

**Jural Pluralism and Jural Integration in David Hume's *History of England*:
A Compendium of 68 Quotations**

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The integrated nation-state is a relatively recent historical development. By integrated, we mean the existence of a single entity called “*the government*.” Today, in 2019, we operate within two distinct jural relationships (Diesel forthcoming, Klein 2017). The first is our relationship with other jural equals: our friends, family, colleagues, employers, and individuals we see on the street. The second is our relationship with the government authority, the jural superior. The existence of these two jural relationships, the equal-equal relationship and the superior-inferior relationship, constitutes jural dualism.

Before political and jural integration, multiple, non-integrated jural authorities contended with each other for influence and authority. It was a world of plural jural superiorities, or *jural pluralism*. Notice that the quantifications signified in “jural dualism” and “jural pluralism” refer to two different species of objects: the first, relationships, the second, authorities/jural superiorities.

The complex relationship between the multiple jural authorities “defies the simple ‘jural superior’ of the nation-state” (Klein and Matson 2019). The main characters in Hume’s story of jural pluralism, and the subsequent integration, are the king, the barons, and the clergy. Hume details the relationships and the strategic interactions between the different players over the course of time, tracing the path from jural pluralism to jural integration or unitarity.

This research memo collects 68 quotations from David Hume’s *History of England* concerning jural pluralism and jural integration. The collection shows that the development of

political and jural integration is a major theme of Hume's *History*, a theme noted by Andrew Sabl (2012, 65) and Duncan Forbes (1975, 263). The first two volumes highlight the non-integrated jural mishmash of England prior to the Tudors. The long road to integration may be said to begin especially with Henry VII in Volume III.

Hume's word choice signals to his reader that jural pluralism is to be left in the rear-view mirror. The process of jural integration was a healthy, albeit difficult, one. Hume uses negatively connoted words, such as anarchy¹, uncultivated², rude³, "days of ignorance,"⁴ and irregular⁵ to express his favor towards developments in the direction of jural integration.

All pages refer to the six-volume edition published by Liberty Fund. The collection of quotations from volume VI, V, and VI is incomplete, and remains a work in progress.

VOLUME I:

60:

The ecclesiastics, in those days of ignorance, made rapid advances in the acquisition of power and grandeur; and inculcating the most absurd and most interested doctrines, though they sometimes met, from the contrary interests of the laity, with an opposition, which it required time and address to overcome, they found no obstacle in their reason or understanding.

167:

Men, not daring to rely on the guardianship of the laws, were obliged to devote themselves to the service of some chieftain, whose orders they followed even to the disturbance of the government or the injury of their fellow citizens, and who afforded them in return protection from any insult or injustice by strangers.

169:

Men must guard themselves at any price against insults and injuries; and where they receive not protection from the laws and magistrate, they will seek it by submission to superiors, and by herding in some private confederacy, which acts under the direction of a powerful leader. And thus all anarchy is the immediate cause of tyranny, if not over the state, at least over many of the

¹ I.169; II.331; V. 556 Note[J]

² II.522; III.117; V.556 Note [J]

³ II.179, 522; III.80; 469 Note[B]

⁴ I.60

⁵ I.361, 371; II.524, 523; III.73; V.556

individuals.

215: [Foreshadowing what will come to England]

When the usurpations, therefore, of the church had come to such maturity as to embolden her to attempt extorting the right of investitures from the temporal power, Europe, especially Italy and Germany, was thrown into the most violent convulsions, and the pope and the emperor waged implacable war on each other.

250:

The barons, whom a severe administration alone could have restrained, gave reins to their unbounded rapine upon their vassals, and inveterate of animosities against each other; and all Normandy, during the reign of this benign prince, was become a scene of violence and depredation.

254:

The Normans indeed, who domineered in England, were, during this age, so licentious a people, that they may be pronounced incapable of any true or regular liberty; which requires such improvement in knowledge and morals, as can only be the result of reflection and experience, and must grow to perfection during several ages of settled and established government. A people, so insensible to the rights of their sovereign, as to disjoint, without necessity, the hereditary succession, and permit a younger brother to intrude himself into the place of the elder, whom they esteemed, and who was guilty of no crime but being absent, could not expect, that that prince would pay any greater regard to their privileges, or allow his engagements to fetter his power, and debar him from any considerable interest or convenience. They had indeed arms in their hands, which prevented the establishment of a total despotism, and left their posterity sufficient power, whenever they should attain a sufficient degree of reason, to assume true liberty: But their turbulent disposition frequently prompted them to make such use of their arms, that they were more fitted to obstruct the execution of justice, than to stop the career of violence and oppression. The prince, finding that greater opposition was often made to him when he enforced the laws, than when he violated them, was apt to render his own will and pleasure the sole rule of government; and on every emergence to consider more the power of the persons whom he might offend, than the rights of those whom he might injure. The very form of this charter of Henry proves, that the Norman barons (for they, rather than the people of England, are chiefly concerned in it) were totally ignorant of the nature of limited monarchy, and were ill qualified to conduct, in conjunction with their sovereign, the machine of government. It is an act of his sole power, is the result of his free grace, contains some articles which bind others as well as himself, and is therefore unfit to be the deed of any one who possesses not the whole legislative power, and who may not at pleasure revoke all his concessions.

265:

The clergy, feeling the necessity, which they lay under, of being protected against the violence of princes, or vigour of the laws, were well pleased to adhere to a foreign head, who being removed from the fear of the civil authority, could freely employ the power of the whole church in defending her ancient or usurped properties and privileges, when invaded in any particular country: ...

284:

The clergy, who could scarcely, at this time, be deemed subjects to the crown, imitated that dangerous example: They annexed to their oaths of allegiance this condition, that they were only bound so long as the king defended the ecclesiastical liberties, and supported the discipline of the church? The barons, in return for their submission, exacted terms still more destructive of public peace, as well as of royal authority: Many of them required the right of fortifying their castles, and of putting themselves in a posture of defence; and the king found himself totally unable to refuse his consent to this exorbitant demand.' All England was immediately filled with those fortresses which the noblemen garrisoned either with their vassals, or with licentious soldiers, who flocked to them from all quarters. Unbounded rapine was exercised upon the people for the maintenance of these troops; and private animosities, which had with difficulty been restrained by law, now breaking out without controul, rendered England a scene of uninterrupted violence and devastation. Wars between the nobles were carried on with the utmost fury in every quarter; the barons even assumed the right of coining money, and of exercising, without appeal, every act of jurisdiction; and the inferior gentry, as well as the people, finding no defence from the laws, during this total dissolution of sovereign authority, were obliged, for their immediate safety, to pay court to some neighbouring chieftain, and to purchase his protection both by submitting to his exactions, and by assisting him in his rapine upon others.

288:

It suffices to say, that the war was spread into every quarter; and that those turbulent barons, who had already shaken off, in a great measure, the restraint of government, having now obtained the pretence of a public cause, carried on their devastations with redoubled fury, exercised implacable vengeance on each other, and set no bounds to their oppressions over the people. The castles of the nobility were become receptacles of licensed robbers, who, sallying forth day and night, committed spoil on the open country, on the villages, and even on the cities; put the captives to torture, in order to make them reveal their treasures; sold their persons to slavery; and set fire to their houses, after they had pillaged them of everything valuable. The fierceness of their disposition, leading them to commit wanton destruction, frustrated their rapacity of its purpose; and the property and persons even of the ecclesiastics, generally so much revered, were at last, from necessity, exposed to the same outrage, which had laid waste the rest of the kingdom. The land was left untilled; the instruments of husbandry were destroyed or abandoned; and a grievous famine, the natural result of those disorders, affected equally both parties, and reduced the spoilers, as well as the defenceless people, to the most extreme want and indigence.

298a:

They exercised all civil jurisdiction, without appeal, over their tenants and inferior vassals: Their common jealousy of the crown easily united them against any attempt on their exorbitant privileges; and as some of them had attained the power and authority of great princes, even the smallest baron was sure of immediate and effectual protection.

298b: [King Henry II's strength]

The authority of the English monarch was much more extensive within his kingdom, and the disproportion much greater between him and the most powerful of his vassals. His demesnes and revenue were large, compared to the greatness of his state: He was accustomed to levy arbitrary exactions on his subjects: His courts of judicature extended their jurisdiction into every part of

the kingdom: He could crush by his power, or by a judicial sentence, well or ill founded, any obnoxious baron: And though the feudal institutions which prevailed in his kingdom, had the same tendency, as in other states, to exalt the aristocracy, and depress the monarchy, it required, in England, according to its present constitution, a great combination of the vassals to oppose their sovereign lord, and there had not hitherto arisen any baron so powerful, as of himself to levy war against the prince, and afford protection to the inferior barons.

305:

The usurpations of the clergy, which had at first been gradual, were now become so rapid, and had mounted to such a height, that between the contest between the regale and pontificale was really arrived at a crisis in England; and it became necessary to determine whether the king or the priests, particularly the archbishop of Canterbury, should be sovereign of the kingdom.

311-12:

The papacy seemed to be weakened by a schism, which divided all Europe: And he rightly judged, that, if the present favourable opportunity were neglected, the crown must, from the prevalent superstition of the people, be in danger of falling into an entire subordination under the mitre.

The union of the civil and ecclesiastical power serves extremely, in every civilized government, to the maintenance of peace and order; and prevents those mutual incroachments, which, as there can be no ultimate judge between them, are often attended with the most dangerous consequences. Whether the supreme magistrate, who unites these powers, receives the appellation of prince or prelate, is not material: The superior weight, which temporal interests commonly bear in the apprehensions of men above spiritual, renders the civil part of his character most prevalent; and in time prevents those gross impostures and bigoted persecutions, which, in all false religions, are the chief foundation of clerical authority. But during the progress of ecclesiastical usurpations, the state, by the resistance of the civil magistrate, is naturally thrown into convulsions; and it behoves the prince, both for his own interest, and for that of the public, to provide, in time, sufficient barriers against so dangerous and insidious a rival. This precaution had hitherto been much neglected in England, as well as in other catholic countries; and affairs at last seemed to have come to a dangerous crisis: A sovereign of the greatest abilities was now on the throne: A prelate of the most inflexible and intrepid character was possessed of the primacy: The contending powers appeared to be armed with their full force, and it was natural to expect some extraordinary event to result from their conflict.

350-1:

The loose government which prevailed in all the states of Europe, the many private wars carried on among the neighbouring nobles, and the impossibility of enforcing any general execution of the laws, had encouraged a tribe of banditti to disturb every where the public peace, to infest the highways, to pillage the open country, and to brave all the efforts of the civil magistrate, and even the excommunications of the church, which were fulminated against them. " Troops of them were sometimes enlisted in the service of one prince or baron, sometimes in that of another: They often acted in an independent manner, under leaders of their own: The peaceable and industrious inhabitants, reduced to poverty by their ravages, were frequently obliged for subsistence to betake themselves to a like disorderly course of life: And a continual intestine war,

pernicious to industry, as well as to the execution of justice, was thus carried on in the bowels of every kingdom. [I'll stop here... but the next 2 pages are on this topic - JH]

360:

The clergy and the laity were during that age in a strange situation with regard to each other, and such as may seem totally incompatible with a civilized, and indeed with any species of government.

361:

A certain proof how irregular the ancient feudal government was, and how near the sovereigns, in some instances, approached to despotism, though in others they seemed scarcely to possess any authority. If a prince, much dreaded and revered like Henry, obtained but the appearance of general consent to an ordinance, which was equitable and just, it became immediately an established law, and all his subjects acquiesced in it. If the prince was hated or despised; if the nobles, who supported him, had small influence; if the humours of the times disposed the people to question the justice of his ordinance; the fullest and most authentic assembly had no authority. Thus all was confusion and disorder; no regular idea of a constitution; force and violence decided every thing.

371-2:

This prince, like most of his predecessors of the Norman line, except Stephen, passed more of his time on the continent than in this island: He was surrounded with the English gentry and nobility, when abroad: The French gentry and nobility attended him when he resided in England: Both nations acted in the government, as if they were the same people; and on many occasions, the legislatures seem not to have been distinguished. As the king and all the English barons were of French extraction, the manners of that people acquired the ascendant, and were regarded as the models of imitation. All foreign improvements, therefore, such as they were, in literature and politeness, in laws and arts, seem now to have been, in a good measure, transplanted into England; and that kingdom was become little inferior, in all the fashionable accomplishments, to any of its neighbours on the continent. The more homely, but more sensible manners and principles of the Saxons, were exchanged for the affectations of chivalry, and the subtillies of school philosophy: The feudal ideas of civil government, the Romish sentiments in religion, had taken entire possession of the people: By the former, the sense of submission towards princes was somewhat diminished in the barons; by the latter, the devoted attachment to papal authority was much augmented among the clergy. The Norman and other foreign families, established in England, had now struck deep root; and being entirely incorporated with the people, whom at first they oppressed and despised, they no longer thought that they needed the protection of the crown for the enjoyment of their possessions, or considered their tenure as precarious. They aspired to the same liberty and independance, which they saw enjoyed by their brethren on the continent, and desired to restrain those exorbitant prerogatives and arbitrary practices, which the necessmes of war and the violence of conquest had at first obliged them to indulge in their monarch. That memory also of a more equal government under the Saxon princes, which remained with the English, diffused still farther the spirit of liberty, and made the barons both desirous of more independance to themselves, and willing to indulge it to the people. And it was not long ere this secret revolution in the sentiments of men produced, first violent convulsions in the state, then an evident alteration in the maxims of government.

The history of all the preceding kings of England since the conquest, gives evident proofs of the disorders attending the feudal institutions; the licentiousness of the barons, their spirit of rebellion against the prince and laws, and of animosity against each other: The conduct of the barons in the transmarine dominions of those monarchs afforded perhaps still more flagrant instances of these convulsions; and the history of France, during several ages, consists almost entirely of narrations of this nature. The cities, during the continuance of this violent government, could neither be very numerous nor populous; and there occur instances, which seem to evince, that, though these are always the first seat of law and liberty, their police was in general loose and irregular, and exposed to the same disorders, with those by which the country was generally infested. It was a custom in London for great numbers, to the amount of a hundred or more, the sons and relations of considerable citizens, to form themselves into a licentious confederacy, to break into rich houses and plunder them, to rob and murder the passengers, and to commit with impunity all sorts of disorder. By these crimes, it had become so dangerous to walk the streets by night, that the citizens durst no more venture abroad after sun-set, than if they had been exposed to the incursions of a public enemy. The brother of the earl of Ferrars had been murdered by some of those nocturnal rioters; and the death of so eminent a person, which was much more regarded than that of many thousands of an inferior station, so provoked the king, that he swore vengeance against the criminals, and became thenceforth more rigorous in the execution of the laws

420: [The church senses the weakness of King John]

The church, which, at that time, declined not a contest with the most powerful and most vigorous monarchs, took first advantage of John's imbecility; and with the most aggravating circumstances of insolence and scorn, fixed her yoke upon him.

427-8:

The quarrel between the king and the see of Rome continued for some years; and though many of the clergy, from the fear of punishment, obeyed the orders of John, and celebrated divine service, they complied with the utmost reluctance, and were regarded, both by themselves and the people, as men who betrayed their principles, and sacrificed their conscience to temporal regards and interests. During this violent situation, the king, in order to give a lustre to his government, attempted military expeditions, against Scotland, against Ireland, against the Welsh; and he commonly prevailed, more from the weakness of his enemies than from his own vigour or abilities. Meanwhile, the danger, to which his government stood continually exposed from the discontents of the ecclesiastics, increased his natural propension to tyranny; and he seems to have even wantonly disgusted all orders of men, especially his nobles, from whom alone he could reasonably expect support and assistance. He dishonoured their families by his licentious amours; he published edicts, prohibited them from hunting feathered game, and thereby restrained them from their favourite occupation and amusement; he ordered all the hedges and fences near his forests to be levelled, that his deer might have more ready access into the fields for pasture; and he continually loaded the nation with arbitrary impositions. Conscious of the general hatred which he had incurred, he required his nobility to give him hostages for security of their allegiance; and they were obliged to put into his hands their sons, nephews, or near relations. ...

VOLUME II:

11:

But the licentious and powerful barons, who had once broken the reins of subjection to their prince, and had obtained by violence enlargement of their liberties and independence, could ill be restrained by laws under a minority; and the people, no less than the king, suffered from their outrages and disorders. They retained by force the royal castles, which they had seized during the past convulsions, or which had been committed to their custody by the protector. They usurped the king's demesnes: They oppressed their vassals: They infested their weaker neighbours: They invited all disorderly people to enter in their retinue, and to live upon their lands: And they gave them protection in all their robberies and extortions.

14:

It must be acknowledged, that the influence of the prelates and the clergy was often of great service to the public. Though the religion of that age can merit no better name than that of superstition, it served to unite together a body of men who had great sway over the people, and who kept the community from falling to pieces, by the factions and independant power of the nobles. And what was of great importance; it threw a mighty authority into the hands of men, who by their profession were averse to arms and violence; who tempered by their mediation the general disposition towards military enterprizes; and who still maintained, even amidst the shock of arms, those secret links, without which it is impossible for human society to subsist.

47:

The violence and fury of Leicester's faction had risen to such a height in all parts of England, that the king, unable to resist their power, was obliged to set on foot a treaty of peace; and to make an accommodation with the barons on the most disadvantageous terms.

75:

He [Edward I] considered the great barons both as the immediate rivals of the crown, and oppressors of the people; and he purposed, by an exact distribution of justice, and a rigid execution of the laws, to give at once protection to the inferior orders of the state, and to diminish the arbitrary power of the great, on which their dangerous authority was chiefly founded. Making it a rule in his own conduct to observe, except on extraordinary occasions, the privileges secured to them by the Great Charter, he acquired a right to insist upon their observance of the same charter towards their vassals and inferiors; and he made the crown be regarded by all the gentry and commonalty of the kingdom, as the fountain of justice, and the general asylum against oppression.

103:

But though the introduction of barons by writ, and of titular earls, had given some encrease to royal authority; there were other causes, which counterbalanced those innovations, and tended in a higher degree to diminish the power of the sovereign. The disuse, into which the feudal militia had in a great measure fallen, made the barons almost entirely forget their dependence on the crown: ... [The remainder of the paragraph is good, but quite long.]

105-7: [The early beginnings of the barons' downward trend, and the birth of the Boroughs]

During the course of several years, the kings of England, in imitation of other European princes, had embraced the salutary policy of encouraging and protecting the lower and more industrious orders of the state; whom they found well disposed to obey the laws and civil magistrate, and whose ingenuity and labour furnished commodities, requisite for the ornament of peace and support of war. Though the inhabitants of the country were still left at the disposal of their imperious lords; many attempts were made to give more security and liberty to citizens, and make them enjoy unmolested the fruits of their industry. ... [The remainder of the paragraph is good, but quite long.]

140: [Edward I was able to hold things the other jural authorities at bay] – The enterprizes, finished by this prince, and the projects, acter of which he formed and brought near to a conclusion, were more the king. prudent, more regularly conducted, and more advantageous to the solid interests of his kingdom, than those which were undertaken in any reign either of his ancestors or his successors. He restored authority to the government, disordered by the weakness of his father; he maintained the laws against all the efforts of his turbulent barons; ... But Edward, however exceptionable his character may appear on the head of justice, is the model of a politic and warlike king: ...

143: The chief obstacle to the execution of justice in those times was the power of the great barons; and Edward was perfectly qualified, by his character and abilities, for keeping these tyrants in awe, and restraining their illegal practices. This salutary purpose was accordingly the great object of his attention; yet was he imprudently led into a measure which tended to encrease and confirm their dangerous authority. He passed a statute, which, by allowing them to entail their estates, made it impracticable to diminish the property of the great families, and left them every means of increase and acquisition.

147: This prince [Edward II] was in the twenty-third year of his age, was of an agreeable figure, of a mild and gentle disposition, and having never discovered a propensity to any dangerous vice, it was natural to prognosticate tranquility and happiness from his government. But the first act of his reign blasted all these hopes, and shewed him to be totally unqualified for that perilous situation, in which every English monarch, during those ages, had, from the unstable form of the constitution, and the turbulent dispositions of the people, derived from it, the misfortune to be placed.

179: The great nobility were a kind of independant potentates, who, if they submitted to any regulations at all, were less governed by the municipal law, than by a species of the law of nations. The method, in which we find they treated the king's favourites and ministers, is a proof of their usual way of dealing with each other.

189: Edward, having now taken the reins of government into his own hands, applied himself, with industry and judgment, to redress all those grievances, which had proceeded either from want of authority in the crown, or from the late abuses of it. He issued writs to the judges, enjoining them

to administer justice, without paying any regard to arbitrary orders from the ministers: And as the robbers, thieves, murderers, and criminals of all kinds, had, during the course of public convulsions, multiplied to an enormous degree, and were openly protected by the great barons, who made use of them against their enemies, the king, after exacting from the peers a solemn promise in parliament, that they would break off all connexions with such malefactors, set himself in earnest to remedy the evil. Many of these gangs had become so numerous, as to require his own presence to disperse them; and he exerted both courage and industry in executing this salutary office. The ministers of justice, from his example, employed the utmost diligence in discovering, pursuing, and punishing the criminals; and this disorder was by degrees corrected, at least palliated; the utmost that could be expected with regard to a disease, hitherto inherent in the constitution.

212-13:

There were strong reasons, which might discourage the kings of England, in those ages, from bestowing the chief offices of the crown on prelates and other ecclesiastical persons. These men had so entrenched themselves in privileges and immunities, and so openly challenged an exemption from all secular jurisdiction, that no civil penalty could be inflicted on them for any malversation in office; and as even treason itself was declared to be no canonical offence, nor was allowed to be a sufficient reason for deprivation or other spiritual censures, that order of men had ensured to themselves an almost total impunity, and were not bound by any political law or statute.

214:

The animosity between him and the clergy was open and declared: The people were discontented on account of many arbitrary measures, in which he had been engaged: And what was more dangerous, the nobility, taking advantage of his present necessities, were determined to retrench his power, and by encroaching on the ancient prerogatives of the crown, to acquire to themselves independance and authority. But the aspiring genius of Edward, which had so far transported him beyond the bounds of discretion, proved at last sufficient to reinstate him in his former authority, and finally to render his reign the most triumphant that is to be met with in English story: Though for the present he was obliged, with some loss of honour, to yield to the current, which bore so strongly against him.

271:

He gained the affections of the great, yet curbed their licentiousness: He made them feel his power, without their daring, or even being inclined, to murmur at it: His affable and obliging behaviour, his munificence and generosity, made them submit with pleasure to his dominion; his valour and conduct made them successful in most of their enterprizes; and their unquiet spirits, directed against a public enemy, had no leisure to breed those disturbances, to which they were naturally so much inclined, and which the frame of the government seemed so much to authorize. This was the chief benefit, which resulted from Edward's victories and conquests.

279a:

The barons, by their confederacies with those of their own order, and by supporting and

defending their retainers in every iniquity, s were the chief abettors of robbers, murderers, and ruffians of all kinds; and no law could be executed against those criminals. The nobility were brought to give their promise in parliament, that they would not avow, retain, or support any felon or breaker of the law; yet this engagement, which we may wonder to see exacted from men of their rank, was never regarded by them.

279b:

The gratifying of a powerful nobleman continued still to be of more importance than the protection of the people.

283-4:

The struggles, with regard to the validity and authority of the great charter, were now over: The king was acknowledged to lie under some limitations: Edward himself was a prince of great capacity, not governed by favourites, not led astray by any unruly passion, sensible that nothing could be more essential to his interests than to keep on good terms with his people: Yet on the whole it appears, that the government, at best, was only a barbarous monarchy, not regulated by any fixed maxims, or bounded by any certain undisputed rights, which in practice were regularly observed. The king conducted himself by one set of principles; the barons by another; the commons by a third; the clergy by a fourth. All these systems of government were opposite and incompatible. Each of them prevailed in its turn, as incidents were favourable to it: A great prince rendered the monarchical power predominant: The weakness of a king gave reins to the aristocracy: A superstitious age saw the clergy triumphant: The people, for whom chiefly government was instituted, and who chiefly deserve consideration, were the weakest of the whole. But the commons, little obnoxious to any other order; though they sunk under the violence of tempests, silently reared their head in more peaceable times; and while the storm was brewing, were courted by all sides, and thus received still some accession to their privileges, or, at worst, some confirmation of them.

300: [Five great peers are all you needed to shake the throne.]

Five great peers, men whose combined power was able at any time to shake the throne, the duke of Gloucester, the king's uncle; the earl of Derby, son of the duke of Lancaster; the earl of Arundel; the earl of Warwic, and the earl of Nottingham, mareschal of England, entered before the parliament an accusation or appeal, as it was called, against the five counsellors, whom they had already accused before the king.

314:

The paragraph is about Henry, the duke of Lancaster. It describes how his stature as a great baron was use to make him a contender to the throne.

321:

All the circumstances of this event, compared to those which attended the late revolution in 1688, show the difference between a great and civilized nation, deliberately vindicating its established privileges, and a turbulent and barbarous aristocracy, plunging headlong from the extremes of one faction into those of another.

331:

The laws had been so feebly executed, even during the long, active, and vigilant reign of Edward III. that no subject could trust to their protection. Men openly associated themselves, under the patronage of some great baron, for their mutual defence. They wore public badges, by which their confederacy was distinguished. They supported each other in all quarrels, iniquities, extortions, murders, robberies, and other crimes. Their chief was more their sovereign than the king himself; and their own band was more connected with them than their country. Hence the perpetual turbulence, disorders, factions, and civil wars of those times: Hence the small regard paid to a character or the opinion of the public: Hence the large discretionary prerogatives of the crown, and the danger which might have ensued from the too great limitation of them. If the king had possessed no arbitrary powers, while all the nobles assumed and exercised them, there must have ensued an absolute anarchy in the state.

428: On the Earl of Warwic (1450 A.D.)

The military men, allured by his munificence and hospitality, as well as by his bravery, were zealously attached to his interests: The people in general bore him an unlimited affection: His numerous retainers were more devoted to his will, than to the prince or to the laws: And he was the greatest, as well as the last, of those mighty barons, who formerly overawed the crown, and rendered the people incapable of any regular system of civil government.

522:

Such a state of society [The Saxons and ancient English] was very little advanced beyond the rude state of nature: Violence universally prevailed, instead of general and equitable maxims: The pretended liberty of the times, was only an incapacity of submitting to government: And men, not protected by law in their lives and properties, sought shelter, by their personal servitude and attachments under some powerful chieftain, or by voluntary combinations.

The gradual progress of improvement raised the Europeans somewhat above this uncultivated state; and affairs, in this island particularly, took early a turn, which was more favourable to justice and to liberty. Civil employments and occupations soon became honourable among the English: The situation of that people rendered not the perpetual attention to wars so necessary as among their neighbours, and all regard was not confined to the military profession: The gentry, and even the nobility, began to deem an acquaintance with the law a necessary part of education: They were less diverted than afterwards from studies of this kind by other sciences; and in the age of Henry VI. as we are told by Fortescue, there were in the inns of court about two thousand students, most of them men of honourable birth, who gave application to this branch of civil knowledge: A circumstance which proves, that a considerable progress was already made in the science of government, and which prognosticated a still greater.

524 - 5:

The constitution of the English government, ever since the invasion of this island by the Saxons, may boast of this preeminence, that in no age the will of the monarch was ever entirely absolute and uncontrouled: But in other respects the balance of power has extremely shifted among the several orders of the state; and this fabric has experienced the same mutability, that has attended all human institutions.

The ancient Saxons, like the other German nations, where each individual was enured to arms,

and where the independance of men was secured by a great equality of possessions, seem to have admitted a considerable mixture of democracy into their form of government, and to have been one of the rest nations, of which there remains any account in the records of history. After this tribe was settled in England, especially after the dissolution of the Heptarchy, the great extent of the kingdom produced a great inequality in property; and the balance seems to have inclined to the side of aristocracy. The Norman conquest threw more authority into the hands of the sovereign, which, however, admitted of great controul; though derived less from the general forms of the constitution, which were inaccurate and irregular, than from the independant power enjoyed by each baron in his particular district or province. The establishment of the Great Charter exalted still higher the Aristocracy, imposed regular limits on royal power, and gradually introduced some mixture of Democracy into the constitution. But even during this period, from the accession of Edward I. to the death of Richard III. the condition of the commons was nowise eligible; a kind of Polish Aristocracy prevailed; and though the kings were limited, the people were as yet far from being free. It required the authority almost absolute of the sovereigns, which took place in the subsequent period, to pull down those disorderly and licentious tyrants, who were equally averse from peace and from freedom, and to establish that regular execution of the laws, which, in a following age, enabled the people to erect a regular and equitable plan of liberty.

532-3 Note [J] , associated with p. 288:

In the fifth year of the king, *the commons complained of the government about the king's person, his court, the excessive number of his servants, of the abuses in the Chancery, King's Bench, Common Pleas, Exchequer, and grievous oppressions in the country, by the great multitudes of maintainers of quarrels, (men linked in confederacies together) who behaved themselves like kings in the country, so as there was very little law or right, and of other things which they said were the cause of the late commotions under Wat Tyler.* Parl. Hist. vol. i. p. 365 . This irregular government, which no king and no house of commons had been able to remedy, was the source of the licentiousness of the great, and turbulency of the people, as well as tyranny of the princes. If subjects would enjoy liberty, and kings security, the laws must be executed.

Volume III:

49:

His government was oppressive; but it was so much the less burthensome, as, by his extending royal authority, and curbing the nobles, he became in reality the sole oppressor in his kingdom.

51:

While Henry's authority was thus established throughout his dominions, and general tranquillity prevailed, the whole continent was thrown into combustion by the French invasion of Italy, and by the rapid success which attended Charles in that rash and ill-concerted enterprize.

73-77: [The discussion of imperium and the laws of Henry VII spans several pages. Here are the major highlights.]

The power of the kings of England had always been somewhat irregular or discretionary; but was scarcely ever so absolute during any former reign, at least after the establishment of the great

charter, as during that of Henry. ... As he ruled by a faction, and the lesser faction, all those on whom he conferred offices, sensible that they owed every thing to his protection, were willing to support his power, though at the expence of justice and national privileges. These seem the chief causes which at this time bestowed on the crown so considerable an addition of prerogative, and rendered the present reign a kind of epoch in the English constitution.

...

The encrease of the arts, more effectually than all the severities of law, put an end to this pernicious practice. The nobility, instead of vying with each other, in the number and boldness of their retainers, acquired by degrees a more civilized species of emulation, and endeavoured to excel in the splendour and elegance of their equipage, houses, and tables. The common people, no longer maintained in vicious idleness by their superiors, were obliged to learn some calling or industry, and became useful both to themselves and to others. And it must be acknowledged, in spite of those who declaim so violently against refinement in the arts, or what they are pleased to call luxury, that, as much as an industrious tradesman is both a better man and a better citizen than one of those idle retainers, who formerly depended on the great families; so much is the life of a modern nobleman more laudable than that of an ancient baron.

But the most important law in its consequences, which was enacted during the reign of Henry, was that by which the nobility and gentry acquired a power of breaking the ancient entails, and of alienating their estates. By means of this law, joined to the beginning luxury and refinements of the age, the great fortunes of the barons were gradually dissipated, and the property of the commons encreased in England. It is probable, that Henry foresaw and intended this consequence, because the constant scheme of his policy consisted in depressing the great, and exalting churchmen, lawyers, and men of new families, who were more dependant on him.

80:

In some nations the privileges of the commons encreased, by this encrease of property: In most nations, the kings, finding arms to be dropped by the barons, who could no longer endure their former rude manner of life, established standing armies, and subdued the liberties of their kingdoms: But in all places, the condition of the people, from the depression of the petty tyrants, by whom they had formerly been oppressed, rather than governed, received great improvement, and they acquired, if not entire liberty, at least the most considerable advantages of it.

87:

The popularity of Henry's [VIII] government [1509 AD], his undisputed title, his extensive authority, his large treasures, the tranquillity of his subjects, were circumstances which rendered his domestic administration easy and prosperous: ...

117:

That turbulent kingdom [Scotland 1515 A.D.], he found, was rather to be considered as a confederacy, and that not a close one, of petty princes, than a regular system of civil polity; and even the king, much more a regent, possessed an authority very uncertain and precarious. Arms, more than laws, prevailed; and courage, preferably to equity or justice, was the virtue most valued and respected. The nobility, in whom the whole power resided, were so connected by hereditary alliances, or so divided by inveterate enmities, that it was impossible, without employing an armed force, either to punish the most flagrant guilt, or give security to the most

entire innocence. Rapine and violence, when exercised on a hostile tribe, instead of making a person odious among his own clan, rather recommended him to their esteem and approbation; and by rendering him useful to the chieftain, entitled him to a preference above his fellows. And though the necessity of mutual support served as a close cement of amity among those of the same kindred, the spirit of revenge against enemies, and the desire of prosecuting the deadly feuds (so they were called), still appeared to be passions the most predominant among that uncultivated people.

189:

He [Henry VIII] found his prerogative firmly established at home: He observed, that his people were in general much disgusted with clerical usurpations, and disposed to reduce the powers and privileges of the ecclesiastical order: ...

205:

The king found his ecclesiastical subjects as compliant as the laity. The convocation ordered, that the act against appeals to Rome, together with the king's appeal from the pope to a general council, should be affixed to the doors of all the churches in the kingdom: And they voted that the bishop of Rome had, by the law of God, no more jurisdiction in England than any other foreign bishop; and that the authority, which he and his predecessors had there exercised, was only by usurpation and by the sufferance of English princes. Four persons alone opposed this vote in the lower house, and one doubted. It passed unanimously in the upper. The bishops went so far in their complaisance, that they took out new commissions from the crown, in which all their spiritual and episcopal authority was expressly affirmed to be derived ultimately from the civil magistrate, and to be entirely dependent on his good pleasure?

206:

The acknowledgment of the king's supremacy introduced there a greater simplicity in the government, by uniting the spiritual with the civil power, and preventing disputes about limits, which never could be exactly determined between the contending jurisdictions.

210:

The ancient and almost uninterrupted opposition of interests between the laity and clergy in England, and between the English clergy and the court of Rome, had sufficiently prepared the nation for a breach with the sovereign pontiff; and men had penetration enough to discover abuses, which were plainly calculated for the temporal advantages of the hierarchy, and which they found destructive of their own.

227a:

The domestic peace of England seemed to be exposed to more hazard, by the violent innovations in religion; and it may be affirmed, that, in this dangerous conjuncture, nothing ensured public tranquility so much as the decisive authority acquired by the king, and his great ascendant over all his subjects.

227b:

The great increase of monasteries, if matters be considered merely in a political light, will appear the radical inconvenience of the catholic religion; and every other disadvantage, attending

that communion, seems to have an inseparable connection with these religious institutions. Papal usurpations, the tyranny of the inquisition, the multiplicity of holidays; all these fetters on liberty and industry were ultimately derived from the authority and insinuation of monks, whose habitations, being established every where, proved so many seminaries of superstition and of folly. This order of men was extremely enraged against Henry; and regarded the abolition of the papal authority in England, as the removal of the sole protection, which they enjoyed, against the rapacity of the crown and of the courtiers. They were now subjected to the king's visitation; the supposed sacredness of their bulls from Rome was rejected; the progress of the reformation abroad, which had every where been attended with the abolition of the monastic orders, gave them reason to apprehend like consequences in England; and though the king still maintained the doctrine of purgatory, to which most of the convents owed their origin and support, it was foreseen, that, in the progress of the contest, he would every day be led to depart wider from ancient institutions, and be drawn nearer the tenets of the reformers, with whom his political interests naturally induced him to unite. Moved by these considerations, the friars employed all their influence to enflame the people against the king's government; and Henry, finding their safety irreconcilable with his own, was determined to seize the present opportunity, and utterly destroy his declared enemies.

293-4:

The king of Scots, [James V] inflamed with a desire of military glory, and of revenge on his invaders, gave the signal for pursuing them, and carrying the war into England. He was surprized to find, that his nobility, who were in general disaffected on account of the preference which he had given to the clergy, opposed this resolution, and refused to attend him in his projected enterprize. Enraged at this mutiny, he reproached them with cowardice, and threatened vengeance; but still resolved, with the forces which adhered to him, to make an impression on the enemy. ... [Hume on the death of James V] He executed justice with impartiality and rigour; but as he supported the commonalty and the church against the rapine of the nobility, he escaped not the hatred of that order.

324:

The abolition of the ancient religion much contributed to the regular execution of justice. While the catholic superstition subsisted, there was no possibility of punishing any crime in the clergy: The church would not permit the magistrate to try the offences of her members, and she could not herself inflict any civil penalties upon them. But Henry restrained these pernicious immunities: The privilege of clergy was abolished for the crimes of petty treason, murder, and felony, to all under the degree of a subdeacon." But the former superstition not only protected crimes in the clergy: It exempted also the laity from punishment, by affording them shelter in the churches and sanctuaries. The parliament abridged these privileges. It was first declared, that no sanctuaries were allowed in cases of high treason;° next, in those of murder, felony, rapes, burglary, and petty treason: p And it limited them in other particulars, q The farther progress of the reformation removed all distinction between the clergy and other subjects; and also abolished entirely the privileges of sanctuaries. These consequences were implied in the neglect of the canon law.

338:

All men of sense, likewise, who saw the nation divided by the religious zeal of the opposite

sects, deemed it the more necessary to entrust the government to one person, who might check the exorbitancies of faction, and ensure the public tranquillity. And though some clauses of the patent seemed to imply a formal subversion of all limited government, so little jealousy was then usually entertained on that head, that no exception was ever taken at bare claims or pretensions of this nature, advanced by any person possessed of sovereign power. The actual exercise alone of arbitrary administration, and that in many and great and flagrant and unpopular instances, was able sometimes to give some umbrage to the nation.

469, Note [B], Associated with p.74:

Rot. Parl. 3 H. VII. n. 17. The preamble is remarkable, and shows the state of the nation at that time. "The king, our sovereign lord, remembereth, how, by our unlawful maintainances, giving of liveries, signs and tokens, retainders by indentures, promises, oaths, writings, and other embraceries of his subjects, untrue demeanings of sheriffs in making pannels, and untrue returns by taking money, by juries, &c. the policy of this nation is most subdued." It must indeed be confessed, that such a state of the country required great discretionary power in the sovereign; nor will the same maxims of government suit such a rude people, that may be proper in a more advanced stage of society. The establishment of the Star-chamber or the enlargement of its power in the reign of Henry VII. might have been as wise as the abolition of it in that of Charles I.

Volume IV:

11:

Whoever refused to take an oath, acknowledging the queen's [Elizabeth I] supremacy, was incapacitated from holding any office; whoever denied the supremacy, or attempted to deprive the queen of that prerogative, forfeited, for the first offence, all his goods and chattels; for the second, was subjected to the penalty of a premunire; but the third offence was declared treason. These punishments, however severe, were less rigorous than those which were formerly, during the reigns of her father and brother, inflicted in like cases.

38:

By the vigour of these men's measures she [Mary, Queen of Scots] endeavoured to establish order and justice in a country [Scotland], divided by public factions and private feuds; and that fierce, retractable people, unacquainted with laws and obedience, seemed, for a time, to submit peaceably to her gentle and prudent administration.

72:

The same ground of discontent, which, in other courts, is the source of intrigue, faction, and opposition, commonly produced in Scotland, either projects of assassination, or of rebellion; and besides mutual accusations of the former kind, which it is difficult to clear up, the malcontent lords, as soon as they saw the queen's marriage entirely resolved on, entered into a confederacy for taking arms against their sovereign.

384:

There were many peculiar causes in the situation and character of Henry VII. which augmented the authority of the crown: Most of these causes concurred in succeeding princes; together with

the factions in religion, and the acquisition of the supremacy, a most important article of prerogative: But the manners of the age were a general cause, which operated during this whole period, and which continually tended to diminish the riches, and still more the influence, of the aristocracy, anciently so formidable to the crown. The habits of luxury dissipated the immense fortunes of the ancient barons; and as the new methods of expence gave subsistence to mechanics and merchants, who lived in an independant manner on the fruits of their own industry, a nobleman, instead of that unlimited ascendant, which he was wont to assume over those who were maintained at his board, or subsisted by salaries conferred on them, retained only that moderate influence, which customers have over tradesmen, and which can never be dangerous to civil government. The landed proprietors also, having a greater demand for money than for men, endeavoured to turn their lands to the best account with regard to profit, and either inclosing their fields, or joining many small farms into a few large ones, dismissed those useless hands, which formerly were always at their call in every attempt to subvert the government, or oppose a neighbouring baron. By all these means the cities encreased; the middle rank of men began to be rich and powerful; the prince, who, in effect, was the same with the law, was implicitly obeyed; and though the farther progress of the same causes begat a new plan of liberty, founded on the privileges of the commons, yet in the interval between the fall of the nobles and the rise of this order, the sovereign took advantage of the present situation, and assumed an authority almost absolute.

406:

Such were the abuses, which Elizabeth would neither permit her parliaments to meddle with, nor redress herself. I believe it will readily be allowed, that this slight prerogative alone, which has passed almost unobserved amidst other branches of so much greater importance, was sufficient to extinguish all regular liberty. For what elector, or member of parliament, or even juryman, durst oppose the will of the court, while he lay under the lash of such an arbitrary prerogative.

414, Note [HH]:

In the year 1591, the judges made a solemn decree, that England was an absolute empire, of which the king was the head. In consequence of this opinion, they determined, that even if the act of the first of Elizabeth had never been made, the king was supreme head of the church; and might have erected, by his prerogative, such a court as the ecclesiastical commission- For that he was the head of all his subjects. Now that court was plainly arbitrary. The reference is, that his power was equally absolute over the laity. See Coke's Reports, p 5" Caudrey's case.

Volume V:

553:

The commons were not to be stopped by so small an obstacle. Having first established a principle, which is noble in itself, and seems specious, but is belied by all history and experience, That the people are the origin of all just power; they next declared, that the commons of England, assembled in parliament, being chosen by the people, and representing them, are the supreme authority of the nation, and that whatever is enacted and declared to be law by the commons, hath the force of law, without the consent of king or house of peers.

556 Note [J]:

This parliament is remarkable for being the epoch, in which were first regularly formed, though without acquiring these denominations, the parties of court and country; parties, which have ever since continued, and which, while they oft threaten the total dissolution of the government, are the real causes of its permanent life and vigour. In the ancient feudal constitution, of which the English partook with other European nations, there was a mixture, not of authority and liberty, which we have since enjoyed in this island, and which now subsist uniformly together; but of authority and anarchy, which perpetually shocked with each other, and which took place alternately, according as circumstances were more or less favourable to either of them. A parliament composed of barbarians, summoned from their fields and forests, uninstructed by study, conversation, or travel; ignorant of their own laws and history, and unacquainted with the situation of all foreign nations; a parliament called precariously by the king, and dissolved at his pleasure; sitting a few days, debating a few points prepared for them, and whose members were impatient to return to their own castles, where alone they were great, and to the chace, which was their favourite amusement. Such a parliament was very little fitted to enter into a discussion of all the questions of government, and to share, in a regular manner, the legal administration. The name, the authority of the king alone appeared, in the common course of government; in extraordinary emergencies, he assumed, with still better reason, the sole direction; the imperfect and unformed laws left, in every thing, a latitude of interpretation; and when the ends, pursued by the monarch, were, in general, agreeable to his subjects, little scruple or jealousy was entertained with regard to the regularity of the means. During the reign of an able, fortunate, or popular prince, no member of either house, much less of the lower, durst think of entering into a formed party, in opposition to the court; since the dissolution of the parliament, must, in a few days, leave him unprotected, to the vengeance of his sovereign, and to those stretches of prerogative, which were then so easily made, in order to punish an obnoxious subject. During an unpopular and weak reign, the current commonly ran so strong against the monarch, that none durst inlist themselves in the court-party; or if the prince was able to engage any considerable barons on his side, the question was decided with arms in the field, not by debates or arguments in a senate or assembly. And upon the whole, the chief circumstance, which, during ancient times, retained the prince in any legal form of administration, was, that the sword, by the nature of the feudal tenures, remained still in the hands of his subjects; and this irregular and dangerous check had much more influence than the regular and methodical limits of the laws and constitution. As the nation could not be compelled, it was necessary that every public measure of consequence, particularly that of levying new taxes, should seem to be adopted by common consent and approbation.

The princes of the house of Tudor, partly by the vigour of their administration, partly by the concurrence of favourable circumstances, had been able to establish a more regular system of government; but they drew the constitution so near to despotism, as diminished extremely the authority of the parliament. The senate became, in a great degree, the organ of royal will and pleasure: Opposition would have been regarded as a species of rebellion: And even religion, the most dangerous article in which innovations could be introduced, had admitted, in the course of a few years, four several alterations, from the authority alone of the sovereign. The parliament was not then the road to honour and preferment: The talents of popular intrigue and eloquence were uncultivated and unknown: And though that assembly still preserved authority, and retained the

privilege of making laws and bestowing public money, the members acquired not, upon that account, either with prince or people, much more weight and consideration. What powers were necessary for conducting the machine of government, the king was accustomed, of himself, to assume. His own revenues supplied him with money sufficient for his ordinary expences. And when extraordinary emergencies occurred, the prince needed not to solicit votes in parliament, either for making laws or imposing taxes, both of which were now become requisite for public interest and preservation.

The security of individuals, so necessary to the liberty of popular councils, was totally unknown in that age. And as no despotic princes, scarcely even the eastern tyrants, rule entirely without the concurrence of some assemblies, which supply both advice and authority; little, but a mercenary force, seems then to have been wanting towards the establishment of a simple monarchy in England. The militia, though more favourable to regal authority, than the feudal institutions, was much inferior, in this respect, to disciplined armies; and if it did not preserve liberty to the people, it preserved, at least, the power, if ever the inclination should arise, of recovering it.

But so low, at that time, ran the inclination towards liberty, that Elizabeth, the last of that arbitrary line, herself no less arbitrary, was yet the most renowned and most popular of all the sovereigns, that had filled the throne of England. It was natural for James to take the government as he found it, and to pursue her measures, which he heard so much applauded; nor did his penetration extend so far as to discover, that neither his circumstances nor his character could support so extensive an authority. His narrow revenues and little frugality began now to render him dependent on his people, even in the ordinary course of administration. Their encreasing knowledge discovered to them that advantage, which they had obtained; and made them sensible of the inestimable value of civil liberty. And as he possessed too little dignity to command respect, and too much good-nature to impress fear, a new spirit discovered itself every day in the parliament; and a party, watchful of a free constitution, was regularly formed in the house of commons.

But notwithstanding these advantages acquired to liberty, so extensive was royal authority, and so firmly established in all its parts, that it is probable the patriots of that age would have despaired of ever resisting it, had they not been stimulated by religious motives, which inspire a courage unsurmountable by any human obstacle.

The same alliance, which has ever prevailed between kingly power and ecclesiastical authority, was now fully established in England; and while the prince assisted the clergy in suppressing schismatics and innovators, the clergy, in return, inculcated the doctrine of an unreserved submission and obedience to the civil magistrate. The genius of the church of England, so kindly to monarchy, forwarded the confederacy; its submission to episcopal jurisdiction; its attachment to ceremonies, to order, and to a decent pomp and splendor of worship; and in a word, its affinity to the same superstition of the catholics, rather than to the wild fanaticism of the puritans.

On the other hand, opposition to the church, and the persecutions under which they laboured, were sufficient to throw the puritans into the country party, and to beget political principles little favourable to the high pretensions of the sovereign. The spirit too of enthusiasm; bold, daring,

and uncontroled; strongly disposed their minds to adopt republican tenets; and inclined them to arrogate, in their actions and conduct, the same liberty, which they assumed, in their rapturous flights and ecstasies. Ever since the first origin of that sect, through the whole reign of Elizabeth as well as of James, puritanical principles had been understood in a double sense, and expressed the opinions favourable both to political and to ecclesiastical liberty. And as the court, in order to discredit all parliamentary opposition, affixed the denomination of puritans to its antagonists; the religious puritans willingly adopted this idea, which was so advantageous to them, and which confounded their cause with that of the patriots or country party. Thus were the civil and ecclesiastical factions regularly formed; and the humour of the nation, during that age, running strongly towards fanatical extravagancies, the spirit of civil liberty gradually revived from its lethargy, and by means of its religious associate, from which it reaped more advantage than honour, it secretly enlarged its dominion over the greater part of the kingdom.

This Note was in the first editions a part of the text; but the author omitted it, in order to avoid, as much as possible, the style of dissertation in the body of his history. The passage however, contains views so important, that, he thought it might be admitted as a note.

Volume VI: [In progress]

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