of Henry in his place was perfectly regular according to ancient precedent. But two things again mark the growth of the new ideas. Not only, as in the case of Edward II., was the deposed king made to resign, but Henry himself, in claiming the crown, did not rely solely on his perfectly good parliamentary title, but mixed up with it a vague claim by hereditary right. He was "descended by right line of blood coming from the good lord King Henry III." This phrase makes it needful to explain a little more fully the state of the royal succession, which becomes of such importance in the next period.

Richard himself had, as we have seen, succeeded without opposition, according to the doctrine of representation, though in earlier times the choice of parliament would have rather fallen on one of his uncles. The new ideas were carried yet further when, under Richard, Roger Mortimer, earl of March, was declared presumptive heir to the throne. The doctrines both of representation and of female succession were here implied, as Roger was through his mother grandson of Lionel, duke of Clarence, second son[1] of Edward III. In earlier times, whatever might have been thought of Richard's own claim, such a claim as this of Roger would have seemed ridiculous while three sons of Edward, the dukes John of Lancaster, Edmund of York, and Thomas of Gloucester, were all living. And in fact the claim of Roger was not put forward at the deposition of Richard and election of Henry; but it was not forgotten, and later events again gave it importance. Henry's own challenge by descent from Henry III. was shrouded in purposed vagueness. He is commonly thought to have referred to a claim of his own yet more strange than the claim of Earl Roger. He was, through his mother, the direct representative of Edmund, earl of Lancaster, the second son of Henry III., who, according to an absurd rumour, was really his eldest son. Such a claim could hardly be put forward publicly; and Henry's vague words might be taken as meaning only that he was the next to the crown in male succession. But that any claim of the kind should have been thought of, when Henry had a perfectly good right by parliamentary election, shows how the ancient right of the nation freely to choose its sovereign, at all events from among the members of the royal house, was gradually dying out of men's minds.

Reign of Henry IV.

The short and troubled reign of Henry IV. has commonly led to forgetfulness of his earlier fame as a gallant and popular prince, a pilgrim to Jerusalem, a crusader in Africa and Prussia. The fourteen years of his reign are almost wholly filled with plots, civil wars, and the endless warfare in Scotland and France. Now again Wales becomes of importance, through the union of a Welsh pretender with the discontented party in England. In the early insurrections, as in that of 1400, the name of the late king Richard was used. The fate of the deposed king was never certainly known; but there seems no just ground for doubting that he either died or was murdered soon after this first revolt. That a pretended Richard appeared, that he was made use of by Henry's French and Scottish enemies, was simply what commonly happens in such cases. The revolt of 1400 was hardly suppressed when it was followed by the more dangerous revolt of Owen Glyndwr, who restored for a while the old independence of North Wales, and acted in concert with the French, the Scots, and the English rebels. In fact, down to his death in 1415, he was never fully subdued. His English allies, the Percies and Mortimers, were defeated at Shrewsbury in 1403; and other plots and revolts, in all of which the house of Percy had a hand, were crushed in 1405 and 1408. At the time of Henry's death, in 1413, there was a truce with Scotland; but the war in France, which had gone on during the whole of his reign, was being waged with a greater vigour than usual.

In 1406 the crown was settled by parliament on Henry and his sons; and on his death his eldest son Henry succeeded without opposition. A new æra in the French war at once began. France, under its weak or rather mad king Charles VI., was torn in pieces by the factions of Orleans and Burgundy. Henry IV. had, in the latter years of his reign, employed the policy of playing off one party against the other, and had given help to each in turn. The war, which had gone on, though mostly in a desultory way, ever since the return of the Black Prince to England in 1370, now began again in earnest under a king who was one of the greatest of warriors and statesmen. The character of Henry's enterprise is often misunderstood. It is said that, whatever claim Edward III. might have had to the crown of France, Henry V. could have none. It is said that, according to Edward III.'s doctrine, by which the right to the crown might pass through females to their male representatives, the rights of Edward III. had passed to Roger of March. So, as a matter of genealogy, they certainly had; and, as a matter of genealogy, there was doubtless an inconsistency in the use of the French title by Henry IV. and Henry V. But the true way of looking at the matter is that both the peace of Bretigny and the truce made in the latter years of Richard II. had been broken by the French, that the war was going on at Henry's accession, that it was just then being more vigorously pressed than it had been for some time, and that all that Henry V. did was to throw the whole national power, guided by his own genius, into its vigorous prosecution. At his accession, his only continental possessions were Calais and its small territory, and a small part of Aquitaine, including Bourdeaux and Bayonne. In Henry's policy, Southern Gaul, which had been so nearly lost, becomes secondary. He puts forward the treaty of Bretigny, as he also puts forward his claim to the French crown; but his real object seems to have been the conquest of as large a continental territory as possible, but in any case the conquest of Normandy. At this distance of time, we see that such a scheme was neither just nor politic. His own age did not condemn it on either ground. He was checked for a moment, first by a Lollard revolt, then by a conspiracy on behalf either of Richard or of the earl of March. But in 1415 he was able to begin his great enterprise. A negotiation, in which Henry claimed, first the crown of France, then the whole continental possessions of the Angevin kings, and lastly the territory ceded at Bretigny, naturally failed. He then crossed the sea in 1415, took Harfleur, and won the battle of Agincourt. The three next years saw his alliance with Duke John of Burgundy, and completed the conquest of Normandy. In 1419 the murder of Duke John by the partisans of the dauphin Charles drove Philip, the new duke of Burgundy, and the whole Burgundian party, altogether to the English side. Paris itself received Henry. Next year (1420), by the treaty of Troyes, Henry gave up his title of King of France. Charles VI. was to keep the French crown for life; Henry was to marry his daughter Katharine, to be declared his heir, and to be meanwhile regent of the kingdom. But the party of the disinherited dauphin still held out, and the war went on in the centre of France, while the rule of Henry was established in the north and south. On August 31, 1422, Henry V. died, revealing the true object of his policy by his last injunction that in no case should peace be made, unless Normandy was ceded to England in full sovereignty. The infant son of Henry and Katharine, Henry VI., succeeded to the kingdom of England and the heirship of France. Two months later, by the death of his grandfather the French king, he succeeded,

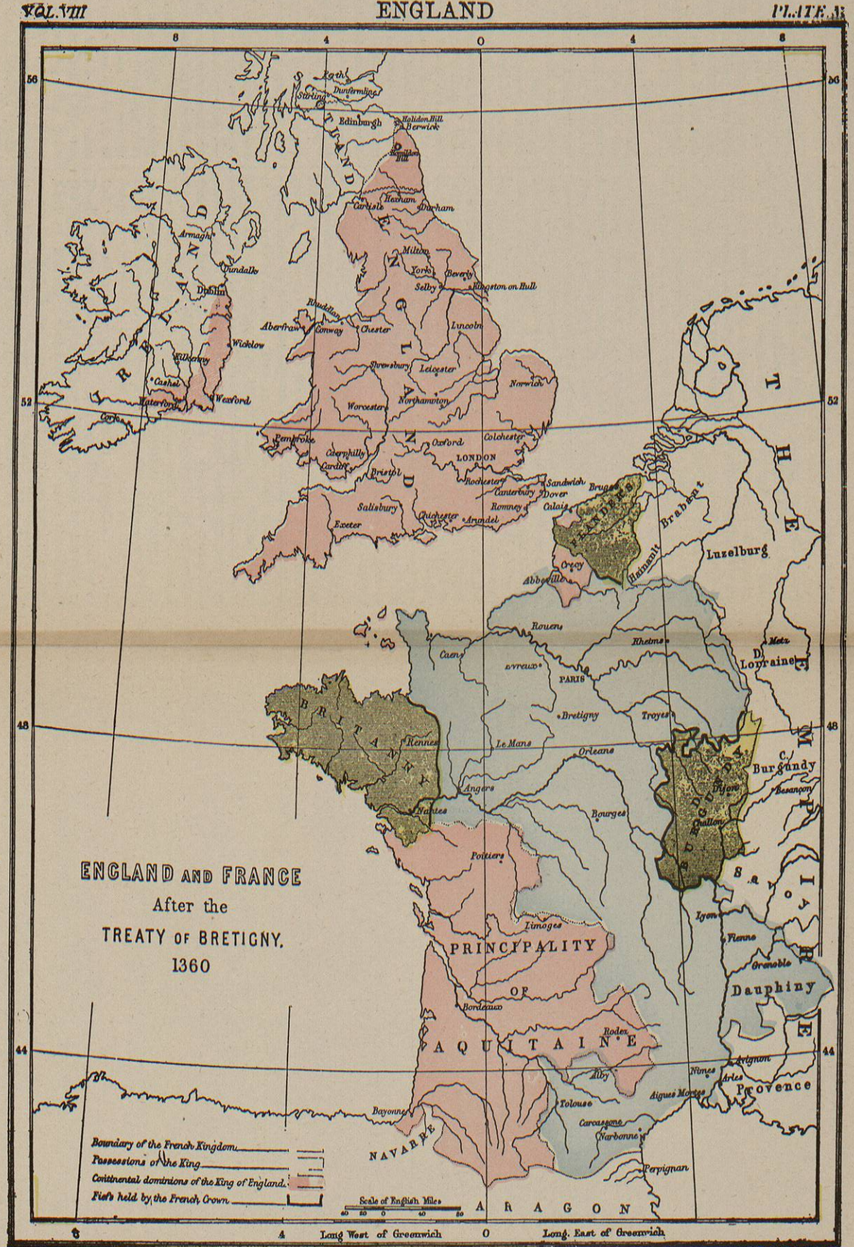
State of France

The war pressed by Henry V

Character of his policy

His conquests.

[1] Lionel was strictly the third son of Edward III.; but he was the second of those who left descendants. As all the three elder sons of Edward died before their father, John of Gaunt was the eldest surviving son of Edward at his father's death.




ENCYCLOPÆDIA BRITANNICA NINTH EDITION

according to the provisions of the treaty, to the crown of France. His two kingdoms were intrusted to the regency of his two paternal uncles, England to Humfrey duke of Gloucester, and France to John, the great duke of Bedford. The babe was king at Rouen and Paris, and either king or sovereign lord at Bourdeaux;[1] but in the intermediate land he had a rival in a third uncle, his mother's brother, Charles VII.

A time of thirty years follows, in which the English were gradually driven out of France and Aquitaine, till nothing was left of the old heritage except the Norman islands, and nothing was left of the new conquests except Calais and its small territory. Even after Henry was dead, the great regent was far stronger than the French claimant; but several causes, one after the other, joined to break the English power on the continent. The mainstay of England was the Burgundian alliance. This was first put in jeopardy by the marriage of Duke Humfrey, the regent of England, with Jacqueline, countess of Holland and Hainault, and his attempt to get possession of her dominions. Then, in 1429, came the wonderful career of the Maid, Joan of Arc. She raised the siege of Orleans; she led Charles to be crowned at Rheims, a ceremony which gave him a certain advantage over his uncrowned rival. Her intervention turned the tide for a while on the French side; but Charles seemed quite unable to press his advantage, and he did absolutely nothing for the deliverance of the Maid when in 1430 she was taken prisoner, and was the next year burned as a heretic and sorceress. Meanwhile Henry was crowned in England in 1429 and in Paris in 1431. In the next year the death of the duchess of Bedford, sister of the duke of Burgundy, broke the tie between her husband and her brother. At last, in 1435, at the peace of Arras, Philip altogether forsook the English alliance. Almost at the same moment the duke of Bedford died, and from this time the English power in France gradually fell back. Paris was lost in 1436. Presently comes a time of truces and negotiations; and in 1445, on the king's marriage with Margaret of Anjou, Maine and Anjou were surrendered. In 1449 Rouen was lost, and the second French conquest of Normandy was completed in the next year. In 1451 the French conquered all that was left to England in the south, Bourdeaux being the last town to hold out. But here the tide once more changed for a moment. The Aquitanian cities found that they had gained nothing by their transfer to the nearer instead of the more distant master. In 1453 John Talbot, the great earl of Shrewsbury, came with an English force, and was welcomed as a deliverer. He was slain at Castillon in July; Bourdeaux was again taken by the French in October, and the tie of three hundred years which united England and Aquitaine was broken for ever. Less striking in the history of the world, the French conquest of Aquitaine is, in the history of Western Europe, almost as marked an epoch as the Turkish conquest of Constantinople which happened nearly at the same moment. Two great questions were decided by it. The Norman Conquest first made England a continental power; the succession of the Angevins greatly increased her continental position. That position now wholly passed away. England is now again shut up within her own four seas. From this time she constantly takes a part in continental affairs; but she holds no continental possessions save such outlying posts as Calais, Boulogne, Dunkirk, or Gibraltar. Calais she kept for another century, partly no doubt because the cessions made by France to Burgundy at Arras cut off Calais from the French territory, and made Burgundy the one continental neighbour of England. Again, the French conquest of Aquitaine is no less an epoch in the history of France itself. It completed the formation of France in the modern sense. Ever since the twelfth century, the French kings had been striving after dominion south of the Loire, that is, after the union of Southern with Northern Gaul. They gained their point for a moment by the marriage of Lewis and Eleanor. They gained it again for a moment by the surrender of Aquitaine to Philip the Fair. They now gained it for ever. The whole relations between England and France were now changed. There were to be many later wars between the two kingdoms, and for a while the old claims of England were always remembered and were now and then asserted. But any serious hope of an English conquest of France, or even of an English conquest of Normandy or Aquitaine, passed away when Bourdeaux opened its gates to the French in 1453. From that day the modern relations between England and France begin.

French conquest of Aquitaine.

between England and France.

The period of the Hundred Years' War was the time in which what we may call the growth of England came to an end. The nation in its later shape was fully formed at the end of the thirteenth century. The great lines of its later law and constitution have been already drawn. During the following period law and constitution have to take their perfect shape at home, and the nation, now fully formed, has to take its final position among the powers of Europe. During this time England and the English people became essentially all that they have been ever since. The changes in later times have been great and important; but they have been changes of detail. In the thirteenth century it was still by no means clear what was to be the final shape of English institutions, what was to be the final position of the English people at home and abroad. In the fifteenth century all this had been fixed. The constitution, the laws, the language, the national character, of Englishmen had all taken a shape from which in their main points they were never again to change. The island realm, with the character of islanders impressed upon its people, with its political constitution and its social state differing from that of any other European nation, was by the end of this period fully formed. When we have reached the end of this period, we know what England is. The personal character of the nation is now fixed. Up to this time the history of the nation has been the record of its growth; our study has had somewhat of a physical character. From this time our study is rather biographical; our history ceases to be the record of the growth of a nation; it becomes the record of the acts of a nation after it has taken its final shape.

Internal growth of England.

In a specially constitutional aspect, the reign of Edward III., the central time of the period with which we are dealing, is hardly less important than the reign of Edward I. But its importance is of a different kind. The earlier reign fixed the constitution of parliament; it decreed that in an English parliament certain elements should always be present. It laid down as a matter of broad principle what the essential powers of parliament were. In the later reign, the essential elements of parliament finally arrange themselves in their several places and relations to one another. The powers, rights, and privileges of each element in the state, and the exact manner of exercising them, were now fixed and defined. The Commons are now fully established as an essential element in parliament. It is further established that prelates, earls, and barons are to form one body, that knights, citizens, and burgesses are to form another. That is to say, as the attempt to make the clergy act as a

[1] After the peace of Bretigny, Edward III. changed his style of *Duke* of Aquitaine to *Lord*. He was "Dominus Hiberniæ et Aquitaniæ." When he again took up the title of King of France, it might have been doubted whether Aquitaine remained a distinct sovereign lordship or was merged in the kingdom.

Relations of Lords and Commons

parliamentary estate came to nothing, parliament now definitely took its modern form of an assembly of two houses, Lords and Commons. A statute of Edward II. in 1322 distinctly asserted the right of the Commons to a share in all acts which touched the general welfare of the kingdom. But a distinction was for a long time drawn between the older and the newer element in the assembly. For a long time the doctrine was that the Commons petitioned, and that their petitions were granted by the king with the assent of the Lords. This position of the Commons as a petitioning body is of the deepest importance, and looks both forwards and backwards. Looking backwards, it was an almost necessary result of the way in which parliament had grown up. The Lords were, and the Commons were not, representatives by direct succession of the ancient sovereign assemblies of the land. It was for them by immemorial right to advise the king and to consent to his acts. The Commons had been called into being alongside of them; they had no such traditional powers; they could win them only step by step. Looking forwards, the position of the Commons as a petitioning body was a source of immediate weakness and of final strength. For a while they simply petitioned; not only might their petitions be refused, but, if they were granted, they had no control over the shape in which they were granted. If the king granted a petition which involved any change in the law, it was by royal officers that the petition was put into the form of a statute after the representatives of the Commons had gone back to their homes. Such a practice gave opportunity for many tricks. It was a frequent subject of complaint that the petitions which were said to be granted, and the statutes which were enacted in answer to them, were something quite different from what the Commons had really asked for. This evil was first seriously checked in the reign of Henry VI., when the practice was established which still prevails, that of bringing in, instead of a mere petition, a bill drawn in the form which the proposed statute was intended to take. Again, as long as the Commons were mere petitioners at whose request a law was enacted, it might be held that the king was equally able to enact at the request of some other petitioning body. Thus we still find statutes sometimes enacted, without the petition of the Commons, sometimes, for instance, at the petition of the clergy. So again, this same position of the Commons as a petitioning body led to one distinction between them and the Lords which has gone on to our own times. In one chief function of the ancient assemblies the Commons never obtained a direct share. Parliament, like those ancient assemblies, has always been the highest court of justice. But its strictly judicial powers have always been exercised by the Lords only. The Commons, by virtue of their petitioning power, have become denouncers and accusers; but they have never become judges. By virtue of their petitioning power, they began, as early as the reign of Edward III., to denounce the ministers of the king, and to demand their dismissal. In the Good Parliament of 1376, and again in the parliament of Richard ten years later, this power grows into a regular impeachment of the offenders, which is brought by the Commons as accusers before the Lords as judges. Whenever the Commons have taken part in action which was practically judicial, it has always been under some other form. They have exercised a somewhat arbitrary and anomalous authority in defence of their own privileges. They have passed bills of attainder and bills of pains and penalties; but these take the form of legislative acts. Strictly judicial functions like those of the Lords they have never claimed.

Judicial powers of parliament.

Position of the Lords.

One effect of the growth of the Commons was to give a more definite position to the Lords. As long as there was only one body, and that a fluctuating body, membership of the assembly could not be looked on as conferring any definite *status*. None but the bishops and earls had any undoubted personal claim. Some abbots, some barons, were always summoned; but for a long time they were not always the same abbots or the same barons, and the memory of the old right of attendance on the part of the whole free population had not altogether died away. So long as this state of things lasted, no definite line could be drawn between those who were members of the assembly and those who were not. It was only when a new body arose by the side of the old one, a body which confessedly represented all persons who had no place in the elder body, that membership of the elder body became a definite personal privilege. The vague and fluctuating gathering of the great men of the realm now grew into a peerage of known members, and possessing defined rights. The very change which made the Lords, as we may now call them, sharers in their powers in every way raised the position of the Lords as a class. The peerage, with its several ranks and its defined privileges, grew up in the reigns from Edward III. to Henry VI. It was gradually established that the king's writ of summons, by which he called this or that man to give his attendance in parliament, conveyed a perpetual right, not only to himself but to his heirs. And now that the peerage has taken this more definite character, we hear of new and more solemn ways of admission to its ranks, such as creations in parliament and by letters patent. New titles of peerage of foreign origin were devised. Edward III. first created dukes, beginning with his own sons. The duchy of Cornwall has ever since belonged of right to the eldest son of the sovereign. Under Richard dukes became more common; under him too the title of *marchio* or marquess, properly the lord or guardian of a *march* or frontier, came to denote another honorary rank of peerage. Under Henry VI. another new rank of peerage first appears, that of *vicecomes* or viscount, a word which had hitherto meant the sheriff of a county. All these new titles were, as titles, purely honorary; they expressed mere rank, with no rights or duties but such as were common to the whole peerage. The creation of these new titles completed the change in the position of the earls, about whom some trace of their original official character long hung. The earldom now became a mere rank in the peerage, like any other. The new dukes and marquesses were set above the earls, while the viscounts were thrust in between the earls and the barons. But both the old titles and the new kept the same position as ranks in an official peerage, in a body of legislators and judges, the temporal portion of which held their seats by genealogical succession.[1] But no nobility in the foreign sense was, or could be, created. Because the peer was raised above other men as hereditary legislator and hereditary judge, therefore his children remained, like other men, members of the general body of the Commons.

Children of peers commoners.

As the growth of the Commons at once raised and defined the position of the Lords, so the general growth of the power of parliament at once defined, and by defining strengthened, the king's prerogative. It now became a question what acts were lawful to the king without the consent of parliament, and what acts needed that consent. It is clear that,

[1] "Genealogical succession," because the phrase "hereditary succession" is, in the older use of the word, applicable alike to the spiritual and the temporal peers, at least as both classes stood till the union with Scotland. In older language "jus hereditarium" means a right handed on from one holder to another, whether the successor be the son of the last holder, or a person chosen or appointed to succeed him after his death. In this sense, the seats attached to the sees of Canterbury, York, London, Durham, and Winchester, are still as strictly hereditary as any earldom or barony. But that name cannot apply to various modern forms of peerage, such as the elective peers of Scotland and Ireland, to the rotatory bishops of Ireland now abolished, to those bishops of England who succeed only by seniority, or to the last newly created judicial peerages.



whenever prerogative was defined, it was at once limited and strengthened. But the very strengthening was of the nature of a limitation. A power which was directly or indirectly bestowed by parliament ceased to be a power inherent in the crown. The struggle was therefore a hard one. The kings strove to hold their ground at every point, and to escape from the fetters which the nation strove to lay upon them. When the Commons tried to make the king dismiss evil counsellors or moderate the expenses of his household, when they tried to regulate the oppressive right of purveyance, the king was apt to find a loop-hole in some protest or reservation or saving clause. So the kings strove to keep the power of arbitrary taxation in their own hands by drawing distinctions between customs and other sources of revenue. So they strove to keep the power of legislation without the consent of parliament, by drawing a distinction between statutes and ordinances, and by pretending to a right to suspend the operation of statutes. The claim to legislate by ordinance is closely connected with the way in which all our legislative and judicial bodies arose. The parliament, the privy council, the courts of justice, have all grown out of the ancient assembly. For some while after the Conquest it is not always easy to see whether the words *curia regis* mean the great council of the nation or the smaller council of the king's immediate advisers. The greater and the smaller council were alike fragments of the national assembly, and both alike derived their special shape from the practice of personal summons. If one body so formed had the right of legislation, it might be argued that the other body so formed had it also. So again, as the Commons grew, the form of their petitions, praying that such and such an enactment might be made by the king with the consent of the Lords, seemed to recognize the king as the only real lawgiver. It might suggest the thought that he could, if he would, exercise his legislative powers, even though the Commons did not petition, and though the Lords did not assent. A crowd of loop-holes were thus opened for irregular doings of all kinds—for attempts on the part of the kings to evade every constitutional fetter—for attempts to reign without parliaments, to impose taxes by their own authority, or to legislate with the consent only of their own council or of some other body other than a regular parliament. Every point had to be struggled for over and over again. But by the end of the fourteenth century we may say that the constitution and the powers of parliament were, as far as the letter of the law went, much the same as they are now. But it took three hundred years more to secure the observance of the letter of the law, while the two hundred years that have followed have, by the side of the written law, developed the unwritten constitution.

For the peculiar character of that unwritten constitution, for the system by which a crowd of powers which the Commons shrink from directly exercising are now exercised by them indirectly, we have to wait for some ages. In those days a power was either exercised directly or it was not exercised at all. Thus one most important power which was freely exercised by our most ancient assemblies, but which modern parliaments shrink from directly exercising, the power of making peace and war, was in the fourteenth century in a very irregular state. Sometimes parliament claims a voice in such matters; sometimes the king seems to thrust a control over them on an unwilling parliament. That is to say, the kings wished to make parliament share the responsibility of their acts. A parliament could hardly refuse to support the king in a war which it had itself approved. The wars of Edward III., and his constant calls for money, made frequent parliaments needful. Perhaps no other series of events in our history did so much to strengthen and define every parliamentary power. But it was mainly by the petitioning position of the Commons that all power has thus been drawn into the hands of parliament. Any matter might become the subject of a petition of the Commons. It followed that, as their petitions gradually grew into demands which could not be resisted, every matter might become the subject of legislation by the Commons. In their position as petitioners lay their strength. They only petitioned, while the king enacted and the Lords assented. But the humbler position gave them the first word. The enacting power of the king gradually came to be a mere power of refusing to enact, a power which has long ceased to be exercised. The humble petitioners came to be the proposers of everything, and so to be the masters of everything. They had the privilege of the *prærogativa tribus*.

Growth of the power of the Commons.

The power of parliament to settle the succession to the crown, that is, the ancient right of election in another shape, comes more largely into play at a later period. We have however one of the greatest instances of its exercise in the deposition of Richard and the settlement of the crown on Henry IV. and his heirs. And twelve years before the ancient doctrine was carried out in practice, it was solemnly declared by Bishop Arundel and Thomas duke of Gloucester, speaking in the name of parliament, that, by an ancient statute, parliament, with the common consent of the nation, had a right to depose a king who failed to govern according to the laws and by the advice of his peers, and to call to the throne some other member of the royal family in his stead. Most certainly there never was such a statute in the form of a statute; but the doctrine simply expressed the immemorial principle on which the nation had always acted whenever it was needful. And the statement that there was a statute to that effect was perhaps simply an instance of the growth of the doctrines of the professional lawyers. Men were beginning to forget that the earliest written law was nothing more than immemorial custom committed to writing. They were beginning to think that, wherever there was law or even custom, it must have had its beginning in some written, even if forgotten, enactment.

After all, nothing better shows the power of parliament than the attempts which were often made by those in power to procure a packed House of Commons. Complaints were made that the sheriffs returned knights of the shire who were not really the choice of the electors, and that they summoned, or failed to summon, boroughs to send burgesses, according to their arbitrary will. Lastly, in the early days of Henry VI., we find the rights of the electors restricted by parliament itself. The constitution of the House of Commons was clearly growing too popular for the ruling powers, and it was thought needful to legislate in the interests of oligarchy. By the statute of 1429 the electors of "small substance and of no value" were disfranchised, and the right of voting was confined to those who had a freehold of forty shillings yearly, a not inconsiderable amount at that time. By another statute of the same reign (1444–45) it is enacted that the knights chosen shall be "notable knights or notable esquires, gentlemen by birth." This enactment is instructive in many ways. It shows, what we find to have been the case almost from the beginning, that the knights of the shire were not always knights in the strict sense. The electors were clearly trying to break down all distinctions of rank and birth, and an attempt is made to enforce these distinctions by law. Happily no definition of "gentlemen by birth" was or could be attempted. This backsliding statute has therefore become a dead letter, as its fellow has no less through the change in the value of money.

Attempts to influence elections.

The powers of parliament in this age, and the external influences under which parliaments acted, cannot be better illustated than by a comparison of the last two parliaments