord Bergavenny, for instance, was indicted by the local justices for illegally retaining 471 men, although this certainly enjoyed royal backing.<sup>83</sup> Similarly, the 15 cases of illegal livery in Warwickshire in 1489 were identified by JPs, in contrast to an *oyer et terminer* commission in the county two years earlier that yielded no cases of illegal livery.<sup>84</sup> It was not just royal influence, however, that encouraged the application of the statutes of livery by local sessions of the peace. Thomas Savage, archbishop of York, heard cases of illegal livery in 1504 in which men were fraudulently wearing the livery of the earl of Northumberland, among others.<sup>85</sup> A few months later, on 23 May 1504, a brawl occurred at Fulford between servants of the earl of Northumberland and the archbishop of York which

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<sup>80</sup> Given-Wilson, *King's Affinity*, 243.

<sup>81</sup> Hannes Kleineke, 'The Commission *De Mutuo Faciendo* in the Reign of Henry VI', *EHR*, 116 (2001) 25.

<sup>82</sup> KB27/839 rott. 31-2 rex.

<sup>83</sup> KB27/985 rott. 7-8 rex.

<sup>84</sup> KB9/380 ms. 41. For early commission see: KB9/138.

<sup>85</sup> KB9/434 ms. 18, 20-2.

was the culmination of a local rivalry between the two factions. R.W Hoyle has stated that although ‘the earl *was* able to intimidate the archbishop through the use of force, the latter was able to strike at the earl through indictments’.<sup>86</sup> Local political rivalries were at times influential in the application of the law.

The involvement of bishops and archbishops in hearing cases of illegal retaining was part of their role in local government. Archbishop Savage was involved in the prosecution of other cases of illegal retaining in Yorkshire at this time. An entry in Henry VII’s household books states that on 22 July 1504 ‘tharchbisshope of yorke sent a rolle of parchment by master magnus wherin er compiled certyrn endictments made aygents master Stanley concerning his reteyndors’.<sup>87</sup> The indictment is probably that against Sir Edward Stanley for illegal retaining in Yorkshire at this time.<sup>88</sup> At that time Savage, although not officially Lord President of the Council of the North, had assumed a position very similar to the position that came into being during later in the sixteenth century.<sup>89</sup> Ecclesiastical lords were integral to law enforcement across late medieval and early Tudor England. In Hampshire in 1505, Richard Fox, bishop of Winchester, took the unusual step of personally attending the quarter session that indicted Sir William Sandys for illegal livery in addition to several other crimes related to feuding with the Lisle family in the region which indicated ‘the gravity of the event’.<sup>90</sup> The Hampshire bench was dominated by the bishop of Winchester but, like many great lords, it was unusual for him to attend in person. Instead the bench was staffed by lawyers who were usually ‘the bishop’s hand-picked servants’.<sup>91</sup> A bishop or an archbishop attending quarter sessions in person was as significant as a duke or an earl attending in person, thus indicating the seriousness of the cases against Sandys and Stanley.

By Henry VIII’s reign, commissions of *oyer et terminer* were no longer the most effective means of prosecuting illegal livery as other mechanisms were being developed. In 1516, Cardinal Wolsey ordered the earl Huntingdon and the marquis of Dorset to appear before him in Star Chamber to answer charges of illegal retaining,

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<sup>86</sup> Hoyle, ‘The Affray at Fulford’, 239-56, quotation on 245; E163/9/27.

<sup>87</sup> BL, Add MS. 21,480 fol. 189.

<sup>88</sup> KB29/134 rot. 26.

<sup>89</sup> Reid, *King’s Council in the North*, 85.

<sup>90</sup> KB9/436 ms. 16; Luckett, ‘Crown Office and Licensed Retinues’, 231.

<sup>91</sup> Lander, *Justices of the Peace*, 159. The importance of the bishop of Winchester for law enforcement in Hampshire is also evident in an inquisition from 1481 concerning the escape from the bishop’s prison at Wolvsey. *Cal. Inq. Misc., 1442-1485*, no. 472.

which was part of his attempts to deal with disorder and ‘demonstrate an even-handed application of justice’.<sup>92</sup> The application of the statutes of livery, as shown in Chapter Three, was sporadic. Commissions of *oyer et terminer* were an opportunity to deal with local disorders and indict leading men of the county for several crimes, including illegal livery. Henry VII’s reign, while continuing to have cases of illegal livery arising from commissions of *oyer et terminer*,<sup>93</sup> witnessed more cases arising from ordinary sessions of the peace. Cases were, however, rare even during the reign of Henry VII. Sessions of the peace and commissions of *oyer et terminer* could be influenced by political circumstance at national and local levels which produced indictments for illegal livery.

### **Dates of Offences**

In relation to the 1468 act Bellamy stated that ‘to assess how the act was enforced is difficult’ because nobles probably continued retaining out of either ignorance of the law or ‘in hope that would be a dead letter or even in plain defiance’.<sup>94</sup> The operations of the legal system and the motivations of justices are difficult to decipher from the formulaic records that survive. No records explicitly state why the acts were enforced on some occasions and not on others, or why certain people were targeted for prosecution other than the fact that they had committed a crime. The identity of those charged with illegal livery and the extent of their ‘criminal career’ is discussed in the following chapter that deals with the identity and careers of those indicted for illegal livery. This chapter on legal process is concerned with how and why the statutes were enforced and the legal system’s response to offences against the statutes. One means of achieving this is examining the date of the offence compared to when those involved were indicted. Comparing these dates and locating them within a wider framework enables firm conclusions to be drawn about the nature and character of many of the cases. It is, however, important to note that many of cases have only been identified from writs of *venire facias* that do not record the date or place of an offence. Dates can only be ascertained for 201 cases and therefore discussion is confined to those cases.

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<sup>92</sup> Robertson, ‘Court, Careers and County Quarrels’, 158-9; KB27/1021 rott. 22-3 rex; KB29/148 rot. 16; *L&P*, ii, no. 2018.

<sup>93</sup> E.g. Surrey in 1491: KB9/390 ms. 44,47, 52-3.

<sup>94</sup> Bellamy, *Bastard Feudalism and the Law*, 85.

The distribution of livery on major feast days was part of the normal ritual and ceremony partaken in by lord and their servants. The earliest surviving complete list of livery is from the start of Edward I's reign in 1272 when livery was given to 102 members of the king's household at Christmas.<sup>95</sup> For the nobility the display of largesse at major occasions was equally important and bound up with concepts of good lordship. Distribution livery was an efficient and effective means of displaying largesse. Lords wishing to demonstrate their largesse found major religious festivals to be the ideal opportunity to distribute their livery to their retainers. Traditionally, there were two grants of livery per annum, a summer livery and a winter livery. Christopher Woolgar has suggested that household livery may not have been worn continually, 'but it was the intention that it should be worn on great occasions and when a lord wished to make an effort'.<sup>96</sup> Major religious festivals were great occasions and therefore distributing livery at them helped to assert a lord's standing.<sup>97</sup> Alternatively, liveries may have been distributed at certain saints' days with special meaning to particular lords.<sup>98</sup> In total, 22 offences were committed on, or around, Michaelmas, while 20 were committed on or around Christmas,<sup>99</sup> fourteen on or around Easter and eleven on or around All Saints Day. Around 40% of the cases for which the date of the offence is known occurred on these, and other, feast days.

The distribution of illegal livery during a major religious event, such as a quarter day, is particularly evident in earlier cases of illegal livery. Out of the 21 cases of illegal livery prosecuted by the Staffordshire *oyer et terminer* commission in 1414, sixteen of the offences were dated to around Christmas time between 1407 and 1413.<sup>100</sup> A further three cases occurred on the Easter Monday 1413. The other case involved Hugh Erdeswyk, esquire, giving livery to eight yeomen on the Monday after the feast of St Thomas.<sup>101</sup> Dating this particular offence is difficult because the scribe does not specify if it was St Thomas the Apostle, meaning the 21 December or if it was St Thomas of Canterbury (Thomas Becket), meaning 29 December.<sup>102</sup> The proximity of both feast days to Christmas, coupled with the fact that most offences

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<sup>95</sup> C47/3/21 no. 18.

<sup>96</sup> Woolgar, *Great Household*, 172-3.

<sup>97</sup> Davies, *Lords & Lordship*, 65.

<sup>98</sup> Mertes, *English Noble Household*, 153.

<sup>99</sup> Included in this figure are cases dated around the time of the Feast of St Thomas. Discussed below.

<sup>100</sup> For the cases in Staffordshire see: KB9/113 ms. 2, 11, 40-3.

<sup>101</sup> KB9/113 ms. 40.

<sup>102</sup> Cheney, *Handbook of Dates*, 60-1, 85.

against the statutes of livery at this time were committed around Christmas, suggests that this offence occurred as part of at the traditional Christmas distribution of livery. The indictment of Sir William Newport for distributing illegal livery to six yeomen of Lichfield stated that the offence had occurred at Christmas between 1407 and 1413 inclusive.<sup>103</sup> Therefore, it is clear that the livery offences were all committed on or around either Christmas or Easter, both of which were major religious events and feast days that would have been well attended.<sup>104</sup> The fact most of the offences committed in Staffordshire in 1414 occurred either on or around Christmas suggests that the distribution of livery in these instances was standard lordly practice, rather than the distribution of livery to non-permanent retainers for short-term lawless purposes. The clear implication of this is that many men who were not permanent household servants were being given livery illegally at the same time as many legal retainers were being given livery legally.

In contrast, the indictments in Herefordshire during the 1450s have no affiliation with major quarter days and indicate that men were illegally retained for the purposes of rebellion and lawlessness. Sir Walter Devereux was indicted for offences against the statutes of livery on 4 January 1452 by the 1452 commission of *oyer et terminer*<sup>105</sup> and for offences committed on 10 May 1455<sup>106</sup> and 1 April 1456<sup>107</sup> by the 1457 commission. The first offence occurred two months before members of the Yorkist faction in Herefordshire made a pact of mutual assistance and then demonstrated in favour of the duke of York on 3 March.<sup>108</sup> Devereux's second offence, that of 10 May 1455, involved illegally retaining only one tailor and does not seem to have been directly preceded any acts of rebellion or lawlessness. The implication is that the motivation behind this particular indictment was to burden Devereux with as many indictments as possible. Similarly, the third offence occurred eleven months before the commission sat, although Ailsa Herbert surmised that a second demonstration for 1456 was contrived.<sup>109</sup> If a second Yorkist rising in Herefordshire was indeed planned, it failed to produce an immediate response from the Lancastrian government who did not grant an *oyer et terminer* commission until 8

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<sup>103</sup> KB9/113 ms. 43.

<sup>104</sup> Mertes, *English Noble Household*, 151-4.

<sup>105</sup> KB9/34/1 ms 5; KB9/34/2 ms. 142.

<sup>106</sup> KB9/35 ms. 69.

<sup>107</sup> KB9/35 ms. 6.

<sup>108</sup> Storey, *End of the House of Lancaster*, 230.

<sup>109</sup> Herbert, 'Herefordshire, 1416-61', 106.

March 1457.<sup>110</sup> Moreover, all ten offences of illegal livery indicted by the *oyer et terminer* commissions were committed between 1 June 1455 and 12 June 1456, although none of them occurred during York's Second Protectorate.<sup>111</sup>

Many of Devereux's close associates also distributed illegal livery following York's resignation as protector. His son, the future Lord Ferrers of Chartley, Walter Devereux, esquire, illegally gave livery to four men illegally on 12 July 1456.<sup>112</sup> His son-in-law, Sir William Herbert, the future earl of Pembroke, illegally gave livery to three men on 12 March 1456'.<sup>113</sup> Significantly, one of Herbert's kinsmen, Walter Vaughan, was murdered the following day and on 15 March 1456 Herbert and Devereux's son, along with a large group of men, interrupted a session of the peace to ensure the execution of those believed to be responsible for the murder and subsequently taking control of the city of Hereford for 36 hours.<sup>114</sup> The murder of one of Herbert's kinsmen the day after he had been distributing livery is suggestive of wider political manoeuvrings and the motivation of the Yorkists faction in the county. The indictment against Herbert only states the men to whom *illegal* livery was given to and does not state anyone that was given *legal* livery. As one of Herbert's kinsmen it is conceivable that Vaughan was given livery legally with many other permanent household servants. If this deduction is correct then the clear conclusion is that Vaughan's murder, Herbert's distribution of livery and the Yorkist takeover of the city of Hereford within three days of each other were all inextricably interlinked. Vaughan's murder occurred at a time when Herbert was gathering his retainers together for rebellious purposes in the city of Hereford.

Elsewhere, 'Devereux's henchman in Leominster', Hugh Shirley, distributed illegal livery to 16 men at Leominster on 2 March 1456.<sup>115</sup> None of the offences in Herefordshire were committed on or around a major quarter day, indicating that these grants of livery were not part and parcel of the annual lordly calendar when livery was granted. Moreover, all the offences occurred in major urban centres. Unfortunately the

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<sup>110</sup> *CPR, 1452-61*, 348-9.

<sup>111</sup> KB9/35 ms. 6, 67-9. York was named Protector for a second time by Parliament on 11 November 1455. *PROME*, xii, 348-56. The precise date when the Protectorate ended is unclear although P.A. Johnson notes that it was no later than 25 February 1456. Johnson, *Duke Richard of York*, 137.

<sup>112</sup> KB9/35 ms. 67; Ralph Griffiths, 'Walter Devereux, first baron Chartley (c. 1432-1485)', *ODNB*, xv, 969-71.

<sup>113</sup> KB9/35 ms. 69; Ralph Griffiths, 'William Herbert, first earl of Pembroke (c. 1423-1469)', *ODNB*, xxvi, 729-31.

<sup>114</sup> KB9/35 ms. 44, 61-2, 65-6, 72; KB9/282 ms. 31; Herbert, 'Herefordshire, 1416-61', 111; Storey, *End of the House of Lancaster*, 180.

<sup>115</sup> KB9/35 ms. 6; Herbert, 'Herefordshire, 1416-61', 121 n. 73.

records do not state where in Herefordshire or Leominster the livery was distributed – i.e. in a public place such as the market or a tavern, or at a private residence – but, if large numbers of men were being given livery by the known Yorkists, then that may have exacerbated any Lancastrian fears which, in turn, precipitated Vaughan’s murder. Therefore, in Herefordshire, prominent Yorkists retained men by grants of livery in an attempt to quickly build up a following of men for rebellious and/or lawless purposes. This was exactly what the statutes were designed to combat.

Similarly, the dates of offences committed during the conflict between the Percy and Neville families in the early 1450s indicate the short-term enlarging of an affinity due to local feuding. Thomas Percy, Lord Egremont, was indicted on four counts of illegal livery, of which the date of two offences is given in the indictment: on 4 February 1454 at York<sup>116</sup> and on 12 May 1453 at Healaugh, causing him to miss the second session of the 1453 parliament and ignoring an order to go to Guienne for military campaigning.<sup>117</sup> Like the indictments in Hereford, there is nothing to suggest if the offence that was committed in the city of York was in a public or private place. The third case involving Egremont is only known by the surviving writ instructing the justices to determine the place and date of the offence.<sup>118</sup> His brother, Richard Percy, was indicted for giving illegal livery to four men, but this is also known only from a writ sent to the justices to inquire into when the offence was committed. The writ does, however, state that Richard Percy had given illegal livery to the men at three separate places in the East Riding of Yorkshire: Foston, Brandesburton and Brigham.<sup>119</sup> Richard Percy probably travelled around the East Riding distributing liveries over an unknown period of time. This could have been an on-going activity of his, but when considered in conjunction with the fact that his brother was also distributing livery in 1453 it is likely that this was a short-term event. At that time the Percy family was engaged in a local feud with the Neville family in the north-east. The most dramatic event in this was on 24 August 1453 in which Egremont and Richard Percy, along with 710 other named men, most of which were likely to have been legal retainers, attacked members of the Neville family, including the earl of Salisbury, while they were returning home from the wedding of Sir Thomas Neville

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<sup>116</sup> KB9/149/1 ms. 53.

<sup>117</sup> KB9/149/1 ms. 49; *PROME*, xii, 210, 212, 222-3, 324.

<sup>118</sup> KB9/149/1 ms. 21. Note: Egremont’s indictment for illegally retaining a man in the city of York is only known by writs of *venire facias* which do not record the date or place of an offense: KB9/148/2 ms. 31, 38, 54-5.

<sup>119</sup> KB9/149/1 ms. 20.

and Maud Stanhope. This was an attempt to assassinate Salisbury and other prominent members of the Neville family.<sup>120</sup> The numbers involved in the attack, and other activities, suggest that several others were in receipt of legal livery from the Percies during this time. The Percies were illegally, and probably legally, giving livery to a large number of men in Yorkshire in the build-up to attack on the Neville family. Like the cases from Herefordshire, the cases that arose from the *oyer et terminer* commission in Yorkshire indicate a process of affinity building by a faction in the county involved in local feuding.

This chronology also has implications for the dating of the origins of the feud. R.L. Storey and Ralph Griffiths argued that the territorial and political ambitions of the two families made violence inevitable and that the origins of conflict between the two families can be dated from at least the late 1440s.<sup>121</sup> This has been disputed by both A.J Pollard and Michael Hicks, who argue that violence between the two families was not inevitable. Professor Pollard demonstrated that during the 1440s and early 1450s the two families were able to coexist and cooperate in the running of local government in the north-east, including the shire election of 12 January 1453. The outbreak of violence in the county was a result of Neville aggrandisement in the Percy dominated East Riding of Yorkshire, which was evident with the announcement of the marriage of Sir Thomas Neville and Maud Stanhope. Relations between the two families then deteriorated quickly into open violence.<sup>122</sup> Professor Hicks similar argued that there was nothing inevitable about the feud and that the dispute ‘seems to have arisen abruptly in the summer of 1453’.<sup>123</sup> The fact that livery was being distributed during the spring of 1453 at the very latest indicates that Hicks is too late in the dating the beginning of hostilities to the summer of 1453.

Others argue that the origins of the feud were located outside of Yorkshire. Considering the feud from the context of their influence in the north-west, Peter Booth has shown that there were instances of violence in Cumbria in 1450 caused by the introduction to the county of the sons of Salisbury and Northumberland during the

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<sup>120</sup> For a discussion of the Percy-Neville feud see: Griffiths, ‘Local Rivalries and National Politics’, 589-632, especially 597-8 for discussion on the events of 24 August 1453; Storey, *End of the House of Lancaster*, 124-32.

<sup>121</sup> Griffiths, ‘Local Rivalries and National Politics’, 592-3; Storey, *End of the House of Lancaster*, 124-6.

<sup>122</sup> Pollard, *North-Eastern England*, 245-8, 255-6.

<sup>123</sup> Michael Hicks, *Warwick the Kingmaker* (Oxford, 1998), 86.

late 1440s.<sup>124</sup> The three years difference between the violence in Cumbria and Yorkshire suggests that feuding between the two affinities was contained and managed in Cumbria and that these events were precursors to, rather than the beginning of, the feud in Yorkshire. Moreover, no-one from Cumbria was given illegal livery by the Percies, although 38 men were indicted from the county, likely legal retainers considering the amount of land owned by the Percy family in the county.<sup>125</sup> Kay Lacey and M.W. Warner argued that a surviving document relating a precedence dispute indicates personal animosity between Richard Neville, earl of Sailsbury and Henry Percy, earl of Northumberland as early as 1442.<sup>126</sup> Again, while there may have been animosity between the two earls a decade before the disturbances in Yorkshire, there was nothing to suggest that those problems could escalate into full-scale private war, nor was there anything inevitably about the re-emergence of conflict between them. The distribution of illegal livery from at least 12 May 1453, and potentially earlier, shows the origins of the dispute were no later than spring 1453, but it was not inevitable that any of the lawlessness in Cumbria spill over into Yorkshire or earlier personal animosity between the earls would re-emerge after their precedence dispute.

A further problem that has been thought to have been exacerbated by bastard feudal retainers is the use of retainers for interference in elections. Discussing electoral disputes in Suffolk and Cambridgeshire, Roger Virgoe argued that electoral malpractices and the manipulation of returns by leading magnates, similar to what J.E. Neale discussed for the Elizabethan period, were well known in the fifteenth century.<sup>127</sup> Simon Payling has questioned this viewpoint stating that 'it seems that the politics of intimidation, even in the fifteenth century, were insufficiently subtle to

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<sup>124</sup> Peter Booth, 'Men Behaving Badly? The West March Towards Scotland and the Percy-Neville Feud', in *Authority and Subversion*, ed. Clark 101-3.

<sup>125</sup> *Ibid.*, 115-16.

<sup>126</sup> M.W. Warner and Kay Lacey, 'Neville vs. Percy: A Precedence Dispute, circa 1442', *Historical Research*, 69 (1996), 211-17.

<sup>127</sup> Roger Virgoe, 'Three Suffolk Parliamentary Elections of the Mid-Fifteenth Century', *BIHR*, 39 (1966), 185-96; Roger Virgoe, 'The Cambridgeshire Election of 1439', *BIHR*, 46 (1973), 95-101; Roger Virgoe, 'An Election Dispute of 1483', *Historical Research*, 60 (1987), 24-44. See also: C.H. Williams, 'A Norfolk Election, 1461', *EHR*, 40 (1925), 79-86. For Elizabethan Parliaments see: J.E. Neale, 'Three Elizabethan Elections', *EHR*, 46 (1931), 209-38; J.E. Neale, 'More Elizabethan Elections', *EHR*, 61 (1946), 18-44. Five out of the six instances discussed by Neale in the two articles, it should be noted, were from Welsh counties. For a more recent discussion of electoral politics and malpractice: Hannes Kleineke, 'The East Anglian Parliamentary Election of 1461', in *Parliament, Personalities and Power*, ed. Kleineke, 167-87.

carry an election'.<sup>128</sup> The Derbyshire *oyer et terminer* commission of 1434 is the only instance in which illegal livery and electoral interference can be connected. Electoral interference, however, was not the primary cause behind the commissions which was a general commission of *oyer et terminer*. Numerous indictments in the file pertain to various assaults, murders, rapes and thefts particularly in connection to disputes between Sir Henry Pierpoint (who earlier had been maimed) and Thomas Foljambe.<sup>129</sup>

The illegal livery cases from this commission are difficult to interpret because the offences were committed around a major religious festival but were also close enough to indictments for electoral interference to suggest a connection. Ten out of the twelve cases of illegal livery prosecuted by the commission were committed on or around *Clausum Pasche* (Sunday after Easter) between 1426 and 1433, while one was committed around Christmas 1429 and one on 1 December 1431.<sup>130</sup> Another indictment was against Henry, Lord Grey of Codnor, for attempting to impede the free election of knights of the shire by appearing at the electoral meeting, reportedly with 200 men on 24 June 1433.<sup>131</sup> Grey himself was indicted for giving illegal livery to eleven men on the Monday after *Clausum Pasche* 1433 (20 April).<sup>132</sup> At first sight it may appear that Grey was building up his affinity for the purposes of electoral interference but the writ for parliamentary summons was sent five weeks later on 24 May 1433.<sup>133</sup> Grey was also not alone in attempting to interfere with the free election. His main rivals at the election, Sir Richard Vernon and Sir John Cokayne likewise appeared at the election with reportedly 300 men.<sup>134</sup> Both men were also indicted for illegal livery. Vernon was indicted for offences committed on Christmas 1429, 1 December 1431 and the Monday after *Clausum Pasche* 1430 (24 April) while Cokayne was indicted for an offence on the Monday after *Clausum Pasche* 1426.<sup>135</sup> The events are complicated by the fact that Vernon and Cokayne were indicted for illegally receiving livery from Grey in 1433. Susan Wright suggested that if Grey had given livery to Vernon and Cokayne to influence the election was ineffectual<sup>136</sup> but

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<sup>128</sup> Simon Payling, 'County Parliamentary Elections in Fifteenth-Century England', *Parliamentary History*, 18 (1999), 247.

<sup>129</sup> KB9/11; *CPR, 1429-36*, 353; Wright, *Derbyshire Gentry*, 128-31.

<sup>130</sup> KB9/11 ms. 15, 17.

<sup>131</sup> KB9/11 ms. 17.

<sup>132</sup> KB9/11 ms. 15; Cheney, *Handbook of Dates*, 229.

<sup>133</sup> *PROME*, xi, 66.

<sup>134</sup> Discussed in: Wright, *Derbyshire Gentry*, 114; Payling, 'County Parliamentary Elections', 246.

<sup>135</sup> KB9/11 ms. 15; Cheney, *Handbook of Dates*, 229.

<sup>136</sup> Wright, *Derbyshire Gentry*, 132.

the summons to parliament were not sent out until after the livery offence was committed. There seems to have been a disagreement between Grey and Vernon and Cockayne in the weeks between the distribution of livery and the shire election. None of the livery offences committed by men involved in electoral interference were committed between the issuing of a parliamentary summons and the holding of the shire election, although it is likely that the men who were given illegal livery were involved in attempts to impede free elections.<sup>137</sup> In Derbyshire in 1434, illegal livery was indicted as an additional punishment for other acts of lawlessness in the county, but was not a means utilised to gain support for electoral interference.

The Derbyshire cases from 1434 indicate that men could be indicted for offences against the statutes of livery committed a number of years earlier. Similar practices are evident in a later commission of *oyer et terminer* in Derbyshire, that of 1468. The April 1468 commission of *oyer et terminer* in Derbyshire prosecuted two cases of illegal livery from 1461: one involving Sir John Gresley illegally giving livery to one esquire and three gentlemen;<sup>138</sup> and one involving Walter Blount, Lord Mountjoy giving illegal livery to ten men.<sup>139</sup> A further two indictments were for offences committed in 1464, those against Lord Grey of Codnor,<sup>140</sup> and John Cokeyn, esquire.<sup>141</sup> The only livery offence committed in the months immediately preceding the commission was against John Talbot third earl of Shrewsbury who illegally distributed livery to 22 men on 23 February 1468.<sup>142</sup> How the justices came to know about cases from four and seven years earlier can only be speculated. The indictment against Lord Grey of Codnor pertained to an offence committed on 4 April 1461, three days after Easter Sunday and therefore around the time when many liveries were distributed.<sup>143</sup> The four other cases however, were not connected with any major feast day or quarter day. Knowledge of the offences must have been given that information either by questioning locals or by having the information offered to them. The commission that heard the cases was a product of Edward IV's alarm at the levels of lawlessness in the county, particularly the murder of Roger Vernon on 3 December

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<sup>137</sup> The involvement of illegal retainers in other crimes committed by peers and gentry is discussed in the 'Other Crimes' section of Chapter Six.

<sup>138</sup> KB9/13 ms. 19.

<sup>139</sup> KB9/13 ms. 22.

<sup>140</sup> KB9/13 ms. 20. Note: he was the son of the Henry, lord Grey of Codnor who was indicted in 1434.

<sup>141</sup> KB9/13 ms. 21.

<sup>142</sup> KB9/13 ms. 23.

<sup>143</sup> KB9/13 ms. 20; Cheney, *Handbook of Dates*, 229 states that Easter Sunday 1461 was on 1 April.

1467. The fact that the Edward's brother, George, duke of Clarence, his chamberlain, Lord Hastings, and his father-in-law, Earl Rivers, indicates the seriousness which Edward regarded the violence in Derbyshire. Five yeomen who received illegal livery from Talbot had been involved in the murder of Nicholas Colyer two years earlier and the indictment against Talbot was probably bound up with these events.<sup>144</sup> The Derbyshire *oyer et terminer* commission of 1468 was zealous in its prosecution of offences and the indictments for illegal livery were both a punishment to the gentry of Derbyshire for years of lawless and a warning about their future conduct.

From the cases for which a date of offence can be identified during the reign of Henry VII, Michaelmas and All Saints day, not Christmas or Easter, were the main feast days on which an offence against the statutes of livery was committed. Fifteen cases occurred on, or around, Michaelmas with other offences occurring on or around All Saints Day, the Nativity of John the Baptist and the Purification of the Virgin Mary. The Warwickshire cases of 1489 suggest that many of the men were being given livery as part of the annual grant of livery to servants. Seven cases regard offences committed on or around Michaelmas 1488, while three offences were committed on or around All Saints' Day 1489 and a further offence on the feast day of St John the Baptist 1489.<sup>145</sup> Christine Carpenter argued that, in these cases, Henry VII was sending 'a clearing warning' to the local gentry 'that the only retaining [in Warwickshire] would be done by the king'.<sup>146</sup> When the dates of the offences are considered, coupled with the fact that the cases were first brought to King's Bench in Hilary 1489, Carpenter's interpretation is sound. Unlike earlier clusters of cases, such as in Staffordshire in 1414, the JPs in Warwickshire did not go back several years to find instances of illegal livery. Instead, they only indicted men for very recent offences. Given the fact that in many instances cases of illegal livery were brought for offences from several years previous, and that the offences were committed on a major quarter day, it is reasonable to assume that the gentry indicted in Warwickshire in 1489 annually gave livery to their affinity at these feast days and that some of the men they to whom illegally gave livery had received livery from them in previous years. Therefore, the cases in Warwickshire in 1489 were only for the most recent

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<sup>144</sup> Hicks, '1468 Statute of Livery' 17-19; Wright, *Derbyshire Gentry*, 139.

<sup>145</sup> The cases from Warwickshire are found on KB9/380 ms. 41. Note: the membrane itself consists of three smaller membranes sewn together. It should also be noted that the *Controlment Roll* contains the names of several other men for whom no corresponding indictment has been identified.

<sup>146</sup> Carpenter, *Locality and Polity*, 567, 574-6, quotation at 576.

offences. The indictments were a warning by royal justices in the county to the gentry that they had to make their retaining practices conform to the law.

Offences relating to the fraudulent wearing of a magnate's livery tended to be prosecuted quicker than other offences, with the date of the offence usually being within one year of the indictment. Seventeen cases, all but one of which occurred during the reign of Henry VII, involved the wearing of a magnate's livery by a person or persons that were not permanent members of their household. Seven of these cases originated from an *oyer et terminer* commission in Surrey in March 1491, six of which dealt with offence that had occurred within the previous six months. The one case that did not fit this pattern was against Thomas Mason, yeoman, for wearing the livery of the earl of Oxford at Wandsworth on 12 October 1485.<sup>147</sup> Nine cases pertain to indictments in 1504 and 1505 and in each case the offence occurred within a year of the person being indicted. In Yorkshire, there were three indictments against ten men for wearing the liveries of the earls of Derby, Northumberland and Sir Robert Constable respectively on 6 October 1503.<sup>148</sup> In Cambridgeshire, there were four indictments against five men for wearing the liveries of the earl of Oxford and the king's mother between 10 July 1504 and 2 January 1505, with similar cases arising in Essex and Huntingdonshire during the same period.<sup>149</sup> During Henry VIII's reign there was one case of this type that arose in Rutland, during Michaelmas 1510, for an offence committed on 4 November 1509.<sup>150</sup> There are two reasons for the speed at which men were indicted for this offence in contrast to other means of violating the livery laws. First, fraudulently wearing the livery of a great noble was regarded as a more serious crime than simply receiving an illicit robe or fee from him and therefore was indicted quickly when identified. Second, that it was harder to prove someone wearing the livery of a magnate fraudulently meaning that any indictments for this offence would necessarily have to be shortly after the offence was committed. Neither reason can be logically discounted. It is likely that both were factors influencing why these types of cases were indicted quicker than others. The speed that these offences were indicted suggests a campaign by local justices against the problem of men wearing the livery of great lords whose households they were not members. The

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<sup>147</sup> KB9/390 ms. 47 for all seven indictments.

<sup>148</sup> KB9/434 ms. 18, 21.

<sup>149</sup> KB9/436 ms. 7-9, 14.

<sup>150</sup> KB27/1013 rot. 8 rex; KB29/142 rot 24.

impetus was exacerbated by the fact people were wearing the livery for the king's mother and one of his closest confidants, the earl of Oxford.

Considering the dates on which offences against the statutes of livery were committed assists in contextualising local lawlessness and specific commissions. Indictments such as those from Herefordshire and Yorkshire clearly show that the members of nobility and gentry *did* go around enlarging their affinities in times of political turmoil or local feuding. The context of the 1450s and the build-up to civil war may partially explain this, although similar examples can be identified from other periods. Unfortunately, the precise place the offence occurred, public (e.g. a market square or a tavern) or a private residence is never recorded. Therefore, it can only be surmised whether or not the livery was distributed in a public place as a show of strength to the whole community or in private place, or even secretly to a discrete number of men. The offences identified by the commission of 1434 suggest that magnates did not distribute illegal livery in order to interfere with the electoral process, but that those given livery may later have aided such endeavours. The cases in Derbyshire in 1468 indicate the extent to which law enforcers had to rely on local information and memory otherwise they would have been unable to indict for offences committed several years earlier. When an offence occurred on or around a feast day, however, lords were not necessarily illegally enlarging their affinities for short-term gain, but were instead partaking in the annual practice of distributing livery. Indictments such as those in Staffordshire in 1414 and Warwickshire in 1488 indicate a campaign from the centre on illegal livery and the dates in which the livery was distributed indicate that these were likely to have been annual events in the lordly calendar. The majority of offences, however, were not committed on major quarter days and therefore the distribution of illegal livery did not normally occur during major feast days. If people were being given illegal livery at the same time that legal retainers were being livery, then the distribution of livery was an on-going practice throughout the year and not just confined to Michaelmas, Christmas or Easter. An examination of the dates of offences compared with when cases were actually brought forth indicates that the factors influencing why justices indicted people for illegal livery varied according to the context of each case or clusters of cases and that the distribution of illegal livery occurred throughout the year.

## Outcomes

Resolving legal cases during the middle ages was an arduous task due to the tactical use of the law, both civil and criminal, by members of the nobility and gentry. As a result, few cases were fully resolved. Outcomes can only be identified for 1055 of the 3740<sup>151</sup> people indicted for illegal livery (28.2%). The reason for this is the inherent weaknesses within the late medieval legal system. One of the most difficult aspects about resolving a case was the problem of getting people to appear before the King's Bench. Some cases could take decades to be resolved and the *coram rege rolls* contain an abundant corpus of returned writs from sheriffs stating that the accused had not appeared. An extreme example is that of Thomas Shirwood, gentleman, of Coventry. During Michaelmas 20 Edward IV a writ was sent out ordering him to appear before the local justices to respond to charges of illegal livery.<sup>152</sup> Subsequently, seven writs were returned by the local sheriff between 1 Richard III Easter and 15 Henry VII Trinity stating that he had failed to appear.<sup>153</sup> The case was never resolved and, from the controlment roll entry, it appears that Shirwood was outlawed. Even in cases in which a resolution was brought about, it could take years to achieve. For instance, in 1511 the Yorkshire knight Sir Thomas Darcy obtained a pardon for an indictment from 1500, for giving livery illegally to 10 men at Templehurst on 4 July 1498.<sup>154</sup> This section is concerned with how law enforcers were able to make those indicted for illegal livery to appear in court to answer their indictments.

Cases that involved members of the peerage illegally retaining large numbers of men tended to be resolved relatively quickly. George Neville, lord Bergavenny, was fined shortly after his indictment for illegal retaining. The controlment rolls indicate that he was indicted in Hilary 22 Henry VII for illegally retaining<sup>155</sup> and his fine can be found in the rolls for Michaelmas the following year.<sup>156</sup> The recent imprisonment of Edmund de la Pole, earl of Suffolk and Henry VII's dynastic

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<sup>151</sup> It should be noted that included in this figure are the 476 men indicted in Cheshire. The palatinate of Cheshire does not have an equivalent to the controlment rolls that provide evidence of things such as outlawry.

<sup>152</sup> KB29/110 rot. 17.

<sup>153</sup> 1 Richard III Easter – KB27/891 rot. 20 rex; 2 Henry VII Easter – KB27/903 rot. 6 rex; 6 Henry VII Easter – KB27/ 919 rot. 25 rex; 8 Henry VII Trinity – KB27/928 rot. 11 rex; 11 Henry VII Michaelmas – KB27/ 937 rot. 20 rex; 13 Henry VII Hilary – KB27/946 rot. 9 rex; 15 Henry VII Trinity – KB27/956 rot. 12 rex.

<sup>154</sup> KB27/1002 rot. 13; KB29/130 rot. 14.

<sup>155</sup> KB29/136 rott. 16-17.

<sup>156</sup> KB27/985 rott. 7-8 rex.

concerns after the death of Prince Arthur suggest wider problems and concerns about the security of the Tudor dynasty. Consequently, any powerful magnate with large retinue comprising of many illegal retainers that could easily turn into a private army aroused government suspicions.<sup>157</sup> This, in turn, meant that the case was brought to a conclusion with relative haste. Similar patterns regarding indictments against members of the peerage are evident during earlier reigns. The dukes of Norfolk and Suffolk were indicted within eight months of their retaining offences and obtained pardons during Henry VI's readeption.<sup>158</sup> These cases are unusual with regards to the fact that both involved members of the peerage and were settled within a relatively short period of time. The artificial expansion of a magnate affinity could cause genuine worry for the king, particularly during Henry VII's reign. The preceding four decades had seen numerous rebellions and usurpations that drew heavily on noble affinities and therefore the problem was dealt with at a comparatively accelerated pace.

The vast majority of cases, however, did not involve the peerage illegally distributing fees and/or livery to hundreds of yeomen who were not permanently residing in their household. Instead, they involved members of the gentry illegally retaining, or giving livery to, a small number of men of a lower rank. This did not offer them the same opportunity to engage in rebellious activities and, consequently, there was not the same urgency to resolve those cases. In many cases, only some of the men involved obtained a pardon, or were fined. Thomas Waryn of Broke, esquire, was accused of illegally retaining four men at Broke on 31 March 1452. The case exemplifies why the livery statutes were used in many cases and the difficulty involved in bringing cases to a conclusion. Two writs of *venire facias*, one in 34 Henry VI Michaelmas<sup>159</sup> and the following Hilary,<sup>160</sup> illustrate the difficulty involved in forcing indicted men to appear in medieval courts. The initial writ states that Waryn had been outlawed, but the second writ states that he was eventually pardoned. The case was never fully resolved since only three men finally appeared in court years later. Waryn appeared before the King's Bench on 8 February 1456 to produce his

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<sup>157</sup> Cameron, 'The Giving of Livery and Retaining', 31-3

<sup>158</sup> KB27/839 rott. 31-2 rex; KB29/99 rott. 31-2. Edward IV later wrote a privy seal letter to his chief justice ordering a halt to proceedings against them. Discussed in 'Royal Intervention' section of this chapter.

<sup>159</sup> KB29/86 rot. 1.

<sup>160</sup> KB29/86 rot. 11.

pardon<sup>161</sup> while two of the men he retained, William Martindale, a merchant from Newport<sup>162</sup> and John Jaye, a husbandman from Brook, appeared two years later on 18 April 1458 with a pardon.<sup>163</sup> In addition to illegal livery, Waryn was charged with several assaults in August 1455 along with various unknown others.<sup>164</sup> Given that Waryn had illegally distributed livery three years before committing the assaults and that he only retained four men illegally while being accused of committing various crimes with between seven and ten unknown others, it is impossible to say if any, all or some of those illegally retained were involved in Waryn's other illegal activities. What is clear is that Waryn only sued for a pardon for illegal livery after he was indicted for more serious crimes.

The trend whereby those who distributed the livery or fees were more likely to obtain a pardon was consistent throughout the period considered in this thesis. When William Birmingham was indicted in Staffordshire in 1414 for illegally giving livery to one carpenter and two yeomen at Easter 1413,<sup>165</sup> he obtained a pardon whereas those who received the livery never had their case resolved.<sup>166</sup> Walter Blount, Lord Mountjoy, was indicted in 1468 for giving illegal livery to ten men,<sup>167</sup> yet only one of those men, John Bonnington, esquire, obtained a pardon<sup>168</sup> in addition to Blount.<sup>169</sup> Even during the reign of Henry VII, when the laws were enforced with more vigour, the same pattern emerged. Sir William Lucy was indicted in Warwickshire in 1489 for giving illegal livery to three yeomen,<sup>170</sup> only one of which, John Somerlane of Warwick, obtained a pardon in addition to Lucy.<sup>171</sup> Moreover, in the previous two cases mentioned the men who received illegal livery obtained their pardon after those who distributed it to them. In the case of Somerlane, who obtained his pardon in 1499, it was a decade after Sir William Lucy. There were, of course, exceptions to this trend, particularly during Henry VII's reign. Indictments against Sir Thomas Cokesey, Edward Grey and Robert Throgmorton, for illegal livery in Warwickshire, in 1489, were settled within a year of the original indictments, with those who received illegal

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<sup>161</sup> KB27/779 rot. 23 rex.

<sup>162</sup> KB27/788 rot. 7 rex.

<sup>163</sup> KB27/788 rot. 2. rex.

<sup>164</sup> KB27/779 rot. 23 rex.

<sup>165</sup> KB9/113 ms. 11.

<sup>166</sup> KB27/617 rot. 18 rex.

<sup>167</sup> KB9/13 ms. 22.

<sup>168</sup> KB27/830 rot. 47 rex.

<sup>169</sup> KB27/831 rot. 13 rex.

<sup>170</sup> KB9/380 ms. 41 B.

<sup>171</sup> KB27/913 rot. 20 rex; KB27/928 rot. 3; KB27/951 rot. 5 rex.

livery also obtaining pardons.<sup>172</sup> However, these cases were rare, even within this cluster, since some cases were not resolved at all or took a longer time to be resolved, such as that against Thomas Shukburgh, esquire, which was not resolved until 1497.<sup>173</sup> It was usually those distributing the livery, rather than those receiving it, who were more proactive in obtaining a resolution to their indictment.

On occasion, parliamentary activity may have encouraged someone to seek a resolution to any outstanding indictments. In 1457 the Dorset court-holder Simon Raule was indicted for giving illegal livery to Philip Hons, labourer, but did not obtain a pardon for the offence until Trinity 1468, a few months after the passing of the 1468 statute of livery.<sup>174</sup> This case seems to have been unique in this respect, since the majority of cases do not seem to have been resolved on account of new statutes being introduced. The likely reason for this is that parliamentary activity and cases did not match up neatly for there to be any evident correlation between the two. Nevertheless, the fact that in this case the person in question waited eleven years to obtain a pardon suggests that the new act was influential in his decision making.

Others were acquitted due to insufficient evidence. Legal technicalities, such as poorly drafted indictments, could see a case being thrown out of court, such as when John, Abbot of Whitby, had his indictment for the rape of the thirteen year old Elizabeth Robinson in 1509 declared insufficient due to ‘some trifling omission in the description of the place where the offence was committed’.<sup>175</sup> In cases of illegal livery this was evident in the case against Hugh Peshale, esquire, in Shropshire for illegally giving livery to 14 men on 10 August 1476. Those accused promptly appeared in court after being indicted and through their attorney stated that the indictment was insufficient in law, since it failed to state the quantity of livery given to them.<sup>176</sup> Later indictments in Worcestershire in 1501 against Robert Throgmorton<sup>177</sup> and in Surrey in 1491<sup>178</sup> were similarly thrown out for being insufficient. These instances were, however, rare. Unless prompted by other legal concerns or a specific crown-driven drive against illegal livery, most indictments were ignored and therefore the accused

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<sup>172</sup> The three indictments are found at: KB9/380 ms. 41. For Cokesey’s pardon see: KB27/913 rot. 19 rex. For Grey’s pardon see: KB27/912 rot. 4 rex. For Throgmorton’s pardon see: KB27/913 rot. 18 rex.

<sup>173</sup> KB9/380 ms. 41 B; KB27/942 rot. 27 rex.

<sup>174</sup> KB27/829 rot. 6, 13; KB29/88 rot. 35; *PROME*, xiii, 384-6.

<sup>175</sup> Blatcher, *Court of King’s Bench*, 57 citing KB27/990 rot. 1 rex.

<sup>176</sup> KB27/865 rot. 2 rex. See also Dunham, *Lord Hastings’ Indentured Retainers*, 83-4, 146-7.

<sup>177</sup> KB29/131 rot. 15.

<sup>178</sup> KB29/121 rot. 27.

was less likely to go to the trouble and expense of having their indictment declared insufficient in law.

Another potential outcome for a case was that the accused was outlawed. In total, 430 men were outlawed for contravening the statutes of livery, of which 184 came from Yorkshire. A further 110 came from Shropshire, 45 were from Suffolk and 23 were from Surrey, while the remaining 72 coming from 13 other counties. The fact that Yorkshire had the largest number of men who were outlawed is unsurprising considering the large number of cases that occurred in Yorkshire. The fact that this constituted 55.9% of the men indicted in Yorkshire is indicative of the fact that most of the Yorkshire cases, and also most of the outlawries, occurred during the reign of Henry VII. The cases that occurred in Yorkshire in 1504 resulted in 79 men being declared outlaws,<sup>179</sup> although others obtained pardons soon after.<sup>180</sup> The number of outlawries in this case can be linked to the new retaining act of 1504 and the renewed vigour of the legal system in dealing with the problem of retaining.

Earlier cases from Yorkshire that led to men being outlawed had a similar pattern to many cases in which pardons were obtained. Nine of the ten men given illegal livery by Sir Thomas Darcy in 1498 were outlawed, although Darcy himself obtained a pardon in 1511.<sup>181</sup> Similar examples can be noted in other counties and at other periods. Five yeomen in Herefordshire were outlawed after being indicted with contravening the statutes of livery in 1491.<sup>182</sup> In Hampshire, five yeomen illegally given livery by Henry Bruyn were outlawed.<sup>183</sup> These examples highlight a further point, namely that it was predominantly the peasantry who received illegal livery that were subsequently outlawed. Out of the 430 men outlawed for illegal livery, 31 were from the gentry: one knight, Sir William Littleton,<sup>184</sup> eight esquires and 22 gentlemen. This equates to approximately 5.5% of those knights, esquires and gentlemen indicted for illegal livery. In contrast, approximately 13.3% of yeomen indicted for illegal livery (145/2025) were outlawed. Yeomen were therefore more than two times more likely to have been outlawed after being indicted for illegal livery than members of the gentry. The clear implication is that members of the gentry were more likely to get their case resolved via the purchase of a pardon. One reason may be financial since

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<sup>179</sup> KB29/134 rott. 26-7.

<sup>180</sup> E.g. KB27/976 rot. 8 rex; KB27/988 rot. 19 rex.

<sup>181</sup> KB27/1002 rot. 13; KB29/130 rot. 14.

<sup>182</sup> KB29/122 rot. 7.

<sup>183</sup> KB29/83 rot. 2; KB29/93 rot. 10.

<sup>184</sup> KB29/135 rot. 20.

they had more disposable income from which to purchase a pardon, but general pardons were relatively inexpensive and most yeomen could have afforded one if they so wished. A more plausible explanation is that the gentry were the main target of prosecution and the various legal activities they engaged in meant that they could not afford politically, economically and socially to be outlawed to the same extent that yeomen could.

Outlawries for illegal livery can almost entirely be identified from the reigns of Edward IV (193) and Henry VII (210). This evidence fits with Professor Bellamy's assertion that 'by the later fifteenth century to be outlawed was much less of a calamity than it had been a century before'.<sup>185</sup> The number of outlawries during this period is significant in the history of illegal livery. The fact that Henry VII's reign witnessed the most number of outlawries for illegal livery is unsurprising given the king's rigorous attempts to have the statutes enforced. Those during the reign of Edward IV, in contrast, require greater consideration. Many of the early cases during the reign of Edward IV resulted in outlawries, many against those receiving illegal livery such as in Kent in 1462,<sup>186</sup> Worcestershire in 1463<sup>187</sup> and Surrey in 1466.<sup>188</sup> The largest case during the reign of Edward IV, however, came from Shropshire in 1480. Out of the 117 men indicted for illegal livery in Shropshire in 1480, 110 are listed on the controlment roll as being outlawed.<sup>189</sup> The remaining seven, including Gilbert Talbot, esquire, who distributed the livery, appeared before the King's Bench to produce a pardon in 1488.<sup>190</sup> The fact that the annotations were not dated means it is not possible to state if they were outlawed towards the end of the Yorkist era or were outlawed by justices during Henry VII's reign. The extent to which the early Tudor regime enforced the statutes suggests that many of the outlawries occurred after Henry VII's usurpation in 1485.

The evidence of outlawries and how they came about is suggestive rather than conclusive since many of the outlawries are only known from annotations made at a later date. Following all cases to a conclusion is an impossible task because most cases were never resolved. The 62 instances in which someone pleaded not guilty do not state whether or not the person subsequently produced a pardon or were

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<sup>185</sup> Bellamy, *Crime and Public Order*, 105.

<sup>186</sup> KB29/92 rot. 13.

<sup>187</sup> KB29/94 rott. 1, 6.

<sup>188</sup> KB29/98 rott. 8, 19-20.

<sup>189</sup> KB29/110 rot. 16.

<sup>190</sup> KB27/908 rot. 19 rex.

convicted. Full resolution of cases was not necessarily the purpose of late medieval legislation. Diane Martin's examination of cases against the statutes of provisors and praemunire led her to conclude that: 'the absence of rigid enforcement of the statutes of provisors and premunire [between 1377 and 1394] suggests that the government's objective was to achieve social control rather than the punishment of guilty offenders'.<sup>191</sup> There was no social, cultural or legal imperative to resolve every case. Nevertheless, the surviving evidence enables conclusions to be drawn about the way in which cases were resolved. A class dimension can be detected in the fact that it was mainly those of lower social status that were outlawed after being indicted for illegal livery while many of those who were pardoned were from wealthier backgrounds. Marjorie Blatcher commented that 'when the criminal law dealt with the poor it was callous but inefficient; when it dealt with the better-off it was merely inefficient'.<sup>192</sup> At first, this may seem to accurately describe the legal process with regards to illegal livery. However, the vast majority of cases were never resolved. The target of many prosecutions was those who distributed the livery and they therefore needed to purchase a pardon. Many of those who received the illegal livery were under no compunction to obtain a pardon and resolve their case, being instead able to ignore their indictment.

## **Pardons**

There were 390 pardons obtained via the King's Bench for illegal livery. Pardons were widely available and could be obtained for virtually any crime, regardless of its severity. The fact that the Hampshire esquire Henry Bruyn obtained a pardon for illegal livery, and various other crimes, on 3 November 1452, when he was receiving livery as a member of the royal household, is due to the ease that pardons could be obtained, rather than any special favour given to a member of the king's household.<sup>193</sup> Since many of the cases that were resolved resulted in the person being pardoned, the concept of pardoning in late medieval England requires consideration. Rebellion and treason were capital offences and, in many cases, particularly after many battles during the Wars of the Roses, summary executions for rebel leaders prevented any

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<sup>191</sup> Martin, 'Prosecution of the Statutes of Provisors and Premunire', 123.

<sup>192</sup> Blatcher, *Court of the King's Bench*, 57.

<sup>193</sup> KB27/771 rot 2 rex; Linda Clark, 'History of Parliament Trust, London, unpublished article on Henry Bruyn, Portsmouth for 1422-60 section', citing E101/409/9, 11, 16, 410/1, 3, 6, 9. I am grateful to Dr Linda Clark and the History of Parliament Trust for allowing me to see this article in draft.

reconciliation. At all times and with all offences, however, clemency was as important as punishment and retribution. Clemency and forgiveness were integral to the operation of law during the late medieval and Tudor eras, and the conception of royal justice. Compared to crimes such as treason and homicide, illegal livery was a minor offence punishable only by a fine, although fines themselves could be cripplingly large.

Illegal livery was listed in several general pardons of the fifteenth and sixteenth centuries. General pardons issued at the parliaments of November 1414,<sup>194</sup> 1437<sup>195</sup> and 1455<sup>196</sup> included illegal livery as one of the pardonable offences. Pardons also survive within local civic records such as pardon to the city of Carlisle dated 1 July 1425 which included offences against the statutes of livery.<sup>197</sup> These pardons necessarily covered a wide range of crimes. Throughout late medieval and Tudor England, general pardons possessed significant political symbolism. For the fourteenth century, Helen Lacey has argued that ‘the strategic issue of a general pardon allowed the political community to symbolise reconciliation and demonstrate their support for the regime’.<sup>198</sup> After Bosworth, Henry VII ‘immediately made extensive offers of clemency’, which helped to legitimise his newly won status as king, since the prerogative of pardoning was something that ‘none but the king might do’.<sup>199</sup> Pardons, moreover, were a source of revenue since a fee of 18s 4d needed to be paid to Chancery to obtain a copy of a pardon<sup>200</sup> which was considerably cheaper than the majority of fines proscribed by various statutes. Nearly 3,000 people bought copies of the general pardon issued by Henry VIII at his accession within the first year of his reign with a further 300 purchasing pardons over the following three years.<sup>201</sup> Pardons therefore needed to be wide ranging and include as many crimes as possible, including illegal livery or retaining.<sup>202</sup> Politically, a wide ranging pardon

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<sup>194</sup> *PROME*, ix, 80-1.

<sup>195</sup> *Ibid*, xi, 220-2. A copy of this pardon survives in the archives of the city of Exeter: H.M.C, *Report of the Records of the City of Exeter* (London, 1916), 9.

<sup>196</sup> *Ibid*, xii, 346-7.

<sup>197</sup> CRO, Ca1/8.

<sup>198</sup> Helen Lacey, *The Royal Pardon: Access to Mercy in Fourteenth-Century England* (Woodbridge, 2009), 92.

<sup>199</sup> Kesselring, *Mercy and Authority*, 58.

<sup>200</sup> Paul Cavill, ‘The Enforcement of the Penal Statutes in the 1490s: Some New Evidence’, *Historical Research*, 82 (2009), 486.

<sup>201</sup> Kesselring, *Mercy and Authority*, 58, 69. Figures taken from C67/56-61.

<sup>202</sup> A cursory examination of the pardon rolls suggests that towards the end of the fifteenth century, illegal livery, and later illegal retaining, became regularly included in the pardon at the top of the rolls,

could encourage more people to obtain them, and thus acknowledge the legitimacy of the sovereign, something crucial after the six usurpations between 1399 and 1485. Economically, the more offences covered by a pardon, the more likely people were to purchase them which, in turn, enhanced government finances.

The purpose of a general pardon was to symbolically usher in a new era, such as the general pardon of 1437 which occurred at the parliament that marked the end of Henry VI's minority. In theory, this was when the young king was supposed to begin taking active control of government. The pardon, however, only covered offences up to 21 September 1431, five and a half years prior to the pardon being issued.<sup>203</sup> In this instance, the pardon only covered older crimes which ensured that any recent crimes could be prosecuted. The general pardon of 1455 similarly included illegal livery.<sup>204</sup> Again, it was at a time when the government was attempting to signify a new era of reconciliation, this time between the Lancastrian and Yorkist factions in the aftermath of the battle of St Albans. Reconciliation was the key aspect of a general pardon and thus the more crimes included the more people that could partake in this process of reconciliation. The clearest example of this comes from the Tudor period. In the final days of his reign Henry VII offered a general pardon to his subjects in order to help ease the transition of power to his young son.<sup>205</sup> The pardon, however, was only to last for the life of the king and the new king, Henry VIII, promptly issued a new, more wide-ranging general pardon that included 'all unlawful retainers'.<sup>206</sup> The general pardon enabled the new king to rehabilitate members of the nobility who had fallen foul of royal government during the latter years of Henry VII's reign and demonstrate a clear break from the old unpopular regime.<sup>207</sup> Pardons obtained at this time, including those for illegal livery, were part of the new king's attempt to reconcile the English population with the fledgling Tudor regime. Men such as Sir William Sandys, later Lord Sandys, and Sir Edward Darrell used the general pardon issued at the outset of the reign to obtain pardons for retaining offences they had been charged with in Hampshire and Berkshire respectively.<sup>208</sup>

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in contrast to the early years of the fifteenth century. This would fit with the pattern of enforcement discussed in Chapter Three. C67.

<sup>203</sup> *PROME*, xi, 220-2.

<sup>204</sup> *Ibid*, xii, 346-7.

<sup>205</sup> Gunn, 'Accession of Henry VIII', 281.

<sup>206</sup> *Tudor Royal Proclamations*, i, 81-3.

<sup>207</sup> Helen Miller, *Henry VIII and the English Nobility* (Oxford, 1986) 7-9.

<sup>208</sup> For Sandes: KB9/436 ms. 13; KB27/993 rot. 12 rex. For Darrell: KB9/436 ms. 16; KB27/993 rot. 8 rex.

A further reason for pardoning someone was that it enabled them to continue retaining men without fear of prosecution, which was particularly advantageous in the lead-up to military expeditions. The use of pardoning in order to bolster the kingdom's military capability was one means by which Edward III was able to increase his naval strength during the opening phases of the Hundred Years War.<sup>209</sup> Military expediency shaped and influenced Henry V's policy with regards to pardoning. Without a national standing army, the king needed the nobility to retain men as it was the only means by which an army could be raised. Henry V acknowledged this in a pardon to Thomas Stanley, who was indicted for giving livery illegally to thirteen men in Staffordshire.<sup>210</sup> The king was 'informed that the said Thomas gave livery to no other purpose than to serve the king's kinsman the earl of Warwick and cross with him on the king's service to the town of Calais' and consequently pardoned him.<sup>211</sup> A century later, many of those who obtained pardons for illegal retaining at the start of Henry VIII's reign were subsequently involved in his French campaigns such as Lord Bergavenny and Sir William Sandys.<sup>212</sup> Pardons were used to unite the prominent men of the kingdom who were also the leaders of retinues needed for the conduct of warfare in the build-up to major international campaigns.

Not every instance in which illegal livery was included in a pardon equated to an indictment for illegal livery. For instance, when Richard Haye was pardoned by Henry VII for his involvement in rebellion in Warwickshire and Worcestershire, illegal livery was included in his pardon, despite not actually being indicted for that specific crime.<sup>213</sup> The reason for this is that 'for many, the purchase of a pardon might have been regarded as protection against malicious accusation which never in fact materialised'.<sup>214</sup> Consequently, when someone purchased a pardon, they ensured that it had as many offences on it as possible. For example, 17 pardons are recorded in the

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<sup>209</sup> Craig L. Lambert, *Shipping in the Medieval Military: English Maritime Logistics in the Fourteenth Century* (Woodbridge, 2011), 16-18.

<sup>210</sup> KB9/113 ms. 11, 41.

<sup>211</sup> *CPR, 1413-1416*, 403.

<sup>212</sup> *Hall's Chronicle*, 658-9, 671; Alasdair Hawkyard, 'George Neville, third Baron Bergavenny (c. 1469-1535)', *ODNB*, xl, 495-7.

<sup>213</sup> KB27/909 rot. 20 rex.

<sup>214</sup> Lacey, *The Royal Pardon*, 91.

*Calendar of Patent Rolls, 1452-1461* that include illegal livery as one of the crimes pardoned, but have no identifiable corresponding indictments.<sup>215</sup>

The pardon for Margaret Beaufort is illustrative of the fact that pardons did not necessarily mean that an offence had been committed. In certain instances a pardon was insurance against any potential allegations. Henry VII had enrolled in the *coram rege rolls* for 20 Henry VII Trinity a signet letter in which he pardoned his mother, Margaret Beaufort, for any offences against the statutes of livery, and permitted her to continue retaining as she was.<sup>216</sup> Unlike licenses given to others, there was no limit on the number of people she was permitted to retain.<sup>217</sup> Michael Jones and Malcolm Underwood only refer to the letter as a license for the king's mother to retain whomever she saw fit to retain.<sup>218</sup> Undoubtedly this was a license to retain, but this is only one aspect of the document's significance. There were indictments in Cambridgeshire and Huntingdonshire during Hilary 1505 against men fraudulently wearing Margaret Beaufort's livery.<sup>219</sup> Although the case was only against Mace for wearing Margaret's livery and not against Margaret for distributing it, the letter must be regarded as insurance against any potential legal case taken out against the king's mother. Even if the king's justices were not inclined to indict her, a private suit was possible. Margaret's licence to retain was dated 1 June 1505 at Richmond palace, just a few months after the indictments in Cambridgeshire. At the same time, other members of the peerage were encountering the same problem of men being indicted for wearing their livery even though they were not permanent members of their household, such as the earl of Oxford, one of Henry's closet councillors.<sup>220</sup> No such licence has thus far been identified for Oxford, or many of the other magnates given whose livery was being fraudulently worn, although it is perfectly plausible that one was given to him.<sup>221</sup> Margaret Beaufort's pardon was a necessary

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<sup>215</sup> *CPR, 1452-1461*, 110-12, 469,478, 485, 498, 537, 540, 545, 569, 575, 599, 625, 628, 629, 633. An additional pardon survives for Philip ap Rhys in Pembrokeshire: *CPR, 1452-1461*, 17. It should also be noted that two of the pardons cover the same person, Edmund Blake, usher of the chamber, on 13 September 1458 and 10 February 1459 respectively: *CPR, 1452-1461*, 469, 478.

<sup>216</sup> KB27/976 rot. 3 rex.

<sup>217</sup> A license from 1540 permitted Thomas Wrothesley to retain up to 40 men. Presumably, it would have been an offence for him to retain more. HRO, 5M53/150.

<sup>218</sup> Jones and Underwood, *King's Mother*, 81. The letter is, however, described as a pardon in: Ross, *John de Vere*, 142.

<sup>219</sup> KB9/436 ms. 8, 14.

<sup>220</sup> KB9/436 ms. 7, 9, 14; KB27/925 rot. 6 rex.

<sup>221</sup> Ross, *John de Vere*, 142.

formality to prevent any potential indictment, while the licence ensured that there could never be a case against her.

Pardoning was therefore integral to the late medieval legal system. The fact that many of the cases of illegal livery ended with a pardon is therefore unsurprising. This is not to say, however, that no-one was ever prosecuted, found guilty and punished by the medieval legal system. Many cases went to King's Bench because those indicted wanted them moved to a higher court in order to obtain a pardon, a verdict that could only be overturned by an act of parliament.<sup>222</sup> Coupled with the fact that few indictments ever reached a resolution, it is clear that in many instances people were able to ignore their indictments for illegal livery. They only obtained pardons due to pressure from the legal system or as a safeguard against future, potentially burdensome, indictments.

### **Royal Intervention**

Another means by which the king could play a role in the legal process was by intervening in the legal proceedings against someone. Throughout the middle ages kings were expected to conform to the accepted conceptions of kingship and had to operate within existing social, political and cultural conventions. These practices and conventions enabled kings to show favour by intervening in the legal process. Instead of the accused appearing in court and producing a pardon, the king could instead write a letter, usually under the privy seal, to his justices ordering them to cease the proceedings against the defendant. These were not pardons, but rather a halt to the legal proceedings, which could be restarted at a later date if deemed necessary by the king. Letters such as this can be found in the Recorda files of the King's Bench, the warrants to the keeper of the privy seal and files of *oyer et terminer* commissions. These letters could cover any crime as evident by the fact that the *oyer et terminer* for Hertfordshire in 1472 which includes three letters from Edward IV intervening to halt the legal proceedings in three cases of treason.<sup>223</sup> Letters like these are clear documented examples of the personal nature of late medieval kingship and provide further evidence into the workings of the legal system. At present, little research has

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<sup>222</sup> Blatcher, *Court of the King's Bench*, 1.

<sup>223</sup> KB9/41 ms. 14, 32-3. For similar letters from Henry VII to justices in Warwickshire and Worcestershire in 1486: KB9/138 ms. 7, 20, 23-6. The only letter that this study has identified from the reign of Richard III regards 29 yeomen in Yorkshire for 'diverse felonyes riotes and other offenses', although illegal livery was not one of them: PSO1/59/3011.

been conducted on letters like these from the later fifteenth century but is clear that they demonstrate the informal pressures placed upon the legal system. Consequently, they provide an insight into the personalities, personal relations and reputations of medieval kings.<sup>224</sup>

Kingship and politics in the middle ages had a strong personal element, a point highlighted by J.R. Lander who stated that: ‘as well as being the fount of justice and discipline’, the late medieval king ‘still exercised justice tinged with favour through his own will, especially upon his richer subjects’.<sup>225</sup> Edward Powell regarded Henry V’s letter to his chief justice ordering the pardon of the William and John Myners for various offences in a local Staffordshire feud as a display of favour to the two men. William Myner even went on to serve with Henry V at Agincourt and therefore the pardons were part of Henry’s wider process of reconciliation and law-enforcement in the years prior to his French campaigns.<sup>226</sup> John Myners had been indicted for illegal livery in Staffordshire in 1414<sup>227</sup> but neither Henry’s letter to his chief justice or the pardon produced by the Myners mentioned illegal livery.<sup>228</sup> The letter itself, dated 6 June 1414, is torn with most of the left-hand side missing but the absence of any mention of illegal livery in the pardon suggests that was not included in the original letter. A further entry in the *coram rege rolls* from 3 Henry V Hilary states that Myners and the two men to whom he had illegally given livery had failed to turn up in court suggests that the case was never resolved since no further entries for the case have been identified.<sup>229</sup>

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<sup>224</sup> K.B. McFarlane believed that writing medieval biography was impossible since there was a lack of material that gave a genuine insight into the personalities of medieval men and women: McFarlane, *Nobility of Late Medieval England*, ix-x. The problems associated with writing medieval biography, particularly with regards to exploring the personality of the subject have been discussed most recently in: Michael Prestwich, ‘Medieval Biography’, *Journal of Interdisciplinary History*, 40 (2010) 325-46. In other publications Prestwich has utilised financial records in order to gain a sense of the personalities, preferences and personal relationships of fourteenth-century kings, notably Edward I and Edward II: Michael Prestwich, *Edward I* (London, 1988), 108-33, especially 111 for discussion of the king’s violent temper as illuminated by a payment compensating an esquire he assaulted at his daughter Elizabeth’s wedding; Michael Prestwich, ‘The Court of Edward II’, in *The Reign of Edward II: New Perspectives*, eds. Gwilym Dodd and Anthony Mussons (Woodbridge, 2006), 61-75. See also Nigel Saul’s psychological analysis of Richard II which suggests that Richard was narcissistic: Saul, *Richard II*, 435-67.

<sup>225</sup> J.R. Lander, ‘Bonds, Coercion and Fear: Henry VII and the Peerage’, in *Florilegium Historiale*, ed. J.G. Rowe and W.H Stockdale (Toronto, 1971), 349.

<sup>226</sup> Powell, *Kingship, Law and Society*, 213-4.

<sup>227</sup> KB9/113 ms. 42.

<sup>228</sup> KB27/612 rot. 24 rex. KB145/5/2/1, unnumbered membrane.

<sup>229</sup> KB27/619 rot. 9 rex.

Royal favour needed to be restrained and kings had to work within existing systems and conform to accepted customs. James Ross has interpreted Henry VI's intervening in the case against John, Lord Scrope's men for murdering Henry Howard as being indicative of Henry VI's inability to govern and the influence of the duke of Suffolk over Henry VI around that time.<sup>230</sup> The one letter in which Henry VI is known to have ordered a halt to proceedings against someone indicted for illegal livery was on 11 August 1452, when he wrote a letter, under his signet, ordering a halt to proceedings against Sir Walter Devereux.<sup>231</sup> In a contrast to later letters, the letter is brief, omits any elaborate address clauses and is much shorter, suggesting that it may have been drafted in haste. The letter did not exclusively deal with Devereux's livery offence but all the offences he had committed, including leading the Yorkist demonstrations in the city of Hereford that triggered the commission.<sup>232</sup> The *oyer et terminer* file thereafter contains charters of pardon against those men who were illegally in receipt of Devereux's livery.<sup>233</sup> Devereux's prominent role in Richard, duke of York's affinity is the prism through which this letter must be considered. After Richard, duke of York's unannounced return from Ireland in 1450 a series of incidents undermined the duke's relations with the King and the duke of Somerset.<sup>234</sup> The events in Hereford in 1452 and the subsequent suspension of the legal proceedings against Devereux and the pardoning of those indicted for receiving his livery was thus one of many incidents during the 1450s in which Richard, duke of York, and his affinity were reconciled with the Lancastrian regime.

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<sup>230</sup> Ross, 'Mischievously Slew', 75-96. In contrast, John Watts has argued that although 'the king [Henry VI] was surrounded by a group of self-interested courtiers blind to the interests of the community at large', it would be a mistake to assume that Suffolk and other leading courtiers 'actively directed this group'. Rather, they 'were so bound up with the management of curial power that they could not avoid association with its abuses'. Watts, *Henry VI and the Politics of Kingship*, 221. The problem is 'evil counsel' was a criticism levelled at earlier kings such as Edward II and Richard II and during Henry VI's reign these problems were exacerbated by Henry VI's fluctuating mental state and two severe breakdowns: Hicks, *Wars of the Roses*, 99-100; Watts, *Henry VI and the Politics of Kingship*, 301-2.

<sup>231</sup> KB9/34/2 ms. 33.

<sup>232</sup> See 'Dates of Offence' section of this chapter and 'Other Crimes' section of Chapter 6 for fuller discussions of Devereux's case.

<sup>233</sup> KB9/34/2 ms. 34-8, 40.

<sup>234</sup> For discussions of these events and incidents see especially: Ralph Griffiths, 'Duke Richard of York's Intentions in 1450 and the Origins of the Wars of the Rose', *Journal of Medieval History*, 1 (1975), 187-209; Ralph Griffiths, 'Richard of York and the Royal Household in Wales, 1449-1450', *Welsh History Review*, 8 (1976), 14-25; Michael K. Jones, 'Somerset, York and the Wars of the Roses', *EHR*, 104 (1989), 285-307; Michael Hicks, 'From Megaphone to Microscope: The Correspondence of Richard Duke of York with Henry VI in 1450 Revisited', *Journal of Medieval History*, 25 (1999) 243-56; Ralph Griffiths, 'Richard, duke of York, and the Crisis of Henry VI's Household in 1450-1: Some Further Evidence', *Journal of Medieval History*, 38 (2012), 244-56. For contemporary comments see: *An English Chronicle*, 71-3, 76-81.

The personal nature of medieval kingship is exemplified in Edward IV's letters to the chief justice of the King's Bench, dated 23 November 1468, which stopped proceedings against Sir William Brandon, and the six men alleged to have been in receipt of his livery, at Southwark on 10 July 1465.<sup>235</sup> Edward stated that Brandon and the men that he was alleged to have illegally retained had been wrongfully accused of illegal livery, and therefore, proceedings against them were to cease.<sup>236</sup> The king clearly knew Brandon and was familiar with his practices as evident in his dealings in the quarrel between the Pastons and the Duke of Norfolk over Fastolf's will. Edward is reported to have said to Brandon that 'thou can beguile the duke of Norfolk' but 'thou shalt not do me so for I understand thy false dealing well enough'.<sup>237</sup> The letter was dated June 1469, six months after Edward IV had intervened on behalf of Brandon to prevent his prosecution for illegal livery. Brandon and his family were subsequently loyal servants to Edward IV, although he abandoned the Yorkist regime after Richard III's usurpation. He was indicted for seditious activities for treasonable words said against Richard III on 2 November 1484 and fought alongside Henry Tudor at Bosworth and his son, also William Brandon, was killed by Richard himself.<sup>238</sup> Previously, Brandon's son had been knighted by Edward IV and was attainted after being implicated in the duke of Buckingham's rising in October 1483, although Brandon himself was not attainted.<sup>239</sup> The informal assistance given to Brandon was not an absolute pardon. Even fighting at Bosworth and losing a son did not necessarily protect him from future legal trouble. On 18 December 1487 Henry VII ordered his chief justice to resume all cases 'for suche interest and profite as be longeth unto us'.<sup>240</sup> In order to prevent any potential legal trouble regarding his previous indictments, William Brandon obtained a pardon for illegal livery and his seditious activities during Richard's reign during Trinity 3 Henry VII.<sup>241</sup> Brandon was protecting himself from any future action because royal intervention was no absolute legal guarantee and could only last for the life of the king intervening.

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<sup>235</sup> KB29/98 rot. 8; KB27/908 rot. 8 rex.

<sup>236</sup> PSO1/33/1742.

<sup>237</sup> *PL*, i, 544; Ross, *Edward IV*, 305-6.

<sup>238</sup> KB27/908 rot. 8 rex. Ross, *Richard III*, 224.

<sup>239</sup> Wedgwood, *Biographies*, 102-3.

<sup>240</sup> KB27/906 rot. 7 rex.

<sup>241</sup> KB27/908 rot. 8 rex.

Other similar letters were sent by Edward IV, two of which came from the cases from Derbyshire in 1468. The first, dated 25 January 1469, regards the Earl of Shrewsbury and 20 of the 22 men to whom he gave illegal livery<sup>242</sup> and states that Edward ‘of oure grace espciall’ ordered his chief justice to halt all procedures. The second, dated 3 February 1469, concerns John Pole, esquire who was one of the ten men indicted for receiving illegal livery from Walter Blount by the *oyer et terminer* commission at Derby in 1468<sup>243</sup>, and orders a similar halt to proceedings. Blount and one of the men he illegally retained, John Bonnington, esquire, had already appeared before the King’s Bench to produce pardons for their offences.<sup>244</sup> In both letters Edward IV ordered his chief justice to stop proceedings ‘unto suche tyme as shal pleas us’.<sup>245</sup> This was a clear attempt by Edward IV to ensure good behaviour from Shrewsbury, Pole etc.

Similarly, a privy seal letter dated 26 November 1471 ordered the cessation of all processes against the dukes of Norfolk, Suffolk and their men for illegal livery.<sup>246</sup> Michael Hicks has stated that the ‘divers great consideracions’ that caused these letters to be written were clearly political.<sup>247</sup> The letters are of further significance because during the readeption Norfolk had appeared before the King’s Bench on 8 February 1471 along with Sir William Calthorp to obtain a pardon for their indictment for illegal livery<sup>248</sup> while Suffolk had appeared two days earlier to obtain a pardon.<sup>249</sup> The validity of pardons issued during the readeption has thus far not been examined in any detail, but there has been nothing to suggest that the governmental work carried out during Henry VI’s second reign was retrospectively rendered null and void by Edward IV reclaiming the throne. The process of government continued irrespective of a change of monarch. Both men aided Edward in regaining his throne, with *The Arrivall* reporting that Norfolk was one of the men who sat in judgement of the

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<sup>242</sup> KB9/13 ms. 23. The two men named in the indictment but not in the letter are two yeomen of Bakewell, Derbyshire.

<sup>243</sup> KB9/13 ms. 22.

<sup>244</sup> KB27/830 rot. 47 rex; KB27/831 rot. 13 rex.

<sup>245</sup> KB145/7/8. Note: the documents in this file are not numbered, although the letter regarding Pole does immediately follow the letter regarding Shrewsbury.

<sup>246</sup> KB145/7/11, unnumbered membrane.

<sup>247</sup> Hicks, ‘1468 Statute’, 26.

<sup>248</sup> KB27/839 rot. 31 rex.

<sup>249</sup> KB27/839 rot. 32 rex.

leading Lancastrians after the Battle of Barnet.<sup>250</sup> This particular letter was a show of favour by Edward IV to the two dukes who had proved their loyalty to him by helping him regain the throne. It may also have held value for Edward himself since it superseded the pardon obtained during the readeption. Therefore, the letter helped to reinforce Edward's rule by showing that justice was done in his name and that he could show favour to loyal subjects.

Henry VII also interceded in the legal process in a letter sent to his chief justice on 15 November 1491, although his example differs from the letters sent by Edward IV. First, the letter was not about offences by the nobility but by eleven men of lower social status: three yeomen, three brewers, two tailors, one innholder, one smith and one skinner. The privy seal letter ordered the suspension of the indictments against them contravening the statutes of retaining. These eleven men, along with two other men, a yeoman and a tailor, were indicted by an *oyer et terminer* commission in Surrey, in 1491, for illegally wearing the livery of the earl of Arundel on the Thursday after Michaelmas 1490.<sup>251</sup> The second, and crucial, difference is the reason for Henry's *supersedeas*. Instead of stating that they had been wrongly accused, Henry stated that his chief justice was to halt proceedings because 'suche fynes as the said persones haue forfauted unto us in this partie been paied unto oure cofers'.<sup>252</sup> The remaining two men that were not named in Henry VII's letter seem to have been pardoned because, in the entry for the case in the controlment roll, the phrase '*sine die*' has been inserted above their names.<sup>253</sup> The fact that the men in question were not of sufficient rank to hold government offices, has meant that no further link has been identified between Henry VII and the men on whose behalf he intervened on 15 November 1491. In the context of Henry VII's reign, the fact that he diverted cash from his chief justice to his own coffers fits with the image of the avaricious Henry VII profiteering from the legal system.<sup>254</sup>

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<sup>250</sup> *Historie of the Arrivall of Edward IV in England and the Final Recouerye of his Kingdomes from Henry VI. A.D. M.CCC. LXXI.*, ed. John Bruce, Camden Series, (1838) 31. This was when the Edmund, fourth duke of Somerset and other prominent Lancastrians were summarily beheaded.

<sup>251</sup> KB9/390 ms. 47.

<sup>252</sup> KB145/9/7 no. 95. A transcription of this document is provided in the appendixes to this thesis.

<sup>253</sup> KB29/121 rot. 27.

<sup>254</sup> This has been a major theme in the historiography of Henry VII's reign. See especially: Geoffrey Elton, 'Henry VII: Rapacity and Remorse', *Historical Journal*, i (1958), 21-39 and 'Henry VII: A Restatement', *Historical Journal*, 4 (1961), 1-29; J.P. Cooper 'Henry VII's Last Years Reconsidered', *Historical Journal*, 2 (1959), 103-29; and more recently: Cunningham, *Henry VII*, 131-2. For a more nuanced interpretation of Henry VII's financial policies with regards to penal statutes see: Cavill, 'The Enforcement of the Penal Statutes in the 1490s', 482-92. One of Henry's two main agents, Edmund

An important point to appreciate about this evidence is that a letter from the king to the chief justice of the King's Bench was unlikely to have been kept secret. Royal interventions would, inevitably, have been known about amongst the wider political community because rumour and gossip were integral to fifteenth-century politics. Charles Ross noted that, particularly during periods of political uncertainty, rumour could be 'seditious in character' and 'spread like wildfire'.<sup>255</sup> Although it would be unrealistic (and even ludicrous) to suppose that the fact the king had intervened to stop proceedings against someone for violating the statutes of livery was the major issue of discussion in every tavern and alehouse in England, it is pertinent to consider Professor Griffiths' comment that 'to the inquisitive outsider, the [royal] court seemed an inexhaustible storehouse of gossip about the great and the noble'.<sup>256</sup> Actions like these were probably known by members of the peerage and gentry if not by the entire kingdom. Intervening in the legal process was likely to have become common knowledge. When Edward IV and Henry VII intervened in their respective cases they would need to have taken these considerations into account. Furthermore, the fact that this interference was not openly criticised suggests that it was an acceptable aspect of kingship. However, if the king went too far and intervened too often or too arbitrarily, it could become a source of criticism. Therefore, when the king intervened in the legal process it was a calculated political decision.

Discussing Henry VII's courtiers, Steven Gunn stated that 'behind the patent rolls lies a world of manoeuvre rarely illuminated by scraps of correspondence'.<sup>257</sup> This argument is equally applicable to the records of the King's Bench, especially with regards to the nobility. The king had a veto if a duke, an earl or a baron was indicted. The letters discussed in this section provide a glimpse into the workings of the legal system, the king's role in it and reveal some of the manoeuvrings that occurred that were rarely recorded. Edward IV demonstrated favour to men who

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Dudley, expressed regret about his role in Henry's actions during his later years: C.J Harrison, 'The Petition of Edmund Dudley', *EHR*, 87 (1972), 86-7. See also: *Anglica Historia of Polydore Vergil*, 126-31.

<sup>255</sup> Ross, 'Rumour, Propaganda and Popular', 19. On the spread of news and gossip more generally see: C.A.J Armstrong, 'Some Examples of the Distribution and Speed of News at the Time of the Wars of the Roses', in *Studies in Medieval History Presented to F.M. Powicke*, ed. R.W. Hunt et al (Oxford, 1948), 429-54.

<sup>256</sup> Ralph Griffiths, 'The King's Court during the Wars of the Roses: Continuities in an Age of Discontinuities' in *Princes, Patronage and the Nobility: The Court at the Beginning of the Modern Ages*, ed. Adolf von Birke (London and Oxford, 1990), 52.

<sup>257</sup> S.J. Gunn, 'The Courtiers of Henry VII', *EHR*, 108 (1993), 46.

helped him regain his throne or who were in close proximity to him at his court. Henry VII's letter is evidence of his ability to sidestep normal legal process on occasion and gain extra revenue into his coffers, which is consistent with the traditional image of Henry as an avaricious king. Moreover, the letters demonstrate the personal nature of medieval government and the political nature of many cases of illegal livery. Kings had to work with their leading nobles in order to run the country and therefore any legal action against the nobility had a political dimension to it with it being almost impossible for any member of the peerage to be charged without, at the very minimum, the king's tacit approval.

### Fines

From an examination of the 'fines' section of the plea rolls, it is clear that it was only in rare instances that fines were paid for offences against the statutes of livery, particularly prior to the reign of Henry VII. During Michaelmas term 1415, 17 men who were illegally given livery by Edmund Ferrers at Christmas 1413 paid fines of 40s to the King's Bench.<sup>258</sup> Similarly, the *oyer et terminer* commission in Herefordshire in 1457 produced several fines. Three men that illegally received livery from Hugh Shirley at Leominster paid fines of 5s during Trinity 35 Henry VI,<sup>259</sup> although Shirley himself obtained a pardon during the previous legal term.<sup>260</sup> An entry in the patent rolls indicates that at least two men who received illegal livery from Sir Walter Devereux paid their fine. On 8 November 1459 Robert Chambre, page of the King's buttery, was granted 'two sums of 40s' that had been forfeited by Robert Cook, husbandman, and William Aldern, yeoman, for illegally receiving a gown of livery from Sir Walter Devereux.<sup>261</sup> There may have been many unidentified fines paid to sheriffs and JPs that were recorded in the now lost records of local government, but the fact that most people either obtained pardons or no resolution can be identified for their case implies that the laws were not enforced stringently enough to force people into paying fines. That the payment of fines is evident in the 1414 Staffordshire cases and the 1457 Herefordshire cases was a product of the politicised nature of those cases. The Staffordshire cases occurred as part of Henry V's campaign against lawlessness in the localities. The indictments had themselves come about after

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<sup>258</sup> KB27/618 fines. For the original indictment see: KB9/113 ms. 41.

<sup>259</sup> KB27/785 fines. For the original indictment see: KB9/35 ms. 6.

<sup>260</sup> KB27/784 rot. 18 rex; CPR, 1452-1461, 353.

<sup>261</sup> CPR, 1452-1461, 530-1.

complaints in parliament by Ferrers and Erdswyke about violence being perpetrated on them by other's affinity. The Herefordshire cases were linked with both local disorder and, more importantly, Lancastrian-Yorkist quarrels during the 1450s and therefore there were no guaranteed immediate pardons.

It was the reign of Henry VII that witnessed the most prominent fines for illegal retaining. Since 1390 successive statutes had increase the severity of fines including the 1504 act which prescribed a fine of 100s per person illegally retained.<sup>262</sup> These fines were bound up with the system of bonds and recognisances – ‘a terrifying system of suspended penalties’<sup>263</sup> – utilised by Henry, particularly during the final years of his reign through intermediaries such as Edmund Dudley and Richard Empson.<sup>264</sup> There were several bonds for illegal retaining such as the bond between Sir Robert Cheyney and Roger Cheyney and Henry VII from January 1499 that explicitly prohibited them from retaining anyone from Newbury or its lordship in Berkshire ‘by word, sign, badge, or livery’.<sup>265</sup> Sir Piers Edgecombe was bound in a recognisance worth 1,000 marks with the earl of Devon on 7 December 1506 so that he ‘would make noo retaynors contrarie to the statute’.<sup>266</sup> Illegal retaining was part of Henry VII's use of bonds and fines during this reign. For his indictment in 1507 Bergavenny was fined over £70,650<sup>267</sup> which was ‘a fine which no one at the time could possibly have paid’, which meant that ‘now bargaining began’.<sup>268</sup> The fine was far greater than the capital value of all his English estates and he was never in possession of his Welsh marcher lordship of Abergavenny which left him ‘at the king's mercy’.<sup>269</sup> His movements were restricted and he was barred from entering the counties of Kent, Surrey, Sussex and Hampshire without royal consent.

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<sup>262</sup> *PROME*, xvi, 365-6.

<sup>263</sup> Lander, ‘Bonds, Coercion and Fear: Henry VII and the Peerage’, 335.

<sup>264</sup> Polydore Vergil believed that Henry VII began his strict policy involving the use of bonds and recognisances against the nobility in 1502, although Sean Cunningham suggests that Henry used these means from the start of the reign and extended their use in his later years. *The Anglica Historia of Polydore Vergil*, 127, 129; Sean Cunningham, ‘Henry VII and Rebellion in North-Easter England, 1485-1492: Bonds of Allegiance and the Establishment of Tudor Authority’, *Northern History*, 32 (1996) 46-9.

<sup>265</sup> *CCR, Hen VII, 1485-1500*, no. 1108.

<sup>266</sup> BL, Lansdowne 127, fol. 34.

<sup>267</sup> KB27/985 rott. 7-8 rex, fines.

<sup>268</sup> J.R Lander, ‘Bonds, Coercion and Fear’, 344.

<sup>269</sup> Pugh, ‘Henry VII and the English Nobility’, 70. E36/214 fol. 263 records payments due on Candlemas 1508 from Bergavenny for his debts to the crown, which must have included his fine for illegal retaining.

James Stanley, bishop of Ely, was fined an even greater sum of £145,610 while his retainers were fined £58,644.<sup>270</sup> Sean Cunningham noted that this ‘impossibly large fine’ permitted Henry VII to ‘load the leading Stanleys and their chief servants with recognisances and obligations that kept more swingeing fines at bay’.<sup>271</sup> Another member of the Stanley family, Sir Edward Stanley, was indicted in 1504 for illegally retaining 52 men in Yorkshire.<sup>272</sup> He obtained a pardon on 23 March 1506 and placed under an obligation of £200 by Edmund Dudley.<sup>273</sup> Members of the Stanley family were placed under various bonds and obligations by Henry VII.<sup>274</sup> Others were placed under similar agreements, such as Sir William Sandys, who was indicted in Hilary 1505<sup>275</sup> and was bound in a recognisance with two other knights and a merchant on 1 October 1505.<sup>276</sup> William Molyneux was placed under an obligation of £40 after being pardoned for illegal retaining.<sup>277</sup> Fines for illegal retaining were never expected to be paid in full because that was not their purpose. During Henry VII’s reign their purpose was to erode the autonomy of potentially rebellious members of the nobility by placing them in debt to the crown and thus at the king’s mercy. Henry VII was using the retaining laws tactically to weaken, both politically and financially, those whom he distrusted.

The accession of Henry VIII in 1509 witnessed a change of royal policy and the attacks of aristocratic finance were reduced. Henry VIII cancelled the remainder of Bergavenny’s fine, pardoned him and restored him to the royal council. He was later involved in Henry VIII’s military expedition to France in 1513, being involved in the capture of Tournai.<sup>278</sup> No similar pardon seems to have been given to James Stanley. Henry VIII’s regime did not relax the financial burdens previously placed on members of the nobility by Empson and Dudley and in the early years of Henry VIII’s reign the Stanley family as a whole still owed the crown substantial sums of

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<sup>270</sup> *L&P Hen. VIII*, i, no. 309.

<sup>271</sup> Sean Cunningham, ‘St Oswald’s Priory, Nostell v Stanley: The Common Pleas of Lancaster, the Crown, and the Politics of the North-West in 1506’, in *Foundations of Medieval Scholarship*, ed. Paul Brand (York, 2008), 153.

<sup>272</sup> KB29/134 rot. 26.

<sup>273</sup> BL, Lansdowne 127, fol. 17; KB29/134 rot. 26.

<sup>274</sup> E36/214 fol. 186, 226, 227, 246, 248.

<sup>275</sup> KB9/436 ms. 13.

<sup>276</sup> E36/214 fol. 189. See also E36/214 fol. 194, 195.

<sup>277</sup> BL, Lansdowne 127, fol. 43.

<sup>278</sup> Hawkyard, ‘George Neville’, *ODNB*, xl, 495-7; *L&P Hen. VIII*, i, no. 438 [p. 234].

money.<sup>279</sup> Henry VIII's cancelling of Bergavenny's fine was part of his attempt to reconcile members of the nobility after what were regarded as the tyrannous final years of Henry VII's reign.

The lack of recorded fines for illegal livery is indicative of wider problems with medieval law enforcement. Fines were an unusual outcome in many late medieval legal cases, as evident by the fact that out of 704 people indicted in the Midlands in 1414 for rape, larcenery, robbery, arson and burglary, only one person is known to have paid a fine.<sup>280</sup> Bringing criminals to heel, particularly those of considerable social standing or those with powerful patrons, was an arduous, and at times impossible, task. The legal system therefore needed to work within these limitations. 'A careful monarch, such as Henry VII', Marjorie Blatcher argued, 'could take steps to make some pardons more expensive, at least to procure, and thereby more nearly approximate to a fitting punishment for the wrong-doing which they erased'.<sup>281</sup> The rate at which pardons were purchased for illegal livery changed little during the period under examination, although the number of cases and the number of persons indicted did increase, particularly during the reign of Henry VII. Fines were not necessary in many cases because the payment of a pardon constituted an acceptable financial penalty for the crime committed, even if the penalty was not as severe as the law prescribed. Pardons needed to be purchased and that was the means by which someone was financially penalised for breaking the livery laws.

## Conclusion

This chapter has examined the legal processes and decision making involved in enforcing the statutes of livery. When the crown wished for the statutes to be enforced it sent letters and proclamations to targeted places, such as towns, ordering local authorities to enforce the statutes. Local society in turn responded to these initiatives from central government and several towns passed legislation to prevent retaining within the town. Central government was able to have the statutes enforced via instructions to those hearing cases, both JPs and commissions in *oyer et terminer*. In all instances a decision about whether or not to indict someone for illegal livery had to

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<sup>279</sup> Barry Coward, *The Stanleys, Lord Stanley and the Earls of Derby: The Origins, Wealth and Power of a Landowning Family*, (Chetham Society, 3<sup>rd</sup> series, xxx, 1983), 147-8.

<sup>280</sup> Powell, *Kingship, Law and Society*, 279.

<sup>281</sup> Blatcher, *Court of King's Bench*, 84.

be made. Hence there were cases in which people were indicted for offences several years earlier while others were indicted with relative haste.

Examining the legal process also helps to illuminate social practices and contemporary legal conventions. The dates that offences occurred suggests that illegal livery was distributed at the same time as legal livery and that in many instances lords were not artificially increasing the size of their affinities for specific lawless purposes, although illegal livery was an additional, burdensome, indictment to be used against lawless gentry. Cases from Herefordshire and Yorkshire in the 1450s were unique in this respect, which reflects the political turmoil of that decade.

Legal norms are evident by the fact that very few cases were resolved and even fewer people obtained a pardon for their indictment. Numerous kings intervened in the legal process on behalf of someone, usually an influential member of the peerage or gentry. In many cases, these interventions were a consequence of the personal relation the indicted, or his lord, had with the reigning monarch. This is not to argue, however, that the medieval legal system was overly oppressive. Many of those who received illegal livery never seem to have been fined, purchased a pardon, or been outlawed, but were instead able to ignore their indictment because they were not the focus of the justices' attention. Consequently, those distributing the livery were more likely to appear in court to obtain a pardon.

In conclusion, the legal processes and manoeuvres surrounding cases of illegal livery differed according to either local or national circumstances. Indicting someone for illegal livery was a choice that justices had to make. The motives were either the result of factional rivalries or the product of a genuine attempt to deal with local disorder. In the majority of instances, illegal livery was a secondary crime and many were freely able to ignore their indictments, especially those in receipt of illicit fees or livery.

## Appendix 4 – List of Letters to Towns and Lordships

Henry V to London – 4 November 1413.<sup>1</sup>

Margaret of Anjou to Leicester – 20 May 1449.<sup>2</sup>

Edward IV to Coventry – 11 February 1472.<sup>3</sup>

Richard III to Northampton – 3 August 1483.<sup>4</sup>

Richard III to Southampton – 12 September 1483.<sup>5</sup>

Richard III to Canterbury – 4 January 1484.<sup>6</sup>

Richard III to Burton – 4 January 1484.<sup>7</sup>

Richard III to Tonbridge and lordships of Penshurst, Brasted, Hadlow and *Ealding* – 22 January 1484.<sup>8</sup>

Richard III to Southampton – 5 July 1484.<sup>9</sup>

Richard III to lordship of Field Dalling (Norfolk) – 10 September 1484.<sup>10</sup>

Richard III to Bedford – 26 September 1484.<sup>11</sup>

Richard III to Tutbury – 2 October 1484.<sup>12</sup>

Richard III to Tamworth – 12 October 1484.<sup>13</sup>

Henry VII to Wells – between 22 August 1497 and 30 September 1497.<sup>14</sup>

Henry VII to Carlisle – 15 February 1498.<sup>15</sup>

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<sup>1</sup> *Calendar of letter-books of the city of London*, I, 119.

<sup>2</sup> *Records of the Borough of Leicester*, ii, 256-7.

<sup>3</sup> *Coventry Leet Book*, i, 373-5.

<sup>4</sup> *Harleian 433*, ii, 10.

<sup>5</sup> *Ibid*, i, 19.

<sup>6</sup> *Ibid*, 69.

<sup>7</sup> *Ibid*, 69-70.

<sup>8</sup> *Ibid*, 81.

<sup>9</sup> HMC, *11<sup>th</sup> Report, Appendix, Part 3: The Manuscripts of the Corporations of Southampton and King's Lynn* (London, 1887) 16.

<sup>10</sup> *Harleian 433*, ii, 159.

<sup>11</sup> *Letters and Papers Illustrative of the Reigns of Richard III and Henry VII*, ii, 288; *Harleian 433*, ii, 162-3.

<sup>12</sup> *Letters and Papers Illustrative of the Reigns of Richard III and Henry VII*, i, 79-81; *Harleian 433*, iii, 116-17.

<sup>13</sup> *Harleian 433*, ii, 166-7.

<sup>14</sup> H.M.C., *1<sup>st</sup> Report, Appendix* (London, 1874), 107. The report does not provide the date for the letter. The date here has been deduced by the fact that the following entry relates to a visit by Bishop Oliver King on 30 September 13 Henry VII. The letter is likely to have been received prior to this date during this regnal year.

Henry VII to Leicester – 20 March 1498.<sup>16</sup>

Henry VII to Lordships of Penwortham – 21 May 1505<sup>17</sup>

Henry VIII to Leicester – 20 March 1522.<sup>18</sup>

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<sup>15</sup> CRO, Ca2/150.

<sup>16</sup> *Records of the Borough of Leicester*, ii, 354.

<sup>17</sup> H.M.C, *6<sup>th</sup> Report* (London, 1877), 444.

<sup>18</sup> *Records of the Borough of Leicester, Volume 3: 1509-1603*, ed. M. Bateson (Cambridge, 1905), 20-1.

## Appendix 5 – List of Local Ordinances<sup>1</sup>

Northampton – 1460<sup>2</sup>

Nottingham – 1463<sup>3</sup>

Worcester – 1466<sup>4</sup>

Leicester – 1467<sup>5</sup>

High Wycombe – 1490<sup>6</sup>

Worcester – 1496<sup>7</sup>

York – 1503<sup>8</sup>

Gloucester – 1504<sup>9</sup>

Newcastle on Tyne – 1516<sup>10</sup>

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<sup>1</sup> An earlier list, which this appendix is an expansion of, is given in: Winifred I. Haward, ‘Gilbert Debenham: A Medieval Rascal in Real Life’, *History*, 13 (1929), 308 fn. 2.

<sup>2</sup> *Records of the Borough of Northampton*, i, 297-8.

<sup>3</sup> *Records of the Borough of Nottingham*, ii, 425.

<sup>4</sup> *The Ordinances of Worcester*, 388.

<sup>5</sup> *Records of the Borough of Leicester*, ii, 293.

<sup>6</sup> *The First Ledger Book of High Wycombe*, ed. R.W. Greaves, Bucks Record Society, 11 (1947), 50-1.

<sup>7</sup> *The Ordinances of Worcester*,

<sup>8</sup> *York Civic Records*, ii, 181.

<sup>9</sup> H.M.C., *Twelfth Report, Appendix, Part IX*, 436.

<sup>10</sup> John Drake, *The History and Antiquities of the Town and County of the Town of Newcastle upon Tyne*, 2 vols. (London, 1789) ii, 179.

## Appendix 6 – Henry VII’s Letter to Carlisle (1498)

The following letter from Cumbria Record Office survives within a collection royal letters to the city of Carlisle and is the only letter in the collection from the reign of Henry VII. As discussed in chapter five it is one of several letters from kings to various cities, towns and lordships during the late medieval period about the subject of retaining. Moreover, the letter has been largely neglected by historians of the reign of Henry VII<sup>1</sup> and those interested in Anglo-Scottish relations of the period.<sup>2</sup> The letter has only been cited in two recent publications. The first is in Henry Summerson’s *Medieval Carlisle*, who cites the letter as an example of Henry VII’s anxiety about a potential Scottish invasion.<sup>3</sup> Claire Etty cites the letter as part of a wider discussion about Henry VII’s policy towards the West March.<sup>4</sup> Both publications, however, only quote the Henry’s address to the city as ‘oon of the chief keyes and fortresse to the defense of this oure Realme’ and provide no detailed analysis of the letter. The wider significance of this letter is discussed in Chapter Five.

### Cumbria Record Office, Ca2/105

Henry by the grace of god king of England and of Ffrance and lord of Irland to the Maire and his bretheryn of our cite of Carlill that nowe be and herafre for the tyme shalbe greting. Insomuche as ye knowe well that the same oure Citie is oon of the chief keyes and fortresses to the defense of this oure Reame and that the losse therof by any sodein entieprins of the Scottes shulde be not oonly youre allez distruction but also a great and an universal hurt to all oure said Reame whiche god defendes. We therfor wool and charge you in oure estraintest wise not to suffice any maner of persone or persones dwelling within oure said cite to be from hensfurthe reteyned with any man be he spiritual or temporall lord or other by lyveree baggnen clothing cognoissance or any other wise nor to ride or passe out of the same oure cite in harnois to any feldes skirmysshing affrayes or riots with any gentilman or othre whatsoever estate or degrie he beof but to be abiding and attending at all seasons

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<sup>1</sup> E.g. Stanley Chrimes, *Henry VII*, (London, 1972).

<sup>2</sup> E.g. Agnes Conway, *Henry VII’s Relations with Scotland and Ireland, 1485-1498*, (Cambridge, 1932); MacDougall, *James IV*, 112-45.

<sup>3</sup> Henry Summerson, *Medieval Carlisle: The City and the Borders From the Late Eleventh to the Mid-Sixteenth Century*, 2 vols (1993) 437.

<sup>4</sup> Claire Etty, ‘“No Man Indented for the Keeping of the Borders”: Royal Administration of the Marches, 1483-1509,’ in *England and Scotland at War, c. 1296-c. 1513*, eds. Andy King and David Simpkin (Leiden and Boston, 2012) 338-9.

bothe of warre and of peax in the same oure citie for the defens and suretie therof agenst the Scotts if they wolde make any sodein attempt at ther into by siege or otherwise. And to thentent that ye of the same oure citie maye be of good suretue and trouthes amonges yourself. We have commanded the Right Reverend fadre in god oure right trusty counsellour the Bishhop of Carlill to take your oathes of fidelitee unto us. Willing you therefore to be attendant unto hym in that behalve and also to conforme you to the due observing of the premisses as ye tender your owne surienties and the wal of this our Reame. And be it soo that any man disobey and be reteyned contrary to this oure ordence we than charge you straitely to certifie us furthwith of his name by your writing and we shal soo provide for his sharp punicon according to oure laws and statutes as other shal therat take feez semblably toffende for tyme coming. Yeven under out signet at oure paloise of Westminster the xv day of Ffebruary the xiiij<sup>th</sup> yere of oure Reigne.

## Appendix 7: Henry VII's Letter to his Chief Justice (1491)

The following letter is taken from the Recorda files of the records of the King's Bench from 7 Henry VII. No study has made extensive use of these records due to both their miscellaneous nature and the poor condition in which many of the records survive (tightly stuck together on a wire).<sup>1</sup> Nevertheless, contained in these files are occasional documents of historical interest which shed further light in the informal process of the legal system. This particular letter refers to an indictments brought before an *oyer et terminer* commission in Surrey in 1491 in which the men named, along with two others were indicted with illegally wearing the livery of the earl of Arundel on the Thursday after Michaelmas 1490.<sup>2</sup> As discussed in Chapter Five, it provides an example of how kings were able to become involved in the legal process and intervene on behalf of a particular party being indicted.

### KB145/9/7 no. 95

Henry by the grace of god king of England and of Ffrance and Lord of Irland to our trusty and welbeloved Sir William Husee knight chie justice of our Benche befor us and to other his felowes justices of the same and to every of them greting. Wher as henry king of Southwerke in the [ ] countie of Surrey yeoman Richard Grene late of the same in the same countie bruer Thomas Wright of Southwerke in the same countie tailor henry Bromfeld late of Southwerke in the same countie yeoman Edmond Atkinson late of Southwerke in the same countie breuer henry clerk late of Southwerke in the same countie breuer William Bull late of Southwerke in the same countie Inholder John a Woode late of Southwerke in the same countie tailor Nicholas Smyth late of Southwerke in the same countie yeoman Bartholamewe Blade late of Southwerke in the same countie smyth otherwise called Bartholamewe Bladsmyth late of Southwerke in the same countie smyth and Roger pudsey late of Southwerke in the same countie skynner bifore Sir William Husee and other ofoure justices of Eyre determyne inoure said countie of Surrey be endited of dyverse trespasses and contemptes ayenst the forme of the statutes of Reteynning and Recevyng of signes lyveres and other tokens the whiche endictmentes by the said justices be now certified untooure Benche before us there to be determined.

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<sup>1</sup> It should, however, be noted that several articles have been based on documents identified from the Recorda file. Kleineke, 'East Anglia Election', 167-87; Ross, 'Mischievously Slewten', 75-96.

<sup>2</sup> KB9/390 ms. 47.

Wherappon proces is awarded for our iutes interesse according to oure lawes to thiere grete jeopardy and losse of goodes without oure special grace and favor to theym be shewed in that behalf. We for diverse consideracion us moeving and in that suche fynes as the said persones haue forfeuted unto us in this partie been paied unto oure cofers wol and charge you and every of you that as for awarding making or delivering of any proces ayenst the said henry king or any of them by what name or names the said henry king or any of theym beforsaid be named or called in the said endictmentes that from hensforth ye surreasse. And yf any proces be awarded made or delyvering ayenst the said henry king or any of theym before named that then ye comannde oure trusty and welbeloved henry herman oure coroner and attorney before us to make oure writt or writtes of sueredias unto suche shire or shires as the said proces is awarded made and delivered unto and that ye saille not hereof as ye entend to doo unto us right singuler pleasure. And thes oure lettres shalbe unto you and every of you and to oure said coroner and attorney sufficient warant and discharge. Yeven undre oure privy seal at oure manior of Grenewiche the xv<sup>th</sup> day of novembre the sevenenth yere of oure Reign.

## Chapter Six: Prosopographical Analysis

This chapter is a prosopographical analysis of those indicted for both distributing and receiving illegal livery. Prosopography is the construction of a collective biography of a select group of people in order to identify social, economic and political trends. Traditionally, prosopographies were primarily reference works, in which information about the individuals in a group is collected in order to create mini-biographies of them such as the volumes of biographies of former MPs produced by the *History of Parliament Trust*.<sup>1</sup> Technological advances have enabled the creation of large searchable prosopographical databases, of which the database constructed for this thesis is an example. This chapter examines those people who were indicted for illegal livery and establishes the salient aspects of their identity and careers. Before doing this, however, it is necessary to highlight the limitations and potential of the available source material.

Surviving records from the central government, local government and estates have provided a wealth of available material from which to construct biographies of many of those charged with illegal livery, especially the gentry and the peerage. Prosopography, however, must go beyond merely assembling facts. Nigel Saul has stated that ‘prosopography only rises above the anecdotal or antiquarian if it is wedded to an analysis of social institutions’.<sup>2</sup> The social institution discussed in this thesis is illegal retaining. Even though this thesis primarily focuses upon the practice of illegal retaining, it is important to recognise that illegal retaining was one aspect of a wider social practice. Bastard feudalism was a social relationship based on mutual advantage, characterised by instance in which monetary rewards and short-term contracts were used in lieu of permanent land based feudal relationships. Retaining was a product of this social institution and so was illegal retaining.

Although a prosopographical analysis enables a broader understanding of the workings of society, there are problems relating to surviving source material. Michael Hicks has stated that ‘regrettably many records that were generated [by the late

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<sup>1</sup> For the period discussed in this thesis see: Wedgwood, *Biographies*. Much of Wedgwood’s work is being updated by the History of Parliament Trust. At present, the project is working on the period 1422 to 1504. The following are currently in print of the period covered in this thesis: *The History of Parliament: The House of Commons, 1386-1421*, ed. J.S Roskell, 4 vols. (Stroud, 1992); *The History of Parliament: The House of Commons, 1509-1558*, ed. S.T Bindoff, 3 vols. (London, 1982).

<sup>2</sup> Saul, *Scenes from Provincial Life*, 28. Similar concerns are expressed in Powell, ‘Poverty of Patronage’, 7.

medieval parliament] were routinely discarded'.<sup>3</sup> This regret can be expanded to include records of local government which have been almost entirely lost for the medieval period<sup>4</sup> as well as personal estates records and correspondents that are opportune survivals.<sup>5</sup> The laconic nature of medieval sources is best exemplified in J.R Lander's study of JPs in which over 30% of JPs he identified could not be found in other central government record and, in some case, not even from detailed local records.<sup>6</sup> Many of these JPs are likely to have held office as estate officials of great lords or attempted to avoid local governmental responsibilities which could be financially burdensome.<sup>7</sup> This is problematic for the proceeding analysis which is based primarily upon the records of central government, specifically the calendared records of the chancery and unpublished King's Bench material. Other relevant records, both published and unpublished, have been examined where they survive, albeit on an *ad hoc* basis.

Previously, estate records have been examined to develop a greater understanding of the workings of bastard feudal society. The financial accounts of great magnate estates have been exploited to inform scholars about bastard feudal affinities. By the time of his Ford Lectures in 1953, K.B McFarlane had identified five sources from which the average size of a noble household could be determined: two livery rolls; two 'Kalendars' which lists all servants residing in the household; and one 'check-roll' which contained the names of those entitled to draw wages. McFarlane went on to identify a further livery roll, that of Elizabeth de Burgh, Lady de Clare.<sup>8</sup> These are the only sources of their kind that survive for the late medieval nobility. For the early Tudor period the list of the retinue of Sir Thomas Lovell from May 1508<sup>9</sup> can be added to this set of documents that are employed in this chapter for comparative purposes in order to set illegal retinues in the wider context of bastard feudal society.

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<sup>3</sup> Michael Hicks, 'King in Lords and Commons: Three Insights into Late Fifteenth-Century Parliaments, 1431-85', in *People, Places and Perspectives*, eds. Keith Dockray and Peter Fleming (Stroud, 2005), 131.

<sup>4</sup> One notable exception is the records of Sir Edward Guildford of Halden, JP of Kent, calendared in: Hicks, 'Out of Session', 38-42.

<sup>5</sup> Christopher Given-Wilson has made a similar point about the survival of medieval chronicles: 'the thread by which hung the survival of a medieval text was frequently a slender one': Christopher Given-Wilson, *Chronicles: The Writing of History in Medieval England* (London, 2004), xx.

<sup>6</sup> Lander, *Justices of the Peace*, 46.

<sup>7</sup> This point has been discussed in detail in the 'Office-Holding' section of Chapter One.

<sup>8</sup> McFarlane, *Nobility of Later Medieval England*, 109-12.

<sup>9</sup> HMC, *Manuscripts of the Duke of Rutland*, iv, 559-66.

This chapter is concerned with the identity of those people who gave and received illegal livery, how these illegal connections were formed and the wider social context of these connections. The sheer number of people indicted and the uneven levels of surviving documentary evidence for those charged with illegal livery has meant that a qualitative approach rather than a quantitative approach has necessarily been adopted.

### **Social Status**

Social status had the most direct effect on the amount of source material referring to a particular person from the medieval period. Those of a higher social status were appointed to offices, had large estates and wrote letters. Hence kings – in whose name government was conducted and in whom many chroniclers were the most interested in writing<sup>10</sup> – are the best documented persons from medieval society. Peasants, in contrast, are the most sparsely documented and for many their existence was never recorded in official sources. Prosopography's focus upon surviving source material inevitably results in a focus upon those who are best documented. In this study the gentry and the peerage are the best documented. Identifying their social status is simplified by the 1413 statute of additions which ensured that every person named in a legal case had to have their rank or occupation listed.<sup>11</sup> This legislation occurred in the wake of the emergence of a clear hierarchy within the gentry between knights and esquires during the fourteenth century.<sup>12</sup> Before fully examining the careers and lives of those indicted with illegal livery, it is first necessary to give a broad outline of the social status and occupations of those indicted with illegal livery.

Dorothy Clayton argued 'the lack of a noble presence [in Cheshire] meant that the evils of livery, maintenance and retaining were not great problems in the county'.<sup>13</sup> There are two objections to this claim. First, as discussed in Chapter Three, there were 39 cases of illegal livery in Cheshire with a total of 476 people indicted, indicating that illegal livery was, at times, problematic in Cheshire. Second and more pertinent to this chapter, Clayton's claim contains an underlying assumption that the

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<sup>10</sup> One reason for this is that, although there were no official royal chronicles in late medieval England akin to those of the abbey of Saint-Denis in France, many chroniclers were close to the royal court. Given-Wilson, *Chronicles*, 153-7.

<sup>11</sup> *PROME*, ix, 20-1.

<sup>12</sup> Saul, *Knights and Esquires*, 6-29.

<sup>13</sup> Clayton, 'Peace Bonds and Law and Order', 136; Clayton, *Administration of the County Palatine of Chester*, 213.

peerage were the main distributors of illegal livery. The majority of cases identified involved members of the gentry distributing livery. Thirty-four out of the 39 cases in Cheshire involved either a knight, an esquire or a gentleman distributing livery to those of a lower social status, mainly yeomen.<sup>14</sup> Furthermore, two other cases involved a cleric who was also a member of the Stanley family, James Stanley illegally distributing livery to 48 men.<sup>15</sup>

The higher nobility were not the ones primarily indicted for illegal livery. Only two dukes, one marquis, four earls, eleven lords and one peeress were indicted for illegal livery. The distribution of these indictments questions the traditional interpretation of Henry VII as the king who suppressed noble power via a rigid adherence to statutory legislation. T.B. Pugh claimed that notable peers such as the earls of Derby, Essex, Northumberland and Oxford as well as Lady Margaret Beaufort, were indicted for illegal retaining.<sup>16</sup> As has been shown, these indictments refer to men fraudulently wearing the livery of peers and not against the peers themselves for distributing. Only two lords, John Grey, lord Wilton<sup>17</sup> and George Neville, lord Bergavenny<sup>18</sup>, along with one earl, George Talbot, fourth earl of Shrewsbury<sup>19</sup>, were indicted for illegal livery during Henry VII's reign. This contrasts with two dukes<sup>20</sup>, one earl<sup>21</sup> and six lords<sup>22</sup> during the reign of Edward IV's reign. In addition, more peers were indicted during the initial decade of Henry VIII's reign than that of Henry VII. The earls of Arundel and Huntingdon<sup>23</sup> were indicted along with the marquise of Dorset<sup>24</sup> and George Neville, lord Bergavenny.<sup>25</sup> The indictments against most of these peers in the reigns of Edward IV and Henry VIII occurred in conjunction with other instances of lawlessness. For instance, the dukes of Norfolk and Suffolk were indicted due to events surrounding the siege of Caister Castle and

<sup>14</sup> CHES25/12 ms. 16-17; CHES25/18 ms. 7-9, 11-14, 17, 21, 26, 28, 33-4; CHES25/25 ms. 14.

<sup>15</sup> CHES25/18 ms. 13-14. Discussed in 'Religious' section.

<sup>16</sup> Pugh, 'Henry VII and the English Nobility', 71.

<sup>17</sup> KB9/417 ms. 119.

<sup>18</sup> KB29/133 rot. 27, KB29/136 rot.

<sup>19</sup> KB9/379 ms. 5.

<sup>20</sup> Norfolk and Suffolk in 1470: KB29/99 rott. 31-2.

<sup>21</sup> John Talbot, third earl of Shrewsbury in 1468, KB9/13 ms. 26

<sup>22</sup> Edward Brooke, Lord Cobham in 1461, KB29/92 rot. 13; John, Lord Clinton of Ash in 1461, KB29/92 rot. 13; Edward Neville, Lord Bergavenny in 1461, KB29/92 rot.13; Walter Blount, Lord Mountjoy in 1468, KB9/13 ms. 11, 63; Henry, Lord Grey of Codnor in 1468, KB9/13 ms. 20 John Brooke, Lord Cobham in 1478, KB29/108 rot.

<sup>23</sup> KB29/148 rott. 12, 16 40.

<sup>24</sup> KB29/148 rot. 16.

<sup>25</sup> KB29/148 rot. 18.

the uncertain loyalty of both dukes at that time.<sup>26</sup> The earl of Huntingdon and the marquise of Dorset were indicted in 1516 as part of a long running feud between the two lords in the midlands.<sup>27</sup> Likewise, the indictments against peers during Henry VI's reign occurred in a context of more general local disorder. The indictments against Lord Egremont<sup>28</sup> and Lord Audley<sup>29</sup> during the 1450s were connected to the feuding in Yorkshire and Herefordshire during that decade. Two earlier indictments from Derbyshire against Lord Grey of Codnor and Lord Cromwell were part of a wide ranging commissions of *oyer et terminer* that indicted many of the prominent men of the county for various crimes. Joan Beauchamp, widow of William Beauchamp, was also indicted for illegal livery by the commission.<sup>30</sup> Peers were therefore indicted for illegal livery at various times during the fifteenth and early sixteenth centuries, not just in the reigns of the early Tudor monarchs, usually as part of a more general campaign against lawlessness in a locality.

One explanation why less peers were indicted during Henry VII's reign than his historical reputation suggests is the lack of adult males among the higher nobility during his reign. Henry came to power after thirty years of intermittent civil war in which many peers, who 'were bound to get caught up in events more deeply than others',<sup>31</sup> were killed. At the start of his reign four out of the 20 living peers were minors while many were 'time-serving nonentities or political lightweights'.<sup>32</sup> Put simply, there were not as many politically active peers to be illegally retaining during Henry VII's reign. One of the most politically active, lord Bergavenny, was indicted for illegal retaining. However, prominent local knights, who were later promoted to the peerage, were indicted for illegal livery during Henry VII's reign, such as Edward Stanley, later first baron Monteagle<sup>33</sup> and William Sandys, later Lord Sandys of Vyne.<sup>34</sup> In addition, it was the local JPs who indicted the earl of Shrewsbury and the lords Bergavenny and Wilton during Henry VII's reign, rather than the commissions

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<sup>26</sup> Hicks, '1468 Statute of Livery', 24-6.

<sup>27</sup> Robertson, 'Court Careers and County Quarrels', 153-70.

<sup>28</sup> KB9/148/2 ms. 31, 38, 54

<sup>29</sup> KB9/35 ms. 69.

<sup>30</sup> KB9/11 ms. 15.

<sup>31</sup> Colin Richmond, 'The Nobility and the Wars of the Roses', *Nottingham Medieval Studies*, 21 (1977), 83.

<sup>32</sup> Ross, *John de Vere*, 114-15.

<sup>33</sup> KB29/134 rot. 26; Gervase Phillips, 'Edward Stanley, first Baron Monteagle (c. 1460-1523)', *ODNB*, lii, 174.

<sup>34</sup> KB9/436 ms. 13; Ronald H. Fritze, 'William Sandys, first Baron Sandys (c. 1470-1540)' *ODNB*, xlviii, 935-6.

of *oyer et terminer* that did so in other reigns.<sup>35</sup> This suggests that the JPs presumed tacit royal approval to indict peers, which is indicative of the wider political context of Henry VII's reign whereby he attempted to curb the excesses of noble power.

At the opposite end of the social spectrum, there were 2025 occasions in which a yeoman was indicted. The majority of cases involved members of the gentry giving livery illegally to men of a lower rank. As expected given the hierarchical nature of medieval society, no one illegally retaining someone from a higher social status than their own. In Staffordshire, in 1414, one yeoman, John Myners of Uttoxeter gave illegal livery to two other yeomen,<sup>36</sup> although this was the only case of its kind. John Myners, along with his brothers William and Thomas, came from an old gentry family in Staffordshire that were part of the affinity of Thomas of Lancaster but had fallen into obscurity during the fourteenth century.<sup>37</sup> John Myner's distribution of illegal livery was the continuation of the traditional role his family played in Staffordshire that remained despite their decline in status.

Problematically, in many cases, particularly those involving members of the gentry, little information can be found for those being illegally retained. Indictments against members of the peerage, in contrast, can be more fruitful since in many instances they on occasion also illegally gave fees or livery to knights and esquires. Ralph Cromwell was indicted in 1434 for illegally giving livery to two knights and three gentlemen.<sup>38</sup> The two knights he illegally retained can be traced in the surviving records because they were of sufficient rank to hold various offices.<sup>39</sup> Not all members of the peerage that was indicted for illegal retaining can have their retainers traced to any meaningful extent. From the perspective of calendared chancery records, little prosopographic information can be obtained for many of the 21 gentlemen illegally retained by Bergavenny. Most of the men illegally retained by Bergavenny were too minor to appear regularly in official records. Only one, Lewis Clifford was given a commission of the peace in Kent, serving on nine commissions between 12 April 1500 and 18 June 1506, all of which Bergavenny also sat on,<sup>40</sup> although there

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<sup>35</sup> For Shrewsbury: KB9/379 ms. 5. For Wilton: KB9/417 ms. 119. For Bergavenny: KB29/148 rot. 12, 16 40.

<sup>36</sup> KB9/113 ms. 42.

<sup>37</sup> Maddicott, *Thomas of Lancaster*, 42, 43, 339; Powell, *Kingship, Law and Society*, 209-10.

<sup>38</sup> KB9/11 ms. 15.

<sup>39</sup> To take one example, *CPR, 1429-1436* contains 10 references to Sir Richard and nine for Sir John Cokayn. For Vernon: *CPR, 1429-1436*, 50, 116, 126, 136, 410, 425, 527, 529, 615, 624. For Cokayn: *CPR, 1429-1436*, 50, 61, 126, 292, 324, 523, 529, 615.

<sup>40</sup> *CPR, 1494-1509*, 644-5.

are scattered references to others who were also illegally retained.<sup>41</sup> The remainder of this chapter develops an understanding of those indicted with illegal livery through a prosopographical analysis based on the surviving records.

### **Office Holding**

Office-holding presented the nobility with the opportunity to wield power locally which, in turn, allowed them to retain members of the local population both legally and illegally.<sup>42</sup> One potential plea in livery cases was that the retaining was lawful because the men in question were being retained in order to do the king's work.<sup>43</sup> An examination of office holding and crime in late medieval England demonstrates that those who were illegally retaining men were also essential for the running of local government. The case of Sir Nicholas Stukeley illustrates this point. Stukeley was named on a commission in Huntingdonshire and Cambridgeshire in 1448 to investigate, among other things, offences against the statutes of livery,<sup>44</sup> but was himself indicted for illegal livery in 1452.<sup>45</sup> He had previously been named on another commission of enquiry on 25 September 1448<sup>46</sup> and a commission of *oyer et terminer* on 26 March 1450.<sup>47</sup> In acting as both a law-enforcer and a law-breaker Stukeley can be regarded as typical of many members of the late medieval gentry. This section explains why the experience of Stukeley was typical of many members of the nobility that were charged with illegal livery.

The gentry were the essential component of local government and it is therefore natural to discover that many of them held local offices, including those related to peacekeeping. The Staffordshire esquire Richard Wrottesley, for example, was named on five commissions of the peace in Staffordshire between 13 March 1485 and 15 December 1487 as well as to a commission of gaol delivery.<sup>48</sup> He was later indicted for illegal livery the following September.<sup>49</sup> Wrottesley was typical because he was given further local offices despite being indicted for illegal livery. While he

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<sup>41</sup> E.g. Roger Appulton, gentleman: *CPR, 1494-1509*, 163; William Whetnall, gentleman: *CPR, 1494-1509*, 245.

<sup>42</sup> See Introduction for a full discussion of present historiography on office-holding.

<sup>43</sup> E.g. Sir William Sandys – KB9/436 ms. 13; KB27/993 rot. 12.

<sup>44</sup> *CPR, 1446-1452*, 140.

<sup>45</sup> KB9/42/1 ms. 11.

<sup>46</sup> *CPR, 1446-1452*, 298.

<sup>47</sup> *Ibid*, 378.

<sup>48</sup> *CPR, 1476-1485*, 573; *CPR, 1485-1494*, 181, 500.

<sup>49</sup> KB9/379 ms. 5.

was not named on the two commissions of the peace for Staffordshire after his indictment,<sup>50</sup> he was named on the eight commissions of the peace for Staffordshire between 13 January 1496 and 12 July 1508.<sup>51</sup> The fact that there was a five year gap between his indictment for illegal livery and the next commission of the peace in Staffordshire means that it is impossible to assert that his indictment for illegal livery prevented him from being named on those commissions.

Other analogous examples show that Wrottesley's case was typical and that indictments for illegal livery did not hinder future commissions. On 6 July 1415, Hugh Erdeswyk was given a commission of the peace in Staffordshire<sup>52</sup> even though he had been indicted on two counts of illegal livery the previous year.<sup>53</sup> In Derbyshire, in 1434, Sir Richard Vernon was indicted for illegal livery<sup>54</sup> yet was named on the subsequent nine commissions of the peace for Derbyshire between 14 July 1437 and 26 November 1449.<sup>55</sup> Vernon had also been named on the five commissions of the peace immediately preceding his indictment for illegal livery between 7 July 1423 and 8 June 1431.<sup>56</sup> Being indicted for illegal livery did not prevent Vernon from being named on commissions of the peace. The majority of the gentry continued to be utilised for local law enforcement despite indicted for illegal livery. Throughout the period considered in this study, indicted for with illegal livery was no barrier to future appointments to commissions of the peace.

One reason why indictments for illegal livery did not hinder further appointments to office was that the gentry were crucial in late-medieval law enforcement, as evident in the arrests of Thomas Malory and Richard Tregoyts.<sup>57</sup> Retaining was essential for the fulfilment of these roles. For instance, on 18 July 1413, Hugh Erdeswyk and Thomas Giffard<sup>58</sup> were given a commission in Staffordshire to make Richard and Nicholas de Pesehale appear before them 'and find sufficient mainpernors under penalty of 100*l* that they will not do bodily harm to William [Young of Charnes] or any other of the king's people, and to imprison them

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<sup>50</sup> These were given on 13 February 1493 and 20 May 1493. *CPR, 1485-1494*, 500.

<sup>51</sup> *CPR, 1494-1509*, 658.

<sup>52</sup> *CPR, 1413-1416*, 423.

<sup>53</sup> KB9/113 ms. 2, 40.

<sup>54</sup> KB9/11 ms. 15, 17.

<sup>55</sup> *CPR, 1436-1441*, 581; *CPR, 1441-1446*, 469; *CPR, 1446-1452*, 588.

<sup>56</sup> *CPR, 1422-1429*, 561; *CPR, 1429-1436*, 615.

<sup>57</sup> Carpenter, 'Sir Thomas Malory', 31-43; Kleineke, 'Why the West was Wild', 83-90.

<sup>58</sup> Charged in Staffordshire in 1414: KB9/113 ms. 2, 40.

if they refuse'.<sup>59</sup> In order to carry out such a commission both Erdeswyk and Giffard would have required the assistance of retainers who could compel Robert and Nicholas de Pesehal to appear before them. Likewise, the Hampshire esquire Thomas Waryn, who was indicted for illegally retaining four men at Broke on 31 March 1452,<sup>60</sup> had previously retained men for the purposes of law enforcement. Waryn was an esquire of Edmund, duke of Somerset and had apprehended William Parmynter, one of Case's rebels.<sup>61</sup> He would have needed to have used retainers of his in order to arrest Parmynter.

A further case pertinent to the relationship between office holding, royal patronage and retaining are the indictments against the Savage family in Worcestershire and Gloucestershire in 1516.<sup>62</sup> On 28 December 1495 John Savage VI<sup>63</sup> was granted numerous offices in Worcestershire and Gloucestershire that had been previously held by his father,<sup>64</sup> who had been a prominent servant of Edward IV. Previously, Savage was one of the men that invited Henry Tudor to England and fought on his side at Bosworth with his men wearing a distinct white livery.<sup>65</sup> The family's standing in Worcestershire was strong throughout the period and in 1512 Henry VIII granted the offices in survivorship to both John Savage VI and his son John Savage VII.<sup>66</sup> In his role as steward, John Savage VI heard various courts and courts leet at Elmley Castle and Lamberton between 1508 and 1513.<sup>67</sup> Successive kings therefore needed the Savages to run the local administration and law enforcement in Worcestershire and Gloucestershire. This, in turn, enabled them to retain men and build up a following in the area, which is how they are likely to have come into contact with those people that they illegally retained.

The ties utilised by central government in its needs for the running of the localities are evident in some of the larger cases of illegal livery involving members of the peerage. Many cases in which peers were indicted for illegal livery, they were indicted along with those with whom they served in local government. Gilbert

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<sup>59</sup> *CPR, 1413-1416*, 112.

<sup>60</sup> KB27/779 rot. 23 rex.

<sup>61</sup> Griffiths, *Reign of Henry VI*, 649; E403/785 ms. 2.

<sup>62</sup> KB29/148 rott. 150-1, 153-4.

<sup>63</sup> The numbering of the members of the Savage family and the biographical information is taken from Tim Thornton, 'Savage Family', *ODNB*, xlix, 63-6.

<sup>64</sup> *CPR, 1494-1509*, 62.

<sup>65</sup> *Three Books of Polydore Vergil's 'English History'*, ed. H. Ellis, Camden Series, 29 (1844), 221.

<sup>66</sup> *L&P Hen. VIII*, i, no. 1524 (47).

<sup>67</sup> *Court Rolls of Elmley Castle, 1347-1564*, ed. Robert K. Field, Worcestershire Historical Society, 20 (2004), nos. 112, 114-19.

Debenham, esquire, served on five out of nine commissions of the peace in Suffolk between 20 November 1467 and 11 September 1473 with the duke of Norfolk, from whom Debenham had illegally received livery.<sup>68</sup> Similarly, Sir Robert Wyngfeld was appointed to three commissions of the peace along with the duke of Norfolk between 4 July 1471 and 11 September 1473 despite having previously received Norfolk's livery illegally.<sup>69</sup> In total, Wyngfeld was named on the eleven commissions of the peace in Norfolk with the duke between 20 February 1466 and 10 November 1475. This trend is evident for several other men indicted in 1470 for illegally receiving livery from the dukes of Norfolk and Suffolk as Sir John Heveningham, Sir William Calthorp and John Knyvet, esquire.<sup>70</sup>

Defence against external as well as internal threats was a further aspect of the late medieval and early Tudor affinity that kings utilised. Military expediency dictated that during times of war or potential foreign invasion. It was necessary to enlist the help of the nobility for the purposes of raising troops. The constant threat of war on the Scottish border meant that the wardens of the march were exempt from the statutes.<sup>71</sup> In the light of a possible French invasion, on 5 May 1491 Henry VII issued a commission of array to 17 men for Warwickshire<sup>72</sup>, of which five of the men – Sir William Lucy, Sir Thomas Cokesay, Sir Simon Mountford, Sir Edward Raleigh and Robert Throgmorton, esquire – had been indicted for illegal livery just two years earlier.<sup>73</sup> Again, in February 1513, Henry VIII gave commissions of array in light of a threatened French invasion to eight men across Somerset, Dorset, Hampshire and Wiltshire,<sup>74</sup> of which four knights had been indicted with illegal retaining: William Sandys<sup>75</sup> and John Lysle in Hampshire;<sup>76</sup> and Walter Hungerford<sup>77</sup> and Edward Darell in Wiltshire.<sup>78</sup>

Commissions were similarly given to muster soldiers for the purpose of military campaigning, particularly in France. Foreign war was a means by which the nobility could serve the king and while the late medieval period witnessed many

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<sup>68</sup> KB29/99 rot. 32.

<sup>69</sup> *CPR, 1467-1477*, 630-1.

<sup>70</sup> *CPR, 1461-1467*, 568; *CPR, 1467-1477*, 622-3.

<sup>71</sup> *PROME*, vii, 313-4; viii, 38; xiii, 65, 386. This point is discussed in detail in Chapter Four.

<sup>72</sup> *CPR, 1485-1494*, 356-7.

<sup>73</sup> KB29/119 rott. 10; KB29/120 rott. 11-13.

<sup>74</sup> *L&P Hen. VIII*, i, no. 1662 (27).

<sup>75</sup> KB9/436 ms. 13.

<sup>76</sup> KB29/143 rot. 24.

<sup>77</sup> KB29/138 rot. 5.

<sup>78</sup> KB9/436 ms. 16.

knights taking up posts as administrators rather than as soldiers, the late medieval aristocracy maintained its martial role. Recent historiography has emphasised the use of retainers during peace time for routine administrative tasks,<sup>79</sup> but it should be remembered that bastard feudalism was a means of recruiting manpower for warfare. Surviving indentures for the military campaigns of English kings in France indicate that the nobility continued their traditional service to the crown irrespective of any previous retaining offences. An indenture survives between Edward IV and the duke of Norfolk from 9 August 1474 in which the king retained Norfolk to provide 300 archers ‘well and sufficiently armed’ for his planned invasion of France.<sup>80</sup> Royal government needed the nobility to retain men for military purposes, even if their previous retaining practices were socially unacceptable. An indictment for illegal livery did not equate to a permanent loss of social or political standing.

The military and administrative importance of noble affinities was further evident in the lead up to the Battle of Flodden on 9 September 1513. In August 1513 Henry VIII gave commissions across all the counties of England ‘to seize the property of all born subjects (except ecclesiastics) of the King of Scots ... selling such as cannot be kept and making inventories of the property &c’.<sup>81</sup> Several knights who were given this commission had previously been charged with illegal livery, including: Sir William Say (in Hertfordshire)<sup>82</sup>, Sir Edward Darell (in Wiltshire)<sup>83</sup> and Sir Walter Griffith (in Yorkshire)<sup>84</sup>. The exact scale of this task is difficult to judge since, at present, there has been no comprehensive study of Scottish population in the early sixteenth-century England. Some research has, however, been undertaken for the fifteenth century which gives an impression of the scale of the task in the early sixteenth century. J.A.F. Thomson examined Scottish emigration to England in the fifteenth century. Although there were no records that could produce a fully quantified study,<sup>85</sup> he stressed that there was a large geographical spread where Scots had settled ‘with its very heavy weighting to the south’ and ‘that there was little large-

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<sup>79</sup> See ‘Service: Affinities, Retinues and Households’ section of Chapter One for a full discussion of this historiography.

<sup>80</sup> E101/71/5 ms. 961.

<sup>81</sup> *L&P Hen. VIII*, i, no. 2222 (16).

<sup>82</sup> KB9/391 ms. 33; KB29/122 rot. 4.

<sup>83</sup> KB9/436 ms. 16.

<sup>84</sup> KB29/142 rot. 7.

<sup>85</sup> J.A.F. Thomson, ‘Scots in England in the Fifteenth Century’, *Scottish Historical Review*, 79 (2000), 1.

scale migration'.<sup>86</sup> Previously, Sylvia Thrupp's examination of the alien subsidy rolls for 1440 identified approximately 1195 Scots living in England,<sup>87</sup> a figure which, due to the precise nature of the subsidy, is likely not to have included merchants and servants of great households.<sup>88</sup> While a comprehensive discussion of migrant Scottish populations is beyond the scope of this study, it is clear that identifying all the Scots in England, seizing their property and making the relevant inventories would have been a time-consuming responsibility. These time-consuming administrative burdens were carried out by the retainers of those given the commission, even if they had been indicted for illegal retaining.

In addition to positions in local government, members of the gentry acted as estate officials for magnates. Sir William Say was connected to the affinity of John de Vere, thirteenth earl of Oxford in 1486 and 1487,<sup>89</sup> and was indicted for illegal livery four years later in 1491.<sup>90</sup> Sir Henry Willoughby was steward, overseer and governor of four of John, Lord Clinton's manors in Warwickshire.<sup>91</sup> Indicted for receiving illegal livery from three different lords in 1434 (Ralph Cromwell, Sir Richard Vernon and John Beauchamp) Richard Broun, gentleman of Repton, was also granted custody of the park of Bretby by the duke of Norfolk in 1432.<sup>92</sup> Ecclesiastical estates provide similar examples. Sir John Legh and Sir William Sandys, both indicted in Hampshire in 1505 and 1511 respectively,<sup>93</sup> held offices in the Bishopric of Winchester.<sup>94</sup> The fact that some retainers of ecclesiastical establishments were indicted for illegal livery should be unsurprising since ecclesiastical lords required service and retainers in much the same way as their secular counterparts.<sup>95</sup> The important point is that those

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<sup>86</sup> Ibid, 13. It should be noted that recent research on immigration into England during the late medieval period has noted a high number of Scots in Northumberland which would seem to contradict this conclusion. Jonathan Mackman, 'Northumberland', *England's Immigrants website* (June 2012) [<http://www.englishimmigrants.com/northumberland/>]

<sup>87</sup> Figures taken from Sylvia L. Thrupp 'A Survey of the Alien Population of England in 1440', *Speculum*, 32 (1957) 270-2. It should be noted that at the time of writing this thesis, a project has commenced at the University of York which has been examining the alien subsidies and the figure may, in future, be revised upwards. It is, however, unlikely that any alteration to these figures would alter this interpretation. I am indebted to Dr Jonathan Mackman and Dr Jessica Lutkin for this information.

<sup>88</sup> Ibid, 263.

<sup>89</sup> Ross, *John de Vere*, 122, 162, 188, 190, 196, 236.

<sup>90</sup> KB9/391 ms. 33; KB29/122 rot. 4.

<sup>91</sup> *IMP, 1-12 Hen VII*, no. 331. For Willoughby's indictment for illegal livery in 1489 see: KB9/380 ms. 41; KB29/133 rot. 16.

<sup>92</sup> *CIPM, 1432-1437*, no. 108; KB9/11 ms. 15.

<sup>93</sup> For Sandys see: KB9/436 ms. 13. For Legh see: KB29/143 rot. 24.

<sup>94</sup> Brown, 'Bastard Feudalism and the Bishopric of Winchester', 304, 306.

<sup>95</sup> Note similar point made about the bishops of Durham: Liddy, *Bishopric of Durham*, 104.

members of the gentry who were indicted for illegal livery were in many instances serving in the affinities of peers as well as the crown. In these cases, it was their own illegal retaining practices that they were being indicted for, while they themselves were being legally retained in other affinities.

Many of those charged with illegal livery performed multiple roles that allowed them to retain people, both legally and illegally, such as the Norfolk esquire William Brandon. Like his lord, the duke of Norfolk, Brandon was indicted for illegal livery.<sup>96</sup> Brandon, however, was indicted in 1467 for illegally distributing livery to six men at Southwark on 10 July 1465. Presumably, he was not indicted for receiving livery from the duke of Norfolk when the duke himself was indicted in 1470<sup>97</sup> because he was a legitimate servant of Norfolk. The Paston letters show Brandon as one of the Norfolk's retainers and he occurs in many letters involving the dispute between the Paston and the Duke of Norfolk over Fastolf's will.<sup>98</sup> McFarlane regarded Brandon as being an archetypal example of servant who was 'the directing brain behind the activities of a baronial household' as opposed to its 'nominal head'.<sup>99</sup> Three Paston letters in particular indicate that Brandon was behind many of Norfolk's activities and could be regarded as a skilful legal operator. Edward IV, in one letter, is reported to have stated how Brandon was able to 'beguile the duke of Norfolk and bring him about the thumb'.<sup>100</sup> On 8 January 1472 John Paston II wrote to his mother Margaret Paston telling her and his brother regarding the dispute with the duke of Norfolk warning about any potential 'craftye delaye by Sothewell or Brandon',<sup>101</sup> while John Paston III described him as one of his 'greatest enemyes'.<sup>102</sup> In addition to being a servant of the duke of Norfolk, Brandon held various positions in government, such as customer of Ipswich,<sup>103</sup> JP in both Suffolk and Norfolk<sup>104</sup>, and was elected MP for Shoreham in 1467-8 and Suffolk in 1472-5.<sup>105</sup> There was nothing untypical of Brandon's multifaceted career as law-maker, law-breaker, law-enforcer and servant. Moreover, Brandon's career is illustrative of many members of the gentry who had

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<sup>96</sup> KB29/98 rot. 8; KB29/99 rott. 32-3.

<sup>97</sup> KB29/99 rott. 31-2.

<sup>98</sup> *PL*, i, 446, 449-50, 488, 495, 544, 578-9, 586, 595.

<sup>99</sup> K.B. McFarlane, 'Parliament and Bastard Feudalism', *TRHS*, 4<sup>th</sup> series, 26 (1944), 72.

<sup>100</sup> *PL*, i, 544.

<sup>101</sup> *Ibid.*, 446.

<sup>102</sup> *Ibid.*, 568.

<sup>103</sup> *CPR, 1467-1476*, 167.

<sup>104</sup> *Ibid.*, 622, 631.

<sup>105</sup> Wedgwood, *Biographies*, 102-3.

both upwards and downward bastard feudal connections.<sup>106</sup> He retained men legitimately for the purposes of estate administration of great lords in the same manner that they retained men legitimately for the purpose of governmental administration.

An examination of office holding has shown that being indicted for illegal livery rarely, if ever, resulted in a permanent loss of office, or exclusion from future patronage. The indictment against Ralph Cromwell in Derbyshire in 1434 for illegally giving livery to two knights and three gentlemen did not hinder or affect his role as treasurer of England, a post to which he had been restored the previous August.<sup>107</sup> Office holding extended beyond honorific display of favour and had a practical element because it was one of the many ways that enabled the nobility to make social connections and retain people. Appointments to commissions and offices enabled people to legitimately retain men for the purposes of serving central government. It was only when they began retaining men that it was deemed socially unacceptable to, or when they used their retainers for lawless purposes, that they were eventually indicted. Thus, office holding enabled the gentry to come into contact with many of the men they retained both legally and illegally. When considered in conjunction with land ownership, it is clear that the formation of illegal retinues and affinities were profoundly influenced by the land ownership and office holding of the gentry.

### **Land Holding**

In medieval society, land was the predominant source of wealth and political power which, in turn, influenced the area where a lord retained men.<sup>108</sup> Land was the means by which offices were conferred, military power was built and connections were formed. The effect of landholding on local lawlessness differed from county-to-county and from noble-to-noble depending on patterns of land ownership. As Alan Cameron observed, the more spread out a nobleman's lands were, the less likely he was able 'to bring the whole of his military force to bear upon the problems of one particular county'.<sup>109</sup> This section examines the influence of landholding on the creation of illegal retaining relationships in late medieval England.

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<sup>106</sup> Hicks, *English Political Culture*, 141-2, 154-6.

<sup>107</sup> KB9/11 ms. 15; *CPR, 1429-36*, 288; A.C. Reeves, 'Ralph Cromwell', *ODNB*, xiv, 353-5.

<sup>108</sup> See Introduction for a full discussion of present historiography on landholding.

<sup>109</sup> Cameron, 'The Giving of Livery and Retaining', 22.

In certain cases the indictments explicitly show that the men were being given illegal livery by lords who were local landowners. For instance, in 1476, the Sussex gentleman, John Lyle of Pulborough illegally gave livery to three husbandmen, one fuller and one carpenter, all from Pulborough, two years earlier at Pulborough.<sup>110</sup> Other cases involved only some of the men who were illegally retained coming from the same place as their lord since most cases involved men being retained illegally from several manors, towns and/or villages. In 1489, William Hugford, an esquire from Warwick, was indicted for giving illegal livery to five artisans of Warwick along with 17 other men from Warwickshire.<sup>111</sup> These cases were, however, untypical since there were only 60 occasions in which at least one of the persons who were illegally retained were recorded in the indictment as coming from the same town/village/manor as the person illegally retaining them. The reason for this low number is the fact that if a person lived on their lord's manor, they were tenants, or could claim to be permanent servants of his, which therefore entitled them to wear his livery. Therefore, the King's Bench records rarely show lords illegally retaining men from where they themselves lived. Additional evidence is thus required for the majority of cases in order to examine the link between illegally retaining and land ownership.

Despite the laconic nature of the available sources for land ownership, a sufficient quantity of evidence survives to permit various conclusions to be drawn regarding the connection between land ownership and illegal retaining practices. The fullest sources for land ownership in medieval England are the surviving inquisitions *post mortem*, which were the formal inquiries of the lands held by lay tenants in chief of the crown after their death.<sup>112</sup> They are, however, problematic. Charles Ross and T.B. Pugh highlighted the main problems inherent in inquisitions *post mortem*: they survive in a defective state; 'usually give us only some of the deceased tenant-in-chief's manors and lordships'; and they regularly undervalued the deceased's property.<sup>113</sup> The printed calendars are difficult to use over a long period of time due to the differing editorial practice that have governed what was included and what was

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<sup>110</sup> KB9/342 ms. 36.

<sup>111</sup> KB9/380 ms. 41C.

<sup>112</sup> Michael Hicks, 'Introduction', in *The Fifteenth Century Inquisitions Post Mortem*, ed. Hicks 1.

<sup>113</sup> C.D. Ross and T.B. Pugh, 'Materials for the Study of Baronial Incomes in Fifteenth Century England', *EcHR*, 6 (1953), 186-88, quotation on 186.

not included since the late nineteenth century.<sup>114</sup> Problems about valuations are not fatal for this study because it is where a lord held land, not the economic value of his lands, that is pertinent to understanding the link between land owning and retaining practices.<sup>115</sup> The fact that not all of a tenant-in-chief's manors are listed, however, is problematic since it means that conclusions drawn from inquisitions *post mortem* are, at best, impressionistic.

The evidence of inquisitions *post mortem* indicates that it was uncommon for nobles to illegally retain people from their own land since their tenants could claim to be legitimate retainers. In Warwickshire, Sir William Lucy held four manors three messuages and a virgate,<sup>116</sup> along with other land in seven other counties<sup>117</sup> but none of the four men he illegally gave livery to at Charlecote in June 1489 came from those lands.<sup>118</sup> Edward Neville, lord Bergavenny, was indicted in Kent in 1461 for illegal livery but, according to his inquisitions *post mortem*, he only held two manors in the county and none of the men who he had given livery to came from those manors.<sup>119</sup> In other cases, it is only possible to identify a small fraction of men coming from a manor owned by the lord illegally retaining them. Out of the ten men to whom Walter Blount, lord Mountjoy, gave illegal livery on 30 May 1461,<sup>120</sup> only one yeoman came from a place where Blount was known to hold land, Sutton.<sup>121</sup> Rather than illegally retaining men from their own lands, lords usually illegally distributed livery and fees illegally to men from neighbouring land.

The lord doing the illegal retaining was normally recorded as coming from the same county as those he was illegally retaining. It was in only 18 cases that the lord distributing illegal livery was listed as coming from a county other than the one where he was indicted. In some cases it is clear that the person being indicted was a member of the peerage who held land in several counties, such as the earl of Shrewsbury who

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<sup>114</sup> Sean Cunningham, 'A Great Historical Enterprise: The Public Record Office and the Making of the Calendars of Inquisitions *Post Mortem*', in *The Fifteenth Century Inquisitions Post Mortem*, ed. Hicks 169-82.

<sup>115</sup> For a favourable view of the potential of *CIPMs* for historical research see: Hicks, 'Introduction', 1-24.

<sup>116</sup> *CIMP*, 1-12 Hen VII, no. 835.

<sup>117</sup> *Ibid*, nos. 836-40, 842-3.

<sup>118</sup> KB9/380 ms 41B.

<sup>119</sup> C140/58 no. 66.

<sup>120</sup> KB9/13 ms. 22.

<sup>121</sup> C140/49 no. 24; C140/57 no. 55.

was indicted in Derbyshire in 1468.<sup>122</sup> Ralph Greystoke of Barnard Castle in the palatinate of Durham was indicted for distributing livery illegally to seven yeomen and one gentleman from Yorkshire in August 1423.<sup>123</sup> His family's connection to Yorkshire is evident by the fact that the manor Slinsby in Yorkshire was held of the baron Greystoke by Sir Alexander Metham.<sup>124</sup> There are others for whom it is difficult to identify any landed wealth. The inquisition for John Grey, Lord Wilton, indicates that he only owned land in Buckinghamshire<sup>125</sup> while he was indicted for giving livery to three men in the neighbouring county of Bedfordshire.<sup>126</sup> Conversely, in the instances in which someone received livery illegally in another county, they were almost inevitably from the neighbouring county. In Devon, in 1491, seven yeomen and one shoemaker from Somerset were indicted for illegal livery,<sup>127</sup> while in Warwickshire Sir Edward Raleigh was indicted for illegally giving livery to one husbandman from Oxfordshire in addition to another from Warwickshire in September 1488.<sup>128</sup> Likewise, in 1414, Thomas Tailor, yeoman of Cheshire, was indicted along with five men from Stafford for illegally receiving livery from Robert Erdeswyk.<sup>129</sup> When someone was charged for receiving illegal livery in a county they were not from, then they were from the neighbouring county. This illustrates how social relationships such as illegal retaining crossed administrative county boundaries.

Instances in which there were large clusters of cases in a particular area and in which men were illegally retaining men from neighbouring counties can be linked to instances of widespread lawlessness and political discontent. In Hereford, men from the March of Wales were indicted for illegally livery by the *oyer et terminer* commissions in the county. In 1452, Henry ap Griffith, esquire, was indicted for illegally giving livery to a corveser from Hereford on 6 April 1452.<sup>130</sup> His son, John ap Harry, was indicted in 1457 for giving illegal livery to eight men the previous

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<sup>122</sup> KB9/13 ms. 63; A.J. Pollard, 'The family of Talbot, Lord Talbot and the Earls of Shrewsbury in the Fifteenth Century' (unpublished PhD thesis, University of Bristol, 1969), 413.

<sup>123</sup> KB27/696 rot. 19 rex; KB27/737 rot. 1 rex.

<sup>124</sup> *CIPM*, 1 to 5 Henry V, no. 497.

<sup>125</sup> *CIPM*, 1504-1509, no. 882.

<sup>126</sup> KB9/417 ms. 119.

<sup>127</sup> KB29/121 rot. 15.

<sup>128</sup> KB9/380 ms. 41B.

<sup>129</sup> KB9/113 ms, 2.

<sup>130</sup> KB9/34/1 ms. 5. Henry ap Griffith's origins are opaque since he is referred to as coming from various parts of Wales, the March of Wales and Herefordshire in official documents: Adam Chapman, "Dug fi at y Dug o Iorc" [He took me to the Duke of York]: Henry Griffith, a "Man of War", in *'Gwalch Cywyddau Gwŷr': Essays on Guto'r Glyn and Fifteenth Century Wales*, eds. B.J. Lewis and D.F. Evans (Aberystwyth, 2013). I would like to thank Dr Chapman for providing me with an early copy of this article.

April.<sup>131</sup> It has not been possible to identify these individuals holding any land in Herefordshire. Their connection with men from Herefordshire was probably the product of the county's geographical proximity to Wales and through the Devereux-Herbert faction in the county at the time of local political instability.<sup>132</sup>

During the reign of Henry VII, similar circumstances are evident with members of the Stanley family. Three members of the Stanley family all listed as coming from Lancashire were indicted in Yorkshire and Cheshire for illegal livery between 1499 and 1504.<sup>133</sup> Since the Stanley family were major land owners in the palatinate counties of Cheshire and Lancashire,<sup>134</sup> the fact that they were retaining men in the neighbouring county of Yorkshire suggests an attempt to expand the geographical scope of their influence. In the north-west there was 'a considerable degree of social intercourse between the Cheshire and Lancashire gentry' that was ensured by the independence of the two counties and their remoteness from the centre.<sup>135</sup> The connection between the men of these northern counties is further evident by the fact that Sir Thomas Assherton and Alexander Radcliff, esquire, were both Lancashire gentry indicted in 1499 for distributing illegal livery in Cheshire.<sup>136</sup> Similarly, in 1491 the Lancashire gentleman Richard Radcliff was indicted for giving illegal livery in Yorkshire.<sup>137</sup> Both situations indicate the regional powerbase of those illegally retaining: Herefordshire and South Wales for the Yorkist faction during the 1450s and the northern counties, especially Lancashire and Cheshire for the Stanley family in the 1490s.

Land was also a means to office in late medieval England and therefore where someone held land affected where they held office. Consequently, a person's landholding determined the area in which they were likely to retain men. The case of the Hampshire knight, Sir William Sandys, created Lord Sandys of Vyne on 27 April 1523,<sup>138</sup> illustrates the connection between landownership, office-holding and illegal retaining. Sandys was indicted in 1505 for illegally retaining four men in Andover,

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<sup>131</sup> KB9/35 ms. 69.

<sup>132</sup> Chapman, 'Henry Griffith, a "Man of War."'

<sup>133</sup> Sir Edward Stanley in Yorkshire in 1504: KB29/134 rot. 26; Sir William Stanley twice in Cheshire in 1499: CHES 25/18 ms. 11; and James Stanley, later Bishop of Ely in twice Cheshire in 1499 and twice in Yorkshire in 1500: CHES25/18 ms. 13-14, KB29/131 rott. 2-3, KB8/3/1 ms. 5. James Stanley's case is discussed in depth in the 'Religious' section of this chapter.

<sup>134</sup> See e.g. Coward, *The Stanleys*, 111-26.

<sup>135</sup> Bennett, *Community, Class and Careerism*, 15.

<sup>136</sup> CHES25/18 ms. 7, 18.

<sup>137</sup> KB9/391ms. 13-14.

<sup>138</sup> Ronald H. Fritze, 'William Sandys', *ODNB*, xlvi, 935-6.

one in Winchester, one in Clatford and one in Ampport.<sup>139</sup> The inquisition *post mortem* for his father indicates that Sandys inherited a considerable amount of land in Hampshire, including the manor of *Alyvys* in Andover,<sup>140</sup> along with two manors in Surrey.<sup>141</sup> His prominence as a land owner meant it was normal for him to be involved in local law enforcement. Consequently, he was given ten commissions of the peace in Hampshire and Wiltshire between 1498 and 1504<sup>142</sup> and also named in an *oyer et terminer* commission for Hampshire in 1501.<sup>143</sup> Prior to his indictment, Sandys had been the beneficiary of crown patronage. In 1499 he was made: steward of the manors of Christchurch and Ringwood; bailiff of Christchurch; and constable of Christchurch castle.<sup>144</sup> Thereafter, he was made ranger of Chute Forest in 1501<sup>145</sup> and given the manors of *Peryton* and *Westrandon* forfeited by Lord Audley in 1504.<sup>146</sup> It was Sandys landholdings, most of which were in Hampshire, that led to him being named on these commissions and given various stewardships. Those indicted for being illegally retained by Sandys pleaded that they had been lawfully retained since Sandys had given them livery of a red rose (a Lancastrian and Tudor symbol) in order to serve the king.<sup>147</sup> Sandys' office holding and land holding were the means by which he came into contact with those whom he had illegally retained.

The absence of a direct correlation between a lord's landholdings and where he was illegally retaining people was a product of the statutes because gifts of livery by a lord to his tenants was deemed to be appropriate by justices. Those living on land owned by a lord were his legal tenants and were therefore entitled, and even expected, to receive fees and livery from their lord. Landownership did, however, have two effects on illegal retaining. One was that that lords who illegally retained men did so from either the same county they held lands in or in a neighbouring county. The other effect was that where a person held land affected where they were granted offices, which in turn allowed them to retain men, both legally and illegally. However, in these situations it remained possible for a person to claim that they had been retained as legitimate servants of the crown. In contrast to legitimate retaining, landholding

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<sup>139</sup> KB9/436 ms. 13.

<sup>140</sup> *CIMP, 1-12 Hen VII*, no. 1246.

<sup>141</sup> *Ibid*, no. 1245.

<sup>142</sup> *CPR, 1494-1509*, 625, 665.

<sup>143</sup> *Ibid*, 287.

<sup>144</sup> *Ibid*, 187.

<sup>145</sup> *Ibid*, 354.

<sup>146</sup> *Ibid*, 425.

<sup>147</sup> KB9/436 ms. 13; KB27/993 rot. 12.

was only a determining factor in illegal livery in a negative fashion – i.e. it was usually in areas that a lord held no land that he retained illegally.

### **Family Connections**

The previous two sections considered how illegal retaining relationships were formed via the formal means of land and office. Society also operated via informal personal relationships such as family and friendship that contributed to the creation of these relationships. The surviving records prohibit any meaningful discussion of the influence of friendship since such informal relationships are not readily recorded in the prosaic records of the King's Bench.<sup>148</sup> The records, however, enable an examination of the extent to which family ties coincided with bastard feudal connections, albeit illegal ones. John Maddicott believed that family ties were important for the 'vigour of the retinue' of Thomas of Lancaster and that 'family feelings thus reinforced the link between lord and retainer'.<sup>149</sup> Family ties were an alternative means by which illegal retaining relationships were formed.

Before analysing the role of family connections it is necessary to identify the possibilities and limitations of the records. In certain cases a familial relationship is explicitly stated. Richard Oates, labourer from Halifax, for example, was described as being the son of William Oates who was also indicted in the same case in 1500. John Oates, yeoman from Halifax, was also indicted at the same time but there is no indication as to what, if any, relation he was to either Richard or William Oates. In the same case, nine men with the surname Kay were indicted in 1500, one of whom, John Kay, was described as the son of Henry Kay, although no Henry Kay was indicted.<sup>150</sup> Presumably, the nine Kays were all related in some fashion. Family connections were clearly a factor in creating these illegal retaining relationships. On other occasions the phrases 'junior' and 'senior' were used distinguish between members of the same

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<sup>148</sup> Note, for instance, Colin Richmond: 'If it is true that you can tell a man by his friends, then another way of coming at John Hopton is through a study of his. There is one snag: we do not know who were his friends'. Richmond, *John Hopton*, 159. Philippa Maddern has discussed notions of friendships within the Norfolk gentry of the fifteenth century. Her evidence is derived from both literary sources and surviving records such as deeds, witness lists and who acted as feoffees, attorneys etc. Although people would have acted in conjunction with those whom they considered to be their friends, many witnesses to deeds may well have been passing acquaintances. The records, similarly, cannot be comprehensive in describing friendships. Moreover, written documentation of this kind says little about the notion of friendship among the peasantry who formed the bulk of the illegal retainers. Phillippa Maddern, "'Best Trusted Friends": Concepts and Practices of Friendship among Fifteenth-Century Norfolk Gentry', in *England in the Fifteenth Century*, ed. Nicholas Rogers (Stamford, 1992), 100-17.

<sup>149</sup> Maddicott, *Thomas of Lancaster*, 60.

<sup>150</sup> KB29/131 rott. 2-3.

family, such as in Leicestershire in 1516, when John Harrington Sen. and his son John Harrington Jr., esquires, were both indicted for being illegally retained by the earl of Huntingdon.<sup>151</sup> The surviving records, however, rarely explicitly state any family connection, meaning that a degree of speculation is required by assuming that those people with the same surname from the same area were related. For instance, John Woode, Henry Woode and Humphrey Woode, all from Dunstable in Bedfordshire were indicted for illegally receiving livery of cloth and signs from John, Lord Grey of Wilton on 12 June 1498. Although the records do not state the nature of any familial relationship – i.e. brothers, cousins, father and sons, uncles and nephews etc. – they were almost certainly related.<sup>152</sup> Repetitions of surnames in a case the records seldom reveal the precise nature, or even existence, of any familial relationships. Nevertheless, it remains a reasonable assumption that whenever a surname was shared by various men illegally retained by the same lord they were in some way related. Despite these limitations, indictments of illegal livery shed light on the link between family connections and bastard feudal relationships, albeit illegal ones.

In total, 88 out of the 334 cases identified (26.3%) have at least one surname repeated,<sup>153</sup> although the number of times multiple members of the same family were illegally retained by the same person is likely to have been higher due to other familial relationships in which surnames were not shared.<sup>154</sup> Many cases of illegal livery occurred in conjunction with instances of feuding between rival families. Consequently, some of these commissions produced several instances of indictments of illegal livery being brought against men that shared the same surname. In Staffordshire, in 1414, for instance, six out of the 21 cases involved several members of the same family.<sup>155</sup> There were instances in Staffordshire during Henry IV's reign of multiple members of the same family working in conjunction with each other and other families. John Myners, who was indicted for illegally distributing livery to two yeomen, was involved in several assaults, along with his two brothers, against prominent Lancastrians in the county. They were also involved with Hugh Erdswyke in a raid upon the house of John Pasmere of Uttoxeter, a Lancastrian servant, in February 1409. Erdswyke himself gave illegal livery to several members of the same

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<sup>151</sup> KB29/148 rot. 16.

<sup>152</sup> KB9/417 ms 119; KB27/952 rot. 7 rex; KB29/129 rot. 2.

<sup>153</sup> See the appended table for the number of cases in each county.

<sup>154</sup> E.g. in-laws and relations via the maternal side.

<sup>155</sup> KB9/113 ms. 2, 11, 41-3.

family.<sup>156</sup> Edmund Ferrers similarly distributed illegal livery in Staffordshire to members of the same families, such as John and William Pas of Chartley, Thomas and Richard Sturdy of Ruggeley and John and Richard Cooper of Abbots Bromley.<sup>157</sup> Familial relations in Staffordshire helped to create social ties that were manifest in instances of illegal retaining as well as general acts of lawlessness.

Comparisons can be made with surviving livery rolls of magnates, although it is important not to over-generalise from isolated examples. Edward Courtney's surviving livery roll of 1384 shows that he gave livery to four other family members. Granting livery to multiple members of one family, however, was an uncommon occurrence. In only four occasions can multiple persons from the same family be identified on the Courtney livery roll<sup>158</sup> and only two examples can be identified on the livery roll of lady de Clare.<sup>159</sup> The Kalendar of the inner household of Richard, earl of Warwick, for 1420-1, implies few familial connections between members of this household. The only familial relationship that can be positively identified is a mother-daughter relationship between two women of the chamber: Agnes, 'wife of Adam' and Agnes, 'daughter of Adam'.<sup>160</sup> Likewise, the Kalendar of the absent John Fastolf's household indicates that the only familial relationship in the household was between Milicent Fastolf and her daughter Alice.<sup>161</sup> A similar pattern is evident in the household books of Robert Dudley, earl of Leicester from the late sixteenth century.<sup>162</sup>

Similar patterns appear in the various lists of retinues, servants and affinities drawn up for members of the higher nobility. The affinities of John of Gaunt, Richard, duke of York and John de Vere, thirteenth Earl of Oxford have all been shown to have included multiple members of the same family.<sup>163</sup> William, Lord Hastings, indentured three members of the Meverell family in 15 Edward IV – Thomas, Thomas junior, and Nicholas – as well as Robert and Richard Eyre in 16 Edward IV. During 21 Edward IV, he also indentured Henry and Ralph Longford and Nicholas and Thomas

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<sup>156</sup> KB9/113 ms. 2, 42, 46-7; Powell, *Kingship, Law and Society*, 209-14.

<sup>157</sup> KB9/113 ms. 41.

<sup>158</sup> BL Add. Ch. 64320.

<sup>159</sup> E101/92/23.

<sup>160</sup> Magdalen College, GDIII/66/1, 8.

<sup>161</sup> Magdalen College, Fastolf Paper 8.

<sup>162</sup> *Household Accounts of Robert Dudley*, 423, 427-8, 431, 435-6, 438.

<sup>163</sup> Johnson, *Duke Richard of York*, 228-41; Ross, *John de Vere*, 228-40; Walker, *The Lancastrian Affinity*, 262-84.

Ruggeley.<sup>164</sup> Royal affinities afforded more opportunity for members of the affinity to bring their relatives into the fold, with 340 out of 860 known members of the royal affinity between 1360 and 1413 sharing a surname with at least one other member.<sup>165</sup> Larger royal affinities afforded greater opportunity for membership than those of even the wealthiest peer. Even in this situation, the majority of retainers, officials and servants were not related to each other and only a small percentage were related in all of these examples.

Family connection, while present in legal retainers, households and affinities was a feature of only a small percentage of the majority of late medieval affinities. The cases examined in this study have one crucial difference in comparison with previous studies: instead of focusing on the higher nobility retaining the gentry, they are predominantly focused on the gentry retaining those of lower social status such as yeomen and husbandmen. With respect to family connections, this evidence suggests that the legal and illegal retaining practices of the gentry were similar to the legal and illegal retaining practices of the peerage, albeit on a smaller scale.

These findings, moreover, have wider implications for understanding the workings of bastard feudal affinities. Christine Carpenter described bastard feudal affinities of the later middle ages as ‘a series of concentric circles’ with the lord at the centre.<sup>166</sup> This was how affinities worked when considered from the centre. When considered from the perspective of those on the periphery who were being illegally retained, it is clear that their connections were by no means uniform. Members of Richard II’s household were able to secure positions in the royal household for their kin. Simon Burley, Richard’s under-chamberlain, was able to secure his brother John a position as Richard’s chamber knight and his nephew William as an esquire of the household.<sup>167</sup> The three Burleys were not in the same ‘concentric circle’ around the king, but the connection between them was as strong, and likely stronger, than with others in the same ‘concentric circle’ as them. Similar influences are likely to have been at work further down the social scale, and probably influenced gentry retaining policy. Illegal livery cases indicate that family connections were a factor in the recruitment of bastard feudal affinities. Similarly, the lists of retainers, annuitants and servants drawn up in the appendixes of various studies show that while family

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<sup>164</sup> Dunham, *Lord Hastings’ Indentured Retainers*, 119-20.

<sup>165</sup> Given-Wilson, *King’s Affinity*, 217, 282-90.

<sup>166</sup> Carpenter, ‘The Beauchamp Affinity’, 515.

<sup>167</sup> Given-Wilson, *King’s Affinity*, 217-18.

relations did occur, they were very rare. In this instance, there is a clear parallel between legal and illegal bastard feudal affinities. Family relations had a role in the formation of both legal and illegal retaining relationships: it was a factor in some cases, but it was not a routine feature.

### **Other Crimes**

Thus far this chapter has been concerned with the creation of illegal retaining relationships and the impact that indictments for illegal livery had on the careers of those indicted. The remainder of this chapter is concerned with the identity and character of those indicted for illegal livery. One of the central themes of this study is the link between cases of illegal livery arising and wider disorder. The problem of retainers being used for lawless activities was one of the main driving forces behind the statutes of livery.<sup>168</sup> Earlier chapters have approached this issue from the wider perspective of where and when cases arose, whereas this section examines the personnel charged. The other indictments considered are those indictments that occurred at the same time, or close to, the period in which they were indicted with illegal livery. If someone was indicted for another offence years, or even decades, before or after being indicted for illegal livery, there is no logical connection between the two indictments.

Traditional historiography discussed livery and maintenance as being connected since both were the main evils associated with bastard feudalism.<sup>169</sup> However, no examples have been found of anyone being indicted for both illegal livery and unlawful maintenance at the same time. The closest example was in Staffordshire in 1414 when Robert Erdeswyke was indicted for illegally distributing livery to six men.<sup>170</sup> Two of the six yeomen who illegally received his livery were indicted, along with four others, for a murder committed on Palm Sunday 1414. The indictment alleged that Robert Erdeswyke had ‘procured and abetted them’.<sup>171</sup> The different laws against certain forms of livery and maintenance did not combine in many cases. This is not to argue that they were not connected concerns and that the phrase ‘livery and maintenance’ was purely an anachronism of nineteenth-century historiography. Several petitions regarding the problem of livery mention the problem

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<sup>168</sup> See ‘Petitions’ section in Chapter Four.

<sup>169</sup> See Introduction.

<sup>170</sup> KB9/113 ms. 2.

<sup>171</sup> KB9/113 ms. 1; ‘Extracts from the Plea Rolls of the Reigns of Henry V and Henry VI’, 5.

of maintenance suggesting the two problems were linked in the minds and language of late medieval petitioners.<sup>172</sup> Unlawful maintenance involved the corruption of the legal system and the connected problem of champerty (supporting an unjust claim to land for a share of the profits).<sup>173</sup> Illegal livery was concerned with the artificial expansion of affinities for violent purposes. The two were not necessarily linked in practice other than being products of bastard feudalism. Further research is required to determine the extent to which enforcement of the statutes dealing with maintenance coincided with the enforcement of the statutes dealing with livery.<sup>174</sup> While the laws concerning both livery and maintenance were connected to problems associated with bastard feudalism, no one was indicted simultaneously for both offences.

The crimes that had the clearest correlation with illegal livery were instances of widespread disturbances in which large numbers of people were indicted, such as riots. In 1516, the earl of Huntingdon was indicted for illegally retaining 184 men and the marquis of Dorset was indicted for illegally retaining 158 men at Loughborough on 20 April. This was part of a long running feud between the two men and they were ordered to appear before the justices of the King's Bench for various 'transgressions, riots and assemblies' as well as illegal livery.<sup>175</sup> This was the only large-scale case in which it is demonstrable that large group of men were *all* indicted with illegal livery in conjunction with another crime.

In contrast, the indictment against William Courtney of Powderham for giving livery illegally to 93 men in Devon in 1491<sup>176</sup> indicates that those given illegal livery were not always the same people who were committing other crimes with a lord. At the same time that illegal livery was being prosecuted, there were also indictments for both riot and mayhem. Forty of the men who were indicted for illegal livery (43%), including William Courtney, were indicted for riot as well. Most of those indicted for rioting were yeomen or craftsmen, although one gentleman, Robert Prous, was indicted for both illegal livery and riot. None of the five men indicted for mayhem or

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<sup>172</sup> *PROME*, vi, 50; vii, 124; vii, 239-40; viii, 11-12, 38; viii, 400; ix, 354-5, 402-3; xiii, 65; xv, 131-2, 371.

<sup>173</sup> Hicks, *Bastard Feudalism*, 119-24, 223, 227.

<sup>174</sup> Nigel Saul argued that 'maintenance was on the increase' during the late fourteenth century. Saul, 'Abolition of Badges', 313. At present, Professor Jonathan Rose is conducting a study on the law of maintenance during the late medieval period and the results of this study may illuminate this point further.

<sup>175</sup> KB29/148 rot. 16; KB27/1021 rott. 22-3 rex; Robertson, 'Court Careers and County Quarrels', 153-70.

<sup>176</sup> KB29/121 rott. 15-16.

the 54 men indicted separately for riot were charged for illegal livery.<sup>177</sup> In this instance the illegal livery indictment is likely to have been brought about by William Courtney's use of some of his illegal retainers. Although all of them were not involved in other acts of lawlessness, they were indicted for illegally receiving livery. Similarly, the indictment against Sir William Sandys for illegally retaining seven men in 1505 indicates that Sandys had used some of his retainers for unlawful purposes. Dominic Lockett has stated that the most likely cause into the investigation of Sandys came after disturbances between the Sandys and Lisle families in August 1502 when both assembled with their adherents on successive days.<sup>178</sup> The list of men who paid fines for their involvement in this incident, however, rarely corresponds to the surviving indictment for illegal retaining. Only two of the seven men fined for rioting with Sandys in 1502 were indicted with being illegally retained by him in 1504, John Hacker, fishmonger and John Est, husbandman.<sup>179</sup>

Determining the extent to which those who received illegal livery participated in widespread disorder, feuding and even private battles is problematic because the records seldom provide a full list of those present. For example, in 1414 Hugh Erdeswyke assembled a group of around 1,000 men 'with a view of killing Edmund de Ferrers, the lord of Chartley'. The figure of 1,000 men is almost certainly an exaggeration meant to convey the scale of the gathering. Only 12 of the supposed 1,000 men are named along with Erdeswyke in the indictment<sup>180</sup> and only three of those named were indicted for illegally receiving livery from him.<sup>181</sup> The other men given livery illegally by Erdeswyke may have been part of the 1,000 men Erdeswyke is alleged to have assembled, but were his legal retainers. The fact that most violence was conducted by legal retainers is evident in the indictments against members of the Percy family who were alleged to have attacked the Neville on 23 August 1453 with 710 men, but were only indicted for giving illegal livery to 28 men between them.<sup>182</sup> The number of men indicted for illegal livery in both cases was clearly only a small percentage of the men involved wider instances of lawlessness. Legal retainers therefore formed the bulk of those retainers engaged in lawless activities.

<sup>177</sup> KB29/121 rot. 14.

<sup>178</sup> Lockett, 'Crown Office and Licensed Retinues', 232.

<sup>179</sup> KB27/969, fines.

<sup>180</sup> KB9/113 ms. 14; 'Extracts from the Plea Rolls of the Reigns of Henry V and Henry VI', 7.

<sup>181</sup> KB9/113 ms. 2, 40.

<sup>182</sup> KB9/148/2 ms. 31, 38, 54, 55; KB9/149/1 ms. 20-1, 49, 53; Griffiths, 'Local Rivalries and National Politics', 597-8.

The fact that the target of a prosecution for illegal livery was the person distributing the livery rather than receiving it is evident in the indictments against the Hampshire esquire, Henry Bruyn. On 16 October 1451 a writ was sent to the justices in Hampshire to enquire into the activities of Bruyn, including those of illegal livery.<sup>183</sup> In addition to livery, Bruyn was charged for attacking a Portuguese ship at Southampton on 3 November 1447,<sup>184</sup> and coming into possession of stolen goods and chattels from another Portuguese ship that had been attacked on 10 August 1450.<sup>185</sup> It was at this time that he was indicted for illegally distributing livery at Rowner on 20 January 1451.<sup>186</sup> Central government was also taking measures to curb the problem of piracy during the period. On 12 December 1450 a commission of *oyer et terminer* was given to the keeper of the privy seal and several gentry to investigate acts of piracy against Burgundian ships by vessels owned by Henry, duke of Exeter, Henry Bruyn, esquire, and ‘a vessel called *le Carvell* of Portsmouth’.<sup>187</sup> A subsequent commission of enquiry on 19 August 1451 concerned an attack on ‘a hulk called *le George* of Lescluse’ which was contrary to a naval truce between Henry VI and Philip the Good.<sup>188</sup> Bruyn was also involved upon an attack upon a Genoese ship in September 1450, wounding the merchants, taking them captive and seizing their cargo.<sup>189</sup> The surviving indictments from the first commission suggest, at the most, minimal involvement of Bruyn or his affinity. Robert Jorde of Titchfield was the only man who received livery from Bruyn and was indicted by this commission.<sup>190</sup> Moreover, despite being the MP for Portsmouth in 1450, Bruyn was unable to prevent himself from being named by the commission as one of those involved in piracy against Burgundian vessels. His political affiliations at this time are difficult to determine. Despite having links with the duke of York, he was also a continual royal servant at this time and seems to have avoided becoming embroiled in the feud between the dukes of York and Somerset.<sup>191</sup> Bruyn’s lawlessness rather than partisan politics led to his indictment for illegal livery and various other crimes.

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<sup>183</sup> KB9/265 ms 84.

<sup>184</sup> KB9/265 ms. 85.

<sup>185</sup> KB9/265 ms. 86.

<sup>186</sup> KB9/265 ms. 88.

<sup>187</sup> *CPR, 1446-1452*, 434-5.

<sup>188</sup> *CPR, 1446-1452*, 480.

<sup>189</sup> KB9/109 ms. 11.

<sup>190</sup> KB9/109 ms. 6.

<sup>191</sup> Clark, “History of Parliament Trust, London, unpublished article on Henry Bruyn.

In contrast to Bruyn's indictment, two commissions of *oyer et terminer* from Herefordshire in 1452 and 1457 demonstrate a connection between illegal livery, lawlessness and political consideration. The indictments against Sir Walter Devereux for illegal livery in Herefordshire in both 1452 and 1457 were part of a series of indictments against him on both occasions. Devereux was indicted for distributing illegally livery once in 1452<sup>192</sup> and twice in 1457.<sup>193</sup> In addition to illegal livery Devereux was indicted for one other offence in 1452<sup>194</sup> and seven other violent offences in 1457.<sup>195</sup> There was a strong partisan political motive to many of the indictments against Devereux. He was indicted for staging a demonstration in Hereford in 1452 in favour of the duke of York.<sup>196</sup> R.L. Storey argued that Walter Devereux 'undoubtedly instigated the [1452] rising in Herefordshire' since he was 'York's leading adherent' in the county.<sup>197</sup> Contemporary evidence clearly demonstrates Devereux's connection with York. On 18 March 1449 he witnessed a charter of Richard, duke of York's which inspected and confirmed a charter of the earl of Gloucester from 1265.<sup>198</sup> While charter witness-lists are not irrefutable indicators of loyalty or social connections, there is other evidence that reinforces this connection. Notably, his appearance on one of York's retinue rolls<sup>199</sup> and the fact he was one of York's annuitants.<sup>200</sup>

The 1457 commission was more wide ranging in its attack on Devereux and his connection in the county. The commission was triggered by an act of large scale lawlessness by Devereux and his son-in-law, Sir Walter Herbert. In August 1456 they were alleged to have gathered a force of around 2000 men, most of which are likely to have been legal retainers, from the duke of York's lands and laid siege to Carmarthen Castle to retake it for the duke. After the siege, Edmund Tudor, earl of Richmond was imprisoned, dying, possibly of plague, shortly after his release. Both Devereux and Herbert were later imprisoned by the government for their role in these events.<sup>201</sup> Like

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<sup>192</sup> KB9/34/2 ms. 142. Note: miscounted as 32 men in Storey, *End of the House of Lancaster*, 229.

<sup>193</sup> KB9/35 ms. 6, 69.

<sup>194</sup> KB9/34/1 m. 48. Discussed below.

<sup>195</sup> KB9/35 ms. 24, 40-1, 48, 70-2.

<sup>196</sup> KB9/34/1 m. 48.

<sup>197</sup> Storey, *End of the House of Lancaster*, 230.

<sup>198</sup> *CPR, 1446-1452*, 231.

<sup>199</sup> E101/53/33.

<sup>200</sup> Johnson, *Duke Richard of York*, 230-1.

<sup>201</sup> Discussed in Storey, *End of the House of Lancaster*, 179-80.

Devereux, Herbert was also indicted for illegal livery by the 1457<sup>202</sup> and was indicted for eight other crimes by the commission.<sup>203</sup> For both Devereux and Herbert, it was their more serious, political, crimes that focused the attention of the legal system upon them, which led to their indictments for illegal livery.

Those illegally liveried by Devereux were indicted for a variety of other crimes. Richard Sherman, ironmonger of Hereford, was indicted for assaulting and leaving for dead John Forte at Leominster on the Saturday after Pentecost 1452 along with unknown others.<sup>204</sup> Others were indicted numerous times for a variety of offenses. Philip Moseley, shoemaker, was indicted for receiving illegal livery from Walter Devereux in 1452 and from his son Walter Devereux, esquire, in 1457. Surviving indictments from the 1452 commission attest to his involvement in several other instances of violence, although none of these seem to have been directly connected with either Devereux.<sup>205</sup> Likewise, Thomas, Richard and Henry Monington, who received illegal livery from Walter Devereux,<sup>206</sup> were indicted for a multitude of offences unrelated to the activities of Devereux and Herbert.<sup>207</sup> There was also John Weobley, described as both a yeoman and a tailor, who was indicted for receiving Devereux's livery in 1452 and had previously been involved in much of the violence that had become commonplace at Hereford's mayoral elections. His earliest known crime was from 1446 when he is reported to have incited a man to commit murder. It has been suggested that, along with many members of his associates sought out Devereux's support.<sup>208</sup> If so, this provides a clear example in support Charles Plummer's claim that, in bastard feudal society, lords 'shielded their [retainers] crimes from punishment'.<sup>209</sup> For the 1457 commission, Ailsa Herbert calculated that 285 out of the 397 (72%) men indicted 'were associates of Devereux, Herbert or members of their affinities'.<sup>210</sup> Many of the men indicted for illegal livery in Herefordshire in 1452 and 1457 were part of a complex network of men that were involved in committing various crimes both with the men that gave them illegal livery and with each other.

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<sup>202</sup> KB9/35 ms. 69.

<sup>203</sup> KB9/35 ms. 44, 52, 60, 70, 72, 102, 115, 117. See discussion in Chapter Five.

<sup>204</sup> KB9/34/1 ms. 45.

<sup>205</sup> KB9/34/2 ms. 18, 86, 95, 113, 165.

<sup>206</sup> KB9/35 ms. 6

<sup>207</sup> E.g. KB9/34/2 ms. 149, 128, 90, 77; KB9/35 ms. 13, 17, 39, 42, 46, 50, 59.

<sup>208</sup> Storey, *End of the House of Lancaster*, 228-30.

<sup>209</sup> *Governance of England*, ed. Plummer, 15-16.

<sup>210</sup> Herbert, 'Herefordshire, 1413-61', 115.

However, not all of those indicted by the 1457 commission in Herefordshire were Yorkists. The indictments against James Tuchet, Lord Audley, Thomas FitzHarry and Henry Oldcastle in Herefordshire in 1457 raise pertinent points regarding the link between illegal livery, lawlessness and politics. For all three, illegal livery was the only crime for which they were indicted and they do not appear to have been involved in any of the nefarious activities of many of the other men indicted for distributing illegal livery. All three were supporters of the Lancastrian regime which questions whether the commission was simply intent on imposing ‘exemplary retribution on York’s retainers in his heartland’.<sup>211</sup> James, Lord Audley, also a retainer of the duke of Buckingham, was indicted for giving livery to a vintner and a draper on 28 May 1455.<sup>212</sup> He was eventually killed leading the Lancastrian army at Blore Heath two years later.<sup>213</sup> Thomas FitzHarry, esquire, was indicted for giving livery illegally to Walter ap Gynon at Hereford in April 1456.<sup>214</sup> His Lancastrian credentials are evident by the fact he was a retainer of the duke of Buckingham, held numerous local offices during the 1450s, including being the escheator on Walter Devereux’s inquisition *post mortem* in 1459. He was eventually attainted for his Lancastrian activities by the parliament of 1461.<sup>215</sup> Henry Oldcastle, esquire, was indicted for giving livery to two butchers and a baker on 6 August 1455.<sup>216</sup> Oldcastle’s career is more opaque although his appearance in several commissions towards the end of the 1450s in Herefordshire indicates that he was seen as reliable by the Lancastrian government.<sup>217</sup>

There is a distinct possibility that the indictments were a token gesture designed to give the impression that the commission was not simply a one-sided attack upon the Duke of York’s men. Two of them, Audley and FitzHarry, were retainers of the duke of Buckingham who sat on the commission.<sup>218</sup> This may be evidence that the commission was not just a one-sided affair only interested in the punishment of known Yorkists. Blatantly ignoring the crimes of Lancastrians while indicting Yorkists for every crime possible, however, would leave the commission

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<sup>211</sup> Hicks, *Warwick*, 131.

<sup>212</sup> KB9/35 ms. 69; Rawcliffe, *The Staffords*, 223.

<sup>213</sup> *An English Chronicle*, 79.

<sup>214</sup> KB9/35 ms. 68.

<sup>215</sup> C139/176 no. 22; *PROME*, xiii, 51; Rawcliffe, *The Staffords*, 223; Wedgwood, *Biographies*, 331-2.

<sup>216</sup> KB9/35 ms. 69.

<sup>217</sup> *CPR, 1452-61*, 559, 667.

<sup>218</sup> Rawcliffe, *The Staffords*, 223; *CPR, 1452-61*, 348-9.

open to criticism and therefore there was a good motive for demonstrating equality in the application of justice. All three were indicted for giving livery illegally to a small number of men and Oldcastle and Audley seem to have been able to obtain a pardon with relative ease.<sup>219</sup> Much of the service that a retainer had to perform for a lord was ambiguous and the types of service required were variable. It is possible that part of the service required of Audley and FitzHarry was to be complicit in their indictment. This is not to argue that the charges were made up, or that no instances of illegal retaining occurred. Rather, offences were committed and therefore indicted, but the cases were not subsequently pursued by the justices. In order that justice was seen to be done it was a wise move politically to indict several leading Lancastrians for the minor offence of illegal livery for which they could easily ignore or obtain a pardon. The fact that two of the men were retainers of the duke of Buckingham, who sat on the commission, gave further credence to the fact that the commission was made to be shown that was not overtly partisan. In order that justice was seen to be done it was a wise move politically to indict several leading Lancastrians for the relatively minor offence of illegal livery and no other offence.

In addition to indictments, a limited amount of other evidence indicates a link between illegal livery and general problems with lawlessness. Four men indicted in Herefordshire during the 1450s were named, along with 21 others, in a petition at the Coventry parliament complaining about lawlessness throughout the kingdom.<sup>220</sup> The best documented example, however, is from the duke of Norfolk's siege of the Paston owned Caister Castle between 21 August and 27 September 1469. During the siege Walter Writtle drafted a letter to four of the duke of Norfolk's asking them to speak with John Paston in order to 'avoide the sheedyng of Cristyn blode'.<sup>221</sup> The four men to whom the letter was addressed – Sir John Heveningham, Thomas Wyngfeld,<sup>222</sup> Gilbert Debenham and William Brandon – were all subsequently indicted for illegal livery at the same time as the duke of Norfolk.<sup>223</sup> Likewise, the list of men said to be present at the siege given in William Worcestre's *Itineraries* names 35 men, only nine

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<sup>219</sup> For Oldcastle: KB27/784 rot. 34 rex. For Audley: KB27/785 rot. 2 rex.

<sup>220</sup> *PROME*, xii, 499-500. The four men were: James Baskerville, George Monington, Thomas Monington and Hugh Shirley.

<sup>221</sup> *PL*, ii, 577-8.

<sup>222</sup> Around the same time Writtle also drafted a separate letter intended only for Wyngfeld – *PL*, i, 578-9.

<sup>223</sup> KB29/99 rott. 31-2.

of whom were also indicted for illegal livery that were also present at the siege.<sup>224</sup> There was little direct correlation between those indicted for illegal livery and those participating in the siege of Caister Castle. The most plausible reason for this is that most of those present at the siege were legal retainers of the duke of Norfolk. While Master Philip Wentworth, knight and Master Simon Fitzsymonde of Essex, esquire, were at Caister Castle but not indicted for illegal livery, there were members of their family that were indicted for illegal livery but not at Caister Castle: Robert Fitzsymond, esquire, Thomas Wentworth, esquire, and Henry Wentworth, esquire, which suggests that the families were linked to the duke of Norfolk. It should be emphasised that Worcester's list is selective and principally names those of gentry rank and above. Therefore, there is no conclusive evidence that the yeomen who were indicted for receiving livery in 1469 were present at the siege. Similarly, many of the gentry that were present at Caister Castle were not indicted with illegal livery a few months later.

Professor Hicks has hypothesised that 'in practice illegal livery was probably normally prosecuted *only* when offenders had also committed other crimes'.<sup>225</sup> The preceding examination has largely substantiated the view that illegal livery was usually a secondary offence, although it was those indicted for distributing the illegal livery that were primarily targeted. Illegal retainers were rarely indicted for a crime they committed independently of their lords. When they were, it was usually for serious crimes such as murder, as in the case with Henry Cook in Derbyshire in 1434.<sup>226</sup> In many situations the followers of a lord indicted with other instances of disorder were not charged with illegal livery and vice-versa. Indictments under the statutes of livery were targeted towards gentry and peers that were committing crimes with their retainers, both legal and illegal. Lords were not indicted because of the crimes of their retainers, but retainers were indicted because of the crimes of their lord.

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<sup>224</sup> William Worcestre, *Itineraries*, ed. John H. Harvey (Oxford, 1969), 189. In addition to the four previously cited there was: John, duke of Norfolk; his brother, John Loveday referred to as 'Loveday his brother' by Worcestre; Sir William Calthorp; Reynold Broke, described by Worcestre as 'Master Broke, son of Lord Cobham esquire'; and Robert Timperley, esquire, described by Worcestre as 'Master Timperley, esquire'.

<sup>225</sup> Hicks, '1468 Statute', 16

<sup>226</sup> Henry Cook was indicted by the *oyer et terminer* commission in Derbyshire in 1434 for both the murder of John Hertshorne Senior on the Sunday after the feast of St James 1427 and illegally receiving livery of Henry Booth, gentleman, in April 1431. KB9/11 ms. 15, 16.

## Townsmen

Bastard feudalism facilitated disorder and lawlessness in towns and cities as well as in the countryside. Towns and urban communities operated within the same patronage networks as their rural counterparts.<sup>227</sup> Nobles were able and willing to retain townsmen for various purposes. The military survey of 1522, for instance, shows that Thomas Grey, marquis of Dorset, retained several men from Droitwich for military service.<sup>228</sup> Similarly, the list of men retained by Sir Thomas Lovell under the 1504 statute includes men from Lichfield, Walsall, Derby, St Albans and Oxford.<sup>229</sup> The status of some of the men retained is indicated by the fact that four former mayors and three future mayors of Walsall were retained by Lovell.<sup>230</sup> The problem of livery in towns and cities is evident in a mandate given to the mayor and aldermen of Kingston-upon-Hull on 27 June 1443 to enquire into all transgressions against the statutes of livery and return the inquisitions to chancery. The reason given for this was that the burgesses of the city had accepted the livery of magnates, which meant that ‘a grievous quarrel has arisen among the burgesses of the town’.<sup>231</sup> Several towns included anti-livery laws in local ordinances and by-laws, possibly as a response to immediate local concerns.<sup>232</sup> They show that the unregulated distribution of liveries and fees was regarded as being just as problematic in an urban setting as it was in a rural setting.

Cities only account for only a minority of cases that came to King’s Bench, namely York in 1454,<sup>233</sup> Coventry in 1480,<sup>234</sup> and Nottingham in 1510.<sup>235</sup> All of these cases were small in scale and usually involved someone either wearing the wrong livery or a lord giving illegal livery to one person. Given that, by the mid fifteenth century, Norwich, Canterbury, Derby, Rochester and Colchester all possessed town charters that included the right to hear illegal livery cases,<sup>236</sup> and the fact that the 1468 act permitted the relevant civic officials in ‘every corporate city,

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<sup>227</sup> On the integration of towns into fifteenth-century patronage networks see especially: Rosemary Horrox, ‘Urban Patronage and Patrons in the Fifteenth Century’, 145-66, especially 156-7 for livery.

<sup>228</sup> *Worcestershire Taxes in the 1520s: The Military Survey and Forced Loans of 1522-3 and the Lay Subsidy of 1542-7*, ed. Michael A. Faraday, Worcester Historical Society, 19 (2003) xxix, 60-2. I am indebted to Professor Christopher Dyer for this observation.

<sup>229</sup> HMC, *Manuscripts of the Duke of Rutland*, iv, 559-66.

<sup>230</sup> Gunn, ‘Sir Thomas Lovell’, 119.

<sup>231</sup> *CPR, 1436-41*, 180-1.

<sup>232</sup> See Appendix 5.

<sup>233</sup> KB9/148/2 ms. 31, 38, 54-5.

<sup>234</sup> KB29/110 rot. 27.

<sup>235</sup> KB29/140 rot. 31.

<sup>236</sup> *Calendar of Charter Rolls*, vi, 115, 124, 132, 151, 179.

borough, town and port' to hear cases,<sup>237</sup> it is possible that there were cases that were heard by city courts. This speculation is given further credence by the fact that cases were heard in the borough of Nottingham in 1483<sup>238</sup> and the fact that successive kings did send letters to towns regarding illegal retaining.<sup>239</sup> Nevertheless, the King's Bench still heard cases from civic courts and also heard cases involving townsmen that were heard by either county JPs or *oyer et terminer* commissions.

Few inhabitants of towns and cities were indicted with illegal livery. Despite being the largest and most populated city in England, only one case is recorded in the King's Bench as having occurred in the city of London, involving a gentleman from Scarborough in 1439. Even in this case a writ was sent out at the same time to the justices in Yorkshire regarding the same offence.<sup>240</sup> On two occasions someone from London was indicted outside London: John Dek, dyer in Kent in 1435<sup>241</sup> and Henry Haydon in 1478, also in Kent.<sup>242</sup> The absence of cases from London may be unexpected given the importance played by London citizens in much of the dynastic changes of the late fifteenth century.<sup>243</sup> Although support from within the city of London was important during political crises, any retainers that were used in rebellions seem to have come from outside London with their lord, as opposed to rebellious lords actively retaining men illegally within the city of London. When Londoners did cooperate with usurping regimes, the cooperation was between London's civic elite and the new regime, not the cooperation between lords and retainers.

A lack of cases involving those from towns is evident across most of late medieval England. Winchester had only two men indicted for illegal livery: Henry Alysaunder in 1476 for illegally receiving livery from Thomas Greenfield of Romsey<sup>244</sup> and John James, vintner, in 1505 for being illegally retained by Sir William Sandys.<sup>245</sup> York similarly had only a few men indicted for illegal livery. John Johnson, yeoman of York, was indicted in 1423 along with six other yeomen and one

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<sup>237</sup> *PROME*, xiii, 385.

<sup>238</sup> *Records of the Borough of Nottingham*, ii, 330-1.

<sup>239</sup> See Appendix 4.

<sup>240</sup> KB29/72 rott. 22, 30.

<sup>241</sup> KB29/68 rot. 11.

<sup>242</sup> KB29/108 rot. 12.

<sup>243</sup> Bolton, 'The City and the Crown', 11; Griffiths, *Reign of Henry VI*, 860.

<sup>244</sup> KB29/106 rot. 24.

<sup>245</sup> KB9/436 ms. 13.

gentleman for illegally receiving livery from Sir Ralph Greystoke.<sup>246</sup> Sir Thomas Percy illegally retained one fletcher from York and seven other men from the surrounding countryside in York on 4 February 1454.<sup>247</sup> Later, in 1504, four yeomen and two merchants from York were ordered to appear before the local justices for violations of the statutes of livery.<sup>248</sup> There were several notable towns which had no-one indicted for illegal livery such as Bristol, Carlisle, Exeter and Southampton.

Three interconnected reasons explain why it was rare for townsmen, particularly in larger cities, to be indicted for illegal livery. First, the fact that the medieval English population was predominantly rural means that most crimes would have been committed by yeomen and husbandmen. Second, the fact that cases were rare in towns is consistent with the fact that cases were, on the whole, rare, except during certain periods. Noble power was more restricted in towns than in the countryside: only 95 out of the 2,244 parliamentary burgesses sitting between 1386 and 1421 can be shown to have links with magnates.<sup>249</sup> Third, it is plausible that livery and retaining offences in cities were dealt with at a local level by the city court, although Chapter Three suggests this was unlikely. Cases involving merchants wearing the livery of one or more guilds may have fallen into this category of a specifically urban crime that could be dealt with within a city. In 1415 the London alderman Richard Merlawe was charged with illegal livery because he accepted the livery of two guilds, the ironmongers and the fishmongers.<sup>250</sup> Cases such as these may have been more common in cities, where civic display was a more prominent issue, than the types of cases in the King's Bench which were concerned with the artificial expansion of affinities for lawlessness. However, these types of cases were qualitatively different from those identified from the King's Bench records that are the focus of this study.

Several of the Derbyshire cases from 1434 involved the rural gentry distributing illegal livery to men from Derby as well as the surrounding countryside.<sup>251</sup> Richard Vernon was indicted on three occasions for giving illegal livery between Christmas 1429 and 1 December 1431. On the first occasion he gave

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<sup>246</sup> KB29/57 rot. 5.

<sup>247</sup> KB9/149/1 ms. 53.

<sup>248</sup> KB29/134 rot. 27.

<sup>249</sup> Clark, 'Magnates and the Affinities', 136.

<sup>250</sup> *Calendar of Letter-Books of the City of London, I*, 149. The ceremonial and civic context of livery is discussed fully in Chapter Four.

<sup>251</sup> For the Derbyshire indictments of 1434 see: KB9/11 ms. 15, 17.

illegal livery to three men from Derby at Derby. On two subsequent occasions the location of the offence was at his principal residence of Haddon in which only one man out of 22 was from Derby in Easter 1431 and to one draper and two souters from Derby out of five men on 1 December 1431. Similarly, Lord Grey of Codnor had given livery illegally to two yeomen and one smith from Derby out of a total of eleven men at Easter 1433. Henry Booth, gentleman, gave illegal livery to one yeoman from Derby and two others in Easter 1431. One yeoman, William Orme, was indicted twice for receiving livery from both Lord Grey of Codnor and Sir William Vernon. The cases from Derbyshire in 1434 indicate that lords illegally retained men from Derby, which contrasts with the later *oyer et terminer* commission in Derbyshire in 1468 in which only one yeoman, Robert Horne, was indicted for receiving illegal livery.<sup>252</sup>

Cases from Herefordshire during the 1450s similarly link the rural gentry and townsmen. The *oyer et terminer* commission in Herefordshire in August 1452 identified three instances of illegal retaining in the city between 1 December 1451 and 6 April 1452. In each case the men being retained were all from the city. Sir Walter Devereux gave livery illegally to four yeomen and 27 tradesmen including butchers, bakers, and tailors on 4 January 1452. Henry ap Griffiths had given livery to a shoemaker on 6 April 1452 and Uriah de la Hay gave livery to a weaver – who had also received illegal livery from Devereux – and a carpenter on 1 December 1451.<sup>253</sup> The later commission of 1457 identified ten alleged instances of illegal livery, eight of which were in the city of Hereford itself.<sup>254</sup> Hereford's position as the main urban settlement bordering South Wales is significant, since both the Welsh Marches and Herefordshire were particular Yorkist strongholds during this period.<sup>255</sup> Curbing the retaining practices of prominent retainers of York in the county was a means by which the law could be employed to deprive York of potential supporters.

Leominster, the second largest town in Herefordshire, likewise had two cases of illegal livery against a member of the Yorkist faction in the county. Devereux's third livery offence was committed in the town on 1 April 1456 when he illegally gave livery to 57 men.<sup>256</sup> His 'agent in Leominster',<sup>257</sup> Hugh Shirley – elected as one

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<sup>252</sup> KB9/13 ms. 20.

<sup>253</sup> The three indictments are found in: KB9/34/1 ms. 5.

<sup>254</sup> KB9/35 ms. 67-9.

<sup>255</sup> See in particular: Storey, *End of the House of Lancaster*, 230; *CIPM, 1422-1427*, nos. 510-12.

<sup>256</sup> KB9/35 ms. 6.

<sup>257</sup> Joe & Caroline Hillaby, *Leominster Minster, Priory and Borough, c. 660-1539* (Herefordshire, 2006), 251.

of the town's MPs in 1450-1, 1460-1 and 1472-5 parliaments – was also indicted for illegally giving livery to 16 men of various occupations from Leominster on 2 March 1456.<sup>258</sup> In 1450s Herefordshire, the Yorkist faction in the county, under Devereux, was attempting to build their support in the counties two main settlements. In both Derbyshire and Herefordshire there was a connection between the gentry and urban artisans with whom they committed various crimes.

In addition, Hugh Shirley's role as MP for Leominster suggests a degree of prominent social standing. The involvement of prominent members of the urban community in outbreaks of violence was similarly evident in Chester. Jane Laughton described fifteenth-century Chester as a place where 'feuding country gentlemen and their rival affinities strutted the city streets and caused serious disturbances'.<sup>259</sup> These disturbances are evident in cases of illegal livery that originated in the city. In 1428, the city's mayor, John Hope, was charged with illegally giving livery to a baker and a yeoman from Chester on the Monday after All Saints Day at Chester two years earlier.<sup>260</sup> Hope was a member of a small group of families who formed Chester's civic elite that had dominated the city during the fourteenth and fifteenth centuries.<sup>261</sup> Previously, he had been sheriff of Chester from 1412 until 1415 and spent seven terms as the mayor of Chester between 1419 and 1428.<sup>262</sup> On 19 October 1419, only a few days after he had been elected mayor, a group of armed men attempted to murder Hope, his brother Robert, Robert's son and three other townsmen. It was alleged that Hope, himself of Welsh descent, went through Chester accompanied by a band of English and Welsh supporters.<sup>263</sup> The Welsh element in this, however, should not be exaggerated. Despite feelings of mutual antagonism between Wales and Cheshire, particularly in the aftermath of the Glyndŵr rebellion, Philip Morgan has argued that 'ethnicity may well have been used as a weapon whose use was enabled in response

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<sup>258</sup> KB9/35 ms. 6; Wedgwood, *Biographies*, 765.

<sup>259</sup> Jane Laughton, 'The Control of Discord in Fifteenth-Century Chester', in *Survival and Discord in Medieval Society*, eds. Richard Goddard, John Langdon and Miriam Müller (Turnhout, Belgium, 2010), 213.

<sup>260</sup> CHES25/12 ms. 16.

<sup>261</sup> *A History of the County of Chester: Volume V Part 1, The City of Chester, General History and Topography* ed. C.P Lewis and A.T Thacker (London, 2003) 60.

<sup>262</sup> *A History of the County of Chester: Volume V Part 2, The City of Chester, Culture, Buildings, Institutions* ed. C.P Lewis and A.T Thacker (London, 2005) 309-10; Jane Laughton, *Life in a Late Medieval City: Chester, 1275-1520* (Oxford, 2008) 119.

<sup>263</sup> CHES25/11 ms. 17-18. Discussed in Laughton, *Chester, 1275-1520*, 34.

to the [Glyndŵr] revolt, but it was not the cause of disorder'.<sup>264</sup> Hope and his retainers were involved in violent and intimidating acts which was why they were indicted for illegal livery. The Welsh element of their decent only exacerbated tensions that previous actions had caused. At the same time, another former mayor of Chester, John Whitmore was also indicted for giving illegal livery to five men in November 1423.<sup>265</sup> Whitmore was also a member of the city's ruling elite and was mayor during the period in which Hope was sheriff.<sup>266</sup> In Cheshire the ruling oligarchy was involved in instances of lawlessness over a sustained number of years and the indictments against two former mayors of the city for illegal livery was connected to their other activities in both the city and the surrounding countryside.

Towns and townsmen were integrated into late medieval society and were not an alien entity to their rural counterparts. They shared many of the same values and interest. As Rosemary Horrox has argued, the urban gentry had interests in both urban and rural life 'and in doing so they challenge the assumption that the social hierarchies of town and country can be treated as though they were separate'.<sup>267</sup> People who lived in towns did enter into retaining relationships and lords were prepared to give their livery of fees to men from large urban settlements for both legitimate and illegitimate purposes. Illegal livery was not the preserve of rural England. The following sections examine two other groups that do not always fit into the traditional lord-peasant image of bastard feudalism: clergy and women.

## Clergy

In total, 21 members of the clergy were indicted in the King's Bench for illegally livery: 13 clerics, six chaplains and one cannon. The 1399 act explicitly included ecclesiastical lords<sup>268</sup> and clergy were indicted for both receiving and distributing illegal livery. The earliest case involving a cleric was in Cheshire when Henry Willaboy illegally gave livery to two men on the Monday after Christmas 1434.<sup>269</sup> In 1478 the Rector of Queen's College Oxford, John Person, obtained a pardon for an

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<sup>264</sup> Philip Morgan, 'Cheshire and Wales', in *Power and Identity in the Middle Ages*, eds. Huw Price and John Watts (Oxford, 2007), 195-210, quote on 209.

<sup>265</sup> CHES25/12 ms. 16.

<sup>266</sup> *V.C.H. Cheshire*, v 60 (1), 309 (2).

<sup>267</sup> Horrox, 'Urban Gentry', 35.

<sup>268</sup> *PROME*, viii, 38.

<sup>269</sup> CHES25/12 ms. 30.

indictment for giving illegal livery six years earlier.<sup>270</sup> Most, however, were indicted for illegally receiving livery. Five clerics and four chaplains from Worcestershire were indicted in 1517 for being illegally retained by John Savage VI, under the statute of 8 Edward IV,<sup>271</sup> while three clerics were indicted in 1506 for being illegally retained by Lord Bergavenny<sup>272</sup> and another in Lincolnshire in 1504.<sup>273</sup> One canon, Richard Shirburn of Lichfield, was charged in 1488 along with nine esquires, two gentlemen, two yeomen and a shoemaker for illegally receiving the livery of the Earl of Shrewsbury.<sup>274</sup>

One identifiable pattern is that the majority of cases involving the clergy occurred later on, particularly during the early Tudor period. In part, this was a consequence of the increase in the number of illegal livery cases but it may also indicative of a more general shift towards anticlericalism in pre-Reformation Tudor England. Peter Marshall has argued that while hard-line anticlericalism was not endemic in pre-Reformation England, a discourse of anticlericalism did exist.<sup>275</sup> Moreover, these indictments were also occurring at a time in which the benefit of clergy was being restricted.<sup>276</sup> Sanctuary too was under attack from the fledgling Tudor regime. E.W Ives argued that the removal of John Savage VI from the priory of St John of Jerusalem in Clerkenwell in connection with the murder of John Pauncefote ‘certainly belongs to the destruction of sanctuary’.<sup>277</sup> Savage was also indicted for illegal livery at this time along with five cleric and four chaplains.<sup>278</sup> This is not to argue that there was a conscious decisions made to include these nine clergymen in the indictments against the Savage family because the issue of sanctuary had arisen in these cases. Nor can it be argued that the anticlericalism and the attacks on benefit of clergy and sanctuary meant that there was any conscious initiative to indict members of the clergy of illegal retaining. Rather, the fact that the majority of indictments against cleric for illegal livery occurred during the reigns of Henry VII

<sup>270</sup> KB27/908 rot. 5 rex.

<sup>271</sup> KB27/1028 rot. 33 rex; KB29/148 rott. 50, 53.

<sup>272</sup> KB29/136 rott. 16-17.

<sup>273</sup> KB9/435 ms. 11.

<sup>274</sup> KB9/379 ms. 5; KB29/119 rot. 2.

<sup>275</sup> Peter Marshall, ‘Anticlericalism Revested? Expressions of Discontent in Early Tudor England’ in *The Parish in Late Medieval England*, eds. Clive Burgess and Eamon Duffy (Donington, 2006), 373-8.

<sup>276</sup> Summarised in: John H. Baker, ‘Benefit of Clergy in England and its Secularization, 1450-1550’ in *Ins Wasser geworfen und Ozeane durchquert*, eds. Mario Ascheri et al. (Köln, 2003), 27-37.

<sup>277</sup> Ives, ‘Crime, Sanctuary and Royal Authority’, 303.

<sup>278</sup> KB27/1028 rot. 33 rex; KB29/148 rott. 50, 53.

and Henry VIII is indicative of the wider social and cultural movement of growing anticlericalism in pre-Reformation England.

Furthermore, given the integration of the clergy into bastard feudal society, the involvement of religious men in cases of illegal livery should be expected since ecclesiastical lords had vast estates and therefore needed to retain people.<sup>279</sup> Having clerics in a noble household was also common in late medieval England and several examples survive showing livery being given to clerics. In 1384-5 the earl of Devon gave livery to two canons, one prebendary and five parsons.<sup>280</sup> Edward, the Black Prince, granted livery to the clerks of his chapel in 1355<sup>281</sup> and there is nothing to suggest this was an unusual practice. The fact that a few members of the clergy were illegally retained or given livery by peers and gentry is consistent with the fact that they were at times legally retained by peers and gentry. Like townsmen, members of the clergy did enter into bastard feudal relationship, some of which contravened the statutes of livery, albeit in smaller numbers than their secular counterparts.

The most prominent case involving a member of the clergy involved James Stanley, the future bishop of Ely who was indicted twice in 1499 for distributing livery to 30 men at Chester on 10 October 1496 and to 18 men at Knottford on the Tuesday after Michaelmas 1494.<sup>282</sup> He was again indicted in Yorkshire in 1500 for illegally distributing badges five years earlier as part of a larger cluster of cases in Yorkshire at that time.<sup>283</sup> It is also likely that he was charged again in 1506, since a list of outstanding recognisances and debts owed to Henry VIII early in his reign records debts of £145,610 for Stanley and £58,644 for his retainers.<sup>284</sup> Given the fact that Lord Bergavenny was fined £70,650 for illegally retaining 471 men between June 1504 and December 1506, Sean Cunningham has speculated that Stanley's illegal retinue may have consisted of as many as 1000 men, assuming that he was illegally retaining for around the same amount of time that Bergavenny was.<sup>285</sup> If the number of men indicted for being illegally retained by him was indeed around 1000, then it is clear that the indictment against Stanley was a direct attempt to curb his retaining

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<sup>279</sup> Brown, 'Bastard Feudalism and the Bishopric of Winchester', 1, 9, 289-91; Liddy, *Bishopric of Durham*, 101-17.

<sup>280</sup> BL, Add. Ch. 64320.

<sup>281</sup> *Register of Edward, The Black Prince, IV, 1351-1365*, (London, 1933), 132-3.

<sup>282</sup> CHES25/18 ms. 13-14.

<sup>283</sup> KB8/3/1 ms. 5. The various clusters of cases in Yorkshire during the reign of Henry VII are discussed in Chapter Three.

<sup>284</sup> *L&P Hen. VIII*, i, no. 309.

<sup>285</sup> Cunningham, 'St Oswald's Priory, Nostell v Stanley', 153.

policy, possibly out of fear of potential rebellion, similar to the indictment against Bergavenny which was in part linked to his potential support for Edmund de la Pole.

James Stanley's indictment for distributing illegal livery was a consequence of secular, not ecclesiastical, concerns. Like his secular counterparts, James Stanley was able to advance his career after being indicted for illegal livery and became bishop of Ely in 1506.<sup>286</sup> He interacted with members of the local gentry in business transactions. A surviving deed of James Stanley from 4 August 1483 names three witnesses – Sir Edward Mascy, Roger Pyllynton, esquire and William Davenport, esquire<sup>287</sup> – none of whom were illegally retained by James Stanley himself. One witness, William Davenport, however, was indicted in 1499 for illegally retaining ten men in 1493.<sup>288</sup> The witness list ends '*et aliis*' suggesting that more men witnessed the deed but the scribe felt that it was unnecessary to list them all. Other members of the Stanley family were indicted with illegal retaining around the same time, namely Sir William Stanley twice in Cheshire in 1499<sup>289</sup> and Edward Stanley in Yorkshire in 1500.<sup>290</sup> Henry VII was concerned about potential power of the Stanley family in the north-west. The family had helped him secure his throne at Bosworth but they were notoriously circumspect. Their loyalty was called into question by Sir William Stanley's defection to the cause of Perkin Warbeck. Taken together, it is clear that the indictment against members of the Stanley family in 1499 and 1500 was political and came from Henry VII's concern about the family's retaining practices, similar to the indictment against Bergavenny.<sup>291</sup> James Stanley's indictments for illegal retaining thus mirrored those of the secular nobility and were part of Henry VII's curbing of the Stanley family's power.

## Women

Women were indicted in four of cases identified in this study. In many cases involving women it is difficult to identify the specific social and political contexts surrounding those involved since women rarely appear in surviving records. Women did not hold offices in local government and therefore did not have the opportunities

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<sup>286</sup> D.G Newcombe, 'James Stanley (c. 1465-1515)', *ODNB*, lii, 221-2.

<sup>287</sup> E41/352.

<sup>288</sup> CHES25/18 ms. 14.

<sup>289</sup> CHES25/18 ms. 11.

<sup>290</sup> KB29/134 rot. 26.

<sup>291</sup> For a full account of the relationship between Henry VII and the Stanley family see: Cunningham, 'Henry VII, Sir Thomas Butler and the Stanley Family', 220-41.

to retain for this purpose. Conversely, since women did not hold positions such as steward or bailiff there were few instances in which they would be retained. Women did however own land, usually as widows who were entitled to a third of their dead husband's estates although. McFarlane highlighted that many held significantly more land than that due to the increased use of jointure in late medieval England.<sup>292</sup> Jennifer Ward argued that noblewomen had a role in developing retinues citing Elizabeth de Burgh, lady de Clare, Isabella Morely, Joan Beauchamp and Anne, countess of Stafford as example of women who had their own retinues.<sup>293</sup> Queens and noblewomen had their own households that were predominantly male. Although late medieval society, and the records it produced, did have a strong gendered bias in favour of men, it is clear that women did have a role in estate management and land ownership with Thomasine Hopton, second wife of John Hopton, being a prime example.<sup>294</sup> Moreover, the four cases in which women were involved all display similar characteristics to those cases involving men.

Three of the four cases of illegal livery in which women were indicted involved widows illegally distributing livery. Widows in late medieval England 'enjoyed an unusual degree of independence'.<sup>295</sup> They benefited from the increasing use of jointure, enfeoffment and conveyance, usually to the financial detriment of their husband's heir, which led Rowena Archer to comment that 'the best years of a woman's life in the later middle ages were those of her widowhood'.<sup>296</sup> Widows were the heads of households that distributed livery as was the case with Elizabeth de Burgh who gave livery to 338 people in 1343.<sup>297</sup> Younger widows with dependent children were more likely to remarry but the three widows indicted for illegally livery had grown up sons when they were indicted. This is the likely reason that they had become heads of households that were distributing livery since it was rare for a parent to live in the same household as their adult children.<sup>298</sup> It is unsurprising to find

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<sup>292</sup> McFarlane, *Nobility*, 64-7.

<sup>293</sup> Jennifer C. Ward, *English Noblewomen in the Later Middle Ages* (London, 1992), 129-42, especially 133-6.

<sup>294</sup> Richmond, *John Hopton*, 97, 115-20, 183.

<sup>295</sup> Monika Simon, 'Of Lands and Ladies: The Marriage Strategies of the Lords Lovell (c. 1200-1487)', *Southern History*, 33 (2011) 21.

<sup>296</sup> Rowena E. Archer, 'Rich Old Ladies: The Problem of Late Medieval Dowagers', in *Property and Politics: Essays in Later Medieval English History*, eds. Tony Pollard (Gloucester, 1984), 19.

<sup>297</sup> E101/92/23.

<sup>298</sup> Mertes, *English Noble Household*, 54.

widows being charged with illegal livery since they could become heads of estates that retained men.

The first case involving a woman was in Yorkshire in 1422 when Elizabeth Neville, mother of the young earl of Westmoreland, was charged with illegal distributing livery to three yeomen on the Monday after St Andrew's day 1420.<sup>299</sup> The offence occurred at Kirkby Moorside where Elizabeth Neville is recorded to have come from and she was pardoned during Trinity 10 Henry V.<sup>300</sup> She died shortly after on 1 January 1423 and her inquisition *post mortem* indicates that she held land in ten counties, with Yorkshire being the most predominant county.<sup>301</sup> Unlike the case of Joan Pelham (discussed below) the men she illegally retained were not from land in which she held. Instead the three yeomen were from the nearby village of Malton. One of the yeomen illegally retained, John Flessheuer, later served on an inquisition jury for William de Lokton, who held tofts in Malton, at *Wymbyssh* on 1 April 1426.<sup>302</sup> This suggests that at least one of the men that Elizabeth Neville illegally retained possessed at least some measure of local standing. Due to the lack of source material it is not possible to consider further aspects of this specific connection.

A further case involving a widow can be identified from the Derbyshire *oyer et terminer* commission of 1434. Joan Beauchamp, lady Abergavenny, widow of William Beauchamp and described as 'that second Jezebel' by Adam Usk,<sup>303</sup> was indicted for giving illegal livery to two gentlemen from Derbyshire, Thomas Maceworth and Richard Broun, the previous April.<sup>304</sup> Her activity in Derbyshire is difficult to decipher and her inquisitions *post mortem* do not include any land in Derbyshire, despite her widespread property in 20 counties and the City of London.<sup>305</sup> Out of the three widows indicted for distributing illegal livery, she is unique in being named on several commissions to raise loans<sup>306</sup>: in Worcestershire, Warwickshire and Gloucestershire in 1426<sup>307</sup>; in Leicestershire in 1428<sup>308</sup>; and in Warwickshire and

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<sup>299</sup> KB29/56 rot. 25.

<sup>300</sup> KB27/645 rot. 8 rex.

<sup>301</sup> *CIPM, 1422-1427*, nos. 144-54, 355.

<sup>302</sup> *CIPM, 1422-1427*, no. 750.

<sup>303</sup> *The Chronicle of Adam Usk*, 133. Note: this is the only reference to her by Usk.

<sup>304</sup> KB9/11 ms. 15. It should also be noted that the only reference to her in Susan M. Wright's study of fifteenth century Derbyshire regards her indictment for illegal livery: Wright, *Derbyshire Gentry*, 131.

<sup>305</sup> *CIPM, 1432-1437*, nos. 412, 500-19.

<sup>306</sup> Christine Carpenter has described as 'remarkable' the fact that she held local office at all. Christine Carpenter, 'William Beauchamp V', *ODNB*, iv, 608-9.

<sup>307</sup> *CPR, 1422-1429*, 354.

<sup>308</sup> *CPR, 1422-1429*, 481.

Leicestershire in 1431.<sup>309</sup> Significantly, none of the commissions were in Derbyshire. A pardon dated 8 July 1433 points to her involvement in lawless and disorder because she was pardoned of the £1,200 fine for incitement at Birmingham on the fourth week of Lent 1431.<sup>310</sup> Again, there is little to suggest any influences in Derbyshire of connection to the two men to whom she gave illegal livery. The two men she illegally liveried, Thomas Maceworth and Richard Broun were both indicted multiple times for illegal livery during by commission. Both had been indicted for receiving illegal livery from Ralph Cromwell in April 1431, which indicates a continued connection between the two men. In addition Broun had also been given illegal livery by Sir Richard Vernon – who himself had illegally liveried by Cromwell – in April 1430.<sup>311</sup> Joan Beauchamp had given illegal livery to two men that were caught up a web of illegal retaining relationships in Derbyshire during this period that were most likely connected to the lawlessness occurring in the county at that time.<sup>312</sup> Her involvement in these activities is difficult to judge due to the fact that there is little other documentation linking her with Derbyshire.

The third case involving a widow arose in 1437, when the Sussex widow, Joan Pelham, was charged with illegal distributing livery to two yeomen.<sup>313</sup> She obtained a pardon on 1 November 1439.<sup>314</sup> The absence of any plea in the surviving legal records means that little can be said about the connection between Joan Pelham and her illegal retainers. However, other records indicate that Joan Pelham’s case was similar to that of many men charged with illegal livery. She was the wife of John Pelham, a knight who became a key figure in the government of Henry IV and the leading knight in Sussex through ‘opportune service to the house of Lancaster’.<sup>315</sup> Prior to his death, he gave warranty of all his moveable goods to his wife Joan, his bastard son and heir John and Bishop Langley.<sup>316</sup> The men whom she illegally retained came from land that was part of either her dower or from land that she held with her husband in jointure. In the indictment Joan Pelham is stated as coming from Laghton, from where one of the yeomen she illegally retained, Thomas May, also came. The other yeoman,

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<sup>309</sup> *CPR, 1429-1436*, 126.

<sup>310</sup> *CPR, 1429-1436*, 295.

<sup>311</sup> All the relevant indictments are found on: KB9/11 ms. 15.

<sup>312</sup> Discussed in ‘Other Crimes’ section on this chapter.

<sup>313</sup> KB29/70 rot. 16.

<sup>314</sup> *CPR, 1436-1441*, 343; KB27/707 rot. 9 rex.

<sup>315</sup> *History of Parliament, 1386-1421*, iv, 39-44, quotation on 40.

<sup>316</sup> *CCR, 1422-29*, no. 388.

Robert Churchgate, was from Chalvington, which was once held of her late husband by Thomas West, knight.<sup>317</sup> The implication of this is that Chalvington, like Laghton, was part of Joan Pelham's dower. Like some of the men charged with illegal livery, Joan Pelham distributed illegal livery to men from land that she held. Joan Pelham had given illegal livery to two yeomen from lands that were part of her dower and like the majority of cases a pardon was given shortly after the case arose.

The final case involving women case occurred in Southwark in 1491 when five women and two men were indicted for illegally wearing livery to they were not entitled throughout January and February 1492.<sup>318</sup> The case arose from an *oyer et terminer* commission held by the Marquis of Berkeley during 6 Henry VII Trinity.<sup>319</sup> Unlike the previous charges, this case did not involve a widow continuing her dead husband's retaining practice, but rather women illegally wearing livery. Four out of the five women were spinsters, while the fifth, Katherine Turner, is said to have been married although her husband, John Turner, was not charged. No resolution to this case has been identified despite the fact that other cases from this *oyer et terminer* commission were resolved.<sup>320</sup> Moreover, the fact that the women were from a lower social strata means that they are unlikely to be identifiable from much of the surviving sources. Consequently, little else can be said about this specific case.

The Surrey case, however, highlights an important point about the distribution of livery to women and their place in bastard feudal society. Beatrice Gottlieb asserted that women 'wore neither livery nor uniforms'.<sup>321</sup> Surviving livery rolls indicate that this assertion does not hold for the late medieval period. The livery roll of the earl of Devon from 1384 shows that three damsels received livery from the earl.<sup>322</sup> Similarly, *The Black Prince's Register* shows that 27 women of the household received liveries of cloth and fur in 1357.<sup>323</sup> These numbers are small in comparison to the number of men receiving livery. In total Edward Courtney distributed livery to 127 men, meaning women only accounted for 2.3% of the total number receiving livery. Even in the households of noble women there was only ever a minority of female

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<sup>317</sup> *CIPM, 1413-1418*, no. 539.

<sup>318</sup> KB9/390 ms. 52.

<sup>319</sup> *CPR, 1485-1494*, 356.

<sup>320</sup> E.g. KB27/921 rot. 9 rex; KB27/923 rot 13 rex; KB27/948 rot. 3 rex; KB27/950 rot 8 rex.

<sup>321</sup> Beatrice Gottlieb, *The Family in the Western World from the Black Death to the Industrial Revolution* (Oxford, 1993), 10.

<sup>322</sup> BL, Add. Ch. 64320.

<sup>323</sup> *Register of Edward, The Black Prince*, iv, 227.

servants,<sup>324</sup> as evident in the livery roll of Lady de Clare, in which only 11 women received livery compared to 227 men.<sup>325</sup> The surviving Kalendars show that four women were living in the household of John Fastolf when he was at war in 1431-2<sup>326</sup> and ten women were in the household of the countess of Warwick in 1420-1.<sup>327</sup> The household of Lady Joan Dinham was exceptional with regards to number of women in her household, even being served by a female reeve, Joan Hurding, in her manor of Matford.<sup>328</sup> Furthermore, the retaining of women, while uncommon, did occur. The clearest example of this is an indenture of retainer, from 1419, indicating that William de Hesilton and his wife Katherine were retained by William de Burgh, esquire. It should be noted, however, that the agreement only allowed for William Hesilton to receive the livery of William de Burgh.<sup>329</sup> Women were part of the late medieval household as domestic servants and ladies in waiting, but they were small in number and are unlikely to have partook in many crimes such as riot that were usually associated with illegal livery.

Rather than there being a social bar from distributing livery to women, it is clear that a small number of women did receive livery. Cases of illegal livery against women were not the conscious product of gender biases preventing women from receiving livery or distributing it. Women gave and received livery, but on a much smaller scale than men, which meant that they only had a minority of opportunities to retain, or be retained, illegally. When cases involving women did arise, the contexts were not distinct from cases in which men were charged. Office-holding was rarely an avenue open for women to retain or be retained,<sup>330</sup> but connections could be formed as a result of land ownership. Therefore, the lack of opportunities for women to give and receive livery in general translated into only four cases in which women were charged with offences against the statutes of livery.

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<sup>324</sup> Ward, *English Noblewomen*, 53.

<sup>325</sup> E101/92/23.

<sup>326</sup> Magdalen College, Fastolf Paper 8.

<sup>327</sup> Magdalen College, GDIII/66/1, 8-9.

<sup>328</sup> Hannes Kleineke, 'Lady Joan Dinham: A Fifteenth-century West-country Matriarch', in *Social Attitudes and Political Structures*, ed. Thornton, 73-4.

<sup>329</sup> *Private Indentures*, no. 115.

<sup>330</sup> The exception with regards to the women discussed in this chapter is Joan Beauchamp.

## **Conclusion**

This chapter has been concerned with the identity of those indicted for offences against the statutes of livery and has highlighted several significant conclusions about the personnel and nature of illegal livery cases. Cases of illegal livery primarily focused on members of the gentry illegally giving fees or liveries to men of a lower social rank that were not permanent members of their household. When other information can be identified about those charged with illegal livery it is possible to draw further conclusions. An analysis of the office-holding of many members of the gentry has shown that being indicted for illegal livery is unlikely to have been detrimental to their career prospects in terms of opportunities for patronage and social advancement. Moreover, office-holding was a determining factor, along with landownership in the formation of illegal retaining relationships. Informal familial relationships also helped to create, develop and cement these ties. Examining the other crimes that those were charged with illegal livery has demonstrated that it was the lawlessness of the gentry, rather than of those they illegally retained that was the reason in many, but not all, for someone being indicted with illegal livery.

Several wider points about the nature of bastard feudalism have also been raised. The focus of many cases was gentry illegally distributing liveries or fees to yeomen but it is clear that other sections of society were indicted with illegal livery too, namely clergy, townsmen and women. While these groups have been somewhat neglected or marginalised in discussions of bastard feudalism it is clear that they entered into relationships analogous to those entered into by many rural secular male nobles and peasants. The fact that in some instances these relations violated the statutes of livery is unsurprising since they were part of the same social institutions. The relatively low number of instances involving clergy and townsmen can in part be explained by the fact that they formed a lower proportion of the population than the secular, rural peasantry.

To conclude that everybody and anybody could be indicted for illegal livery or that no two cases were identical would be equally benign, uninformative and misrepresentative. The reality was more complex. Cases of illegal livery arose for different reasons, although illegal livery was a crime and therefore committing it always meant a potential indictment. In some instances widespread lawlessness led to a repression of illegal retaining of either specific individuals or in a locality more generally. In other instances people were indicted for political reasons, such as the

many of the cases in Herefordshire in the 1450s. On many occasions wider disorder led to illegal livery being prosecuted not all those indicted, especially those indicted for illegally receiving livery, were necessarily involved in other nefarious activities. Therefore, those who were indicted for illegal livery could potentially come from all social ranks (with the exception of the royal family), but reasons for individuals being indicted varied according to differing local, legal and political circumstances.

## Chapter Seven: Conclusion

The distribution of fees and livery continued throughout the early modern period.<sup>1</sup> During the reigns of Elizabeth I and James I retaining and the distribution of livery remained a concern of the legal system.<sup>2</sup> Eventually, in 1628, parliament repealed the statutes.<sup>3</sup> By this time it is likely that the statutes themselves had fallen into disuse. Unregulated retaining by fees and livery was no longer the problem it had been during the late medieval period. A comprehensive examination of the legal records until 1628 is required in order to understand the entire history of the statutes of livery. This thesis has examined the extent to which retaining was legislated by various parliaments and enforced from the first parliamentary debate on the issue until the first decade of Henry VIII's reign.

Michael Hicks argued that an examination of the 'statutes of livery can be used to cast light on bastard feudalism, its evolution and regulation', and that his article on the 1468 act could act as a 'fixed point for more wide ranging interpretation'.<sup>4</sup> This thesis has enabled such wide ranging interpretations by providing a forensic examination of the statutes, their development and their enforcement during the late medieval and early Tudor period. Much of the evidence presented in this thesis may imply that the statutes of livery were of little historic importance or consequence. The statutes were enforced sporadically and many who were indicted were able to ignore their indictments. Despite numerous parliamentary discussions, particularly during the late fourteenth and early fifteenth centuries, few justices enforced the statutes. However, when further consideration is given to the statutes, their evolution and the cases they produced, it cannot be argued that the statutes of livery were of little historic interest or consequence. The evidence presented in this thesis draws several conclusions about law, politics and society during the late medieval and early Tudor period, which are identified in this chapter.

This thesis has examined the relationship between law-making in parliament and law-enforcement in the localities, by considering the effectiveness of the statutes. J.G. Bellamy noted that no late medieval king 'made serious efforts to suppress the

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<sup>1</sup> Note examples from 1559 to 1568 in *Household Accounts of Robert Dudley, Earl of Leicester*, 419-28.

<sup>2</sup> *Select Statutes and other Constitutional Documents Illustrative of the Reigns of Elizabeth and James I*, ed. G.W. Prothero, 4<sup>th</sup> edition (Oxford, 1919) 144, 362, 377, 382, 386. For the reign of Henry VIII see: *EHD*, v, 549-50.

<sup>3</sup> *Stat. Realm*, v, 27-30.

<sup>4</sup> Hicks, '1468 Statute of Livery', 15.

giving of livery let alone destroy it root and branch'.<sup>5</sup> This was because neither kings, nor anyone else, wanted the wholesale suppression of the giving of livery and retaining. It is only with hindsight that later historians believed these practices to be intrinsically problematic for society. Contemporaries only wanted to limit and regulate the distribution of fees and livery. Chapter Three demonstrated that the statutes were enforced sporadically and cases usually occurred in places experiencing problems with public order. By Henry VII's reign, there was a more concerted effort to combat illegal retaining and more cases arose during his reign, in places not necessarily experiencing widespread disorder. Chapter Four illustrated how the statutes evolved over time in order to adapt to changing circumstances and legal practicalities. It was shown that while earlier acts originated from Commons petitions, the acts of Edward IV and Henry VII were crown-driven affairs. Lancastrian kings, particularly Henry V, enforced the statutes during periods of disorder. In these situations, kings were using existing law rather than following a conscious policy. The increase in the number of cases coupled with the impetus for new legislation came from the crown as opposed to the Commons explains the apparent paradox regarding lack of enforcement of the statutes early on: they were ignored by the same class of people who were their architects, i.e. the gentry who were local justices and MPs. Royal support for the statutes was crucial in their later development and enforcement but the initial desire for the distribution of livery to be regulated came from the Commons.

Furthermore, illegal livery needs to be set in a wider historical context. The sporadic nature of the enforcement is consistent with research into the enforcement of other statutes passed by medieval parliament. Sporadic enforcement was indicative of how the late medieval and early Tudor legal system operated. Studies similar to this one on other crimes are likely to demonstrate that the enforcement of the statutes of livery was by no means unique. In addition, as Chapter Five demonstrated, it was rare for cases to be resolved and even those that did rarely ended in the person accused paying a fine. Most of those indicted, as Chapter Six demonstrated, did not have their career prospects hindered by indictments for illegal livery since they were the essential component of royal government, and many were able to freely ignore their indictment for illegal livery. It was only when their indictment for illegal livery was

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<sup>5</sup> Bellamy, *Crime and Public Order*, 23 fn. 53.

entangled with political upheaval, such as in Herefordshire during the 1450s, that illegal livery was detrimental to someone's career. Most individuals that offended against the statutes of livery were probably never indicted. Those who were indicted were usually able to ignore their indictment and it was rare for an offence to have any impact on a person's standing. This was standard for the majority of offences committed during the late medieval and early Tudor periods.

Judging the impact of the statutes on social practice is difficult due to the poor survival rate of household accounts for this period.<sup>6</sup> Although documentary evidence is lacking, other circumstantial evidence may be used to deduce the effectiveness of the statutes. Christopher Given-Wilson noted that immediately after the first act, Richard II remained within the terms of the 1390 act by increasing the number of esquires in his affinity during the 1390s.<sup>7</sup> This was certainly an option open to both the king and his richest subjects. Mervyn James suggested that, a century later, Henry, fifth earl of Northumberland likewise increased the number of estate officials he had in order to remain within the terms of the statutes.<sup>8</sup> If there was a change in social practice, there may have been, as John Maddicott has suggested for the retaining of royal justices, a change to in the rewards given from fees and liveries to things such as 'hospitality, entertainment and favours incapable of precise definition and description'.<sup>9</sup> These speculations have been primarily focused on the activities of the king and the peerage, however, no king and only 19 members of the peerage were indicted for illegal livery. The majority of those indicted were members of the gentry who were not wealthy enough to significantly increase the number of estate officials they had or fees they were paying. Therefore, they either stopped giving livery to non-permanent household servants, or they continued to do so, knowing the statutes were not regularly enforced. Some, no doubt, always retained in a lawful manner but these occasions are sparsely documented.

The impact of the statutes on social practice can therefore only be speculated. What is certain from this study is that enforcement was sporadic but increased during the fifteenth century, reaching its apex during Henry VII's reign; that the statutes

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<sup>6</sup> Mertes, *English Noble Household*, 194-215 lists surviving household accounts between c.1250 and 1600. Most of the documents that survive are the only known ones for that magnate. When more than one survives they survive for periods or in quantities that cannot provide conclusive evidence on the matter.

<sup>7</sup> Given-Wilson, *King's Affinity*, 40.

<sup>8</sup> James, *Society, Politics and Culture*, 51.

<sup>9</sup> Maddicott, 'Law and Lordship', 56.

evolved over time in response to changing circumstances; that wider social and political contexts affected the way in which the statutes were enforced; and that indictments for illegal livery did not necessarily hinder career prospects. These findings have been able to illuminate various aspects of late medieval England and can provide the basis for further research on the nature of law, politics and society in late medieval England. Moreover, it is clear that England was not the only late medieval state that experienced problems with unregulated retaining and therefore legislated against it. The English example is the best documented of a wider European phenomenon.

Finally, this study has been concerned with the nature of bastard feudalism in late medieval England and how it was regulated by contemporaries. Chapter Six demonstrated that clergy, women and townsmen entered into bastard feudal relationship, albeit on a smaller scale than their secular, male counterparts living in a rural environment. However, historians of late medieval England have, in recent years, either been reluctant to employ the term ‘bastard feudalism’ or have dismissed it as unhelpful and uninformative.<sup>10</sup> Simon Payling’s study of the Nottinghamshire gentry and Simon Walker’s study of John of Gaunt’s affinity have been taken by Colin Richmond as evidence of the non-existence of bastard feudalism. Reviewing both monographs, Professor Richmond states that Drs Payling and Walker: ‘tackle that old, senile, adversary Bastard Feudalism. It is dealt a knock-out blow; it may hereafter be resurrected only as an Aunt Sally ... we are left in no doubt: Bastard Feudalism is dead: I do not think I ever believed it was alive’.<sup>11</sup> The interpretations of Drs Payling and Walker, however, are reliant on too narrow a definition of bastard feudalism. Peter Coss identified two definitions of bastard feudalism: one narrow that identifies bastard feudalism as a set of relationships confined to certain groups in society and a broader one about society in general.<sup>12</sup> The studies of Payling and Walker only demonstrate that the first definition of bastard feudalism was inaccurate since the nobility were not controlling the localities through their retainers.<sup>13</sup> Similarly, Nigel Saul argued that, in Sussex, there were members of the gentry that did not operate within the bastard feudal model.<sup>14</sup> Chapter One addressed the

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<sup>10</sup> E.g. Davies, *Lords and Lordship*, 5.

<sup>11</sup> Colin Richmond, ‘An English Mafia?’, *Nottingham Medieval Studies*, 36 (1992), 240.

<sup>12</sup> Coss, ‘Bastard Feudalism Revisited’, 30.

<sup>13</sup> Payling, *Political Society*, 87-108; Walker, *Lancastrian Affinity*, 235-61.

<sup>14</sup> Saul, *Knights and Esquires*, 260-1.

problems associated with the view of society and here it is only necessary to state that these arguments exaggerate the role of the nobility in bastard feudalism at the expense of the gentry. When the evidence of illegal livery is considered, it is clear that the gentry retained men and were the heads of bastard feudal affinities, albeit on a much smaller scale than those of the peerage.

Central to this thesis has been the link between law, politics and society in England between the late fourteenth and early sixteenth centuries. The link between politics and the law is evident in many of the cases that arose and the drafting of many of the statutes that were passed. Decisions had to be taken when enacting new legislation or when indicting someone for illegal retaining. Politics and the law were not independent of one and other or isolated from wider society. The statutes and their enforcement had to conform to accepted social and cultural norms. All decisions were therefore influenced by a range of factors: political, social, economic, cultural, military, national and local. These pressures, to varying extents, influenced the 20 discussions of livery and retaining in parliament between 1388 and 1504. When the statutes were enforced, it was usually during periods of unrest and lawlessness, which explains why the 334 cases were not distributed evenly either chronologically or geographically. The statutes of livery were enforced only when required. Henry VII was keen on their enforcement hence the reason why more cases occurred during his reign than any other king. Places like Yorkshire and Cheshire were more prone to lawlessness, rebellion and political upheaval, which is why more cases occurred in those counties than others. In conclusion, the statutes of livery were the means by which late medieval society regulated bastard feudalism through the use of parliamentary statutes and selected enforcement.

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