

Chapter 3

Bastard Feudalism in England in the Fourteenth Century

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Jenny Wormald has written with distinction on lordship, service and governance in late medieval Scotland. This is a contribution to the same subjects in the kingdom on the other side of the border.¹ It addresses, at times speculatively, a conundrum which has of late become increasingly evident: if, as has been assumed, bastard feudalism in the fourteenth century was the same as in the fifteenth, why does it look so different in many ways?²

I

It is necessary to begin with a summary of our present understanding of bastard feudalism in the fifteenth century. The *fons et origo* is K. B. McFarlane and his revolutionary rejection of the Plummer/Stubbs view that this was, as the name suggests, a debased form of feudalism. Thus, bastard feudalism did not replace a legitimate and permanent bond, based on land, with an illegitimate and inherently unstable one, based on money, contract and mutual advantage, thereby undermining government and society and encouraging terrible violence which culminated in the Wars of the Roses. Rather, it filled a gap left by the decline of feudalism. At first McFarlane still accepted the prevailing opinion that linked the emergence of bastard feudalism to the king's military needs. But, for him, it was not that the requirements of the French wars gave birth to the military contract and all its alleged evils but that the decline of the feudal host necessitated the recruitment of armies in a new way: the contract. However, well before his death, he had realised that we need to think of bastard feudalism not as a by-product of military needs but (to use George Holmes's apposite phrase) as 'part of the normal fabric of society'.³

Building on McFarlane's work, especially as more of it began to come into print, historians of bastard feudalism, working initially on noble followings and then increasingly on the localities, where its normal operation lay, came to a clear understanding of the system in its mature form.⁴ Much of this confirmed or amplified McFarlane's own insights. Just like feudalism, bastard feudalism was a perfectly respectable tie, binding lesser to greater landowners, as feudalism had done. Like feudalism, it was highly localised and nobles normally recruited their followers in the geographical vicinity of their main estates. Accordingly, a lord's followers were not low-class household retainers with a propensity for violence but members of the local gentry, and they were not normally recruited in war. In fact, in the fifteenth century, with the exception of one or two nobles who have proved to be unusual, there was very little overlap between war and peace retinues. Moreover, as one would expect from a relationship based on geographical proximity rather than wartime need, it often had a high degree of permanence and stability, even across generations and across changes in the tenure of the noble estate. Men who served more than one lord tended either to be associated with lords who were themselves linked in local politics or – notably lawyers – were offering professional services.

All this has entailed drawing a clear distinction between a lord's household menials and his gentry followers. The latter might have close or more distant relations with their lord's household, depending on whether they held an office with him, but they would normally be resident on their own estates in the neighbourhood of one of the lord's residences. It was these followers who, with men drawn from the tenantry on their own estates, would furnish the greater part of a lord's retinue if he wished to make a show of any sort, just as had been the case in the days when a lord summoned the knights who were his feudal tenants to come accompanied by their men. The change of emphasis in the historiography from unstable military and household retinue to stable local gentry following

has also made historians realise that the indenture of retainer that was formerly placed at the heart of the relationship was probably more the exception than the rule. Thus, gentry were connected to lords by a variety of means, some more formal than others. Some followers were no more than what was known as 'well-willers'. The fee that might be part of this relationship was normally not large relative to the recipient's income and nobles mostly spent fairly frugally on them. For all these reasons, historians now prefer to call a late medieval noble's following his affinity rather than his retinue. We can sum all this up by saying that it has been realised that bastard feudalism should not be regarded as an institution with specific causes and characteristics. As it happens, the historians of the post-Conquest period have been concurrently coming to the same conclusion with regard to 'feudalism'.⁵ Both are merely shorthand for complex structures of social and political relationships.

The work on local landed societies, especially through intensive use of legal records and deed evidence, two sources which came into their own with these studies, has enabled us to reach a sophisticated understanding of how these functioned in the fifteenth century and the role that the nobility and bastard feudalism played within them. It is now understood that the lord's main role for the members of his affinity was to help them in the protection of their estates. This was effected by putting the weight of the lord and the affinity behind the various transactions that secured the gentry's property, marriage settlements, post-mortem transmission and so on; behind arbitrations that prevented disputes reaching the courts or, once they did, got them privately settled; and, if all else failed, behind the pursuit of land claims through law or outside the law. The affinity in turn served the lord directly in various ways but its major role was to make him the key figure in the management of the locality on the king's behalf. This was achieved by gentry followers taking on some of the major local offices and, if enforcement was required, by placing the local manpower that came from their own lordship over their peasant tenants at the lord's disposal, to add to the force he raised

from his own tenantry. It is this mutuality of reciprocal needs and obligations, between lord and gentry follower, and king and lord, that in many ways lies at the heart of the relationship by this period. This tripartite symbiotic arrangement meant that the noble achieved the greatness that he expected in the areas where his main estates lay (his 'country'), the gentry got their protection, and the king's government was carried on, by this time with a remarkable depth and reach. It is therefore now understood that, far from making a crude distinction, as used to be done, between royal power in the shires (good) and magnate power (bad), we need to accept that the public power of the crown in the fifteenth century rested on the private power and private relationships of nobles and gentry and that neither public nor private power could function without the other.

II

The problem is that it is becoming increasingly unclear that we should attribute these same features to bastard feudalism in the century before. Certainly, for a long time the fourteenth century was regarded as quite as much a McFarlane century as the fifteenth: these had been the Cinderella centuries, both of them dismissed as of no interest to serious scholars, other than as the crucible of parliament, their politics as unrespectable as their nobles and most of their kings. Both centuries were rescued and given the possibility of a serious political history by McFarlane. His Ford lectures of 1953 took 1290 as their starting date, and the lecture on 'service, maintenance and politics', although its evidence leans heavily towards the fifteenth century, assumes a similar pattern throughout the period.⁶ The first two major school-of-McFarlane studies to be published were of key nobles under Edward II: Maddicott's *Thomas of Lancaster* and Phillips's *Aymer de Valence Earl of Pembroke*, both from the early 1970s. Both took the same view of the role of bastard feudalism as would have been held at that time by a fifteenth-century historian. This was that a lord's political following comprised an affinity located in the areas of his principal estates; that his good lordship offered preferment

and protection; and that much of this was effected by the possibilities for influencing and controlling local officers, and by the ability to raise a local force, for aggressive or defensive purposes, which his affinity gave him. Members of the affinity, for their part, were an adjunct to the lord's local and national political power, and the local pressure on the law and its officers which could be exerted via the affinity might equally be exerted to the lord's benefit. Maddicott, while acknowledging that there were fewer 'blatant examples of bribery and corruption of sheriffs, jurors, and justices' under Edward II than the fifteenth-century Paston letters reveal, stated that 'there is little doubt that Lancaster exercised his influence over royal justice and administration in his own lands in much the same way as did the Dukes of Norfolk and Suffolk in the East Anglia of the 1440s.' Conversely Phillips attributed Pembroke's failure to use retainer to create a strong local power base to the fact that 'it is possible in some way Pembroke remained an outsider in English society' because of his strong links to the Continent. Pembroke was therefore judged to be in some respects an exception to the 'bastard feudal' norm exemplified by Lancaster.⁷

There seemed every reason to make these assumptions, from the wave of noble and local studies which began to appear in thesis form and in print under the inspiration of McFarlane and of which these two were pioneering examples. As had long been understood, for this kind of pressure on the local administration of the law and peacekeeping to be possible, there had to have been a change from the centralised, king-focused rule of the localities which essentially characterised the twelfth and thirteenth centuries to a localist one. Once this had occurred, the local gentry, the quintessential 'local amateurs', administered the shires, largely unsupervised by central royal commissions. It was indeed this change, seen as deleterious to local rule and local order, which had underpinned much of the older account of bastard feudalism, in the version of medieval English history which, as McFarlane put it, had been written by 'King's Friends'.⁸ It was generally considered that this process was complete

in some respects and well under way in others by the time of Edward II. The decline of the great curial sheriff and his replacement by a lesser and local figure began under Henry III and had been more or less completed by the end of the thirteenth century.⁹ The last full eyre was abandoned in 1294. The replacement of its successor experimental centralised commissions, like trailbaston and the itinerant King's Bench, by the justices of the peace, although in train by 1307, took longer. Putnam, the seminal historian of the JP, had declared that this process had its more or less final act in the statute of 1361 'which gave statutory sanction ... for the transformation of keepers into justices'.¹⁰ Historians pursuing local studies realised the enormous importance of these two officers: the sheriff as the local enforcer of the writs which set in motion the royal courts at Westminster, which now heard so much of the gentry's legal business, and the JPs, as the men who could enable or disable the first stage of a crown plea, by accepting or rejecting a bill placed before them to be heard by a jury. Fifteenth-century studies of the localities and of individual disputes were showing how much it mattered to both parties in a gentry dispute that they should be able to rely on a sympathetic sheriff and commission of the peace, and how much could be lost when they could not.¹¹ It therefore seemed reasonable to assume that this was the case for most of the second half of the fourteenth century, and to a degree for the whole of the century, despite what was known of the periodic attempts to revive some sort of centralised system for bringing justice and order to the shires up to 1361.

III

As this summary indicates, the study of fifteenth-century bastard feudalism has shown the necessity of exploring both the private relationship – its nature, extent and function – and the public system of local rule within which it operated and of which it was an essential part. It is in fact recent study of local government in the fourteenth century that has begun to cast serious doubt on the appropriateness of the later model for this period. To begin with the

sheriffs of the first six or seven decades of the fourteenth century, it is true that they were mostly local, in that they were not curialists and they had landed interests in the counties where they served, as sheriffs were obliged to have by this time, though there was no specific qualification until 1371.¹² However, closer examination is now suggesting that we should be wary of thinking of either the sheriffs or the other local men appointed to office at this time as ‘amateurs’ drawn from the leading local gentry. Quite a few of the local officers were not of the first rank tenurially or socially speaking, and the sheriffs, as a group, despite individual exceptions, were significantly lower in rank and tenure than those of the following century. Moreover, the sheriffs, like many other local officers, including even those from the local elite, tended to be almost professional in the frequency with which they were appointed to a variety of local employments. To add to the aura of professionalism, several of these frequent officers were lawyers or administrators, working for local nobles or even the king. Some in fact came into royal service after starting in the shires and were perhaps drawn to the king’s attention by their excellence as local officers.¹³ It is well known that, although there was legislation in 1340 that sheriffs were to be replaced annually, subsequently re-enacted more than once, the practice did not become the norm until after the statute of 1371. Might this be less that kings were routinely ignoring the legislation because it suited them to do so than that the expertise was simply not widely enough available?¹⁴ To be effective, a sheriff had to be able to read and write in Latin and to have a basic familiarity with writs and accounts; one who had to rely on the probity of his staff could be at a serious disadvantage, nor could a king rely on such a sheriff.¹⁵ It is striking, judging by the names in a list of Warwickshire officers between 1290 and 1348, how many families seem effectively to be hereditary office-holders, a circumstance one might attribute to the necessary skills being fairly rare and passed down within families.¹⁶

In fact, such work as has been done on local officers in general under the first three Edwards up to the 1370s suggests that there was quite a small core, a few of these of greater tenurial status, several who were not. To take Saul's figures for Gloucestershire, for example: from the 1290s to the early 1330s up to seven men 'bore the brunt of county administration', accompanied by some lesser men whose service was not confined to Gloucestershire. Similarly in Warwickshire between 1310 and 1320 just ten men acted as officers three times or more and this had hardly changed between 1338 and 1348, when the number was eleven. By 1350, the core group of officers in Gloucestershire was barely larger but fewer of them served outside the county and it was now very rare for a man with no links to the county to hold a local office. Moreover the group of local men who served as officers was beginning to grow larger, a development to be expected in the post-Black Death period with the increasing size of the commission of the peace, the emergence of justices of labourers and the king's continuing needs for the Hundred Years War. So the Gloucestershire officer elite was now accompanied by a number of lesser, purely local, men.¹⁷ Enlargement and social diversification of the officer class beyond the core group are noted slightly earlier in Coss's survey of Warwickshire officers in the first half of the fourteenth century. Gorski does not disaggregate his figures for sheriffs in the period 1350-71 but he shows how dramatic the change was thereafter, when he comments that 'several [official] elites were blown wide open'.¹⁸ In sum, over the course of the century, as education and legal training became more widely distributed among the gentry, even if often only to the level that would enable them to make use of the law themselves, so the group of local men who could take office began to expand. It is only then that we can begin to think of local office as something that the local gentry, as a body, might aspire to.¹⁹

More alarmingly still, from the perspective of bastard feudalism in the fourteenth century, it has become clear that we need to rewrite Putnam's history of the JPs.²⁰ Thanks to

Musson and Verduyn, it is now well known that what occurred in the first decades of the century was not a straightforward tussle fought out in parliament, between crown and localities, the former espousing centralised commissions, including assizes and gaol delivery, the latter the commission of the peace. We now appreciate that there was plentiful overlap in personnel between the different types of commission and that many of the various experiments in policing and judicial supervision had less to do with a tug-of-war between crown and parliamentary Commons and more with the needs of the moment; often, especially under Edward III, these were military needs. Even before this work, Powell had shown that the role of the assize justices, before and after the magic date of 1361, was not to control the JPs on the crown's behalf but to integrate them into a judicial system that had become both centralised and professionalised. Thus, the power to determine felony, which had been fetishised by Putnam in her account of the rise of the JP, was not a mark of local independence but a matter of making sure that no-one was hanged after improper administration of the law. Accordingly, JPs' acquisition of this power on a permanent basis went along with the creation of the quorum, which in practice meant that JPs did not try felonies without the presence of the assize justices, who now doubled as justices of gaol delivery. Often the JPs did not try them at all, leaving it to gaol delivery.²¹ In any case there was no political significance in the power to try felonies. This was because the pleas that came before JPs arising from conflict among landowners were principally trespass: *vi et armis* and the new statutory trespasses.²² Furthermore, the statutory position of the JPs, far from being finalised in 1361, went on developing in important ways until nearly the end of the century. For example, determining powers for felonies were last withdrawn in 1382 and restored in 1389, payments to gentry members of the commission were first made statutory in 1388, and the quorum did not reach its final and permanent form until 1394.²³ Membership followed a similar pattern. It was not until the second half of the century that it first began to

be routine for local nobles who were not serving abroad to be named to the commission and that the gentry members grew in number – though numbers were still usually small compared with later. And many of the gentry JPs were of the semi-professional officer type we have touched on already, characterised by Musson as ‘men of law’. Again - leaving aside some exceptionally large commissions issued for exceptional reasons - it was only towards the end of the century that both the size of the commission and the number of JPs who might be termed amateurs, by contrast with the semi-professionals who had hitherto predominated, began to grow.²⁴

As for the business of the commission of the peace, for most of the fourteenth century, it is clear that its real work was to enforce the policing and regulation of the lowest ranks of society that the crown had increasingly assumed, especially since the Statute of Winchester of 1285. The main reason for the enlargement of the commission from 1350 and its afforcement with members of the nobility was the biggest step so far in this: to ensure implementation of the legislation designed to keep the lower classes in check, economically and in other ways, after the Black Death. Indeed JPs had become necessary because since the later thirteenth century, and especially after the Black Death, the crown had taken so much responsibility for policing and regulating at the lowest social levels that these tasks were far beyond the capacity of intermittent commissions sent out from the centre and required a permanent presence in the localities.²⁵ The JPs’ sessions seem not to have achieved their overriding importance as the court of first instance for non-regulatory business until the later fourteenth century. Although we await a full analysis of the origins of indictments and presentments heard by King’s Bench in the fourteenth century, the evidence suggests that JPs did not play much part in providing these for gaol delivery or King’s Bench until after 1350 and still only a limited role, if a growing one, towards the end of the century. One reason for this was the availability of procedure by bill before the King’s Bench as long as it continued

to itinerate, but much of the business of King's Bench and gaol delivery still came from the sheriff's tourn or private hundreds.²⁶ Furthermore, the statutory trespasses, like forcible entry and livery offences, which concerned matters at the heart of disputes among landowners and in local politics, and which were to furnish a fair proportion of JPs' business concerning landowners, did not begin to appear until Richard II's reign.²⁷ What we know of the commission's role in local politics in the later fourteenth century, which is not a great deal, seems to endorse the view that their role became significant only at this time. Alison Gundy's study of the Appellant earl of Warwick shows that, on occasion at least, local nobles, such as Warwick and Gaunt, and some local gentry were making political use of the peace sessions in the west Midlands from the mid-1370s. Richard II had certainly concluded that the sessions throughout England had become a significant locus for the play of local interests when he removed the nobility and some of the local knights and esquires from the commissions in 1389. That he had to restore the nobles the following year, at the request of the Commons, shows how essential noble power had become to local government and peacekeeping by this time. Richard was then to show this understanding in his use of the Worcestershire commission against Warwick in the early 1390s.²⁸ If we examine the other side of the judicial coin, supervision from the centre, we need to remember that powerful centralised commissions of enquiry, including the itineration of the King's Bench as what Putnam called a 'superior eyre', did not end in 1361. These continued off and on in the later years of Edward III and the early years of Richard II. When, in 1387, Richard II used the itinerant King's Bench to attack the earl of Warwick, it does represent a new dispensation, in which this kind of intervention could be seen as a royal act of aggressive interference in a noble's country.²⁹ It is therefore of a piece with his changes to the commission of the peace two years later.

IV

Broadly speaking, from what we know of noble affinities and local politics in the last three decades of the fourteenth century, if put together with what we now know about local government and law, it seems fair to say that from this time we do have what we might call classical bastard feudalism, as described at the start of this chapter.³⁰ The question is therefore whether we can find bastard feudalism in its quintessential late medieval form between ca.1300 and ca.1370. We shall begin by looking at the followers of the lords. This is not a straightforward undertaking. First, there seems to be less evidence, while too much of that comes from the rather unrepresentative earls and dukes of Lancaster. Secondly, until the mid-fourteenth century, perhaps even a little beyond this date, an 'esquire' in a lord's service may be a landowner below a knight, a son of a knight who has yet to be knighted and may not yet have any lands, a landless man-at-arms, or a household servant.³¹ Thirdly, no historian has yet attempted to trace noble connections in detail through a particular locality in this period. But, even if we must proceed with caution, it is a striking fact that Holmes, whose book on the higher nobility still contains the most thorough general study of noble followings for this century, does not suggest that their ties with the gentry were extensive before the 1370s. It seems that most nobles had only a handful of lesser landowners in their service at this time. Indeed, Holmes's account of noble followings in this period is reminiscent of what has been written on 'bastard feudal' connections in the thirteenth century. As in these studies, he identifies, in most cases, only a small number of followers of the nobility and discusses their service as agents, household officers (some of them clerks), councillors, feoffees and executors, rather than as the lord's means of influence over local government and landed society.³² A recent addition to the literature, on the affinity of Thomas Brotherton, earl of Norfolk (d.1338), mentions only a small number of men who might be considered part of an affinity in the late medieval sense.³³ We can in fact apply the argument that followings grew

between the early and later fourteenth century to the exceptional house of Lancaster. In 1385, John of Gaunt was making payments to over 200 retained bannerets, knights and esquires, while Thomas of Lancaster's very large retinue for his time seems to have been, at its largest, only about a quarter of that number at any one point.³⁴

There is further evidence to suggest that smaller followings may have been the rule for much of the fourteenth century. The noticeable fall in the level of fees paid to retainers and annuitants between the fourteenth and fifteenth centuries may indicate that the decreasing sums were a function of their being paid to a larger number of retainers and annuitants.³⁵ There is also some evidence for a fall during the course of the fourteenth century. The atypical house of Lancaster, which dominates the evidence, seems to have kept them at much the same level throughout the century: from £20 (sometimes marks) to £40 for their prominent knights up to £100 (sometimes marks) for their great retainers, some of whom were noble.³⁶ However, by the 1370s, some of the more typical nobles were often paying at most £20 to a knight and 20 marks to an esquire, and often rather less.³⁷ By the fifteenth century, it was unusual for a gentry retainer or annuitant outside the northern or Welsh marches to be given more than £20 and most had much less, while the percentage of income spent on fees by a non-marcher noble was usually no more than 10%. This contrasts with the 40% that has been suggested for the earl of Nottingham in the 1390s and even this large percentage had fallen to c.20% in the early fifteenth century.³⁸ This point can also be illustrated by comparing atypical nobles across the two centuries, for, while the Black Prince, the heir to the throne, was giving his knights £40 in the 1360s and 1370s, in 1415 John duke of Bedford, then heir presumptive, awarded the northern knight, Robert Plumpton, a mere 20 marks.³⁹

Before considering the significance of these numbers, we should note the rather surprising fact that, in Jones and Walker's collection of indentures, seventy-seven of those

made between a noble lord and a member of the gentry belong to the period 1307-99 and only forty-eight to the whole of the fifteenth century.⁴⁰ It is thus possible that, for much of the fourteenth century, indentures of retainer did not represent the most formal, and relatively rare, version of a widespread and varied web of links between nobles and local gentry, as they do in the fifteenth century, but were, on the contrary, the principal, possibly even unique, indicator of a relationship which was still unusual. Thus, nobles' links to the local gentry were largely confined to the men they had retained, with the addition of a small number of senior estate and household servants; if laymen, these might be members of the minor gentry and were not always formally retained.

What then was the purpose of indentures at this time? A plausible hypothesis is that they really were primarily military in intention and were nobles' attempts to ensure that some of their most important knightly followers would turn out with a force when required. It has been shown that up to half or more of the local landholders of Nottinghamshire and Cambridgeshire named in crown listings under Edward I and II served in the kings' campaigns.⁴¹ Were indentures the nobles' answer to the post-feudal challenge of how to play their part in raising these large forces for the king? The fact that some of the earlier contracts specify the number of men-at-arms to be brought by the retainer supports this hypothesis, for the later development of routinely non-feudal recruitment of national armies would have made these clauses redundant.⁴² Indeed, in a list of men retained by Thomas of Lancaster, the number of men-at-arms to be brought by every retainer is indicated, from the eighty next to Warrene's name, to the single man to accompany his least significant followers. Maddicott has calculated that Lancaster's retainers alone may have been able to supply him with 200 knights and 350 infantry, let alone the 2,000 or more infantry he could raise from his own lands and those who might come from the resident members of his household.⁴³ The association of most known retainers at this time with areas where their lords had lands was

natural, for these would be men who, even if not feudal tenants, came within the ambit of the lord's influence and local authority and could therefore be expected to turn out for him.

Perhaps significantly, under the first two Edwards, and under the third until the 1360s, grants of land rather than fees seem to be much more common than they were to be later on. This suggests, first, that lords were still thinking in terms of substituting for feudal military service and secondly that the number of men they feed was still small enough for this kind of grant not to be damaging to the estate.⁴⁴

In Edward III's reign, when the military recruitment system reached its full flowering, there may be further evidence that this was the primary reason for indentures of retainer for much of the fourteenth century. A remarkable level of continuity of service has been found, from the reigns of the first two Edwards all the way up to the 1350s. Andrew Ayton concludes that, in its mature form under Edward III, such continuity was owed to a mixture of factors, including the development of recruiting networks, some local to the lords' estates, some not, and, as a significant element in these networks, the use of lieutenants who brought their own sub-contracted companies. He doubts whether by this time the men brought by the lords' permanent retainers were 'more than a small proportion' of those raised for military retinues. However, we can assume that having the guaranteed service of the indentured men and the men-at-arms they brought was important to Edward's captains, both in supplying armies for the king and in securing a measure of permanence and familiarity among their officers.⁴⁵ We may argue further for the primarily military purpose of these contracts by relating many of them directly to the annuities, either implicitly or explicitly linked to war service, that Edward III granted to some of his nobles and bannerets from the 1330s to 1350s, ranging from 200 to 500 marks for the lesser men to 1,000 marks or £1,000 for an earl. The grants often included stipulations concerning military service and the recipients were in many cases significant members of Edward's military establishment at home and abroad. It seems

likely that this is less the 'budget of noble assistance' postulated by Given-Wilson, following Contamine, than a mechanism for delegating recruitment, coeval with the growth of contract companies.⁴⁶ Armed with these sums, nobles would be better placed to offer permanent retainer to those lieutenants whom they used as part of their recruiting networks. The figures given in some of those contracts of the early part of the century which dictated the number of men that a retainer was to bring give us an idea of what might be expected: for example, forty from William Latimer to Thomas of Lancaster in 1319 or twenty from Sir Ralph Neville to Henry Lord Percy in 1328. If the development under Edward III of a regular contractual system for military companies, along with widespread recruitment networks, made it no longer necessary to specify numbers, grants of sizeable sums of money from the king could still be very useful for Edward's major captains in assuring them of instant access to a regular core force, to be brought by their main lieutenants.⁴⁷ Under these circumstances, one would expect that the permanent indentures made by these nobles would be relatively small in number, would be made usually with prominent knights and bannerets, and were generous enough to secure the retainers' enthusiastic co-operation. Moreover, if the main intention of these grants from the king was to guarantee that the nobles could raise men for war service, the expenditure on retaining of quite a high percentage of a noble's income, now enhanced by that annuity, is logical.⁴⁸

V

Pulling all this together, it can be argued that the social, political and governmental system for which bastard feudalism is shorthand barely existed at the accession of Edward II and emerged in its full form much later in the century. The main purpose of indentures was initially to furnish the king's armies, and lords were not embedded in local societies, as the chief protectors of the gentry and their lands and as 'gatekeepers' to local rule on the king's behalf, until its last three decades or so. There is, however, a gaping hole in this story. This is

the fact that it has become a commonplace that magnate influence over local government and the law was already rife under Edward II.⁴⁹ Furthermore, it is often assumed that what we see in the localities under Edward II is indicative of an inexorable progression to local control, local corruption and local violence set in train under Edward I, and usually attributed to war or the breakdown of the eyre, or both, and first disclosed in his enquiries of 1304-7.⁵⁰ But there is an alternative way of looking at these conditions: as a manifestation of the particular circumstances of Edward II's reign, combined with the changes in the law made by his father. If we begin with the reign itself, we might consider whether what we see under Edward II is less magnates and gentry taking advantage of local disturbance, to use the law as they wished, and more a defensive reaction to the failure at the centre. That would fit with the idea that the country was still accustomed to an essentially centrist kind of rule in 1307. Thus, even if indentures first appeared in order to furnish the king's military needs, under Edward II local magnates began to use them to build up their military power to replace the missing royal authority. This was primarily to safeguard themselves against local and national enemies but we should bear in mind that local order had always been closely linked with the availability and government control of local manpower: through the sheriff's *posse comitatus*, the updating of the Assize of Arms in 1242, the Statute of Winchester of 1285, and the continuing link of the keepers and justices of the peace with the array. Once local officers could not be trusted to oversee or deploy the local *armati* to keep the peace, and the king was unable to call to order either his officers or landowners, it made sense for local lords to turn themselves into the dominant local military power.⁵¹

The evidence of indentures is suggestive here. If it was access to military power, in peace as well as in war, that was the prime mover for nobles' use of life indentures for most of the century, then we might well expect the amount of retaining to increase in the reign of Edward II. Numbers of retainers may then have fallen as internal peace returned under

Edward III, perhaps to rise again as Edward III's military ventures encouraged lords to seal permanent indentures with selected lieutenants. We are not in a position at present to test the first and third of these propositions, but the fact that the standard first phrase of indentures of retainer is thought to have emerged from Thomas of Lancaster's chancery might suggest that such agreements did indeed become widespread for the first time under Edward II.

Comparison of the size of the knightly retinues of Thomas of Lancaster and his successor, Earl Henry, might offer some support for the second proposition: about fifty-four for Thomas and about twenty for Henry.⁵² Moreover, in the period between 1313 and 1319, when Thomas's relations with Edward II were extremely bad, he probably spent over £7,500 a year of his £11,000 or so annual income on maintaining and feeding his household. This very large sum suggests that much was devoted to fees for retainers and to other expenditure designed to increase the size of his military household. The dimensions of the army that he could raise via his retinue and household have already been noted.⁵³ By contrast, in the early 1330s, Henry spent about 6% of his clear income on fees to permanent retainers, some of them knights. We are unable to compare Henry's total household expenditure with Thomas's but the size of the force at Henry's disposal was certainly not commented on at the time as Thomas's was.⁵⁴ It is highly probable that much of Thomas's outlay was for personal defence against the king and other nobles.⁵⁵ And, beyond the risks of national politics, there were certainly good reasons for nobles to ensure that they had enough retainers under Edward II. For example, the Charlton-Pole feud continued almost throughout the reign, not just unrestrained by the king but positively encouraged by Edward's favouring of Charlton and Lancaster's of Pole.⁵⁶ In 1318 Pembroke's longstanding relationship with the Berkeleys broke down in a violent attack on the earl's manor of Painswick in Gloucestershire. No action was taken for over five months and it was a year and more before the *oyer* and *terminer* commissions that were eventually sent to Gloucestershire achieved any restitution for Pembroke. One does not

envisage Edward I permitting a case concerning an attack on a major noble close to the throne by another prominent family to drag on in this way.⁵⁷ Lancaster himself was faced with a rebellion in his own county of Lancashire in 1315, led by his own retainer, Adam Banaster, and the value of a private force was shown in the rebellion's suppression.⁵⁸

As Pembroke's case suggests, Edward II's failure to keep the peace or to punish infractions of it meant also that the judicial system was often insufficient. The delays in Pembroke's suit against the Berkeleys were caused by their refusal to answer the summons of the commission; their subsequent arrest of the Gloucestershire coroners, to prevent them pronouncing outlawry on themselves and their fellow defendants; and, once the defendants had appeared before the justices, the impossibility of summoning a jury, all of them apparently too scared to turn up. In fact, the proceedings were never completed and Pembroke's eventual compensation appears to have come from an informal settlement.⁵⁹ Just as Edward I is likely to have acted swiftly in such a case, it seems unlikely that he would have permitted such a high-profile affair to have ended in a private compromise in which the king apparently played no part.⁶⁰ One of the reasons for the failure of the law in this case was that the Berkeleys had enough retainers in Gloucestershire at the time to feel confident in resisting it.⁶¹ The whole episode gives substance to the idea that retaining under Edward II was a response to the lack of effective governance and the consequent need for private military forces.

But what happened under Edward II also undoubtedly reflected the large-scale changes in the law in the later years of Edward I and at this point we need to return to the public, institutional context. The prosecution of pleas through bills of trespass requesting special *oyer* and *terminer* commissions had already been growing in the early years of Edward I. Then, with the arrival of the trespasses associated with conspiracy in the 1290s and their incorporation into the crown's proceedings in 1304-7, the king's courts were

entertaining pleas that had a direct impact on landowners: all the more dubious facets of protecting and laying claim to lands, from corrupting and threatening officials to outright violence.⁶² The number of private commissions of *oyer* and *terminer* grew fairly steadily in the later years of Edward I and, throughout the reign, they tended to peak when there was no major intervention by the crown in the shires.⁶³ These commissions could often offer a quick resolution, and plaintiffs had the opportunity to name their preferred justices.⁶⁴ With Edward II so much less active than his father in issuing general enquiries to impose the king's peace, it is therefore hardly surprising that there was large-scale resort to private *oyer* and *terminer* commissions. This was despite the determination expressed in the parliament of 1315 that, because such commissions were given too lightly, 'where a great lord, or a man of power, wishes to destroy a man', 'henceforth they are not to be granted except for very great trespasses'.⁶⁵ It is noteworthy that the percentage of such commissions issued on behalf of gentry plaintiffs, having been at 52% in 1299-1301, had risen to 68% by 1316-19, some of the worst years of the reign.⁶⁶ Many of the justices requested at this time were gentry or minor nobles.⁶⁷ This implies both that the routine judicial processes were no longer answering the gentry's needs and that they were often looking for assistance from those with local influence. In fact everything was in place for a 'bastard feudal' application of law in the shires, including retaining not just for military purposes but also to have influence over local officers.

We do not have to look far for evidence that there was a perception that this was occurring. There were complaints in parliament at this time about abuse of the law in the localities, especially regarding commissioners of *oyer* and *terminer* and sheriffs, and evidence for partiality in the administration of the law is not hard to find.⁶⁸ Unsurprisingly, much of it concerns commissions of *oyer* and *terminer*. Maddicott cites three instances between 1315 and 1320 in which Lancaster was able to influence in his favour the

composition of judicial commissions that were enquiring into matters of personal concern. With a favourable justice, the proceedings themselves could be manipulated. A notable example of judicial malfeasance occurred when Maurice Berkeley, presiding in 1312-13 over a plea of his retainer, John Botiller, told one of the defendants that he would make sure that the record of the proceedings would not arrive in King's Bench. That meant that there could be neither judicial oversight nor an appeal against the verdict.⁶⁹ Then, even on the limited evidence that we have, there was some justification for the belief that too many men connected with the nobility were becoming sheriffs.⁷⁰ For example, at various dates between 1314 and 1318, retainers of Thomas of Lancaster were appointed to the joint shrievalties of Warwickshire and Leicestershire, and Shropshire and Staffordshire, areas where he was a major landowner.⁷¹

In the absence of closer study of the localities in this period, it is not possible to say whether local officials like sheriffs were regularly exploiting their position on behalf of noble masters and fellow members of noble affinities, as was to be a common occurrence under classic bastard feudalism; Lancaster's almost permanent absence from Staffordshire would suggest that he took little interest in what happened there.⁷² Even so, there is some suggestive evidence. For example, in 1318 the sheriff of Staffordshire had returned falsely that he had imprisoned Juliana Murdock for the murder of her husband, a knight of Warwickshire and Northamptonshire, and thereby provided a basis for the quashing of her outlawry in Warwickshire. This was clearly a 'domestic', in which Juliana was aided and abetted by her household staff and by her subsequent husband John de Vaux, but equally Vaux was evidently a man of some importance in Staffordshire, where the killing occurred, and may therefore have had some influence with the sheriff.⁷³ The earl of Pembroke's retainer, William de Claydon, was able to prevent an assize of novel disseisin against him being heard for three and a half years, with the aid of the sheriff's clerk of Suffolk.⁷⁴ More generally, it is

possible to cite many further examples of abuse of, or resistance to, official power, from throughout the reign and the period of Mortimer power just after. This was often used to perpetrate or cover up crimes, some of a violent nature, and some of it committed by men linked to local nobles.⁷⁵

All this is a world away from what, as far as can be told at the moment, was the norm under Edward I, even when the enquiries of 1304-7 reveal much more of the kind of behaviour that the 'conspiracy' part of their remit was designed to root out.⁷⁶ However, it is, interestingly, in these last years of Edward I, when the king was aging, much concerned about order and much preoccupied with Scotland, that we have the first evidence of nobles establishing 'bastard feudal' links with local officers on any kind of scale. It may be that this was their first experience of stepping into the breach locally, in this case probably with the king's blessing and support.⁷⁷ Possibly, it helped prepare them for their response to what was soon to come. But it is arguable that, from the middle of Edward II's reign, when the country was particularly disturbed, there were efforts to revert to a style of rule more like that of Edward I. The national trailbaston commissions of 1313 to 1316 and the experiment in using King's Bench as an additional itinerant court begun in 1318 could be seen in this light, as could enquiries into sheriffs and other officers launched in 1320. This might be applied even to the further development of the King's Bench from 1323 as a very aggressive form of trailbaston. There seems also to have been a greater determination, as early as 1315, to respond in parliament to complaints and petitions regarding justice and order. Unfortunately, the schemes of 1313-16 and 1318 were doomed to failure by divisions and disorder at national and local level, while parliament was too often dominated by confrontation or crisis. As for the later King's Bench itinerations, which might have been the occasion of a new start after Lancaster's defeat, they were too obviously a vehicle for revenge and for the self-aggrandisement of the Despensers, part of their wider use of the law for their own purposes.⁷⁸

The Despensers' attempt to impose their authority on Gloucestershire, where Hugh the younger was trying to make himself pre-eminent, epitomises these mutually-conflicting aims: what could be seen as the centre's efforts to take back control of the legal system actually developed into a form of private tyranny. As such, it failed. The resurgence of the Berkeley interest in local government from ca.1324 demonstrated the practical limits to domination of this kind and the continuing need at this time for local magnate power, if local government was to be in any way effective.⁷⁹ However, the sharp fall in private *oyer* and *terminer* commissions from 1319, the year after the experiment with the King's Bench began, followed by persistently lower levels until the end of the reign, does make the administration of law look superficially much more like what it had been under Edward I.⁸⁰ But, if there was a return to the forms of the judicial administration of Edward I, even the subjective and anecdotal evidence, which is all we have at the moment, suggests that there was no real reversion to more central control and more peaceful local habits. Indeed, the efforts of the Mortimer regime to restrict the grant of individual *oyer* and *terminer* commissions may well have contributed to its overthrow, for, unless the government could reclaim control of legal administration, these commissions were an essential safety valve. The deeds of the Coterels and Folvilles in the late 1320s and early 1330s and other evidence of continuing local upheaval reveal the dimensions of Edward III's problems when he took power in 1330.⁸¹

VI

We should now examine how Edward III dealt with law and governance in the localities, starting from the premise that noble power in the shires between 1307 and 1330, and the 'bastard feudal' practices which accompanied it, had been largely a defensive reaction to the failure of royal government under his father. Edward's task was to revitalise the system for making local law and peacekeeping unequivocally the responsibility of the centre. At the same time, there was now at his disposal the revolutionary option of making constructive use

of the systems for self-help which had developed in the shires under his father. And, in all his decisions, he needed increasingly to place the needs of war first. Most of Edward's responses in the 1330s were in fact centrist, perhaps on the advice of Sir Geoffrey Scrope, Chief Justice of the King's Bench, who had been a young lawyer in the later years of Edward I and had framed policy under Mortimer, under whom he had explicitly tried to devise remedies against 'diuers oppressions des grauntz'. Even so, in a decade that was full of experiment, Edward also periodically gave some leeway to the shires, in the form of responsibility for self-policing.⁸² Moreover, the overlap of personnel between the various centralised and localised commissions demonstrated by Musson shows that neither Edward nor his advisers were ready entirely to ignore the claims of local men to have some say in peacekeeping, nor indeed their usefulness.⁸³ However, even though internal order had almost certainly improved a lot by the end of the decade, the fact that in 1338 the sheriff of Suffolk was unable to assemble for a plea a jury of knights who were not in some way connected with the plaintiffs – the earls of Norfolk and Northampton and two other prominent local men – suggests that nobles were still sufficiently nervous about whether the king could make his legal system work to continue to retain and fee widely in the shires. Moreover, the new rise in the number of private commissions of *oyer* and *terminer* for much of this period might indicate a continuing lack of faith in attempts at resurrecting centrally directed law and justice.⁸⁴

Edward's solution from 1341, when he set about serious reorganisation of his government and country for war, was in many ways to restore the centralised mechanisms of his grandfather. However, it was in a manner which took account of the much larger and still growing range and number of pleas that had come into being as a result of the larger scope of the law and the greater number of litigants. On the one hand, there were draconian central commissions and periodically a potentially punitive itinerant King's Bench, in a policy which seems to have been masterminded by his chief justice, Sir William Shareshull, who had

learned his trade under Scrope. On the other, the itinerant King's Bench also offered the localities access to central justice, perhaps most importantly via a court to which they could bring bills, rather than having to petition by bill for the *oyer* and *terminer* commissions whose partisanship could destabilise local justice.⁸⁵ It may well be that one result of all this was that local office became less politicised in this period. In fact, we should seriously consider whether, now that the king was doing a decent job, the nobility, perhaps with a sigh of relief, began to extricate themselves from the entanglement in the shires which had become necessary since 1307. Those who were much abroad, which was many of them, would in any case have found it difficult to maintain this degree of involvement.⁸⁶

However, it would have been impossible to return entirely to the conditions of Edward I's reign. By the end of that reign, the demands on the king's law from both the king and his subjects were making it ever harder for the old centrist system to work without some local assistance. The later years of Edward I also demonstrated that, under the pressure of war and the demands that war made on government and country, it was very difficult for the king alone to keep the lid on local disorder. This was likely to be all the more true with Edward III's still greater and more extended wars. Moreover, the scale of his need for troops, money and supplies necessitated a more permanent source of authority in the shires than the king's delegated agents could offer.⁸⁷ Even with our present limited knowledge, it is clear that the solution Edward developed from the 1340s was to use the local powers on whom he knew he could rely, starting with the use of several major nobles whom he still trusted for the punitive commissions of 1341-4. These included such important figures as the earls of Derby, Northampton, Arundel and Huntingdon.⁸⁸ Most notably, between 1344 and 1351, he appointed nobles to be life sheriffs in six counties. There were also the counties already in noble hands in heredity.⁸⁹ Nearly all these noble sheriffs were men close to the king; these were less surrenders to local powers than the harnessing of trusted local powers to do the

king's business, and their role was clearly designed to give them a widely conceived authority within the shire. For example, Warwick himself was regularly named to the commission of the peace in Warwickshire between 1345 and 1368, initially in a period when nobles were less likely to feature on it, along with close family members, servants and associates of the earl. It seems that the Warwick interest did not dominate the commission but, especially with the earl as the leading member, it was in a position to see that any royal wishes with regard to peace-keeping were carried out, even when he was abroad on the king's business. Warwick also served as JP in Worcestershire, where he was hereditary sheriff, and in both counties in other capacities also, for example array.⁹⁰ Similarly, the earl of Devon, who was too unwell to serve abroad from 1347, although not given the life shrievalty of the county, led the Devonshire commission of the peace, serving with men linked to himself or to the Black Prince, who, as duke of Cornwall, had lands and followers in Devon.⁹¹ If the military leaders amongst these nobles were sealing indentures so they could support the king's wars, the consequent enlargement of their connections among the gentry may have helped extend their capacity to assist his rule at home.

A comparable fusion of centrist and localist approaches to rule eventually evolved with regard to the powers and structure of the commission of the peace. The commissions of 1341 to 1344 led to the Commons complaining in the parliament of 1344 about the enquiries, and demanding that they be replaced by JPs with determining powers.⁹² The king relented, and in 1344 the first steps were taken in the direction of having a commission that was both local and centralised. The JPs were local gentry, afforded in a few cases by mostly minor local nobles, but their power to determine was dependent on the presence of qualified lawyers.⁹³ From 1351, this developed into the quorum of assize justices for determining felony and, although there was still occasion for reversals of such a modified localist policy until the late 1360s, this was how the commission was to develop.⁹⁴ We have noted already

the growth in size of the commission, as well as the normal addition of local nobles if they were not away on campaign, especially from 1350. This was all part of the JPs' acquisition of an acknowledged role in the central-local partnership.

The greatest local hegemony of all was bestowed on Edward's close friend and aide, the duke (erstwhile earl) of Lancaster, when he was given palatinate powers in Lancashire in 1351, making the county in effect a sub-division of the kingdom administered by the duke.⁹⁵ It seems likely that this was the consequence of the depressing series of major outbursts of violence and internecine fighting among Lancastrian landowners, from Banaster's rebellion in 1315, to further feuding in the 1320s, and murder and mayhem at the Liverpool assizes in 1345. The problem was made particularly intractable by the fact that Henry, earl of Lancaster, the leading nobleman during the first part of Edward III's reign, was blind and, it seems, more wedded to his honour of Leicester than to his Lancashire lands, while his successor in 1345, the future duke, was the king's right-hand man militarily, and consequently more often abroad than not and, when at home, equally reluctant to spend time in the north. One response had been to issue commissions of the peace that were outsize even by late fifteenth-century standards: forty-one in 1345 and sixty in 1350.⁹⁶ Delivering the responsibility for the county to a locally run administration under a man so close to the king must have seemed a solution that would offer local effectiveness combined with central direction, via the personal relationship between king and duke.

Below such front-line nobles as Lancaster and the noble sheriffs and leaders of the peace commissions were men like Nicholas Lord Cantilupe, a north midland landowner and a servant of the king in multiple capacities, including as justice, soldier, diplomat and adviser. He sat frequently on judicial and other commissions in the localities, especially in his own home counties of Nottinghamshire, Derbyshire and Lincolnshire.⁹⁷ Another of this type was Guy de Bryan, technically a banneret rather than a noble but a man summoned to the Lords,

who likewise served in both military and local official capacities.⁹⁸ In fact Edward seems to have been particularly good at discovering able men who could function in a number of different spheres. The regular appointment of nobles to the commission of the peace from 1350 was, as we have seen, primarily to stiffen its local authority at a time when the landed classes were under pressure from the lower classes. The great benefit to the king of using nobles in all these capacities was that their landed power made them natural local leaders, while their recruitment of many of their own servants among the local gentry enabled them to discover who would be reliable and efficient local officers. This is how Edward seems to have lighted on several of his cadre of trusted local officers after 1340: for example, Sir John Delves, a servant of Arundel, soldier, Shropshire JP, and then multi-tasking servant to the Black Prince in Wales and Chester, and finally justice of the Common Pleas (another of those multiply talented soldiers and administrators and justices).⁹⁹ We need to think about reversing the normal paradigm and consider that a noble may have recommended a servant for local office, not to make use of his influence, but so that the king was well served at a time when the requisite expertise was still in short supply.¹⁰⁰

VII

One striking aspect of Edward's attitude to the men he made use of is his readiness to attack them if he felt they had let him down, especially when his military exertions were stretching him badly.¹⁰¹ In 1341-4, a host of greater and lesser officers, from justices, to sheriffs, to minor local officials, were caught in the eye of Edward's storm, and it is evident that in some cases they were being sacrificed to Edward's put-upon subjects simply for doing their jobs, as demanded by the king.¹⁰² Even the very great were not always immune. For example, between 1354 and 1360, Edward reined in his own son, the Black Prince, when he felt that the Prince's aggressive use of his powers as Prince of Wales towards the Marcher lords was alienating men like Arundel and Warwick who were important to him. Equally, Arundel's

usefulness to the king had not stopped Edward arresting three men who were close to the earl in the 1340s.¹⁰³ A more dramatic example was made of Sir John Moleyns, soldier, personal agent and strong-arm-man to the king, and Buckinghamshire justice of the peace and of *oyer* and *terminer*, who was twice prosecuted, in each case for a string of apparently appalling crimes.¹⁰⁴ Moleyns has been held up as an example of lawlessness under Edward III and of the king's reluctance to take it seriously unless it suited him personally.¹⁰⁵ However, a closer examination reveals a rather different agenda. Moleyns was almost certainly a difficult and sometimes violent and dangerous man but we need to remember that the accusations made against him, often going back several years, arose when he had fallen foul of the king in 1340-1 and of the queen in the 1350s. It was accordingly open-season on him, the charges against him were entirely one-sided, and were not all necessarily wholly true.¹⁰⁶ From our perspective, what is revealing is that he was hauled over the coals in the early 1340s, in company with so many of Edward's servants and officials; that he was pardoned, as were so many others who felt the king's wrath then; and that he then served the king further, in the Crécy campaign, at a great council, and as JP. His mistake in the 1350s seems to have been that, having been made steward to the queen, there were complaints of 'oppressiveness' just as the queen became unhappy with his work and as the king no longer wished to use him.¹⁰⁷ We may see cynicism on Edward's part in all these instances of intervention but also that, as far as he was concerned, these greater and lesser men were there to help accomplish his work of supplying the war and keeping the peace and, if they failed, or appeared to him to do so, he would have no mercy. This was not a man who simply handed over the localities to local powers and took no interest in the outcome.

What we can observe in Edward III's rule from 1341 is an attempt by the crown to harness local power, above all noble power, to its rule, in recognition of the sheer scale and reach of its responsibilities. The fact that agitation about the alleged improprieties of royal

justices continued during these years shows the degree to which the central ministers of the crown still had a major effect on how the law was administered.¹⁰⁸ This was probably for two reasons. First, the local administration of the cases going through the central law courts was still in the hands of sheriffs who believed that their responsibilities to the king, either through direct association or via a noble lord who was a major servant of the king, normally outweighed those to their locality. Secondly, there is no argument but that the king continued to police the localities by means of the itinerant King's Bench and, on occasion, by special commissions. If he was unhappy about order or the enforcement of his commands in the shires, he was still very ready to send men in to sort things out. He was also ready to use his serjeants-at-law, his 'enforcers' as Richard Partington has termed them. These first become prominent in 1340 and were employed thereafter in a number of different capacities. Mostly they were used to get what he needed for war and attack those who stood in the way of this aim, including his own officers. But he also deployed them for other purposes, for example to arrest obstructive local notables, and to spearhead an attack in the early 1350s on offenders of all kinds, from nobles to breachers of the new labour legislation.¹⁰⁹

And his system seems to have worked. If we regard *oyer* and *terminer* commissions issued in response to individual petitions as an index of the efficacy of royal control of the shires and of confidence in the king's law, rather than as one of landowners behaving badly, it is telling that the number of such commissions never again rose to the levels of the 1310s and 1320s and began to fall significantly in the later 1340s.¹¹⁰ This was certainly also related to the availability of the itinerant King's Bench and the JPs as alternative avenues, notably as fora which could receive the bills which *oyer* and *terminer* commissions handled.¹¹¹ It must also have been connected to the significant fact that Edward III's government felt confident enough of its rule of the localities to legislate in 1360 against petitioners naming their desired justices.¹¹² All the same, as we have seen, when the crown responded energetically and

effectively to problems of local order, the number of private *oyer* and *terminer* commissions did decline. The hypothesis that the decline of *oyer* and *terminer* commissions went hand in hand with the creation of a workable new system for maintaining local order would also fit with Maddicott's well-known account of the feeing of justices. This practice began to be regulated in the 1340s and seems to have ceased by the 1380s. Feeing justices became redundant once *oyer* and *terminer* commissions were in decline; once it was becoming less common to request named justices to hear a particular plea, even before the practice was banned; and once the administration of the justice which affected landowners was firmly in the hands of local sheriffs and JPs.¹¹³

VIII

Whether this account of bastard feudalism in the fourteenth century stands up or not will not be known until there have been local studies for the first seventy years or so of the fourteenth century which replicate the detailed and systematic attention to local affairs of some of the work on the last decades of the century and on the fifteenth. Most importantly, we need to know whether nobles' direct and indirect links with local landowners were so extensive as to amount to what, using our later characterisation, we may truly term an affinity. Secondly, if there were indeed noble affinities, did they operate as later ones were to do? Was it normal for the significant local officers to have links with the locally powerful nobility and for such links to be routinely exploited to protect the lands of the members of the affinities and expedite their pleas and, if less frequently, to do the same for their lords?¹¹⁴ And, in this context, do we find such extended involvement of nobles in the land transactions of their followers and in private settlements of disputes, in the areas where their landed power lay, that we may conclude that immediate responsibility for peacekeeping had now moved firmly from the king to the nobility? When it came to local conflict, was it new in the later fourteenth century to use litigation primarily as a means of forcing the other party to an

informal settlement? It could be that, until then, the king's law was still regarded as the normal means of bringing disputes to an end among lesser men and that conflict among the great was seen as something that the king himself was expected to deal with, promptly and, if necessary, ruthlessly.¹¹⁵ Edward III's intervention in the prosecutions of men he felt had let him down might imply that expectations concerning the king still held until ca.1370.

Regarding the actual practice of law and peacekeeping in the shires up to this date, we have seen that we know very little.¹¹⁶ Our knowledge of lords' part in the private world of the gentry until the 1360s or 1370s is similarly restricted. Maddicott has shown that there was a measure of interconnectedness through marriage and kinship among Thomas of Lancaster's followers, and one might well expect that matches were made through meetings in the lord's household, while retainers might recommend their relatives to their lord. However, Maddicott does not pursue Lancaster's role in his followers' lives beyond this, and whether his followers really were 'a true "affinity"' in the later sense, as he believes many were, awaits confirmation. Saul notes the strong local connections between Gloucestershire lords, especially the Berkeleys, and their retainers, but does not elaborate further on this subject.¹¹⁷

There is further support for the view that it was only in the 1370s, or perhaps just before, that what we think of as the late medieval dispensation in the shires began to emerge. This lies in the Commons' comments on local justice and local officers in these decades as recorded in the Parliamentary Rolls. It must be emphasised that these are perceptions and not necessarily reality. Moreover, perceptions in the 1370s and 1380s were undoubtedly coloured by the fact that the massive demands being made for a largely unsuccessful war led the Commons to stipulate that, if the government could not offer external achievement after all this expenditure, it should at least do its job of maintaining internal peace.¹¹⁸ Nevertheless, it is noteworthy that, although complaints about over-assertive crown officers continued, from the mid-1360s there was an increasing volume of protest about exploitation and abuse of the

law by local officials or powerful men: such matters as local justices' favouring of their friends, including the choice of JPs 'par brocage des meyntenours', sheriffs' improper practices at tourns, the maintenance of defendants against plaintiffs by the defendants' powerful feoffees, and more general allegations of 'brocage et maintenance'. There were also straightforward complaints regarding disorder in various parts of the realm, which imply a sense of under- rather than over-government.¹¹⁹ Furthermore, it was in 1376 that noble life shrievalties first came under fire. This implies that previous acceptance of what had been a local contribution to centrist rule had changed to rejection of a means of placing a shire too firmly in the private power of a noble.¹²⁰ None of this should be read as an outpouring of disgust by upright gentry caught up in a novel stew of corruption and hankering for a return to more interventionist rule, and the Commons still expressed a dislike of centrist commissions, but it was a new form of rhetoric. The locus of corruption and oppression, those favourite words of the Commons, was now less central government than local government and local powers.¹²¹ It is also arguable that, from the 1370s, legislation and parliamentary petitions concerning the outward identification of bastard feudal lordship, along with the appearance of cheap badges and smaller and more standardised fees, suggest the regularisation of a relationship that was now becoming widespread and commonplace.¹²²

IX

To sum up, all the evidence suggests that bastard feudalism for most of the fourteenth century was not the same as bastard feudalism as revealed by studies of nobles and localities in the fifteenth century. When it looks most similar in the period up to ca.1370, that is under Edward II and in the great decades of Edward III's reign, this is deceptive. Under Edward II, nobles and gentry were fire-fighting. Under Edward III, what we see is the king's exploitation of the local influence and connections of certain key nobles, for the purposes of military

recruitment and to provide reliable local officers and local order while king, nobles and government were stretched to the utmost by a massive military project. Equally, these were not evolutionary stages towards the fully fledged bastard feudalism of the late fourteenth century.

What these two different uses of local power, one by nobles, the other by the king, did reflect is more profound evolutionary changes in the localities, whose roots went back much further. This was a development dating back to the early thirteenth century. More and deeper government ultimately meant more delegation to local landowners, both because they demanded control over governance which was exploiting and directing them to an ever greater degree (on this Putnam was undoubtedly correct) and because it required a much larger governmental base and one that was locally resident. Once this delegation was more or less complete, there had to be a local directing force, and, in most areas, this would be the local nobility. The structures of local power and local rule which emerged in the late fourteenth century were the final stage of this development. However, the exact timing was largely a matter of contingency: the substantial increase in government at the lowest level occasioned by the Black Death and its consequences; the relaxation of Edward III's hold on government from 1360 once he was at peace; new war from 1369 coinciding with a failure of energy at the top, through senility (Edward), illness (the Black Prince) and youthfulness (Richard II). By the time Richard had grasped the situation and decided he did not like it at all, it was too late to put the clock back – though that did not prevent him trying.

¹ I am most grateful to Andrew Spencer for his helpful comments on this chapter in draft form.

² Historians of the thirteenth century, who have taken up this subject more recently, are also assuming the same model. See notably P. R. Coss, 'Bastard feudalism revised', *Past and Present* 125 (Nov. 1989), 27-64, and David Crouch, D. A. Carpenter and P. R. Coss, 'Debate: bastard feudalism revised', *Past and Present* 131 (May 1991), 165-203.

³ K. B. McFarlane, *England in the Fifteenth Century*, ed. G. L. Harriss (London, 1981), especially McFarlane, 'Bastard feudalism', 23-43, and Harriss, 'Introduction', pp. ix-xxvii; Christine Carpenter, 'Political and constitutional history: before and after McFarlane', in R. H. Britnell and A. J. Pollard (eds.), *The McFarlane Legacy* (Stroud, 1995), 175-206; George Holmes, *The Later Middle Ages, 1272-1485* (2nd edn., London, 1970), 167.

⁴ For this and the paragraph which follows, see the following summaries, which are also guides to further literature: G. L. Harriss, 'The dimensions of politics', in Britnell and Pollard (eds.), *McFarlane Legacy*, 1-20; G. L. Harriss, *Shaping the Nation: England, 1360-1461* (Oxford, 2005), chs. 4-6; Michael Hicks, *Bastard Feudalism* (London, 1995); Christine Carpenter, *The Wars of the Roses* (Cambridge, 1997), chs. 2 and 3. The universality of noble leadership in the shires is debated but there is agreement on the localisation of local administration and justice, and on noble embeddedness in local society and office-holding when the lord did lead: Christine Carpenter, 'Gentry and community in medieval England', *Journal of British Studies* 33 (1994), 340-80.

⁵ See for example Judith A. Green, *The Aristocracy of Norman England* (Cambridge, 1997), ch. 7.

⁶ K. B. McFarlane, *The Nobility of Later Medieval England* (Oxford, 1973), ch. 1, p. vi.

⁷ J. R. Maddicott, *Thomas of Lancaster, 1307-1322* (Oxford, 1970), 49; J. R. S. Phillips, *Aymer de Valence Earl of Pembroke, 1307-1324* (Oxford, 1972), 271; also 258-9. Similarly, Richard W. Kaeper, 'Law and order in fourteenth-century England: the evidence of special commissions of *oyer and terminer*', *Speculum* 54 (1979), 734-84, at p. 751.

⁸ McFarlane, *Nobility*, 2-3; quotation at p. 2.

⁹ W. A. Morris, *The Medieval English Sheriff to 1300* (Manchester, 1927), 166-7; Helen M. Cam, 'Cambridgeshire sheriffs in the thirteenth century', in Cam, *Liberties and Communities in Medieval England* (London, 1963), 36-48; more recently, D. A. Carpenter, 'The decline of the curial sheriff in England, 1194-1258', in Carpenter, *The Reign of Henry III* (London, 1996), 151-82.

¹⁰ Bertha Haven Putnam (ed.), *Proceedings before the Justices of the Peace in the Fourteenth and Fifteenth Centuries* (The Ames Foundation, 1938), xxxvi-xlvi, lix-lxiii; quotation at p. xlv. She did recognise that the process was not yet entirely complete (see below, nn.21 and 23).

¹¹ See n.4 for guides to the literature on localities and on individual disputes.

¹² Richard Gorski, *The Fourteenth-Century Sheriff* (Woodbridge, 2003), *passim* and at 68-9 for the property qualification; William A. Morris, 'The sheriff', in Morris and Joseph R. Strayer (eds.), *The English Government at Work, 1327-1336*, ii, Fiscal Administration (Mediaeval Academy of America, 1947), 48; PROME, ii, 308, item 39.

¹³ Morris, 'The sheriff', 50-3; Nigel Saul, *Knights and Esquires: The Gloucestershire Gentry in the Fourteenth Century* (Oxford, 1981), 117-18, 156-7; Anthony Musson and W. M. Ormrod, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century* (Basingstoke and London, 1999), 70; Anthony Musson, *Public Order and Law Enforcement: The Local Administration of Criminal Justice, 1294-1350* (Woodbridge, 1996), chs. 6 and 7; Peter Coss, *The Origins of the English Gentry* (Cambridge, 2003), ch. 7 (but his

distinction between knights and professionals is too sharp); Gorski, *Fourteenth-Century Sheriff*, 69-78 (emphasises diversity but most of his examples of sheriffs of lower status come from ca.1300-50).

¹⁴ Saul, *Knights and Esquires*, 110-111; Gorski, *Fourteenth-Century Sheriff*, 41-2.

¹⁵ For the office and duties, see Morris, 'The sheriff' and Musson, *Public Order*, 150-3. For the advantages to the crown of long service and repeat appointments, see Gorski, *Fourteenth-Century Sheriff*, 38, 57-8.

¹⁶ Coss, *Origins*, Appendix v, using a list supplied by R. Gorski. Also Musson, *Public Order*, 140-4.

¹⁷ Saul, *Knights and Esquires*, 161-2; Coss, *Origins*, Appendix V, excluding non-Warwickshire men acting on joint commissions etc. (in each selected period, a small number of men at either the beginning or end of an extended official career did not make the cut); Musson, 93-4.

¹⁸ Coss, *Origins*, ch. 7, esp. 200-1; Gorski, *Fourteenth-Century Sheriff*, 44-57 (quotation at p. 45); also Saul, *Knights and Esquires*, 162 (but see at p. 116 for a measure of reappointment to the shrievalty post-1371).

¹⁹ There is no account of gentry education and literacy in the fourteenth century but strong indicators are the greater availability of legal education and training, the growth of law and administration as routes into the gentry, and the increasing number of surviving texts in English rather than French: see Coss, *Origins*, 244-8; Coss, *Foundations of Gentry Life*, ch. 11; Michael J. Bennett, *Community, Class and Careerism: Lancashire and Cheshire in the Age of Sir Gawain and the Green Knight* (Cambridge, 1983), 195-203; Harriss, *Shaping the Nation*, 156-7; Maurice Keen, *English Society in the Later Middle Ages, 1348-1500* (London, 1990), 225, 237; Musson, *Public Order*, 136-44.

²⁰ For a summary of what follows on JPs, see Christine Carpenter, 'War, government and governance in England in the later middle ages', in Linda Clark (ed.), *Conflict, Consequences and the Crown in the Late Middle Ages, The Fifteenth Century 7* (2007), 16-21.

²¹ Putnam (ed.), *Proceedings*, introduction; Edward Powell, *Kingship, Law, and Society: Criminal Justice in the Reign of Henry V* (Oxford, 1989), 56-60; Powell, 'The administration of criminal justice in late-medieval England: peace sessions and assizes', in Richard Eales and David Sullivan (eds.), *The Political Context of Law* (London, 1987), 49-59; Musson and Ormrod, *Evolution of English Justice*, 47-8, 51; Anthony Verduyn, 'The politics of law and order during the early years of Edward III', *EHR* 108 (1993), 842-67.

²² See below for statutory trespass. It is likely that anything concerning landowners serious enough to come to the king's attention would be handled at this time by special commission or the itinerant King's Bench, while landowners might themselves use the latter (see Carpenter, 'War, government and governance', 19-20). By the late fourteenth century, it was becoming routine for either defendant or victim to get the case taken into King's Bench for trial: J. B. Post, 'Criminals and the Law in the Reign of Richard II', unpublished D.Phil. thesis (University of Oxford, 1976), 240; Putnam (ed.), *Proceedings*, lxiii-iv; Philippa C. Maddern, *Violence and Social Order: East Anglia, 1422-1442* (Oxford, 1992), 44-7.

²³ Putnam (ed.), *Proceedings*, xxiv-v, xxviii-ix, xc; Powell, *Kingship, Law, and Society*, 58.

²⁴ Musson and Ormrod, *Evolution of English Justice*, 69-71, 62-8; Saul, *Knights and Esquires*, 133-4; W. M. Ormrod, *The Reign of Edward III* (New Haven and London, 1990), 110. See also commissions under Edward III in *Calendar of Patent Rolls* (1343-77). There were some outsize post-Peasants' Revolt commissions (*Calendar of Patent Rolls*, 1381-5, 84-6, 244-55; cf. *ibid.* 1391-6, 587-8) and two very large commissions appointed for gross disorder in Lancashire (see below, at reference note 96). For the size of the commission in the fifteenth century, see Susan M. Wright, *The Derbyshire Gentry in the Fifteenth Century*

(Derbyshire Record Society, 8, 1983), 94 and Christine Carpenter, *Locality and Polity: A Study of Warwickshire Landed Society, 1401-1499* (Cambridge, 1992), 268.

²⁵ Helen M. Cam, *The Hundred and the Hundred Rolls* (London, 1930), Parts III and IV; Helen M. Cam, 'Shire officials: coroners, constables and bailiffs', in James F. Willard, William A. Morris *et al.* (eds.), *The English Government at Work, 1327-1336*, iii, Local Administration and Justice (Mediaeval Academy of America, 1950), 143-83; Bertha Haven Putnam, 'Shire officials: keepers of the peace and justices of the peace', *ibid.*, 185-217; Chris Given-Wilson, 'Service, serfdom and English labour legislation, 1350-1500', in Anne Curry and Elizabeth Mathew (eds.), *Concepts and Patterns of Service in the Later Middle Ages, The Fifteenth Century 1* (2000), 21-37; Musson and Ormrod, *Evolution of English Justice*, 93-6. For JPs' business at this time, see for example Rosamund Sillem (ed.), *Some Sessions of the Peace in Lincolnshire, 1360-1375*, Lincoln Record Society 30 (1910), pp. xlv-vi; E. Chapin Furber (ed.), *Essex Sessions of the Peace, 1351, 1377-1379* (Essex Archaeological Society, 1953), 38-55.

²⁶ J. B. Post, 'Local jurisdiction and judgment of death', *Criminal Justice History* 4 (1983), 1-21; Simon Walker, 'Yorkshire justices of the peace, 1389-1413', in Walker, *Political Culture in Later Medieval England* (Manchester, 2006), 105; Musson and Ormrod, *Evolution of English Justice*, 118-19. Cf. Maddern, *Violence and Social Order*, 31. For the itinerant King's Bench, see immediately below.

²⁷ J. G. Bellamy, *Bastard Feudalism and the Law* (London, 1989), 19-20, 21-2.

²⁸ Alison Gundy, 'The earl of Warwick and the royal affinity in the politics of the west midlands, 1389-99', in M. A. Hicks (ed.), *Revolution and Consumption in Late Medieval England, The Fifteenth Century 2* (2001), 57-70; Alison Gundy, *Richard II and the Rebel Earl* (forthcoming, Cambridge, 2013); R. L. Storey, 'Liveries and commissions of the peace,

1388-90', in F. R. H. Du Boulay and Caroline M. Barron (eds.), *The Reign of Richard II* (London, 1971), 131-52.

²⁹ W. Mark Ormrod, *Edward III* (New Haven and London, 2011), 477-8; Gundy, *Richard II and the Rebel Earl*; Simon Walker, *The Lancastrian Affinity, 1361-1399* (Oxford, 1990), 227 (similarly aggressive visits of the King's Bench to the north midlands in the 1390s against Gaunt).

³⁰ Gundy, *Richard II and the Rebel Earl*; Martin Cherry, 'The Courtenay earls of Devon: the formation and disintegration of a late medieval aristocratic affinity', *Southern History* 1 (1979), 71-97; Walker, *Lancastrian Affinity* (Lancaster's position, which makes him untypical, need not obscure the essential template, and the discussion of the earls of Stafford reveals a typical affinity in fifteenth-century terms); Christian D. Liddy, *The Bishopric of Durham in the Late Middle Ages* (Woodbridge, 2008), 79-92.

³¹ Saul, *Knights and Esquires*, 6-25 for a very useful survey. Also Coss, *Origins*, ch. 9. As one example, Thomas of Brotherton's household esquires in 1337 included two tailors: A. Marshall, 'An early fourteenth-century affinity: the earl of Norfolk and his followers', in Nigel Saul (ed.), *Fourteenth Century England* 5 (2008), 3.

³² G. A. Holmes, *The Estates of the Higher Nobility in Fourteenth-Century England* (Cambridge, 1957), ch. 3. The exceptions are Henry of Lancaster (late 1320s, early 1330s) and Lady Elizabeth de Burgh (1343) (at pp. 58-9, 67-9). For work on the thirteenth century, see n.2; also, for more recent discussion and references, Marc Morris, *The Bigod Earls of Norfolk in the Thirteenth Century* (Woodbridge, 2005), 68-72, 141-53; 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. See Andrew Spencer, *Nobility and Kingship: The Earls and Edward I, 1272-1307* (Cambridge, forthcoming, 2013), Section B for extended research on this subject.

³³ Marshall, 'An early fourteenth-century affinity', 1-12.

³⁴ Walker, *Lancastrian Affinity*, 14; Maddicott, *Thomas of Lancaster*, 43-5. By the time of Gaunt's registers, an esquire really was a member of the gentry (see n.31).

³⁵ For examples of fees in the fourteenth century, see Holmes, *Estates of the Higher Nobility*, 60-72 and Michael Jones and Simon Walker (eds.), *Private Indentures for Life Service in Peace and War, 1278-1476*, Camden Miscellany, 32, Camden Society, 5th ser., 3 (1994), nos. 11-92, comparing, from the fifteenth century, Christine Carpenter, 'The Beauchamp affinity: a study of bastard feudalism at work', *EHR* 95 (1980), 514-33, at p. 519; Carole Rawcliffe, *The Staffords, Earls of Stafford and Dukes of Buckingham, 1394-1521* (Cambridge, 1978), Appendix D; P. A. Johnson, *Duke Richard of York, 1411-1460* (Oxford, 1988), Appendix III. There are exceptions in both centuries though most of the outsize fees or expenditure in the fifteenth century tend to be by Henry IV as duke of Lancaster (Helen Castor, *The King, the Crown, and the Duchy of Lancaster: Public Authority and Private Power, 1399-1461* (Oxford, 2000), 29) or lords of the Welsh or Scottish March (for example, J. M. W. Bean, *The Estates of the Percy Family* (Oxford, 1958), 91-4). See also T. B. Pugh, 'The magnates, knights and gentry', in S. B. Chrimes, C. D. Ross et al. (eds.), *Fifteenth-Century England* (Manchester, 1972), 101-6.

³⁶ Maddicott, *Thomas of Lancaster*, 42, 46; Holmes, *Estates of the Higher Nobility*, 67-8, 71-2; Walker, *Lancastrian Affinity*, Appendix I.

³⁷ Holmes, *Estates of the Higher Nobility*, 60-6. £20 was already a standard fee for a knight under Edward I (ex inf. Andrew Spencer) but knights at that time could be the equivalent of quite minor esquires a century later.

³⁸ Chris Given-Wilson, *The English Nobility in the Late Middle Ages* (London, 1987), 156 (citing the work of Dr R. E. Archer) and refs. in n.35.

³⁹ Jones and Walker (eds.), *Private Indentures*, nos. 41-2, 46, 49-50, 55-6, 114. Some of the Black Prince's knights had as much as £100 a year: D. S. Green, 'Politics and service with Edward the Black Prince', in J. S. Bothwell (ed.), *The Age of Edward III* (York, 2001), 57.

⁴⁰ Jones and Walker (eds.), *Private Indentures*, 35-179, excluding agreements between members of the nobility and, as far as possible, indentures with menial servants. Also excluding Lord Hastings' indentures made under Edward IV, which are not printed in this collection and are effectively agreements with the king: Theron Westervelt, 'The changing nature of politics in the localities in the later fifteenth century: William Lord Hastings and his indentured retainers', *Midland History* 26 (2001), 96-106.

⁴¹ David Simpkin, 'Total war in the middle ages? The contribution of English landed society to the wars of Edward I and Edward II', in Adrian R. Bell, Anne Curry *et al.* (eds.), *The Soldier Experience in the Fourteenth Century* (Woodbridge, 2011), 61-94, at pp. 75-6.

⁴² See for example Jones and Walker (eds.), *Private Indentures*, nos. 13, 24-5, 29, 32, 33, 34, 37, and at pp. 15-16 for the origins of indentures; Maddicott, *Thomas of Lancaster*, 42-3.

⁴³ Holmes, *Estates of the Higher Nobility*, 140-1; Maddicott, *Thomas of Lancaster*, 27, 44-5.

⁴⁴ See e.g. Jones and Walker (eds.), *Private Indentures*, nos. 14, 17-18, 34, 38, 48, 50; Holmes, *Estates of the Higher Nobility*, 69-70, 72, 74, 122-3; Maddicott, *Thomas of Lancaster*, 42; Phillips, *Aymer de Valence*, 309-10.

⁴⁵ Andrew Ayton, 'Military service and the dynamics of recruitment in fourteenth-century England', in Bell, Curry *et al.* (eds.), *Soldier Experience*, 15-23; quotation at p. 20. For examples of the large retinues that a major noble captain might bring, see George Wrotesley, *Crécy and Calais* (London, 1898), 193.

⁴⁶ Given-Wilson, *English Nobility*, 154-5.

⁴⁷ Holmes, *Estates of the Higher Nobility*, 122. The indentures in Jones and Walker contain few examples of this from the 1330s onwards. They resurface in some of Gaunt's contracts,

however (Walker, *Lancastrian Affinity*, 48-9), perhaps because Gaunt's outsize military commitments necessitated a return to earlier practices.

⁴⁸ Possible examples of retaining done with the benefit of money received from the king in this way are by Thomas de Bradeston, a banneret (Given-Wilson, *English Nobility*, 154; *Complete Peerage*, s.n.) in 1345-7 (Saul, *Knights and Esquires*, 280) and Grosmont's larger annuities (Holmes, *Estates of the Higher Nobility*, 66-7). Ayton, 'Military service', 20.

⁴⁹ See above, at reference notes 7-11; also for example John Bellamy, *Crime and Public Order in England in the Later Middle Ages* (London, 1973); Saul, *Knights and Esquires*, 202; Kaeuper, 'Law and order', 751, 782-3; Scott L. Waugh, 'For, king, country and patron: the Despencers and local administration, 1321-1322', *Journal of British Studies* 22 (1983), 23-58.

⁵⁰ A. Harding, *The Law Courts of Medieval England* (London, 1973), 86-92; A. Harding (ed.), 'Early trailbaston proceedings from the Lincolnshire roll of 1305', in R. F. Hunnisett and J. B. Post (eds.), *Medieval Legal Records Edited in Memory of C. A. F. Meekings* (London, 1978), 146-51; Richard W. Kaeuper, *War, Justice, and Public Order: England and France in the Later Middle Ages* (Oxford, 1988), 3-4.

⁵¹ Harry Rothwell (ed.), *English Historical Documents*, iii, 1189-1327 (London, 1975), 357-9, 460-2; Morris, 'The sheriff', 57-61; Musson, *Public Order*, 15-17; Musson and Ormrod, *Evolution of English Justice*, 50, 52.

⁵² Maddicott, *Thomas of Lancaster*, 45; above, note 36, for Henry.

⁵³ Maddicott, *Thomas of Lancaster*, 22-3, 27-8; above, at reference note 43.

⁵⁴ Maddicott, *Thomas of Lancaster*, 43-4. The figure for Henry is ex inf. Andrew Spencer.

⁵⁵ See e.g. Maddicott, *Thomas of Lancaster*, 53, 154-7; Andy King, 'Lordship, castles and locality: Thomas of Lancaster, Dunstanburgh Castle and the Lancastrian affinity in Northumberland', *Archaeologia Aeliana* 5th ser. 29 (2001), 223-34, at p. 229.

⁵⁶ J. C. Davies, *The Baronial Opposition to Edward II: Its Character and Policy* (Cambridge, 1918), 216-17; Maddicott, *Thomas of Lancaster*, 140-1, 143-5, 147, 184.

⁵⁷ Phillips, *Aymer de Valence*, 261-7. Cf. Spencer, *Earls and Edward I*, chs. 6-8, which shows how swiftly and effectively Edward I acted as soon as he deemed it necessary.

⁵⁸ G. H. Tupling, *South Lancashire in the Reign of Edward II* (Chetham Society, 1949), pp. xlii-viii; Maddicott, *Thomas of Lancaster*, 174-6, and 176-7 for more on disorder in the north affecting Lancaster.

⁵⁹ Phillips, *Aymer de Valence*, 265-6.

⁶⁰ See above, note 57, and, for more on out of court settlements, below, note 115.

⁶¹ Saul, *Knights and Esquires*, 69-70 (he suggests 'perhaps a dozen knights').

⁶² Kaeuper, 'Law and order', 742-3; Alan Harding, 'The origins of the crime of conspiracy', *TRHS* 5th series, 33 (1983), 94-104; Harding, 'Early trailbaston proceedings', 146-51.

⁶³ Kaeuper, 'Law and order', 738, 739-41, 743-4.

⁶⁴ Kaeuper, 'Law and order', 750-74.

⁶⁵ PROME, i, 290, item 10.

⁶⁶ Kaeuper, 'Law and order', 750. For national and local instability at this time, see Phillips, *Edward II*, chs. 6-8 and Maddicott, *Thomas of Lancaster*, chs. 5-7.

⁶⁷ Kaeuper, 'Law and order', 753.

⁶⁸ For complaints, see PROME, i, 289-91.

⁶⁹ Maddicott, *Thomas of Lancaster*, 50; Kaeuper, 'Law and order', 769; Saul, *Knights and Esquires*, 70. See Powell, *Kingship, Law*, 54 on King's Bench's supervisory jurisdiction.

⁷⁰ PROME, i, 343.

⁷¹ Maddicott, *Thomas of Lancaster*, 63. It is even true of the much less locally engaged Pembroke (Phillips, *Aymer de Valence*, 310-11). Also Roger Mortimer, especially in Herefordshire, notably from 1316: Paul R. Dryburgh, 'The Career of Roger Mortimer, First

Earl of March (c.1287-1330)', unpublished Ph.D. thesis (University of Bristol, 2001), 162-3, 166.

⁷² A. J. Gross, 'The king's lordship in the county of Stafford', *Midland History* 16 (1991), 24-44, at pp. 30, 38-9.

⁷³ 'Plea Rolls of the reign of Edward II', *Collections for a History of Staffordshire* 10 (1889), 27-8, 35-6, 37-9; L. F. Salzman (ed.), *Victoria History of the County of Warwick*, v (1949), 58; Peter Coss, *The Lady in Medieval England 1000-1500* (Stroud, 1998), 131-7. Vaux was constable of Stourton Castle, where the murder occurred. See Gross, 'King's lordship', 34-6 for further suggestive instances.

⁷⁴ Phillips, *Aymer de Valence*, 260. Pembroke had substantial lands in Suffolk but Phillips does not record any link with the sheriff there: *ibid.*, 244, 310-11.

⁷⁵ For example, Maddicott, *Thomas of Lancaster*, 50-1; Gross, 'King's lordship'; *Calendar of Patent Rolls, 1307-1313*, 420; 'Plea Rolls of the reign of Edward II', *Collections for a History of Staffordshire* 9 (1888), 99-100; *ibid.* 10 (1889), 66-75; S. L. Waugh, 'The profits of violence: the minor gentry in the rebellion of 1321-22 in Gloucestershire', *Speculum* 52 (1977), 843-69; Saul, *Knights and Esquires*, 183, 202-3. Note that care is needed in using accusations made against the defeated, especially of 1321-2.

⁷⁶ Caroline Burt, *Edward I and the Governance of England, 1272-1307* (Cambridge, 2013), *passim* and Harding, 'Early trailbaston proceedings', 147-9.

⁷⁷ Burt, 'A "bastard feudal" affinity', 156-80, especially pp. 178-80, but she emphasises the lords' need to protect their local interests while away at war.

⁷⁸ Kaeuper, 'Law and order', 744; G. O. Sayles (ed.), *Select Cases in the Court of King's Bench under Edward II*, iv, *Selden Society* 74 (1955), pp. lviii-lxiii, lxxxiv; Gwilym Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford, 2007), 74-6; Waugh, 'For king, country, and patron', 23-58; Michael Prestwich,

Plantagenet England, 1225-1360 (*Oxford, 2005*), 188-204; Natalie Fryde, *The Tyranny and Fall of Edward II, 1321-1326* (*Cambridge, 1979*), chs. 5 and 6.

⁷⁹ Nigel Saul, 'The Despensers and the downfall of Edward II', *EHR* 99 (1984), 1-33 on the narrowness of the Despenser power-base, and *Knights and Esquires*, 152-3 on the resurgence of the Berkeley interest. Julian Turner, 'Law and Justice in the Fourteenth Century: Gloucestershire, 1321-30', unpublished BA thesis (University of Cambridge, 1982) for the limits to such a 'tyranny' (with thanks for permission to quote this).

⁸⁰ Kaeuper, 'Law and order', 741, 744-5.

⁸¹ Kaeuper, 'Law and order', 745-6; J. G. Bellamy, 'The Coterel gang: an anatomy of a band of fourteenth-century criminals', *EHR* 79 (1964), 698-717; E. L. G. Stones, 'The Folvilles of Ashby-Folville, Leicestershire and their associates in crime, 1326-47', *TRHS* 5th ser., 7 (1957), 117-36; Ormrod, *Edward III*, 106-7.

⁸² E. L. G. Stones, 'Sir Geoffrey le Scrope (c.1285-1340), chief justice of the King's Bench', *EHR* 69 (1954), 1-17, at pp. 2-3, 1-12; Stones, 'The Folvilles', 126-7; H. Cam, 'The general eyres of 1329-30', in Cam, *Liberties and Communities*, 150-62 (quotation at p. 159); B. W. McLane, 'Changes in the court of King's Bench, 1291-1340: the preliminary view from Lincolnshire', in W. M. Ormrod (ed.), *England in the Fourteenth Century* (Woodbridge, 1986), 155-6; Putnam (ed.), *Proceedings*, xxxix-xli; W. R. Jones, 'Rex et ministri: English local government and the crisis of 1341', *Journal of British Studies* 13 (1973), 1-20, at pp. 6-7; Musson and Ormrod, *Evolution of English Justice*, 47, 49, 51, 64; Musson, *Public Order*, 73-4, 236-7; Ormrod, *Edward III*, 107-10; PROME, ii, 104-5, item 10.

⁸³ Musson and Ormrod, *Evolution of English Justice*, 64; Musson, *Public Order*, 73-4 and chs. 3, 5, 6 and 7.

⁸⁴ Holmes, *Estates of the Higher Nobility*, 82-3; *Calendar of Inquisitions Post Mortem*, viii (London, 1913), 95 (see Holmes for correction of the calendar); Kaeuper, 'Law and order',

741. The state of the realm regarding order *c.*1338 remains a matter of guesswork (Ormrod, *Reign of Edward III*, 112 for a pessimistic view) but it is difficult to believe that Edward would have left for France had there not been improvement.

⁸⁵ Ormrod, *Edward III*, 259-60, 371, 477-8; Jones, 'Rex et ministri', 1-20; Putnam (ed.), *Proceedings*, lvii-lxiii, 29-32; Bertha Haven Putnam, *The Place in Legal History of Sir William Shareshull* (Cambridge, 1950), 20; Musson and Ormrod, *Evolution of English Justice*, 49, 118-19; Carpenter, 'War, government and governance', 19-20. For more on punitive commissions, see below, at reference notes 101-7.

⁸⁶ E.g. Derby/Lancaster, Clinton, March, Northampton, Arundel, Warwick: Ormrod, *Reign of Edward III*, 103; *Complete Peerage* and *ODNB*, s.nn.

⁸⁷ Carpenter, 'Law, government and governance'.

⁸⁸ Jones, 'Rex et ministri', 4-5.

⁸⁹ Life shrievalties: Warwickshire and Leicestershire (Warwick, 1344), Shropshire (Arundel, 1345), Staffordshire (Derby, 1345), Cambridgeshire and Huntingdonshire (Lisle, 1351): Ormrod, *Reign of Edward III*, 110 and 233 n. 94; *List of Sheriffs for England and Wales*, PRO Lists and Indexes 12 (1898), 117-18, 127, 145. Hereditary shrievalties: Lancashire (Lancaster), Westmorland (Clifford), Rutland (Audley and Bohun), Cornwall (Black Prince), Worcestershire (Warwick): Gorski, *Fourteenth-Century Sheriffs*, 34.

⁹⁰ For Warwick's connections in the county, see S. Barfield, 'The Beauchamp Earls of Warwick, 1268-1369', unpublished M.Phil. thesis (University of Birmingham, 1997), ch. 3, with thanks to Mr Barfield for permission to cite his thesis. For commissions, including of the peace, in Warwickshire and Worcestershire, see *Calendar of Patent Rolls*, vols for 1343-70.

⁹¹ See for example *Calendar of Patent Rolls*, 1350-4, 87, 1354-8, 552, 1361-4, 64; R. J. Burls, 'Society, Economy and Lordship in Devon in the Age of the First Two Courtenay Earls', unpublished D.Phil. thesis (University of Oxford, 2002), ch. 4.

⁹² On the commissions, see below, at reference note 102.

⁹³ Musson, *Public Order*, 17, 77-8; Musson and Ormrod, *Evolution of English Justice*, 51; *Calendar of Patent Rolls, 1343-5*, 393-7.

⁹⁴ Musson, *Public Order*, 79; Musson and Ormrod, *Evolution of English Justice*, 51; Ormrod, *Edward III*, 371, 477-8.

⁹⁵ Walker, *Lancastrian Affinity*, 142.

⁹⁶ Tupling, *South Lancashire*, pp. xlii-li, lix-lx; R. Stewart-Brown, 'Two Liverpool medieval affrays', *Transactions of the Historic Society of Lancashire and Cheshire* 85 (1933), 71-81; *ODNB* s.nn. for evidence of their preferred residences; *Calendar of Patent Rolls, 1343-5*, 509-10, *1348-50*, 533. This insight regarding the creation of the palatinate comes from the work on Lancashire of my Ph.D. student Gunnar Welle.

⁹⁷ *ODNB*, s.n.

⁹⁸ *Complete Peerage*, s.n.; Burls, 'Society, Economy and Lordship', 175-7.

⁹⁹ Richard Partington, chapter on law and lawyers, to be published in J.-P. Genet, John Watts and Christopher Fletcher (eds.), *Governing in Late Medieval England and France: Office, Network, Idea*, forthcoming, with thanks to Mr Partington for permitting me to cite his work in advance of publication.

¹⁰⁰ An insight I owe to Richard Partington.

¹⁰¹ For the general point, see Richard Partington, 'Edward III's enforcers: the king's sergeants-at-arms in the localities', in Bothwell (ed.), *Age of Edward III*, 96-106.

¹⁰² Jones, 'Rex et ministri', 1-20; Bernard William McClane (ed.), *The 1341 Royal Inquest in Lincolnshire*, Lincoln Record Society 78 (1987): see especially several of the charges against Gilbert Ledred, multiple local official: for example nos. 1135-9. For the context, see G. L. Harriss, *King, Parliament, and Public Finance in Medieval England to 1369* (Oxford, 1979), chs. 10-13.

¹⁰³ R. R. Davies, *Lordship and Society in the March of Wales, 1282-1400* (Oxford, 1978), 269-73; Partington, 'Edward III's enforcers', 105-6.

¹⁰⁴ For what follows, see Natalie Fryde, 'A medieval robber baron: Sir John Moleyns of Stoke Poges, Buckinghamshire', in Hunnisett and Post (eds.), *Medieval Legal Records*, 198-221.

¹⁰⁵ Fryde, 'Medieval robber baron', 207; John Aberth, 'Crime and justice under Edward III: the case of Thomas de Lisle', *EHR* 107 (1992), 283-301, at pp. 293-301.

¹⁰⁶ Similar points can be made about the nature and timing of the charges with regard to other causes célèbres, for example against Bishop Lisle (Aberth, 'Crime and justice') and Lord Fitzwalter (Ormrod, *Reign of Edward III*, 112).

¹⁰⁷ Jones, 'Rex et ministri'.

¹⁰⁸ See e.g. PROME, ii, 136-7, 141, 167-8, 286-7; also Ormrod, *Reign of Edward III*, 111-12 on the comparatively few complaints about 'bastard feudal' matters in this period.

¹⁰⁹ Partington 'Edward III's enforcers', 89-106.

¹¹⁰ Kaeuper, 'Law and order', 741.

¹¹¹ Musson and Ormrod, *Evolution of English Justice*, 120, 130-1; Harding, *Law Courts*, 109-10; Anthony Musson, 'Attitudes to royal justice in fourteenth-century Yorkshire', *Northern History* 39 (2002), 173-85, at p. 174.

¹¹² Musson and Ormrod, *Evolution of English Justice*, 121.

¹¹³ J. R. Maddicott, *Law and Lordship: Royal Justices as Retainers in Thirteenth- and Fourteenth-Century England*, Past and Present Supplement 4 (1978).

¹¹⁴ In the late fourteenth and fifteenth centuries, cases concerning lords tended to come before the king's council: see for example Harding, *Law Courts*, 105-6; Maddern, *Violence and Social Order*, 206-25; John Watts, *Henry VI and the Politics of Kingship* (Cambridge, 1996), 202-4.

¹¹⁵ Spencer, *The Earls and Edward I* shows Edward's readiness to step in when he was displeased by the behaviour of his great men. Edward Powell, 'Arbitration and the law in England in the late middle ages', *TRHS* 5th ser. 33 (1983), 49-67, at pp. 54-5 for evidence of lay arbitration increasing 'dramatically' after 1350. McLane, 'Changes in King's Bench', 160 for a growing trend towards out-of-court settlement in King's Bench litigation from the 1320s.

¹¹⁶ Walker, *Lancastrian Affinity* has very little about local conflict before the 1370s.

¹¹⁷ Maddicott, *Thomas of Lancaster*, 58-61 (quotation at p. 60); Saul, *Knights and Esquires*, 70-9.

¹¹⁸ Christine Carpenter, 'Law, justice and landowners in late medieval England', *Law and History Review* 1 (1983), 205-37, at p. 227.

¹¹⁹ For example PROME, ii, 311-12, 320, 331, 333, 334, 354, iii, 21, 42, 62-3, 94, 137, 164, 231; Ormrod, *Reign of Edward III*, 112-13.

¹²⁰ PROME, ii, 334. The immediate catalyst for this general request seems to have been the death in 1376 of Arundel, which led to a petition from Shropshire that there should be no more hereditary sheriffs (Ormrod, *Reign of Edward III*, 112) but this is the first time that hostility to this practice was being voiced.

¹²¹ Carpenter, 'Law, justice and landowners', 226, 228-9.

¹²² Nigel Saul, 'The Commons and the abolition of badges', in C. Rawcliffe and L. Clark (eds.), *Parliament and Communities in the Middle Ages*, *Parliamentary History* 9 (1990), 302-15. For legislation, see above, at reference note 27.