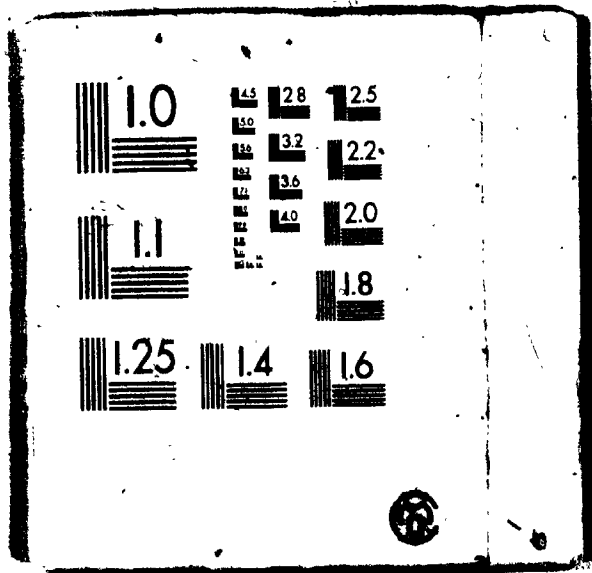


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GAOL DELIVERY IN THE EASTERN CIRCUIT 1437-1439

by



Rosemary Briggs

A thesis submitted to the Faculty of Graduate  
Studies in partial fulfilment of the require-  
ments for the degree of Master of Arts

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### Abstract

Gaol delivery was the final stage in the processing of medieval felons whereby special commissioners of the king were ordered to clear the gaols by terminating the cases against the prisoners detained within through trial or proclamation. The records preserved for these proceedings supply the names of the officials involved in the administration of the felony laws in the counties as well as providing the names of the king's judicial tribunal. Chapter II deals with the careers of some of these men in an attempt to provide an added perspective regarding the application of the law as it pertained to felony and the procedure involved in criminal trials. Chapter III exposes the differential treatment received by the various felonies of rape, homicide and theft as well as treason in the court of gaol delivery based on the cases preserved in the eastern circuit roll. Chapter IV examines the status of the appeal procedure in the fifteenth century as an alternate method to the indictment process for bringing felons to trial while Chapter V discusses the options available to some felons to escape either conviction or the gallows. Conviction for any felony offence carried a capital sentence, but the procedure of gaol delivery encompassed many variables that affected the trial of a felon.

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## I. AN INTRODUCTION TO GAOL DELIVERY

Gaol delivery was the final stage in the processing of a medieval felon where commissioners of the king were directed to clear the gaols by terminating the cases against the people detained within, either by trial or by proclamation. Sessions of gaol delivery were generally held, though not exclusively, in conjunction with the assizes utilizing the same panel of justices. These joint sessions commonly occurred once or twice annually, and continued for one or two days depending on the number of cases requiring the attention of the king's justices. The assize proceedings were recorded separately from the actions of gaol delivery, and it is the enrolment of the latter court that the present investigation examines. More precisely; the gaol delivery roll for the eastern circuit for the years 1437-1439 provides the focus of the discussion.<sup>1</sup>

To facilitate the work of the king's justices,<sup>2</sup> and to an extent to systematize the legal process in England, the country was divided into six assize circuits to be visited annually by the commissioners. In the early fifteenth century when the king's bench ceased its visitations to the circuits and became stationary at Westminster, the justices itinerant, armed with separate commissions of assize and gaol delivery became even more vital extensions of the king's courts, and alleviated the strain on the legal resources at Westminster by administering the law within the circuits.

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<sup>1</sup>Public Record Office, Justices Itinerant/3/210.



The eastern circuit, encompassing the counties of Norfolk, Suffolk, Cambridge, Huntingdon, Bedford and Buckingham, was visited twice annually during the last two weeks of February and the last two weeks of July by the same gaol delivery tribunal during the time period examined. The enrolment of the sessions begins with the circuit visitation of July 1437 and ends with the same in 1439, during which time each of the counties of Norfolk, Suffolk, Cambridge and Huntingdon were delivered of felons on five separate occasions. Both Bedfordshire and Buckinghamshire were not included in the visitations of the justices in July of 1438, and therefore have only four deliveries each recorded on the roll.

The cases dealt with by the commissioners of gaol delivery all pertained to felony offences. Land disputes, assaults, and matters of debt or trespass were reserved for the court of assize, while thefts, homicides, rapes and treasons along with the appeals of these charges came under the jurisdiction of the commission of gaol delivery. The eastern circuit roll examined contains seven such commissions directing the justices to hold delivery sessions in a specified county on a certain day and in the vicinity of the gaol named within the commission. Ideally, the justices would have received annual orders from the king to deliver each county within the circuit; however the lack of a full set of commissions in the eastern roll did not prevent the deliveries from taking place annually. This may indicate either the loss of the missing commissions somewhere between their issue at Westminster and the final enrolment by the clerk, or the justices acting upon initiative granted to them in a more nebulous mandate from the king in 1434, to inquire from time to time into felonies and insurrections in the eastern circuit.<sup>1</sup> Traditionally, the justices of assize appear to

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<sup>1</sup>Cal. Patent Rolls, 1429-1436, p. 358.

have continued to hold sessions without annual commissions until replaced by new orders from the king,<sup>1</sup> and the same may be true of the treatment of the gaol delivery commission. The annual visitations of the king's justices to the eastern circuit appear to have been relatively continuous, in spite of the minority of Henry VI and his accession to power during the time covered by the roll examined.

The extant commissions vary only slightly in matters of form, and are for the most part standard in content. They do, however, offer an insight into the machinery utilized at the county level to organize the gaol delivery sessions. The officials in charge of county administration were responsible for presenting the felons to be delivered when the king's justices arrived to terminate the cases. The commission issued by the king ordered a precept to be sent to the sheriff of the county warning of the impending sessions at which the sheriff was responsible to have all felons present, with the documentation of their cases in order. The sheriff was empowered to inform and cause to be present at gaol delivery all coroners, justices of the peace, stewards and bailiffs of the liberties and hundreds of the county, with all memoranda generated by their offices and pertaining to the business of the forthcoming visitation by the justices. The documentation required from these various shire officials was mainly in the form of indictments against the felons facing delivery, generated in the various courts over which they presided. The justices of gaol delivery were commissioned to act upon these indictments and terminate the cases in the name of the king.

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<sup>1</sup>M. M. Taylor, "The Justices of Assize" in English Government at Work, eds. J. F. Willard, W. A. Morris, and W. H. Dunham, Jr., (Cambridge, Mass., 1950), p. 230.

In order to process the felons at the sessions, not only the indictments, but also a trial jury was required for each case brought before the justices. The precept ordered sent to the sheriff by the commission also directed him to empanel twenty-four jurors from the region where the felony occurred and the area of residence of each felon to be delivered. The type of juror allowed was restricted to those who were knights or possessed 100 shillings in lands or rents, and who had no connection with the felon requiring judgement. The role of the jury in the gaol delivery process was significant, as these men were required to pronounce the guilt or innocence of the felon based upon their own knowledge of the crime. The elements of modern law and legal process which analyse the degree of a crime by attempting to measure intent and circumstance surrounding a criminal action were foreign to the medieval legal system. The precursor to this concept of assessing evidence to determine culpability was the medieval belief in the integrity of the trial jury. By stipulating in the commission that jurors had to be drawn from the regions where the felony occurred and the felon resided, the idea that the medieval jury was its own source of evidence is reflected. The men of the jury were expected to know a felon's criminality by virtue of their proximity to the place of the offence, and their knowledge of the people involved. While information regarding the felon and the crime was thus assumed, objectivity in judgement was believed to be guaranteed by the disqualification of jurors biased by blood or natural affinity to the parties involved.

The minimum wealth requirement of 100 shillings mirrors the concept of a medieval society which equated a man's worth with his honour. Integrity was believed maintained in the trial jury because a man of honour would not perjure himself, or stoop to take a bribe. This ideal

vision of the virtues of the system of processing felons by jury was eloquently expounded by Sir John Fortescue, chief justice of the king's bench in the mid-fifteenth century.<sup>1</sup> The system, however, was open to corruption, and a petition registered by the king in the parliament of 1436 suggests that the ideal of the honourable trial jury was far from being realized:

Perjurie is runnyng rampant in the kingdom . . .  
and yet it is supposed by reason that the more  
sufficient that men be of livlihood, of lands  
and tenements, more unlikely they are by corruption,  
brokerage or fear to be treated to perjurie.<sup>2</sup>

Fortescue's belief that England's wealth assured the success of the jury system by supplying ample yeomen, franklins, squires and knights suitable for jury service,<sup>3</sup> must thus be tempered by evidence revealing her apparent failure to do so.

A study of the gaol delivery rolls offers little information regarding the nature of the institution of the jury, for unlike the case of the peace rolls or the coroner's rolls, the names of the members of the adjudicating panels were not listed when the records of the sessions were made. This omission from the enrolments leaves a gap in the historian's perspective on this final stage of medieval criminal procedure, by creating a dearth of direct information on the composition of the trial jury and thus suppressing the implications it may have had upon the application of felony laws.

Another potential avenue of research which suffers from the lack of

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<sup>1</sup>Sir John Fortescue, *De Laudibus Legum Angliae*, ed. S. B. Chrimes (Cambridge, 1949), pp. 64-71.

<sup>2</sup>*Rotuli Parliamentorum*, iv, 501.

<sup>3</sup>Fortescue, *De Laudibus*, p. 71.

information supplied by the rolls regards the nature of the fifteenth century felon. In most cases, only the name of the felon, his occupation and place of residence along with the area where the crime was committed, is given. These facts were probably included in the indictments presented at the sessions and were subsequently enrolled by the gaol delivery clerk. Although the scant information given offers only the barest profile of the individual felon, taken collectively the profiles illuminate a study of the gaol delivery process. The people who entered into gaol delivery were generally labourers, husbandmen, small tradesmen or members of the lesser clergy. Rarely was a gentleman or even a yeoman brought before the justices for delivery. When such people do appear on the rolls it is generally in the capacity of main perners or as pledges in the event of an appeal. As a result, it appears that the gaol delivery records offer an almost exclusive picture of criminal offences committed by the lower classes of society only.

While the gaol delivery rolls limit possibilities for research in some areas, the information recorded offers ample material for fruitful study regarding the operative laws, legal processes and official personnel involved in gaol delivery. The sentences pronounced by the king's justice upon hearing the jury's verdict display the rigidity and inflexibility of the felony laws that applied to the court of gaol delivery. A convicted felon received the sentence of death by hanging, whether the crime was the theft of a sheep or a most heinous homicide. The traitor suffered the added punishment of being drawn to the gallows and then hanged. Felony law in the fifteenth century offered no amelioration of punishment to the convicted as the legal code did not encompass any concept of degrees of culpability that would have required suitably

variant sentences. Fortescue expressed the belief that capital punishment for felony was swift and humane, allowing the people of England to live in peace and quiet under such a law without the fear of the horrors of torture suffered under continental civil law.<sup>1</sup> The gaol delivery court neither supports nor detracts from Fortescue's vision as the lower classes are represented on the roll as the group to whom the law was applied. The group who lived under the law had no voice to express opinions regarding its efficiency.

While the laws of felony were rigid in application, the legal process admitted several options the felon could exercise to mitigate the severity of the capital sentence. Pardons obtained from the king prior to conviction provided a potential safeguard against execution, and those obtained after sentencing freed the holder from threat to life and limb. The ability to appeal to the privileges of the church also supplied the felon with the chance to escape death by fleeing to sanctuary and abjuring the realm prior to arrest, or by pleading benefit of clergy if convicted at gaol delivery. The eastern circuit roll attests to the fact that these options were successfully utilized by a number of felons to escape the gallows. The restrictive felony laws were subsequently breached in cases where these extra-legal elements were incorporated into the process of delivery.

Personal appeal by the victim of a felony is exemplified throughout the eastern circuit roll. In spite of the decline in popularity of this method of bringing felons to trial, the records examined suggest its role as an almost guaranteed route to conviction remained vital to the

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<sup>1</sup>Fortescue, De Laudibus, p. 65.

fifteenth century legal process. Conviction rates for most felonies suggest that a person presented at goal delivery had slightly better than a seventy-five per cent chance for acquittal. Appeal offered an option to the victim to nullify the felon's chance of escaping vengeance, and in this capacity it warrants examination.

A fourth area of study suggested by the gaol delivery rolls focuses not on the law or its application regarding the felon and the victim, but rather considers the men responsible for administering the law both at the county level in preparation for the arrival of the commissioners, and the king's justices themselves. A look at the careers of some of the legal personnel required to maintain the gaol delivery process provides an added perspective to the workings of the court by displaying some of the qualities of the men supporting its decisions. The enrolments of the gaol delivery court provide the names of the legal administrators involved making recourse to outside sources possible to gain biographical information. After examination of the type of men administering the felony laws, it will then be possible to turn to the analysis of the gaol delivery process itself.

## II. SELECT BIOGRAPHIES OF LEGAL PERSONNEL

One of the major difficulties in attempting to create a biography of a medieval personality is the type of sources available for such a study. Personal letters and papers, diaries and other such documents that lend depth of understanding to more modern biographies are exceedingly rare for the medieval time period. The type of evidence that is preserved offers a one-sided view of the life examined, largely in terms of the person's relationship to the king. This relationship is rarely fully exposed, remaining only formally preserved in records of writs, commissions, charters and inquisitions. It is therefore necessary to view medieval biographical studies with the limitations of the documentation in mind, and to derive information from what can be determined regarding a particular personality, rather than attempting to recreate a full representation. The more active a person was in legal and administrative matters affected the amount of accessible information pertaining to his career. While this unfortunate fact inhibits the possibilities for directly studying the felons who faced gaol delivery, a limited range of activities of some of the coroners, justices of the peace and the justices of gaol delivery can be extracted using the names provided on the eastern circuit roll.

Bartholomew Brokesby of Kirby Bellers was named on the gaol delivery roll exercising both the office of steward and of coroner for



Bury St. Edmund's in 1437.<sup>1</sup> His career as an administrator in Suffolk was preceded by one of official duties in the counties of Leicester and Warwick. In 1419, Brokesby was commissioned as sheriff of Warwickshire to raise a loan for the king,<sup>2</sup> and acted in the same capacity in Leicestershire in 1422.<sup>3</sup> He was returned knight of the shire for Leicestershire six times between 1410 and 1432<sup>4</sup> and held commissions to the peace for the same county sporadically from 1413 to 1438.<sup>5</sup> Brokesby's interests in Suffolk appear to have been established through connections with archbishop Arundel as early as 1409, and maintained by continued affiliation with Joan FitzAlan, Arundel's niece and the co-heir of Thomas, earl of Arundel (d. 1415), in the capacity of her legal agent from as early as 1417.<sup>6</sup> In 1424 Brokesby was commissioned by the king to hold inquisition into the lands of the late earl of Arundel not returned in the inquisition post mortem.<sup>7</sup> During the years that he was working in the interests of the Arundel family, Bartholomew Brokesby also fulfilled commissions of array and miscellaneous inquisitorial duties at the request of the king, and was actively acquiring land interests of his own. In 1420 he was

<sup>1</sup>P.R.O. JI/3/210, mm. 13d, 14.

<sup>2</sup>Cal. Pat. Rolls, 1416-1422, p. 256.

<sup>3</sup>ibid., 1416-1422, p. 416.

<sup>4</sup>J. S. Roskell, The Commons in the Parliament of 1422 (Manchester, 1954), p. 157.

<sup>5</sup>Cal. Pat. Rolls, passim.

<sup>6</sup>Roskell, Commons, p. 157.

<sup>7</sup>Cal. Pat. Rolls, 1422-1429, p. 276.

pardoned for acquiring and entering without licence one-third of the manor of Newport Pagnell, Essex and the manor of Little Lyndford in the county of Buckingham.<sup>1</sup> Brokesby was later pardoned for the same offence along with John duke of Norfolk regarding the manor of Carweden in Essex.<sup>2</sup> His connection with the Arundel family is again apparent in 1438 when he was granted the lands of Humphrey, the young earl of Arundel, in England, Wales and the march of Wales, to hold until reversion at Humphrey's majority.<sup>3</sup> On July 14, 1440, he was granted the right of reversion to the hundreds of Laundich and Southgrenowe in Norfolk with Henry, earl of Northumberland, Lord Scrope and four others upon the death of Beatrice, countess of Arundel.<sup>4</sup> Writs were issued on the same day to the escheator of Norfolk ordering the delivery of the hundreds and their livery to Brokesby and the others,<sup>5</sup> and to the escheator of Surrey not to meddle with a messuage comprised of six acres of meadow and twelve acres of land in the hundred of Lambeth and to deliver the same to Brokesby.<sup>6</sup> During the same year, Brokesby was embroiled in a suit over the manor of Stretton-en-le-Field in Leicestershire regarding a joint enfeoffment with Nicholas Fynderne, a gentleman of Derbyshire. He was ordered to obey the warrant of William

<sup>1</sup> Cal. Pat. Rolls, 1416-1422, p. 302.

<sup>2</sup> ibid., 1422-1429, p. 486.

<sup>3</sup> ibid., 1436-1441, p. 231.

<sup>4</sup> ibid., 1436-1441, p. 446.

<sup>5</sup> Calendar of Close Rolls, 1435-1441, p. 327.

<sup>6</sup> ibid., p. 323.

Yelverton,<sup>1</sup> his attorney in the suit, against John Fortescue, the attorney of Nicholas Fynderne.<sup>2</sup> Other land claims held by Brokesby included the quitclaim to the manor of Watnowe Chawort in Nottinghamshire and all its lands with Lord Beaumont, William Babyngton and eight others.<sup>3</sup> He also held in demise the manors of Thorplangton, Estlangton and Westlangton with four others for a yearly rent of £10.<sup>4</sup>

Bartholomew Brokesby died in 1449,<sup>5</sup> and although little can be gleaned of his life, he appears to exemplify how a young man of law could advance himself in the fifteenth century through connections with a noble family such as the Arundels. Although his main wealth appears to have remained in Leicestershire in the vicinity of Kirby Bellars,<sup>6</sup> holding the lands of the young earl of Arundel until his majority, acting as legal consultant to the co-heir of the elder earl, and the acquisition of land by Brokesby upon the death of Beatrice, countess of Arundel, represents definite advancement through the patronage of that noble family. The fact that Bartholomew Brokesby occupied both the office of coroner and steward for Bury St. Edmunds in 1437 reflects the position and prestige he maintained outside his county of origin, and

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<sup>1</sup>Vide infra pp. 17-22.

<sup>2</sup>Cal. Close Rolls, 1435-1441, p. 382.

<sup>3</sup>ibid., p. 422.

<sup>4</sup>ibid., 1441-1447, p. 29.

<sup>5</sup>Roskell, Commons, p. 157.

<sup>6</sup>V.C.H. Leicestershire, i, 372.

also lends credence to the belief that pluralism was a fifteenth century feature of the coronatorial office.<sup>1</sup>

While Bartholomew Brokesby appears to have been a relatively influential member of society, several other coroners named on the rolls do not appear to have enjoyed such a position of mobility. William Fowler of Weston Turvyle was a county coroner for Buckinghamshire in 1438,<sup>2</sup> but his status as such was questioned in 1429 and 1430 by writs from the king ordering him replaced as he was insufficiently qualified for the office.<sup>3</sup> Insufficient qualifications for the coronatorial office was a phrase that could imply a lack of lands within the county where the duties were to be exercised or non-residence within the county,<sup>4</sup> but the reason was not specified in Fowler's case. Whether he was replaced as coroner for a while is not clear, but he was filling the position in 1438 and continued to do so until 1441, when the sheriff was again ordered to find a new coroner.<sup>5</sup> This time, however, Fowler was to be removed from office on the grounds that he was too busy fulfilling his new commission as justice of the peace in Buckinghamshire. In 1443 he was acting as escheator in Bedfordshire,<sup>6</sup> and in 1446 Fowler received a writ exempting him from the necessity of taking further

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<sup>1</sup>R. F. Hunnisett, The Medieval Coroner (Cambridge, 1961), p. 161.

<sup>2</sup>P.R.O., JI/3/210, m.33.

<sup>3</sup>Cal. Close Rolls, 1429-1435, pp. 9, 29.

<sup>4</sup>Hunnisett, Medieval Coroner, p. 172.

<sup>5</sup>Cal. Close Rolls, 1435-1441, p. 400.

<sup>6</sup>Cal. Pat. Rolls, 1441-1446, p. 371.

office from the king.<sup>1</sup> He held his commission of the peace through the change of dynasty and continued as justice of the peace for Buckinghamshire until 1468. William Fowler's family appears to have been in favour with the king, Edward IV, as William was granted the manor of Preston in Buckinghamshire in the year 1465 as a reward for the good services rendered by his father, Thomas.<sup>2</sup> The grant included two hundred acres of land, fifty acres of pasture and ten acres of meadow along with an annual rent of 20s. Edward IV later granted the reversion of these lands to Richard Fowler, William's son.<sup>3</sup> In July of 1468, William received a licence to found a chantry at Thornton in the county of Buckingham to pray for his soul,<sup>4</sup> and his name disappears from the records shortly thereafter.

From what appears to have been a questionable beginning as a coroner in Buckinghamshire, William Fowler's legal career expanded to include the commission of the peace. He benefitted in gaining a degree of landed wealth through the recognition of his father's contribution to the king, but the records offer little suggestion regarding his own initiative in that direction, or pertaining to ventures outside his home county. In contrast, Thomas Chamberlain of Little Staunton, a coroner for Bedfordshire in 1438,<sup>5</sup> exemplifies by his career the

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<sup>1</sup> Cal. Pat. Rolls, 1446-1452, p. 183.

<sup>2</sup> *ibid.*, p. 440.

<sup>3</sup> *ibid.*, 1467-1477, p. 18.

<sup>4</sup> *ibid.*, p. 112.

<sup>5</sup> P.R.O., JI/3/210, m. 29d.

possibilities available through exercising the good offices of the king. In 1440 he was granted sixpence daily from the customs of the port of Southampton,<sup>1</sup> and was to receive in later years a part of the petty customs of Bordeaux as groom of the chamber.<sup>2</sup> In 1446 he received a grant of 100s. annually from the customs of Southampton until such time as he received offices providing that amount for life.<sup>3</sup> In 1450, Chamberlain acquired the office of the receivership of the Isle of Wight and Carlisle Castle,<sup>4</sup> which was subsequently converted to Castle Caresbroke in 1452.<sup>5</sup> The offices Thomas Chamberlain held during these years exemplifies the method of payment often used by the king to pay his officials. Instead of salaries, grants of receiverships, customs subsidies or rents from royal lands were utilized. In 1441 Chamberlain, as servant to the king's secretary, Thomas Beckington, received a grant jointly with Thomas of lands and a waterway in the king's lordship of Spene in Berkshire.<sup>6</sup> Throughout his career, Thomas Chamberlain was also able to accumulate lands through his own dealings. In 1427, one-third part of the manor of Wynefelde was acknowledged to him at Westminster,<sup>7</sup> and in the same year he was granted the reversion of one-third the manor Jays of Grancestre in Cambridgeshire jointly with

<sup>1</sup>Cal. Close Rolls, 1435-1441, p. 318.

<sup>2</sup>Cal. Pat. Rolls, 1441-1446, p. 347.

<sup>3</sup>ibid., 1446-1452, p. 347.

<sup>4</sup>ibid., p. 329.

<sup>5</sup>ibid., p. 546.

<sup>6</sup>ibid., 1436-1441, p. 561.

<sup>7</sup>Cal. Close Rolls, 1422-1429, p. 359.

Robert Cavendish, a Suffolk justice of the peace.<sup>1</sup> Chamberlain also held one knight's fee in Cambridgeshire of the Master of Corpus Christi College in 1428,<sup>2</sup> and also held one-quarter knight's fee from Johanna Grey of Hertfordshire.<sup>3</sup>

The brief outline given of the careers of three coroners named on the gaol delivery roll gives some indication of the fact that the office of coroner may have been viewed by some, such as William Fowler and Thomas Chamberlain, as a step toward a more prominent career as justice of the peace or as an official in the king's household. For Bartholomew Brokesby, the office was only one of several that he held during the time period covered by the gaol delivery roll examined. In contrast to the successes of these three men, it must be realized that a study of the names of six other coroners contained in the gaol delivery roll failed to produce any significant information pertaining to their careers. On the Cambridgeshire coroners, Nicholas Hammond and Simon Hockyngton the records available are silent, except to inform that both were ordered replaced in 1440 due to infirmity and insufficient qualifications.<sup>4</sup> Brokesby, Chamberlain and Fowler thus appear to be the exception rather than the rule in regards to career possibilities for the fifteenth-century coroner. The office of coroner was declining in prestige throughout the fourteenth and fifteenth century, but its ability to attract the type of men whose lives were outlined suggests its continued

<sup>1</sup> Cal. Close Rolls, 1422-1429, p. 380.

<sup>2</sup> Feudal Aids, i, 186.

<sup>3</sup> ibid., ii, 446.

<sup>4</sup> Cal. Close Rolls, 1435-1441, p. 308.

vitality. Coroners were still essential to the processing of felons with regards to homicides, approvers and appeals, and it is acting in these capacities that their names appear on the gaol delivery rolls.

One of the main factors contributing to the decline of the office of coroner was the rise of the justices of the peace throughout the fourteenth and fifteenth centuries. Intertwined with the advent of these county officials was the coincident increase in popularity of the process of indicting felons at the quarter sessions rather than utilizing the system of personal appeals to obtain justice. An appeal required the presence of a coroner, while the indictment of felonies was the jurisdiction of the justice of the peace.<sup>1</sup> As in the case of the coroners, several of the justices of the peace named on the gaol delivery roll do not appear to have been actively involved administratively beyond the duties of their office. However, the career of William Yelverton, justice of the peace for Norfolk, is more vividly preserved in the existing records due to his affiliation and confrontation with the Paston family. The Paston Letters and Papers of the Fifteenth Century,<sup>2</sup> is a collection of family documents that offers a rare look at the inter-relations of people from the viewpoint of this Norfolk clan. William Yelverton and William Paston both received payment for holding sessions of the peace from 1431 to 1439.<sup>3</sup> From 1430 to 1438, Yelverton's commission to the peace was limited to Norfolk, with Devon

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<sup>1</sup>For further detail on this point see Hunnisett, pp. 190-199, and B. H. Putnam, Proceedings Before the Justices of the Peace in the Fourteenth and Fifteenth Centuries (London, 1938), pp. xxxvi-xxxvii.

<sup>2</sup>The Paston Letters and Papers of the Fifteenth Century, ed. Norman Davis (Oxford, 1976).

<sup>3</sup>Putnam, Proceedings, pp. 28-29.



and Cornwall added in 1439.<sup>1</sup> From 1440 to 1472 he was commissioned to the peace in eleven counties, including the entire northwestern assize circuit.<sup>2</sup> In 1439 he attained the degree of serjeant-at-law,<sup>3</sup> and held the traditional general feast on the day of the Translation of St. Thomas in the Bishop's Inn of Ely in Holbourne, along with six other newly made serjeants.<sup>4</sup> During the time covered by the gaol delivery roll, Yelverton was at the beginning of his legal career, and from 1439 until his death in 1472,<sup>5</sup> his legal services were commissioned by the king for oyer et terminer sessions, inquisitions of array and muster for Norfolk and Suffolk, and the numerous examinations of the forests, dykes and waterways of Norfolk. The turbulence of the last ten years of the reign of Henry VI is reflected in the number of special oyer and terminer commissions, and sessions of inquisition into riot issued to Yelverton with various high powered nobles and legal officials during the period 1450 and 1461. William Yelverton's gaol delivery commissions began in 1439, the same year he became serjeant-at-law, at the Ipswich gaol,<sup>6</sup> and in the same year he began regular work as an assize justice in the counties of Southampton, Wiltshire, Dorset, Somerset, Devon and Cornwall.<sup>7</sup>

<sup>1</sup>Cal. Pat. Rolls, 1436-1441, p. 580.

<sup>2</sup>The Northwestern Circuit encompassed the counties of: Gloucester, Worcester, Hereford, Salop, Stafford, Oxford, Berkshire.

<sup>3</sup>E. Foss, Biographia Juridica (London, 1870), p. 777.

<sup>4</sup>The Brut Chronicle, ed. F. W. D. Brie (London, 1908), p. 473.

<sup>5</sup>DNB, lxiii, 318. The date is obscure due to the lack of an inquisition.

<sup>6</sup>Cal. Pat. Rolls, 1436-1441, p. 269.

<sup>7</sup>ibid., p. 341.

In 1440 and again in 1445, Yelverton was commissioned with William Westbury, justice of the bench, to the assize of the northwestern circuit and delivered Hereford, Bury St. Edmunds, Newgate, Gloucester, Colchester and Worcester Castles numerous times between the years 1441 and 1455.<sup>1</sup> During this time, Yelverton was also named to commissions of oyer and terminer which were general in nature and covered entire assize circuits, attesting to the legal power and great mobility required and expected of the king's justices. Legal careers such as that of William Yelverton obscure the possibilities of separating the powers of the justices of the peace and those of the king's justices. Yelverton was named justice of the king's bench in 1443,<sup>2</sup> and subsequently maintained his position as justice of the peace, justice of assize and of gaol delivery for the northwestern circuit in the years that followed.

The political intrigues of the dynastic change in 1461 did not detract from Yelverton's prestigious legal status as justice of the king's bench, and he was created knight of the Bath prior to the coronation of Edward IV.<sup>3</sup> It was rumoured at the time, however, that his knighting was an appeasement offered in place of the office of chief justice of the king's bench which he had expected.<sup>4</sup> It is possible that Yelverton aspired to the primary justiciarship, which was vacant

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<sup>1</sup>Cal. Pat. Rolls, passim.

<sup>2</sup>ibid., 1441-1446, p. 179.

<sup>3</sup>Foss, Biographia, p. 777.

<sup>4</sup>Paston Letters, no. 631.

due to the exile of John Fortescue with Henry VI in 1461.<sup>1</sup> In 1443, Yelverton was fourth justice of the king's bench behind Fortescue, William Westbury and William Godrede,<sup>2</sup> but the arrival of Edward IV brought John Markham to the seat of chief justice. By retaining his seat on the bench, however, Yelverton continued to be summoned to parliament under Edward IV in his capacity as king's justice in 1461, 1462, and 1469.<sup>3</sup> He was also summoned in 1470 by Henry VI during the brief Lancastrian restoration, but failed to be recalled by Edward IV in 1472.<sup>4</sup> Edward IV, upon his return to power, transferred Yelverton to the court of common pleas, and appointed him justice of assize at a fee of 20 marks per annum.<sup>5</sup>

Apart from the exercise of judicial commissions, William Yelverton was involved with the work of his powerful patron and ally, Sir John Fastolf. In 1450, he wrote to Fastolf seeking his assistance in quelling malicious rumours perpetrated by Lord Scales and his men and slandering Yelverton's good fame.<sup>6</sup> He requested that Fastolf have a word with the Chancellor to see what could be done, indicating how powerfully connected Fastolf was and that Yelverton recognized the value of his

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<sup>1</sup>Fortescue, *De Laudibus*, p. lxxii for the editor's discussion of Fortescue's Lancastrian politics.

<sup>2</sup>Cal. Close Rolls, 1441-1446, p. 192.

<sup>3</sup>W. Dugdale, *Summons of the Nobility to Great Councils and Parliaments of this Realm* (London, 1685), pp. 459-467.

<sup>4</sup>ibid., pp. 470, 471.

<sup>5</sup>Cal. Close Rolls, 1468-1476, p. 153.

<sup>6</sup>*Paston Letters*, no. 877.

patronage. A letter from Fastolf to William Yelverton and John Paston I was written to thank the two justices for their labours in court on the knight's behalf,<sup>1</sup> and exhibits that Fastolf's good patronage also benefitted himself through an exchange for legal expertise. The bond that existed between Fastolf and the two justices proved, however, to be the source of the rift that developed between John Paston and William Yelverton during the years subsequent to Fastolf's death in 1459. In his will Fastolf named both justices among others as trustees of his estate and his executors, perhaps as a reward for their legal services during his lifetime. Unfortunately, two days before his death, Fastolf made a second will placing John Paston in a more powerful position as trustee, particularly in terms of the disposal of Caister Castle. John Paston was charged by the will to set up a college of seven monks at Caister to pray for Fastolf's soul and was granted the lands of the castle to use for the maintenance and defence of the institution. The intrigues of the ensuing twelve year struggle to gain control of the Fastolf estates are too numerous to recount here, but examples of the tactics used by both parties expose the ruthlessness and ingenuity utilized by each to gain support. In 1460, William Yelverton seized Caister castle causing John Paston to file a petition with the Chancellor in 1462 on the grounds that Yelverton was being false to the dead by hindering the installment of the monks requested by Fastolf.<sup>2</sup> Yelverton was meanwhile labouring at the sessions of the peace to get

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<sup>1</sup>Paston Letters, no. 461.

<sup>2</sup>ibid., no. 60.

Thomas Howes, the Paston chaplain and co-executor of Fastolf's will, indicted,<sup>1</sup> a tactic which he was to use repeatedly against Paston's men. In 1464, Yelverton and William Worcester, another trustee, filed suit in the court of audience of the Archbishop of Canterbury, claiming the manor of Cotton in Suffolk<sup>2</sup> which was also part of the Fastolf inheritance. In spite of a warrant of the king granting the title of Caister to the Pastons in 1466, Yelverton sold the castle to John duke of Norfolk in 1468, and with the suit over Cotton still pending, he sold the manor to Gilbert Debenham.

William Yelverton appears to have taken advantage of his connections at court to gain access to the Chancellor in order to hinder the work of the Pastons in Chancery<sup>3</sup> long enough to seize several Fastolf manors and then sell them to even more powerful men such as John duke of Norfolk. A glimpse at how he managed to maintain control until the sale was arranged is given in a letter written by Margaret Paston. Yelverton's men were described as riding daily from the city of Norwich arrayed in doublets with the result that "whatso ever they do with their swords, they make it law."<sup>4</sup> Yelverton himself was variously pictured using abusive and foul language to pressure tenants into paying rent, or distraining goods to keep profits from reaching Paston coffers.

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<sup>1</sup>Paston Letters, no. 88. Thomas Howes later changed sides in the struggle joining William Yelverton, William Jenney and William Worcester.

<sup>2</sup>ibid., no. 119.

<sup>3</sup>ibid., no. 92.

<sup>4</sup>ibid., no. 325.

Margaret Paston's outrage at the behaviour of Yelverton and his men, however, turned to smugness when describing her own use of similar tactics successfully. Possession of the estates plus the ability to prove reception of rents from the tenants would have legally strengthened the position of either party in a court settlement. What becomes obvious from the final settlement of Fastolf's will is that the ones who suffered most in the struggle were probably the tenants whose animals and crops were seized by either party claiming power.

The points that stand out in the career of William Yelverton stress the amount of activity and mobility required to maintain the offices of the king's commissions, which appear to have drawn him annually to the northwestern circuit, and to manage a personal estate in Norfolk and Suffolk. Initially through the patronage of Sir John Fastolf Yelverton's legal prestige grew, though his aspirations were perhaps thwarted with the coronation of Edward IV. That he used his legal position to enhance his personal struggle with the Pastons is implied throughout the correspondence of the family, but it seems unlikely that the elder John Paston and his son William were adverse to using their own positions in a similar manner.

John Enderby, squire of Stratton, appears on the indictments from Bedfordshire contained in the gaol delivery roll throughout the time period 1437-1439 in the capacity of justice of the peace.<sup>1</sup> His lands, and thus his influence, were located in the county of Bedford, largely in the hundred of Biggleswade. At his death in 1457,<sup>2</sup> Enderby held the manor of Stratton and also the manor of Edsworth which he had obtained

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<sup>1</sup>P.R.O., JI/3/210, mm.29-31d.

<sup>2</sup>V.C.H. Bedfordshire, ii, 211.

as the marriage settlement of his first wife, Alice Furtho.<sup>1</sup> The Enderby family also held lands and tenements at Astwick,<sup>2</sup> two hundred acres of land at Biggleswade manor,<sup>3</sup> plus lands and tenements worth 30s. per annum in Beresford, Kempston and Blounham,<sup>4</sup> and was seised of the manor, Millo, throughout the fifteenth century.<sup>5</sup> John Enderby was returned knight of the shire on eleven different occasions between the years 1414 and 1445,<sup>6</sup> and was commissioned to the peace in Bedfordshire ten times from 1424 to 1448.<sup>7</sup> During his career, Enderby served on special commissions of array, to raise loans, and of inquisition in the county of Bedford, including a 1446 commission of inquiry to determine if the fee farm of the town of Bedford was too high.<sup>8</sup> The citizens of the town had petitioned the king requesting the tax be reduced by one-half, as Bedford was too poor to support the traditional £42.<sup>9</sup>

Coincident with his activities as a commissioner of the king, John Enderby also served in a legal capacity for the Greys of Ruthin.

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<sup>1</sup>V.C.H. Bedfordshire, ii, 224.

<sup>2</sup>ibid., ii, 204.

<sup>3</sup>ibid., ii, 210.

<sup>4</sup>Feudal Aids, vi, 395.

<sup>5</sup>V.C.H. Bedfordshire, ii, 220.

<sup>6</sup>Roskell, Commons, p. 176.

<sup>7</sup>Cal. Pat. Rolls, passim.

<sup>8</sup>ibid., 1446-1452, p. 40.

<sup>9</sup>ibid., p. 36.

In 1416 and again in 1421, he was appointed attorney in Ireland for Reginald de Grey, knight,<sup>1</sup> and acted on Reginald's council from 1413.<sup>2</sup> In 1437 and again in 1439, the Bedfordshire peace sessions were disrupted by armed supporters of John, lord Faunhope and lord Grey of Ruthin, with John Enderby actively supportive of his patron in both cases.<sup>3</sup> The justice of the peace was not pardoned for these actions until May 30, 1439.<sup>4</sup> Upon the death of Reginald, lord Grey of Ruthin, in 1440, Enderby continued his connection with the family as is shown by his reception of a recognisance from Henry Percy in 1441 for Edmund, the new lord Grey regarding the marriage of Edmund to Katherine Percy.<sup>5</sup> He also acted as witness to a quitclaim confirmation for Edmund and his brother Thomas Grey in the same year,<sup>6</sup> and thus appears to have remained a family attorney. Enderby's services as attorney were also utilized by John, duke of Norfolk in 1444 in a land transaction with the earl of Suffolk.<sup>7</sup>

Prior to his death in 1457, Enderby left money to found a chantry to sing masses to his soul at Stratton chapel.<sup>8</sup> Unlike Bartholomew

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<sup>1</sup> Cal. Pat. Rolls, 1416-1422, pp. 37, 317.

<sup>2</sup> Roskell, Commons, p. 176.

<sup>3</sup> See Appendix I, p. 100.

<sup>4</sup> Cal. Pat. Rolls, 1436-1441, p. 283.

<sup>5</sup> Cal. Close Rolls, 1435-1441, p. 466.

<sup>6</sup> ibid., 1441-1447, p. 55.

<sup>7</sup> ibid., p. 215.

<sup>8</sup> V.C.H. Bedfordshire, ii, 214.



Brokesby, the career of John Enderby does not reflect great gains through the patronage of a noble family. Instead, he appears to have been content to maintain a position of prestige within his own county of Bedford by serving as a family attorney and member of the Grey's council rather than extending his influence to the surrounding counties. When Enderby finally received commissions of gaol delivery in 1450<sup>1</sup> and 1453,<sup>2</sup> both were issued for Bedford only, indicating the limited range of his legal status.

In contrast, the career of John Prisote whose name appears connected with the indictments from Cambridgeshire contained on the gaol delivery roll,<sup>3</sup> displays a remarkably rapid extension of legal powers. He came from a family whose established residence at Haslingfield in Wetherby hundred, Cambridgeshire was recorded since 1350.<sup>4</sup> He died before the accession of Edward IV to the throne, as lord of the manor of Wallyngton in the county of Hertford.<sup>5</sup> His father was lord of the manor of Wesburies in Kent which remained the family seat.<sup>6</sup> Although Prisote is not listed as commissioned to the peace in Cambridgeshire until 1437,<sup>7</sup> he was named as a justice of the peace on

<sup>1</sup>Cal. Pat. Rolls, 1446-1452, p. 389.

<sup>2</sup>ibid., 1452-1461, p. 117.

<sup>3</sup>P.R.O., JI/3/210, mm.22-25d.

<sup>4</sup>V.C.H. Cambridgeshire, v, 232.

<sup>5</sup>DNB, xlvi, 402.

<sup>6</sup>Foss, Biographia, p. 540.

<sup>7</sup>Cal. Pat. Rolls, 1436-1441, p. 579.

indictments from 1435 that were processed before the justices of gaol delivery. By 1439 he was acting as both justice of the peace and escheator for the county of Cambridge,<sup>1</sup> and in 1442 his commission of the peace was extended to include Hertfordshire.<sup>2</sup> In the same year Prisote was ordered to prepare to take on the degree of serjeant-at-law in June, under pain of £1,000, with several other fifteenth century legal notables including Robert Danvers and Peter Arderne.<sup>3</sup> His first recorded summons to parliament was in 1444<sup>4</sup> as a justice of common pleas, and he was granted the usual fees and robes as chief justice of the common bench in 1449.<sup>5</sup> Within seven years of his attainment of the degree of serjeant-at-law, Prisote reached the pinnacle of his legal career.

Prior to his appointment as chief justice, John Prisote was assigned to the assize of the eastern circuit<sup>6</sup> and served on special commissions of oyer et terminer and of inquisition. Throughout the 1450's, his activities within the sphere of special commissions grew to include gaol delivery and the commission of the peace for the entire eastern circuit, plus general commissions of oyer et terminer that

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<sup>1</sup>Cal. Close Rolls, 1435-1441, p. 296.

<sup>2</sup>ibid., 1441-1446, p. 471.

<sup>3</sup>ibid., p. 328

<sup>4</sup>Dugdale, Summons, p. 435.

<sup>5</sup>Cal. Pat. Rolls, 1446-1452, p. 230.

<sup>6</sup>ibid., p. 188

encompassed four of the six assize circuits.<sup>1</sup> From 1453 until his death in 1460 Prisote was summoned to parliament as John Prisote, knight,<sup>2</sup> although the year he received the honour is undetermined. His career was somewhat remarkable in that within seven years of his first recorded peace commission Prisote was made serjeant-at-law, and became chief justice of the common bench seven years later. In contrast, William Yelverton spent forty-two years in the legal profession, but never attained the chief justiciarship.

The brief outlines of the lives of William Yelverton and John Prisote indicate how the commission of the peace could be only a stage in the development of a fifteenth-century legal career. For John Enderby and seven other justices of the peace named on the gaol delivery roll for the various counties of the eastern circuit, the commission of the peace remained their highest legal achievement. These men were used extensively by the king in non-judicial functions as commissioners to raise loans, to serve as administrators of oaths, array, and muster, and to inquire into the king's forests and waterways within their shires.<sup>3</sup> Yelverton and Prisote thus appear to have been exceptions to the normal justice of the peace, with aspiration in the legal field not shared, or at least not achieved, by most.

The office of justice of the peace appears to have carried with it the expectation of becoming a shire administrator. In a statute of

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<sup>1</sup>Cal. Pat. Rolls, 1452-1461, passim.

<sup>2</sup>Cal. Close Rolls, 1447-1454, p. 395; Dugdale, Summons, pp. 431, 441.

<sup>3</sup>Cal. Pat. Rolls, passim.

1440, it is revealed that the justices of the peace were not entirely competent in this area and the people of the shires would not be ruled or governed by them as they were of small behaviour.<sup>1</sup> To rectify the problem, the king ordered all justices of the peace who did not possess land or rents worth twenty pounds per annum to remove themselves from the peace commission. A similar problem regarding the judicial functions of the justices was documented in the same statute where the recording of malicious indictments, appeals and writs of conspiracy was complained of at the quarter sessions.<sup>2</sup> The actions of the justices of the peace in reference to their judicial function during the reign of Henry VI are concealed from direct analysis through the lack of peace rolls preserved during this time. The indictments from the sessions of the peace provided the majority of cases processed by the justices of gaol delivery, but whether these indictments accounted for all, or only part of the work of the justices of the peace remains equivocal. A study of the form of the peace commissions which included those of the reign of Henry VI, exposed the inconsistency and ambiguity of the powers exercised by the justices of the peace.<sup>3</sup> The commissions appear to give the justices of the peace the power to not only inquire, but also to determine felony cases. By statute, two men of the same county where they held the commission of the peace were to

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<sup>1</sup>18 Henry VI, c.11.

<sup>2</sup>18 Henry VI, c.12.

<sup>3</sup>R. Sillem, "Commissions of the Peace, 1380-1485," Bulletin of the Institute of Historical Research, X (1932), pp. 81-104.

be assigned to gaol delivery as often as was expedient.<sup>1</sup> This appears to be in direct conflict with an earlier statute which stated that no man of law could act as justice of assize or gaol delivery in his own county.<sup>2</sup> The question of whether or not the justices of the peace were determining felonies during the reign of Henry VI, and thus their connection with the king's appointed justices of gaol delivery is obscured by the conflicts in the commissions and the statutes.<sup>3</sup> The peace commissioners on the eastern circuit began to receive commissions of gaol delivery after 1449, but whether they were determining felony cases at the peace sessions cannot be stated from the present evidence. It is thus possible that both the justices of the peace and the king's assize justices were determining felonies during the period covered by the gaol delivery roll examined.

The panel of men commissioned by the king to deliver the gaols of the eastern circuit included John Cottesmore, justice of the common bench, Richard Weltden, a northern administrator, and John Fray, chief baron of the exchequer. John Fortescue envisioned the king's justices as sitting in the king's court from eight o'clock until eleven each morning, with the rest of the day spent in quiet contemplation upon the law.<sup>4</sup> The career of John Cottesmore provides a definite foil to this

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<sup>1</sup>17 Richard II, c.10, confirmed 18 Henry VI, c.11.

<sup>2</sup>8 Richard II, c.2, confirmed 13 Henry VI, c.2.

<sup>3</sup>B. H. Putnam, Early Treatises on the Practices of the Justices of the Peace in the Fifteenth and Sixteenth Centuries (New York, 1974), p. 88, n. 4.

<sup>4</sup>Fortescue, De Laudibus, p. 129.

idyllic portrait, as his activities in the legal sphere could have left little time for contemplation. The deliveries recorded on the eastern circuit roll were probably Cottesmore's last, as he died in the final months of 1439.<sup>1</sup> He was first appointed assize justice for the eastern circuit in 1422,<sup>2</sup> and in the same year Cottesmore was named commissioner of the peace for all the counties within the same circuit. He continued to hold both commissions until his death. Cottesmore was named to the common bench in 1429<sup>3</sup> and was appointed chief justice in January of 1438.<sup>4</sup>

Cottesmore first appeared as commissioner of the peace for the city of Oxford in 1418,<sup>5</sup> and remained as such throughout his career. Oxfordshire was the county where the greater part of his landed interests were located. Cottesmore acquired the manor of Brightwell, at Brightwell Baldwin sometime between the years of 1428 and 1431.<sup>6</sup> This manor appears to have been the family residence, with the Cottesmores presented regularly at the church of Brightwell Baldwin. A fifteenth century brass, eight feet long remains within the church to commemorate Cottesmore, his wife, and their eighteen children.<sup>7</sup> Although Brightwell was the family residence, Cottesmore acquired other manors

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<sup>1</sup>Foss, Biographia, p. 193.

<sup>2</sup>Cal. Pat. Rolls, 1416-1422, p. 407.

<sup>3</sup>ibid., 1429-1436, p. 5.

<sup>4</sup>ibid., 1436-1441, p. 229.

<sup>5</sup>ibid., 1416-1422, p. 458.

<sup>6</sup>V.C.H. Oxfordshire, viii, 46.

<sup>7</sup>M. Jessup, A History of Oxfordshire (London, 1975), p. 49.

throughout his career. In 1424, he was granted a charter to the manor of Donyngton in the county of Buckingham and to the manor of Diss in Norfolk with six others.<sup>1</sup> In 1425 Cottesmore received the charter to the manor Kyngston in Warwickshire with three others,<sup>2</sup> and acquired the quitclaim of one-sixth of the manor Sottewelle in Berkshire in 1428.<sup>3</sup> He also gained the quitclaim of one-seventh of the manor of Eselburg in Buckinghamshire in 1430,<sup>4</sup> and after he had purchased a licence, Cottesmore received the livery and issues of the manor Bokeland in Berkshire, which he held jointly with Thomas Chaucer.<sup>5</sup>

Cottesmore's activity regarding the acquisition of land, and his legal commissions, coupled with his frequent summons to parliament<sup>6</sup> as king's justice could not have left him much time to attain Fortescue's vision of the ideal justice. Richard Weltden is described on the gaol delivery roll as a justice of the king, although his qualifications in this capacity appear dubious. His career lends even less credence to Fortescue's description of the king's justices, since the records expose him as rarely exercising any other judicial functions apart from the assize and gaol delivery of the eastern circuit. Weltden was commissioned to the circuit as early as 1422,<sup>7</sup>

<sup>1</sup>Cal. Close Rolls, 1422-1429, p. 150; Cal. Pat. Rolls, 1422-1429, p. 211.

<sup>2</sup>Cal. Close Rolls, 1422-1429, p. 258.

<sup>3</sup>ibid., p. 444.

<sup>4</sup>ibid., 1429-1435, p. 56.

<sup>5</sup>ibid., p. 336.

<sup>6</sup>Dugdale, Summons, pp. 411, 412, 414, 417, 419, 422, 423, 426.

<sup>7</sup>Cal. Pat. Rolls, 1419-1422, p. 421.

the same year as John Cottesmore, with William Babyngton as the third member of the panel. In 1449, Weltden was commissioned to hold general sessions of oyer et terminer in Northumberland,<sup>1</sup> and served on a similar commission for Newcastle-upon-Tyne in 1450.<sup>2</sup> However, apart from these few judicial functions, Richard Weltden appears to have been utilized by the king as an administrator in the north rather than as a justice. In 1450 he served a commission inquiring into the sale of fish to the Scots, and fishing from the Tweed at illegal times,<sup>3</sup> and he was commissioned to the peace only once in 1455 for the county of Northumberland.<sup>4</sup> The offices held by Weltden also indicate his main function as administrative rather than judicial. In 1443 he was appointed receiver of the honour of Yorkshire<sup>5</sup> and in 1444 he received a similar office for two parts of the lordship of Richmond.<sup>6</sup> In 1452 Weltden received a grant from the king worth £10 annually as payment for his services as an officer of the great wardrobe.<sup>7</sup> He also served twice on commissions of inquiry into the state of the customs and waters of the Tyne,<sup>8</sup> probably due to his office of 'tronage et pesage'

<sup>1</sup>Cal. Pat. Rolls, 1446-1452, p. 270.

<sup>2</sup>ibid., p. 387.

<sup>3</sup>ibid., p. 389.

<sup>4</sup>ibid., 1452-1461, p. 673.

<sup>5</sup>ibid., 1441-1446, p. 229.

<sup>6</sup>ibid., p. 249.

<sup>7</sup>ibid., p. 28.

<sup>8</sup>ibid., pp. 177, 220.



for the port of Newcastle-upon-Tyne, granted to him in 1450.<sup>1</sup>

Weltden's position on the panel of gaol delivery justices is thus obscure, as what can be discovered of his career indicates his qualifications were largely those of a county administrator of the north rather than a king's justice of assize and gaol delivery. The one quality that commended him to the position was perhaps his impartiality regarding the legal process of the eastern circuit, with which he had no apparent personal connection.

The third member of the gaol delivery tribunal, John Fray was partnered with Cottesmore and Weltden for the assize of the eastern circuit in 1430, replacing William Babyngton.<sup>2</sup> In the same year Cottesmore and Fray were jointly commissioned to hold sessions of oyer et terminer in the counties of Buckingham, Hertford, Norfolk and Suffolk,<sup>3</sup> and they continued to serve together until Cottesmore's death in 1439. The career of John Fray, however, differed greatly from that of John Cottesmore in that Fray's major appointments and advancement came from his position in the exchequer rather than through the legal sphere of the justice. In 1426, Fray left his position as recorder of London to become third baron of the exchequer,<sup>4</sup> and was elevated to second baron in 1435.<sup>5</sup> He attained the office of chief baron one year later

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<sup>1</sup> Cal. Pat. Rolls, 1446-1452, p. 418.

<sup>2</sup> *ibid.*, 1429-1436, p. 68; Foss, p. 282.

<sup>3</sup> Cal. Pat. Rolls, 1429-1436, pp. 75, 132.

<sup>4</sup> *ibid.*, 1422-1429, p. 333.

<sup>5</sup> *ibid.*, 1429-1436, p. 452.

with an annuity of 100 marks and two pipes of Gascon wine.<sup>1</sup>

Prior to his career in the exchequer, Fray was commissioned to the peace for Hertfordshire in 1419 and 1422,<sup>2</sup> and this appears to have been his county of origin. At his death in 1461, Fray held six manors plus 642 acres of land in three blocks and diverse smaller plots throughout the county of Hertford.<sup>3</sup> He also held the manor of Sudbury in Bedfordshire and the manors of Greater and Little Wendon in Essex.<sup>4</sup> In 1428 Fray possessed the manor of Parkbury in Hertfordshire,<sup>5</sup> which he sold in 1436.<sup>6</sup> In 1438, he sold the manor of Burstow in the county of Hertford to St. Alban's,<sup>7</sup> so the monks could found a chantry to pray for the king's good health in life and his soul in death, and to hold services for John Fray and his heirs.<sup>8</sup> In 1437 he was granted the manor of Aber in Caernarvon for good services in the exchequer,<sup>9</sup> but this manor was not listed in the inquisition into the lands held by Fray at his death.

John Fray appears to have had a more personal connection with Henry VI than any of the other figures studied. In 1441, with John

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<sup>1</sup> Cal. Pat. Rolls, 1436-1441, p. 31.

<sup>2</sup> ibid., 1429-1436, p. 453.

<sup>3</sup> Calendar of Inquisitions Post Mortem, iv, p. 309.

<sup>4</sup> ibid., p. 309.

<sup>5</sup> Feudal Aids, ii, 429.

<sup>6</sup> V.C.H. Hertfordshire, iii, p. 30.

<sup>7</sup> ibid., ii, p. 425.

<sup>8</sup> Cal. Pat. Rolls, 1436-1441, p. 131.

<sup>9</sup> ibid., p. 50.

Somerset and John Langton, Fray made a grant of land to the king and his heirs for the foundation of the Royal College of St. Nicholas in Cambridge.<sup>1</sup> In 1446, Fray was licensed to found a chantry in the cathedral church of Canterbury,<sup>2</sup> and similarly in 1459, two years before his death, he was licensed to convert a priory in Roweney, Hertfordshire, into a chantry to sing masses for the king and queen and himself.<sup>3</sup> John Fray was named patron of the king's free chapel of Hastings in 1461<sup>4</sup> by Edward IV, indicating the recognition of his pre-eminence by the new king. Upon attaining the throne, Edward IV issued an order to the sheriffs of Middlesex and London to raise the money to pay John Fray £200 he had lent to the king.<sup>5</sup> Had he lived beyond 1461, the records suggest that John Fray would have been held in favour by Edward IV as he had been by Henry VI. Fray died in 1461 and was buried in the church of St. Bartholomew the Little in London.<sup>6</sup>

The gaol delivery tribunal which presided over the sessions of the eastern circuit was thus comprised of John Cottesmore, a justice of apparently extensive legal talents who was elevated to the position of chief justice of common pleas, Richard Weltden, a local northern administrator, and John Fray, a Hertfordshire magnate and official of

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<sup>1</sup> Cal. Pat. Rolls, 1436-1441, p. 522.

<sup>2</sup> ibid., 1446-1452, p. 21.

<sup>3</sup> ibid., 1452-1461, p. 503.

<sup>4</sup> ibid., 1461-1467, p. 22.

<sup>5</sup> Cal. Close Rolls, 1461-1471, p. 11.

<sup>6</sup> Foss, Biographia, p. 282.

the king in the capacity of chief baron of the exchequer. These three men were commissioned to process the indictments generated by the justices of the peace at the quarter sessions, and by the coroners at their inquests. With this brief outline of the careers of a few of the legal personnel involved in the gaol delivery sessions completed, it becomes apparent that the legal administrative structure depended upon the qualities of the men supporting it for effectiveness both at the county level and from the perspective of the king's justices. The men involved in the application of the king's law were frequently also pursuing personal interests through the patronage of a noble lord, or perhaps even the king himself.

### III. THE FELONIES

The gaol delivery roll of the eastern circuit for the years 1437-1439 contains 196 entries for theft, representing 216 felons accused on 269 counts. The theft indictments presented at the sessions far outnumbered all other felony charges combined. The majority of the felons who appeared before the king's justices were generally classified as labourers, husbandmen, or small tradesmen, with yeomen presented for trial only seven times, and women accounting for only eight of those indicted. Out of sixty-seven convictions for theft, only seven felons were assessed as having goods to forfeit to the king. The lower class position of those indicted and who appeared before the gaol delivery justices is thus attested to by their classification on the roll, and is further evidenced by the lack of goods to forfeit.

The overall conviction rate for theft in the eastern circuit during the time covered by the roll examined was 31 per cent, but this figure varied greatly from county to county. Bedfordshire had the highest conviction rate at 56 per cent and Suffolk the lowest at 16 per cent, with the county of Buckingham above the average at 41 per cent. Cambridgeshire and Norfolk juries convicted 33 per cent of the felons tried, and the county of Huntingdon sessions produced convictions 31 per cent of the time. The wide discrepancy between Bedfordshire and Suffolk cannot be considered as evidence of long term attitudes towards

law in those counties, but does reflect a distinct regional variance for the time period considered. The justices of gaol delivery remained the same for all the counties from 1437 to 1439, and thus the diversity of the conviction rates most likely reflects the attitudes of the jurors in the regions, unaffected by personnel changes in the king's judicial tribunal. Conviction for any felony in the fifteenth century carried a sentence of death by hanging, along with forfeiture of all goods to the king. However, only fifty-one of the sixty-seven people who were found guilty of theft in the sessions examined were ordered to be hanged, with the remaining sixteen claiming either benefit of clergy or pregnancy. Thus of the two hundred and sixteen indicted felons, roughly three out of four escaped capital punishment.

The indictments entoled in the gaol delivery records offer a possible source for research into the nature of the fifteenth-century law of theft. In a fourteenth-century study of a Cambridgeshire gaol delivery roll it was tentatively suggested that the use of the verb 'furari' denoted simple larceny, or the removal of a person's goods. The verb 'burgare' distinguished burglary, a theft accompanied by breaking and entering a building, while the verbs 'depredare' or 'roberia' were used on the indictments to specify a theft accompanied by assault.<sup>1</sup> The ability to determine whether the fifteenth-century legal code recognized felony theft in terms of these three categories is hampered by the lack of varying punishments for a felon convicted as a robber, a burglar, or a common thief. The indictments proffer no evidence to

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<sup>1</sup>E. G. Kimball, A Cambridgeshire Gaol Delivery Roll, 1332-1334, (Cambridge, 1978), p. 9.

suggest that the degree of severity of a crime was increased by additional circumstance surrounding it. The use of any other verb than 'furari' is extremely rare in the theft indictments contained in the fifteenth-century gaol delivery roll examined, with 'roberia' appearing only three times and 'deburgare' used only on two occasions, describing the breaking of a grange in both cases. These rare instances of a change in form of the indictments probably represent regional anomalies, and are too infrequent in the fifteenth-century roll to indicate a general recognition of varying types of theft.<sup>1</sup> Instead, the theft indictments on the roll indicate a standardized form used in the eastern circuit which combined the elements of the three forms of theft noted in the fourteenth-century indictments. The felon was normally indicted for breaking and entering the close and home of the victim and feloniously stealing, 'felonice furatus fuit', incorporating the ideas of simple larceny and burglary into one form. Occasionally the verb phrase was augmented with additional verb pairs such as 'cepit et abduxit', or 'cepit et asportavit', usually when livestock was stolen. The use of 'furari' alone was most common in denoting theft, whether it was a 'per nocte' theft or a daytime crime. Theft accompanied by assault was normally indicated on the indictments as two separate actions, with the verb phrase used to describe the actual theft the same as in straight theft cases. The gaol delivery theft indictments thus offer little evidence to suggest the recognition of any substantive difference between

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<sup>1</sup>T. F. T. Plucknett, "An Analytical Index to the Indictments", Putnam, Proceedings, p. cxxxvi.

the forms of theft, with the variations in form which do exist indicating little more than the fulfillment of the requirement for the location of the crime being included on the indictment.

The type of goods stolen and their value was also included on the indictments. It is possible that a study of the relative value of what was stolen could offer useful information to an historian studying the economics of the reign of Henry VI, but such a study would be confronted with anomalies like a grey horse worth 2 shillings contrasted to a grey horse worth 40 shillings, or one ewe valued at 2 shillings with seven pregnant ewes worth 10 shillings. Lacking such a study, several general statements may be made concerning the goods most commonly stolen. The favourite prey of the thief was livestock, with horses stolen twice as often as cattle. Greater numbers of sheep were stolen, but normally in flocks of five to seven at one time. This type of theft may have been very difficult to prove in that common pasture rights, and the habit of enclosing sheep together in one fold for security could have caused confusion when claims of ownership were made. Although the number of sheep a man owned may not have been in doubt, which sheep he claimed could have lead to a theft charge.

Household goods, including tools, coins and cloth goods, jointly hold second position for the most likely targets of a prospective thief. There seems to have been a large amount of silver and brass, worked into jewellery and pots respectively, that attracted thieves. The type of clothing stolen was most often moderately expensive robes, caps and tunics, with the cloth goods tending to be full measures of either linen or wool. These chattels would have been difficult for a labourer or



husbandman to claim as his own, and were most likely intended for sale or barter by the thief. Coins were always the goods stolen in the case of assault and theft, and were often included with other household items on a break and enter indictment. They were not commonly the sole item stolen by a thief entering a house, unless the amount was greater than 40 shillings and the coins contained in a coffer. The ease of carrying and concealing coins made them an ideal target.

In general, the goods stolen reflected the needs of the class of people accused of stealing them. Livestock was essential to the rural worker, both for food and transportation of goods to market or elsewhere. The goods stolen for sale or barter perhaps reflect a superior mode of thievery which in turn required a market for the disposal of these goods. The methods used to dispose of stolen goods after the execution of the crime have been outlined for the first half of the fourteenth century,<sup>1</sup> and the fifteenth-century gaol delivery rolls offer little further information in this area. However, one fact about the goods stolen that seems odd, particularly for this time period is the relatively few thefts of corn and grain. The years 1437 and 1438 were reportedly devastating farm years due to frosts which lasted up to seven months.<sup>2</sup> The king issued commissions for Buckinghamshire and Kent in December of 1439 to inquire into hoarders of wheat and corn who continued

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<sup>1</sup>B. Hanawalt Westman, "A Study of Crime in Norfolk, Yorkshire and Northamptonshire, 1300-1348", (unpublished Ph.D. thesis, University of Michigan, 1970), pp. 189-193.

<sup>2</sup>Brut Chronicle, pp. 470, 472.

the practice "notwithstanding the dearness and scarcity . . . for no small time in this realm owing to the bad weather."<sup>1</sup> Similar commissions were issued for the counties of Leicester, Cambridge, Huntingdon,<sup>1</sup> Stafford and Warwick in January of 1439 due to a severe drought which caused poor crops.<sup>2</sup> A licence granted to an Essex landowner in the same year for the purchase of 140 quarters of corn in Norfolk and Suffolk<sup>3</sup> indicates that Essex was also suffering from insufficient crops, but also suggests that Norfolk and Suffolk were considered to have a surplus, in spite of the problems elsewhere. While this may explain the rarity of the theft of grain in these two counties, three other counties of the eastern circuit, Buckingham, Huntingdon, and Cambridge received special commissions to inquire into the problem of poor crops. One could expect that under these economic pressures the thefts of grain would rise unless the scarcity was so great that there was little opportunity to abscond with such goods.

The justices of gaol delivery also tried felons charged with rape, homicide and treason, with rape appearing as the second most common crime dealt with on the eastern circuit roll. In her study of a fourteenth-century gaol delivery roll, Elizabeth Kimball suggested that the use of the verb 'rapuit' in conjunction with the phrase 'vi et armis et contra pacem' instead of the adverb 'felonice' implied that the 'rapuit et abduxit' was treated as a trespass rather than a felony charge.<sup>4</sup> The

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<sup>1</sup>Cal. Pat. Rolls, 1436-1441, p. 266.

<sup>2</sup>ibid., p. 268.

<sup>3</sup>ibid., p. 348.

<sup>4</sup>Kimball, Cambridgeshire Gaol Delivery, p. 8.

verb 'rapuit' was related more closely by juries to the idea of 'abduxit', or abduction, which was a trespass, rather than the statutory felony, rape. The trying of rape indictments at gaol delivery, traditionally viewed as a felony court, lends doubt to this suggestion. By the early fifteenth century, the rape indictments from the peace sessions did not include the trespass phrase 'vi et armis et contra pacem', but used instead the phrase 'felonice rapuit'.<sup>1</sup> The fourteenth-century peace rolls reserved the distinction of rape as a felony for the marginalia, and did not incorporate the word 'felonice' in the actual indictment.<sup>2</sup> The fourteenth-century gaol delivery enrolments probably included only the indictment and not the word 'felonia' from the margin, thus creating the appearance of rape as trespass due to documentary illusion. The change in the form of enrolling rape charges in the peace rolls to include the phrase 'felonice rapuit' in the fifteenth century seems to remove any confusion regarding the treatment of the crime as felony. The indictments for rape included on the eastern circuit roll, 1437-1439, contain both the trespass phrase and 'felonice rapuit' as the standard form. This conjunction of the 'vi et armis' clause with a felony charge was not unique to rape indictments in the eastern circuit, but was also normally joined with 'felonice furatus fuit' and 'felonice interfecit'. The suggestion put forth by Kimball that the wording of the rape indictment implied its treatment as a trespass may seem plausible

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<sup>1</sup> Putnam, *Proceedings*, pp. 308, 319, 320, 324, 326, for examples from the extant peace rolls, 1409-1414, of this form of use.

<sup>2</sup> *ibid.*, p. 290.

for the fourteenth century, but the trend in all felony indictments, including those for rape, in the fifteenth-century roll examined was to join the 'contra pacem', or king's trespass, phraseology with the forms of the felony charges.

The gaol delivery roll of the eastern circuit contains 25 entries for rape representing 27 felons facing 27 counts of rape. All cases appear to have been treated by the juries as felony charges in their pronouncements on the guilt of the felons so accused.<sup>1</sup> While the 'rapuit' cases on the rolls indicate that the offence was definitely treated as felony rape, it does not appear to have been given much credibility as such, with the 27 charges put forth producing no convictions. It is possible that this phenomenon of felony conviction rates could be attributed to the fact that an all male jury may have been reluctant to send a man to the gallows for this offence. A Bedfordshire jury was swayed by the plight of a rape victim, however, as one homicide case shows the jury accepting a plea of self-defence for the killing of a Frenchman by the girl he was in the process of raping.<sup>2</sup>

One surprising feature of the rape cases studied is the type of felon most often named as the offender. Of the twenty-seven men so charged, twenty-one were members of the lower clergy, including rectors, chaplains and parsons. Rape, it seems, was the cleric's felony. Such an impression reflects the satiric portrait of Geoffrey Chaucer's

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<sup>1</sup>The standard response of the jury in delivering a verdict "(non) est culpabilis de feloniam predicta", was maintained for the rape cases as for all felonies.

<sup>2</sup>P.R.O., JI/3/210, m.29d. The jury decided the homicide victim had feloniously raped Joanna Chamberlain, for which reason he died. Vide infra p. 51.

monk, "that lovede venerie",<sup>1</sup> or the Friar who made "ful many a marriage/ Of yonge women at his owene cost."<sup>2</sup> The high incidence of clerics charged with rape may indicate an antagonism toward the lower clergy, perhaps due to their position as tithes collectors for the parish.

Apart from the general tendency of charging the lower clergy with rape, there is also reason to believe that the number of felons so charged was inordinately high, based on the regional distribution of the indictments. Suffolk accounted for seventeen of the twenty-seven men who appeared before the gaol delivery justices on rape charges, with the other five counties producing only ten such felons between them. The county of Norfolk presented more felony indictments than the rest of the counties combined, but reported only two cases of rape over the three years studied. The tendency of Suffolk during this time to produce such a comparatively high number of felony rape charges may indicate a regional trend within the county, or a specific attempt by the justices of the peace in Suffolk to encourage such presentments. While the actions at the peace sessions may explain how the county produced the rape indictments, the reasons why the charge had such popularity in the county remain hidden.

The third most common felony recorded on the gaol delivery roll was homicide, with seventeen reported incidences involving twenty-one felons. Only thirteen of these cases involved only a homicide charge, with four combining indictments for theft also. In order to view the

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<sup>1</sup>Geoffrey Chaucer, Canterbury Tales (Everyman, 1958), l. 166.

<sup>2</sup>ibid., ll. 212-213.

treatment of homicide by medieval juries, without the factor of a dual charge as an influence, only the simple homicide indictments will be examined. The felons who appeared before the gaol delivery justices were presented to the court by three different methods. Two of the felons were arrested on suspicion of homicide by the sheriff, and upon arrival at gaol delivery were immediately appealed. One man and his wife were taken on suspicion in a similar manner, but were subsequently indicted by a coroner prior to gaol delivery. Of the ten remaining indictments, six were issued by the justices of the peace and three by county coroners, with one felon indicted by both a coroner and a justice of the peace. The thirteen felons presented for delivery on these various homicide charges appear to have faced less sympathetic juries than their thieving counterparts, with nine found guilty, indicating a high conviction rate of 69 per cent.

The indictments issued by the coroners in cases of homicide offer the most detailed accounts of the actual crime, including information obtained upon the view of the body and brought forth in the inquest. The view provided information regarding the wounds inflicted by the assailant and the type of weapon used, as exemplified in one of the entries on the gaol delivery roll. Emma Mollyng a spinner in Suffolk was indicted before two county coroners at their view of the body of John Madelyn. Emma, with an instrument called a "rasour", valued at fourpence, feloniously cut the victim, inflicting a wound five inches long and one inch wide while attempting to shave his beard.<sup>1</sup> The type of weapon and

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<sup>1</sup>P.R.O., J1/3/210, m.19d.

its value were required information in the case of a killing, as it was considered forfeit to the king.<sup>1</sup> A second coroner's indictment displays the added detail of the circumstance surrounding a homicide obtained at the coroners inquest. William Joye of Marham, Suffolk was indicted before Thomas Crussebut, king's coroner, at his view of the body of John Warrok. William apparently broke into the house where John was staying and assaulted him with a candelabra which he carried in his left hand. After beating his victim in diverse parts of the head, William drew a knife from his belt and stabbed John in several places so that the blood flowed from his heart and he died.<sup>2</sup> The detailed account of the actions of William Joye was probably supplied at the coroner's inquest and was then incorporated into the indictment presented to the justices of gaol delivery. In contrast, an indictment issued by William Yelverton, justice of the peace for Norfolk, regarding the same crime offers little information regarding the crime itself. The indictment merely stated that William Smyth, alias Joye, entered the home of one John Miller then assaulted and feloniously killed John Warrok.<sup>3</sup> The existence of two indictments for the same crime was not an uncommon feature of the gaol delivery roll. What is interesting to note is the dearth of information in the indictment issued by William Yelverton, justice of the peace in comparison to that of Thomas Crussbut, king's coroner.

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<sup>1</sup>R. F. Hunnisett, Calendar of Nottinghamshire Coroner's Inquests, 1485-1558 (Nottingham, 1969), p. vii.

<sup>2</sup>P.R.O., JI/3/210, m.10.

<sup>3</sup>ibid., m.9d.

In this case, the peace session indictment appears to stand on its own, bearing little resemblance to the coroner's indictment for the same crime, except that what little information it gives does not conflict with that of the king's coroner.

A second indictment of William Yelverton's bears a closer resemblance to a coroner's indictment. The homicide charge was directed against one John Folsham, a Norfolk husbandman who allegedly entered the home of Alex atte Green and feloniously beat him about the head with a staff called a "sysul", valued at sixpence, and twelve inches by five inches in dimension. In this manner, John Folsham "felonice interfecit et murdravit" Alex atte Green.<sup>1</sup> This indictment, although attributed to the justice of the peace contains information normally obtained by the coroner at his view of the body and the inquest. It is not the sparse form displayed in the first justice of the peace indictment cited which more closely matches the style of the theft and rape indictments examined. The variant forms of the indictments for homicide appears to indicate that the justices of the peace in the eastern circuit were sometimes inquiring into homicides at the quarter sessions without the use of a coroner's information; and at other times, such as in the case of the second indictment cited, the information from the coroner's view and inquest was apparently available when the indictment was framed. Although it may be possible that the justice of the peace presided at the view and inquest alongside the coroner, it seems unlikely since the

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<sup>1</sup>P.R.O., J1/3/210, m.5.



name attached to these indictments was that of the justice. This privilege was expressly denied to the justices of the peace in an early sixteenth-century tract by Thomas Marowe which stated:

"Et encore le coroner ne poet retourner cest  
Inquisicion deuaunt eux mez deuaunt Justice dassize  
en leur cessions, mes il couient al coroner destre  
la. . . ."

The inquests and the peace sessions were regarded as separate courts, with the officials of each performing separate duties. However, the justices of the peace were empowered to ask the coroner to attend the peace sessions, and it seems most likely that the indictments presented to the justices of gaol delivery which contained information from inquests were drafted from rolls submitted by the coroner to the justices at the quarter sessions.

A felon who committed homicide thus appears to have been subject to indictment either by the coroner or a justice of the peace, and also at times by the two king's officials working in conjunction. A third method of bringing a homicide culprit into gaol delivery court which did not involve indictment by a coroner or a justice of the peace is exemplified by the two felons arrested on suspicion, who were ultimately appealed formally in front of the justices of the king. The first, Thomas Chohan of Suffolk was taken on suspicion for the death of one Thomas Guerard of Wykham brook. Upon presentation to the justices of gaol delivery, he was immediately appealed by the widow of the slain man

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<sup>1</sup> Thomas Marowe, "De Pace Terre et Ecclesie et Conservacione Eiusdem", Putnam, Early Treatises, p. 363.

who stated that Thomas Conan lay in wait for her husband in a field, and with a "clubbistaff", inflicted two blows, against the peace and dignity of the crown, and feloniously killed him.<sup>1</sup> In the second appeal case, Richard Faryngdon, a tailor was arrested on suspicion of homicide, but the name of the alleged victim was not specified. He too was immediately appealed by the widow of the slain for feloniously stabbing her husband in diverse parts of his chest with a "daggere", thus plaguing him mortally.<sup>2</sup> Although the gaol delivery enrolments for these two cases lend the impression that the two culprits were arrested on suspicion of felonious homicide, it seems unlikely that the sheriff would bother to detain these two felons without some grievance filed against them, whether by complaint or formal appeal.<sup>3</sup> In the first case cited, where the specific homicide for which Thomas Chonan was arrested on suspicion is stated, this seems most likely.

Apart from the variety of methods available by which a homicide could be brought to gaol delivery, the homicide indictments on the roll offer two other points of interest by the nature of the cases themselves. The first entry to be examined is a Bedfordshire acquittal granted on the grounds of self-defence. Joanna Chamberlain, a servant and "singlewoman" was indicted before a county coroner for the slaying of Eborard Legard, a Frenchman. Legard, at the home of Joanna's employer, feloniously raped Joanna while holding a knife, with which he intended

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<sup>1</sup>P.R.O., JI/3/210, m.15d.

<sup>2</sup>ibid., m.29.

<sup>3</sup>Vide infra, p. 67.

to kill her. Joanna, "pro se ipse defendendo", took a candelabra valued at one penny, in her right hand and in this manner, killed her assailant.<sup>1</sup> The jury gave a verdict of not guilty and stated that Legard had feloniously raped Joanna for which reason he died. Joanna was subsequently released by the justices upon the pronouncement of the jury. What seems odd about the case is the failure of the court to remit Joanna to prison to await the king's pardon, which was necessary and yet automatic in self-defence cases.<sup>2</sup> On this point, the verdict of the jury in Joanna's case is crucial, as it was only necessary to obtain a pardon upon conviction. Thus, while the jury in an added comment, which was an uncommon occurrence, expressed the belief that Joanna had killed the Frenchman, by delivering a not guilty verdict the jurors had saved her the necessity of obtaining a pardon. It is this type of jury behaviour in homicide cases that has been considered as one of the main deterrents to the development of a substantive law of homicide in the fifteenth century.<sup>3</sup> By acquitting such slayers as Joanna, juries eliminated the necessity of judicial reviews of questionable cases, which may have resulted in more specific statutory recognition of varying degrees of culpability in homicide.

The second case of interest is again from Bedfordshire, and presents a peculiarity that has proved baffling. William atte Halle, a labourer,

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<sup>1</sup>P.R.O., J1/3/210, m.29d.

<sup>2</sup>Putnam, Proceedings, pp. cxlvi-cxlviii; N.D. Hurnard, The King's Pardon for Homicide Before A.D. 1307 (Oxford, 1969), pp. 70-74.

<sup>3</sup>T. A. Green, "The Jury and the English Law of Homicide, 1200-1600," Michigan Law Review, vol. 74 (1976), pp. 452-456.

was indicted before the justices of the peace for administering a mortal poison, "arsenyk", to his wife Alice. He began to give her the poison on the 7 May, 1439, causing her death eleven days later.<sup>1</sup> When put to the country, William was found guilty, and sentenced to be drawn to the gallows and hanged. This punishment was normally meted out only to felons convicted of treason such as arson or counterfeiting the king's coin. William's case appears to be a simple homicide, but the sentence received does not reflect its treatment as felony by the justices. It is possible that William once acted as Alice's servant prior to their marriage, which would make the killing petty treason instead of homicide.<sup>2</sup> However, the indictment for this case does not use the word "proditore" to describe the killing, which was used to denote the treason indictments contained in the gaol delivery roll, in place of the word "felonice". Instead the indictment uses only the single phrase "felonice interfecit", and is devoid of all phrases such as, "ex malicia precogitata", which were frequently used to emphasize the seriousness of the crime. The sentence passed by the justices of gaol delivery in this case is thus an anomaly, perhaps indicating some societal revulsion to the use of poison as a weapon.

Although the strictures of the felony law process and the scant information on homicide contained in the gaol delivery roll provide little assistance in determining the nature of fifteenth century

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<sup>1</sup>P.R.O., JI/3/210, m.31.

<sup>2</sup>Marowe, "De Pace", Putnam, Early Treatises, p. 379.

homicide law, the high conviction rate for this type of crime and the behaviour of the jury in the case of Joanna Chamberlain suggests that the jurors at the gaol delivery sessions held a harsh opinion of the offence, and yet were capable of giving acquittal in cases where the law offered too little leeway. The varying forms of the indictments display the growth in prestige of the office of the justice of the peace exemplified by the number of indictments for homicide generated at the quarter sessions. The coroner was traditionally the official who handled homicide cases, but the gaol delivery indictments expose the inroads made by the justice of the peace in this sphere.

In addition to indictments for felony offences such as theft, rape and homicide, the justices of gaol delivery tried those people indicted for treason. In a statute of 1429,<sup>1</sup> arson was declared high treason in response to a complaint from the commons regarding the town of Cambridge and the counties of Kent and Essex. At the time, lawless men in these areas were threatening to burn dwellings if the owners did not pay a ransom to prevent it. The intended victims were informed of their fate by an anonymous bill, which was posted by the blackmailer. The statute seems to have made only this kind of arson high treason, that is, arson accompanied by blackmail, however the practice displayed by the three arson cases contained in the eastern circuit roll indicates that all burnings of buildings were being tried as treason by the year 1436. In the first case, Margaret Cory, the wife of a Norfolk yeoman was indicted before William Yelverton for five separate arson offences

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<sup>1</sup>8 Henry VI, c.6.

occurring between September 13, 1435 and July 19, 1436.<sup>1</sup> The indictment specified that Margaret feloniously entered the buildings with fire and treasonably burned them. In this manner she intended to kill the inhabitants of four of the dwellings by having them consumed in the fire. The linking of arson with attempted homicide was consistent in all three arson indictments, but no homicide appears to have been successful. Whether or not the intent of the arsonists was to kill the inhabitants within the buildings or not is a debatable point. The arson indictments included the phrase "vi et armis et contra pacem. . .ex malicia precogitata" which appears regularly on the felony indictments in cases of homicide or theft accompanied by assault ostensibly to denote a crime against the person and not just property. The use of the phrase seems more due to formal standardization of the indictments in the eastern circuit rather than an attempt to imply the intent of a criminal.

Margaret Cory was acquitted by the jury, as was a second female charged with arson at the Suffolk sessions.<sup>2</sup> The felon named on the third indictment, a servant of Norfolk, was convicted of treason for entering a bakehouse and a "wenynghous" with fire and treasonably burning them to the ground.<sup>3</sup> These were distinguished as out-buildings on the indictment, and not the main dwelling house, but the accusation of attempted homicide was maintained in spite of the unlikelihood of anyone being inside. The sentence passed upon the felon included being drawn to the gallows and then hanged. The punishment for treason distinguished

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<sup>1</sup> P.R.O., JI/3/210, m.1d.

<sup>2</sup> *ibid.*, m.18.

<sup>3</sup> *ibid.*, m.5.

the traitor from the normal felon in that it included degradation along with capital punishment.

A fourth case enrolled on the gaol delivery records examined contains a charge of intended arson in connection with a theft indictment. Richard Johnson, a Norfolk labourer, was indicted for entering the home of Matilda Reynes and stealing goods valued at 30 shillings. On the same day, he entered her hall with fire and intended to kill and burn out Matilda.<sup>1</sup> Richard was convicted by the jury and sentenced to hang by the justices. It appears that he was convicted on the felony theft charge by the sentence received, suggesting that the arson was perhaps unsuccessful. An attempt to commit treason or felony was not considered a culpable offence in the fifteenth century. The idea of intent to commit a crime was not combined with the actuality of the crime itself as no substantive law prevailed.

A second treason offence tried before the justices of gaol delivery was counterfeiting the king's coin. Of the six men so charged, four were convicted and one remitted to gaol until the next delivery, with only one felon acquitted. Counterfeiting the king's coin had probably been considered treason since the time of the Saxon kings,<sup>2</sup> and the conviction rate of 80 per cent, based on the five determined cases indicates that the juries of the eastern circuit were inclined to deal harshly with the crime. The one felon that was acquitted for counterfeiting was convicted on a homicide charge and successfully pleaded

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<sup>1</sup>P.R.O., JI/3/210, m.7.

<sup>2</sup>J. G. Bellamy, The Law of Treason in England in the Later Middle Ages (Cambridge, 1970), p. 2.

benefit of clergy.<sup>1</sup> Thus none of the felons indicted for making false coin left their trial as free men. The final outcome of the case against John Rous, a Suffolk yeoman, is not contained on the eastern circuit roll. Prior to the sessions of gaol delivery, he was convicted by two Suffolk commissioners of oyer et terminer for diverse transgressions and felonies committed within the county, and subsequently pleaded benefit of clergy. However, a new indictment charging Rous with counterfeiting the king's coin was presented to the gaol delivery justices and since treason offences were not clergyable, John Rous should have faced trial. He was not tried at the session when he was presented, but was released to the ordinary and remitted to the bishop's prison with the stipulation that he return for the next delivery to answer the counterfeit indictment.<sup>2</sup> It is not stated on the roll why the justices delayed the processing of the case against John Rous and instead released him to the ordinary. Possibly he was granted time by the justices for compurgation of the homicide conviction before facing a jury on the treason charge.

The counterfeit indictments appear to have followed a standard form in the eastern circuit and were distinguished by the verb phrase "proditore tondebat et contrafecit" or "proditore contrafecit et fecit" in conjunction with "ad similitudinem bone et legale monete Anglie" or "contra pacem coronam et dignitatem suam". Simulating the king's coin was considered an act against the regalian dignity, and thus

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<sup>1</sup>P.R.O., JI/3/210, m.13d.

<sup>2</sup>ibid., m.15.



treasonous, as the production of false coin included the creation of a debased image of the king. Destruction of the king's coin, and therefore his image, does not appear to have constituted treason. The eastern circuit roll contains an indictment against a baker and a barber of Suffolk who allegedly stole £40 in coins and then proceeded to melt down the money.<sup>1</sup> The adverb "proditore" was not utilized in the indictment to indicate that this action was regarded as treasonable. Instead, "felonice" was used to describe the offence, and probably referred to the actual theft of the goods which constituted a felony. Therefore, it would seem that while the melting of coins was an affront to the peace and dignity of the crown, the actual creation of a false image of the king was required for the offence to be considered as treason. The trial of the barber and the baker focussed on the felony theft, with the action of melting the coins perhaps added to make the crime sound worse in order to sway the jury toward conviction.

The panel of gaol delivery justices also had to deal with cases of non-appearance of felons due to the negligence of county officials or gaol deaths prior to delivery. The eastern circuit roll contains only two instances where a felon died in gaol before the arrival of the justices.<sup>2</sup> Both died in the Norwich gaol while detained on suspicion of felony, and in each case the cause of death was stated as "ex infirmatate naturali et pestilencia". In cases of gaol death, the coroner was responsible for pronouncing the reason why the felon died to

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<sup>1</sup>P:R.O., JI/3/210, m.20.

<sup>2</sup>ibid., mm.3, 10d.

the justices of gaol delivery. Gaol fever was consistently listed as the cause of death in such cases, probably without a view of the body taking place as the coroners had no wish to risk infection.<sup>1</sup>

Escape from prison or from the town stocks was another reason for the non-appearance of felons at gaol delivery. The official responsible for the escape was then examined by the justices to explain the absence. Information regarding escapes was probably collected by the justices of the peace at the quarter sessions and delivered to the justices along with the indictments. Three prisoners escaped from the custody of county sheriffs and in each case the fine was 100 shillings. It is interesting to note that the three felons were two gentlemen and a yeoman and as such belonged to a class rarely tried at gaol delivery. The amount of the fine assessed against the sheriffs responsible for the escapes was the normal scale, although higher fines could be handed down by the justices. A porter of the gaol of Bury St. Edmunds was fined 100 marks for allowing an escape, but this was later reduced to the more common 100 shillings by letters patent from the king when the porter re-captured the missing man.<sup>2</sup> In cases when a higher assessment was made by the justices it is probable that assistance by the offending official in the evasion was suspected. In cases where the county agent was accused of assisting in the escape of a felon a formal indictment was drafted and the offender tried. The gaol delivery roll contains three cases involving five constables who were indicted by Bartholomew

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<sup>1</sup>Hunnisett, Calendar, p. iii.

<sup>2</sup>Cal. Pat. Rolls, 1436-1441, p. 240.

Brokesby for accepting bribes from prisoners detained in the stocks and allowing them to escape. Four of the constables were released "sinedie" as the jurisdiction of Brokesby's office as steward did not extend to the towns where the escapes occurred, and the fifth was acquitted of the charge. The escapees included two gentlemen, a yeoman, and the wife of a yeoman. Constables were responsible for detaining felons in the stocks or in their home until such time as the sheriff or bailiff could take custody.<sup>1</sup> The felons who purportedly escaped the stocks had all spent two or more days in confinement which was probably an experience unpleasant enough to encourage attempts to gain release.

One other case of non-appearance recorded on the eastern circuit roll occurred in Bedfordshire. Thomas Warner, a husbandman from Northamptonshire, was indicted for diverse transgressions and felonies at a session of oyer et terminer prior to gaol delivery. He was released on bail, or mainperned, with Thomas Moorton a Bedford gentleman and Thomas Dalton, a yeoman of the same, acting as sureties bound under penalty of £10 each to produce Warner at the gaol delivery sessions.<sup>2</sup> If an indicted felon could obtain men to act as sureties for his good behaviour, the justices of the peace were empowered to release him rather than place him in gaol while he awaited delivery before the king's tribunal.<sup>3</sup> When Thomas Warner did not appear for trial, his

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<sup>1</sup>H. M. Cam, "Shire Officials: Coroners, Constables and Bailiffs", English Government at Work, p. 170.

<sup>2</sup>P.R.O., JI/3/210, m.31.

<sup>3</sup>Sillem, "Commissions of the Peace, 1380-1485", BIHR, X (1934), p. 86.

mainpernors were ordered to forfeit £10 each and to produce him at the next session.

In each case when a felon did not appear for delivery as expected, someone was always held responsible to explain the reason or to face a heavy fine. The precept sent out prior to the arrival of the justices ordered the presence of most of the county administrators and their records regarding felons. The coroner was required to report gaol deaths, the sheriff was held accountable for prison breaks, constables were responsible for escapes from the stocks and mainpernors forfeited their sureties if the felon did not show. The prisoners who did appear for trial before the justices on charges of treason or felony were processed according to the rigid legal code of the times.

#### IV. APPEALS

The form and intent of the appeal does not appear to have altered remarkably from the time of the general eyre up to the fifteenth century. With the growth in popularity of the process of indictment, the appeal became less frequent, and the lack of usage seems to have left the procedure relatively static throughout the later medieval period. Appeal was the accepted method of acquiring justice at law until the advent of the indictment, and was essentially an accusation directed to the court by the victim of a crime. By the fifteenth century the indictment had removed most felony charges from the realm of personal accusation by appeal to the suit of the king and country. The development of the indictment effectively established the concept of prosecution by the state rather than the individual. The popularity gained by the indictment over appeals can be attributed to the fact that the newer procedure presented no risk factor to the victim of a crime, and little effort. Appeals carried a fine of six shillings and eight pence if unsuccessful, and default in appearance by the appellant before the process was completed meant an automatic amercement for false appeal.<sup>1</sup> The king, with his network of legal officials and justices at both the county and national levels, was technically better equipped to detain

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<sup>1</sup>C. A. F. Meekings, Crown Pleas of the Wiltshire Eyre, 1249 (Devizes, 1961), p. 71.

and bring the felon to prosecution than was the individual appellant.

The gaol delivery roll of the eastern circuit contains twenty-six entries, that contain appeals, representing twenty-nine felons facing thirty-three charges, including five homicides. In spite of the decline in popularity of the appeal, these entries indicate that it still served a purpose in the fifteenth-century trial system. The outcome of the cases which were prosecuted by an individual indicates a conviction rate of 93 per cent, with only two felons acquitted. The main intent of the appellants in using this procedure appears to have been to gain a conviction, a suggestion which was also noted regarding thirteenth-century appeals<sup>1</sup>. By appealing a felon, the victim of a crime could remove the case from the county court level and guarantee processing of the felon before the king's justices of gaol delivery. Commissioners of the peace were given the power to determine felonies at the suit of the king only,<sup>2</sup> and thus could not receive appeals at the quarter sessions. Thomas Marowe's tract on the powers of the justices of the peace reiterated this point clearly:

Si homme voille entre appelle de Felonie ou  
murdre deuaunt lez Justicez de peas sur une  
enditement de felony ou murdre que est deuaunt  
eux ou deuaunt le coroner, lez Justicez de peas  
ne ont ascun poiar de tener plee sur cest  
appelle ...<sup>3</sup>

The hearing and recording of all appeals was the duty of the king's coroner at the county court level,<sup>4</sup> and his attendance was mandatory at

<sup>1</sup> Meekings, Crown Pleas, p. 70.

<sup>2</sup> Putnam, Proceedings, pp. cvi-cvii.

<sup>3</sup> Marowe, "De Pace", Putnam, Early Treatises, p. 406.

<sup>4</sup> Hunnisett, Medieval Coroner, p. 55.

the gaol delivery sessions along with the records of all such actions.<sup>1</sup> The right to determine appeals was one area that the justices of the peace could not make gains in spite of their established powers in the fifteenth century. Appeals made and recorded before the coroners removed the case to the jurisdiction of the king's justices of gaol delivery.

Appeals made by individuals followed a standard pattern of phrasing that varied only slightly from case to case depending upon whether it was an appeal of theft or of homicide. Most frequently, the felon was indicted before a justice of the peace or a coroner, and this indictment was enrolled at the beginning of the gaol delivery entry. Upon entering with the sheriff, the felon was immediately appealed by the victim of the crime. In cases of homicide, the appeal was normally made by the spouse of the victim, or an immediate blood relation. The appellant needed two sureties, or pledges, to guarantee his intent to prosecute, and it is in this capacity that yeomen and gentlemen appear most frequently on the eastern circuit roll. Two worthy men of the community to swear to the validity of an appeal may have helped to convince a jury that a conviction was deserved. In the event of an appellant defaulting in the prosecution of an appeal he was arrested and the pledges amerced.<sup>2</sup> The appeal itself was normally a re-stating of the felony as contained in the indictment with the addition of such phrases as "contra pacem coronam et dignitatem suam", designed, perhaps

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<sup>1</sup>Hunnisett, Calendar, p. xiv.

<sup>2</sup>Hunnisett, Medieval Coroner, p. 60.

to convince the jury of the seriousness of the crime. In cases of theft appeals, the chattels stolen tended to increase in numbers and value between the list on the indictment and the goods claimed by the appellant. Successful appeal was the only recourse a victim of such a felony had if he wished to retrieve the stolen items which would otherwise forfeit to the king upon conviction of the felon. This was probably the main reason for the continued use of appeals for such felonies, and the reason why the appellant's list of stolen goods tended to be more detailed than that contained in the indictment.

Appeals of homicide followed the same form as those for theft, with the details of the killing offered by the appellant sounding much like the results of a coroner's inquest. The fact that the victim could not bring appeals for this felony allowed for appeal by a woman as the wife of the slain. Death of a husband and rape were technically the only two instances where a woman could generate an appeal.<sup>1</sup> No rape appeals occurred on the eastern circuit roll, but four homicide appeals were at the instigation of the widow. The intent of homicide appellants was probably simply to gain a conviction and thus revenge, for unlike the case of theft, appeal of homicide could not secure the return of any goods.

A felon charged at the suit of the king and by appeal of an individual faced the appeal first. A Suffolk juggler, appealed of homicide, was found guilty by the jury and successfully pleaded his clergy. Before being released to the ordinary as a convicted clerk, he also had

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<sup>1</sup>Meekings, Crown Pleas, p. 88.



to face a counterfeiting indictment of which he was quit.<sup>1</sup> The precedence of appeal over indictment at the suit of the king indicates its position relative to the king's own legal process. The accusation by an individual with two worthy, sworn pledges was not only more effective with the jury as is indicated by the rate of conviction in cases where an appeal was made, but it also took precedence of the king's treason indictment. That felons attempted to evade prosecution by appeal is indicated by a writ of "supersedeas" issued to the justices of gaol delivery for Huntingdon in 1441, in which the king ordered proceedings for the trial of two men indicted for homicide to cease.<sup>2</sup> Apparently the men had filed for and had been granted a special delivery session for their case in an attempt to avoid an appeal by the widow of the alleged victim. The writ of "supersedeas" was issued so the appeal could be raised at a general session before the king's justices. The reason for attempting to avoid being tried on appeal is apparently due to the high conviction rate relative to the rates of conviction for felons delivered on indictment. The implication rising from this attempt to by-pass the appeal of homicide is that the felon felt acquittal at gaol delivery would preclude the possibility of a later appeal. This indicates that an appeal of felony needed to be filed prior to trial before the king's justices in order to be valid, and thus the felon was supplied with a degree of protection against double jeopardy.

When a felon appeared for delivery on indictment it was possible

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<sup>1</sup>P.R.O., JI/3/210, m.4d.

<sup>2</sup>Cal. Close Rolls, 1435-1441, p. 415.

that he would be confronted by an appeal of the victim of a crime not listed on the indictment. The eastern circuit roll offers two instances of this situation, with the victim of the felony outlined in the indictment making an appeal at the same time.<sup>1</sup> When two appeals occurred, the accusations were heard separately, but the felon only put himself upon the country once and thus received only one verdict. When the accused faced both an indictment and a separate felony appeal, as in the case of the juggler, each charge was put to the jury separately, whereas more than one appealed charge was treated in the same manner as a multiple indictment, with all counts covered by one verdict of the country. Where more than one felon was appealed, each placed himself upon the country separately. In one such case, the appeal of two felons on a theft charge resulted in one being acquitted and the other found guilty.<sup>2</sup> The appellant was fined three shillings fourpence, half the normal amercement for false appeal, indicating that the appeal of two felons was viewed as only one appeal.

Three felons appealed on the roll were not presented to the justices of gaol delivery on indictment, but rather on suspicion of felony: In one case the man detained was suspected of larceny, and the other two were believed to have committed homicide. It is not clear why these three were not indicted but it is possible that the suggestion of their felonious actions reached the authorities between the time of the quarter sessions and the arrival of the justices of gaol delivery.

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<sup>1</sup>P.R.O., JI/3/210, mm. 4d, 31d.

<sup>2</sup>ibid., m.20d.

Precisely who the authorities were who detained these suspected felons is debatable. However, they arrived at gaol delivery in the custody of the sheriff as did most other prisoners presented for trial. The constables detained felons in the stocks until it was possible for the sheriff to take custody, but it is doubtful they had the power to arrest on suspicion of felony without an indictment. The justices of the peace were not empowered to arrest suspicious persons, but they could detain felons on suspicion of a specific crime.<sup>1</sup> The three felons appealed without the existence of a formal indictment were immediately accused by their victims upon presentation to the justices of gaol delivery and the same procedure was used to process these appeals as was applied when an indictment had been issued.

In addition to these three felons who were detained on suspicion the justices of gaol delivery presided over the processing of 191 other suspected felons during the three years covered by the roll examined. The clerk enrolling these deliveries tended to group the suspicion cases under one entry for each session in groups ranging from two to fifteen people and he usually positioned the cases as the last entry. This may indicate that suspected felons were reserved as the last presentations to the justices, or that the clerk exercised an editorial licence when enrolling. The processing of suspicion cases differed from both delivery on indictment and procedure on appeal in that suspected felon faced no charge at the suit of the king or by an individual and therefore had no need to acquit himself by verdict of the

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<sup>1</sup> Putnam, Proceedings, p. cvii.

country. Instead, each suspected felon faced a procedure that resembled the presentments at the peace sessions with a jury from the four neighbouring hundreds where the felon was detained asked by the justices if there was any indictment or appeal against the accused. If this was not the case, the person presented was proclaimed by the court to be of "bone fame" and released "sine die". It appears that the village or the four neighbouring hundreds where the felon was detained on suspicion were held responsible for prosecuting such cases by supplying either an indictment or an appeal at gaol delivery. Failure to produce a reason for prosecution often resulted in amercement of the village, usually assessed at six shillings eightpence, the same as for false appeal. The rate could vary, but the roll examined offers only one instance of the justices raising this amount.<sup>1</sup> While the assessment of amercements remained at a standard rate, the application of the fines appears to have been random. Only twenty-nine villages were amerced by the justices with over one hundred and fifty escaping this cost. There is no apparent explanation for this sporadic application of amercements to be obtained from the roll, and thus the use of the fine seems to be as an occasional example deterrent to villages to curb the large numbers of suspected felons presented at gaol delivery. One village in Suffolk that presented two felons on suspicion was subsequently amerced thirteen shillings fourpence, double the normal rate for false appeal, when no prosecution ensued.<sup>2</sup> A Buckinghamshire

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<sup>1</sup>P.R.O., JI/3/210 m.26d. The town of Alconbury, Co. Hunts, was amerced 10 shillings for failure to prosecute.

<sup>2</sup>ibid., m.19d.

village was similarly fined for presenting a felon suspected of felony, and with suspected stolen goods which apparently represented two suspicion counts. When the prisoner claimed the goods as his own and was found "bone fame", the village faced the double amercement for failure to prosecute on both suspicion charges.<sup>1</sup>

Detaining a felon taken with mainour, or stolen goods, was similar to holding a person prisoner on suspicion of felony, but had an added stage when processed at gaol delivery. Nine felons were arrested with mainour and in each case the prisoner was asked by the justices whether or not he wished to claim the goods in question. Seven of the felons denied ownership of the goods which were then forfeit to the king. The two men who did choose to assert their claims did not appear to meet any resistance and were granted custody of the goods. The seven felons who rejected this route were subsequently delivered as suspicion cases and were released "sine die" by proclamation of the court. Presumably the suspect felons who claimed ownership of the mainour ran the risk of the claim being challenged or appealed but the gaol delivery roll offers no examples to verify this point. Possession of stolen goods did not in itself constitute a felony if no indictment or appeal was made, and the suspect felons were thus proclaimed "bone fame" by the jury rather than asked to put themselves to the country for a verdict.

If a felon proceeded to delivery on a suspicion charge, and an indictment was produced, the jury was required to pass a verdict rather than a proclamation. The eastern circuit roll contains four examples

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<sup>1</sup>P.R.O., J1/3/210, m.32d.

of felons brought before the justices of gaol delivery on suspicion who had indictments produced against them. In two cases, the indictments were generated outside the county where the session was being held. In the first instance, an Essex labourer appeared before the tribunal of justices in Cambridgeshire where an indictment from an Essex oyer et terminer session was produced. The felon was remitted to gaol and appeared again before the justices on their next circuit when he was declared "sine die" as no indictment was found against him in the county of Cambridge.<sup>1</sup> In the second entry examined, a Bedfordshire man was found to have been indicted in his home county at a Buckinghamshire gaol delivery session, but was remitted to gaol "sub periculo incumbente", to be produced by the sheriff at the next delivery in the county of Bedford.<sup>2</sup> The difference in the handling of the two prisoners from outside the county where the session was being held suggests that the processing of such cases may have rested on judicial discretion. Essex was outside the eastern circuit boundaries, and it is possible that the justices were not empowered to determine felony indictments generated from beyond the jurisdiction granted to them by the gaol delivery commission, and had no system of extradition to transfer the felon. The counties of Bedford and Buckingham, the two shires named in the second example, shared one sheriff who was thus responsible for producing felons for Bedford deliveries also.

Felons detained on suspicion could be appealed or confronted with an indictment, but the amercements assessed by the justices suggest

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<sup>1</sup>P.R.O., JI/3/210, m.23d.

<sup>2</sup>ibid., m.33d.

that failure to prosecute such prisoners was viewed as a false appeal. While the case of the Essex labourer may suggest limitations in the powers of the justices of gaol delivery, one special form of appeal, the approvement, necessitated the crossing of the jurisdiction of the commission to obtain jurors. The eastern circuit roll contains two approver cases, both from Cambridgeshire. To turn approver, a felon had to confess to his crime before a coroner, and was then assigned three days to appeal his accomplices. Each of the people so appealed was obliged to appear before the justices of gaol delivery to answer to the accusation. Appeals by approvers could be proved either by jury or by the duel, although the latter was rarely resorted to.<sup>1</sup> Once a felon had turned approver the responsibility for maintaining him in gaol and the cost of transporting him, if necessary, became an expenditure taken on by the king.<sup>2</sup> The approver effectively became an agent of the king's justice by exposing other felons, ostensibly to gain time before facing sentencing himself. Considering the relatively low conviction rates, the felon who turned approver must have been desperate and sure of his own conviction. Approvers' chances of obtaining a special royal pardon were remote, and their confession took away from them the possibility of a general pardon.<sup>3</sup> The time gained by approvers may have been used to plan a prison break, or perhaps the prospect of spending one's last days at the expense of the king appealed as a way to survive a little longer. Approvers perhaps harboured the

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<sup>1</sup>F. C. Hamil, "The King's Approvers", Speculum, XI (1936), p. 256.

<sup>2</sup>Meekings, Crown Pleas, p. 91.

<sup>3</sup>Hamil, "King's Approvers", p. 253.

hope that they could successfully appeal all of their accomplices, and thus abjure the realm to save life and limb, but the chance was remote. One acquittal among those appealed by an approver resulted in an automatic capital sentence.

The two approvers in the Cambridgeshire sessions appealed a total of thirty-six accomplices in crime. The first case is that of William Pescod, a cook of Iselham, who was detained on suspicion of felony and remitted to gaol.<sup>1</sup> He was indicted for theft of stolen goods valued at eight shillings in 1435, and appeared before the king's justices in July of 1437. At the gaol delivery session, Nicholas Hammond, a king's coroner testified that William had confessed to this crime and turned approver in the Cambridge gaol in June of 1436. During the three days assigned him by the coroner, William Pescod appealed fifteen men ranging from servants to gentlemen, of crimes of theft or receiving. Nine of those appealed were recorded in the rolls as appearing to answer the accusation. The six appealed gentlemen, two from Suffolk and four from Lincolnshire did not appear, and no jury was ordered brought to the next session from those counties to determine their suit. It seems odd that no mention of their failure to appear was made and no explanation was asked for by the justices of gaol delivery. The nine men who did show up in court responded that the suit of the approver was false and and fraudulent and the charges "in nullo sunt vera." William Pescod was then allowed to plead benefit of clergy and was released to the ordinary "sub periculo incumbente" as a convicted clerk. Why William turned approver is questionable, as his ability to

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<sup>1</sup>P.R.O., JI/3/210, m.22.



plead clergy would have saved him from the gallows had he been convicted on the theft indictment, unless he perhaps needed time to learn to read in order to prove his clergy. Extracting revenge may have motivated William to turn approver, for he appears to have gained little else.

With William's fate thus determined, the court moved to prosecute the men he had appealed. One of the appellees, Lawrence Duraunt of Cambridgeshire claimed the appeal against him was insufficient as the felony "accessorio" was not included in the appeal, and thus it contained no felony charge. Lawrence's claim was allowed and he was released "sine die". Had he not pleaded ~~his~~ clergy, William's faulty form in appealing Lawrence Duraunt would have been sufficient to cause him to be sentenced to hang. An approver's appeal had to be perfect in form and successfully prosecuted in all cases before he earned the right to abjure the realm. The eight remaining appellees pleaded not guilty and placed themselves upon the country. Since these remaining appeals required juries from Huntingdon, Lancaster, Suffolk, Buckingham and Essex, the justices ordered the respective sheriffs to find jurors to be brought to the next gaol delivery session in Cambridgeshire. Seven of the eight appellees were released on bail and the eighth remitted to prison for the duration, presumably because he could not produce sureties to guarantee his appearance at the next session. The manucaptors who acted as pledges for the men who were released all came from the county of Cambridge where the session was being held, whereas the appealed men were from various counties. How these sureties were obtained is not clear and it is unlikely that all knew each other. It is possible that a manucaptor could be bought for a fee

from among the gentry class attending the sessions.

Five more of those appealed by William Pescod were acquitted at the following delivery; however the juries from Lancashire, Essex and Buckinghamshire failed to appear. Of the three remaining appellees, one died before his case was processed, a second was acquitted in the spring of 1439, while the fate of the third, John Ladde of Lancashire is unknown, as the jury of that county failed to appear at four successive deliveries. Thus, William Pescod, by turning approver in July of 1437, instigated a legal process which stretched over three years and resulted in no convictions save his own.

The second Cambridgeshire approver, John Flewellyn, did not apparently have the option of pleading clergy and subsequently suffered the fate of most approvers. John's approvement was heard in January of 1438 in the Cambridge gaol by Simon Hockington, king's coroner. John confessed to arson and theft and appealed twenty persons of various felonies including theft, receiving and homicide.<sup>1</sup> Unlike the approvement of William Pescod, John's appellees were all from the county of Cambridge and thus the whole case was processed at the gaol delivery session in February of 1439. John's approvement also varied from William's in that the names of those involved in each felony outlined tended to repeat. The confession of William indicated his own movement throughout various counties committing crimes with varied felons as accomplices whereas John Flewellyn's felonious activities appear to have been localized within the county of Cambridge with the assistance of a much larger group. The numbers involved in each crime ranged from

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<sup>1</sup>P.R.O., JI/3/210, m.24.

five to eleven, repeatedly including what was possibly brother, or father and son teams such as John and Nicholas Sloane of Wiltford Bridge or Robert and William Turpin of Knewsworth. John Flewellyn's appeal creates a picture of a gang of thieves working within Cambridgeshire, but the strong possibility that John embellished or created the facts in his appeal in order to fully utilize the three days designated for his appeal must temper this vision somewhat. The jury failed to convict any of the men accused by John as his accomplices in crime, and it seems unlikely that this would have been the outcome if those implicated had been as busy terrorizing the countryside as John Flewellyn would have had the jury believe. Since he had confessed initially to an arson charge which was treasonable, John was sentenced to be drawn to the gallows and hanged. The confessions of approvers represent a special form of appeal, but the failure of William Pescod and John Flewellyn to gain any convictions from a total of thirty-six attempts indicates that juries did not have the respect for appeals initiated by a self-confessed felon that they displayed in appeals generated by the victims of crimes.

One final case contained on the eastern circuit roll deserves examination in a discussion on the nature of appeals in the fifteenth century. It is unique in several ways in that the conflict in jurisdiction between the gaol delivery court and the king's courts is shown, and the accused in the case is a gentleman, John Belsham, a gentleman of Hadleigh in Suffolk, was indicted for homicide in April of 1438, before Robert Crane, a justice of the peace, and William Wolfe, a knight of Hadleigh, and subsequently appealed by John Lowell, the son of Belsham's alleged victim, Alice Lowell. The appeal of the son removed

the case from the jurisdiction of the county justices and into the gaol delivery court. When John Belsham appeared before the king's justices in February of 1439, four additional indictments were produced charging him with counterfeiting and three counts of theft accompanied by assault.<sup>1</sup> There had been some difficulty in securing Belsham's appearance at gaol delivery due to interference in his case by John, duke of Norfolk,<sup>2</sup> and when he did face the justices, no mention was made of the appeal by John Lowell. Instead, Belsham was appealed by Maurice Lowell, husband of Alice and father to John, for assault and theft of goods value at fifty-three shillings. Belsham was acquitted of the appeal, and when asked how he wished to acquit himself at the suit of the king, Belsham presented a pardon to the justices that he had obtained from the king at Westminster in April of 1438. He was subsequently remitted to prison presumably so the charges and the pardon could be looked at more closely.

On July 24, 1439, John Belsham failed to appear at the next gaol delivery session in Suffolk. The sheriff explained to the justices that his absence was due to the fact that two months' earlier Belsham had appeared before the chancellor and was bound over to the custody of the marshal of the Marshalsea to appear "coram rege" to respond to the appeal of John Lowell regarding the murder of Alice Lowell.<sup>3</sup> Thus the case against John Belsham was removed from the jurisdiction of the

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<sup>1</sup>P.R.O., JI/3/210, m.17.

<sup>2</sup>ibid. The duke of Norfolk apparently threatened the gaoler of Bury St. Edmunds where Belsham was detained and secured his release in September 1438. Belsham was found at large by the understeward of St. Edmund's the day before the gaol delivery session and arrived in the custody of the sheriff of Suffolk.

<sup>3</sup>P.R.O., JI/3/210, m.17d.

justices of gaol delivery to that of the king's bench. The fact that the Suffolk jury acquitted Belsham in February of 1439 when he was appealed by Maurice Lowell for the theft may indicate why John Lowell deemed it necessary to appeal his case to the king's bench. Personal appeals virtually assured conviction of a felon, and the jury's failure to conform to this trend suggests that Belsham had strong support in Suffolk, perhaps through the influence of the duke of Norfolk.

The outcome of the proceedings before the justices of the king's bench is not known, however a special commission of inquiry issued in July of 1439 to John Fray, John Cottesmore, Richard Weltden and three others, including the sheriff of Suffolk, suggests that the case involved further tangents.<sup>1</sup> The commission was issued in response to a petition by William Wolfe, a knight who had served on the peace commission which had initially indicted Belsham for the homicide, and Maurice Lowell in which they claimed that John Belsham had falsely accused them of high treason because of the furthering of the homicide appeal at the king's bench. The commission of inquiry stated that John Lowell was in the service of William Wolfe, and that John Belsham was also indicted for the slaying of a constable of the town of Hadleigh. It appears that Belsham filed an appeal against Maurice Lowell and William Wolfe in order to delay or counter the proceedings at the king's bench on the homicide indictment. The king had ordered Henry Brownflete in the capacity of constable of England to determine the appeal of treason in the high court of chivalry in November of 1438,<sup>2</sup> but the commission of inquiry suggests that the case was not concluded

<sup>1</sup> Cal. Pat. Rolls, 1436-1441, pp. 316-317.

<sup>2</sup> *ibid.*, p. 265.

by July of 1439. In addition to the counter-appeal filed by Belsham, the linking of John and Maurice Lowell as associates of William Wolfe lends a further perspective to the case. A pardon issued by the king to two felons, "maliciously indicted by their enemies although guiltless as the king is informed",<sup>1</sup> named William Wolfe as one of the justices of the peace involved. It is possible that Wolfe used his commission of the peace in a similar manner to indict John Belsham for homicide.

The Belsham case shows how an appeal could be removed from the jurisdiction of the gaol delivery sessions, by appeal to a higher court. However, the accused felon involved belonged to a class that rarely entered gaol delivery for trial and the existence of the procedure did not affect any of the other appeals on the eastern circuit roll. Appeals "coram rege" do not appear to have been within the realm of possibility, or even necessary for victims of lower class felons. The high conviction rate for appeal at gaol delivery satisfied the cause of most appellants eliminating the need for further judicial recourse.

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<sup>1</sup>Cal. Pat. Rolls, 1436-1441, p. 375.

## V. OPTIONS FOR THE FELON

While appeal offered an option to be exercised by the victim of a crime in order to gain a conviction, the felon had several routes he could follow to escape the figours of capital punishment. The ability to appeal to the privileges of the church by pleading benefit of clergy or by fleeing to sanctuary and abjuring the realm saved a number of felons from the gallows. Flight after committing a crime was generally viewed as a confession of guilt, and a Huntingdon jury convicted two felons on theft charges where the indictment specified this action.<sup>1</sup> However, if a felon fled to a sanctuary, he could receive a reprieve from secular justice. Felons who took to sanctuary rarely appeared on the gaol delivery records under normal circumstances. Sanctuary-seekers entered ecclesiastical jurisdiction upon reaching their destination, and if they decided to abjure, the process was handled by a king's coroner. It is therefore only aberrations to the normal procedure that resulted in the felon appearing in gaol delivery court.

The eastern circuit roll examined contains two cases where the felon fled to sanctuary after committing a crime. In a Norfolk case of 1437, Robert Ketilbere, a husbandman of Thetford, appeared before the justices of gaol delivery as one indicted for theft of twenty silver

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<sup>1</sup>P.R.O., JI/3/210, mm. 28, 28d.

marks from the home of William Reydon. The victim of the crime also appeared and appealed Robert on two counts of theft. In defence, Robert claimed that immediately following the felony for which he was indicted he had fled to the sanctuary of the church of St. Cuthbert's in Thetford from which he was forcibly removed by one John Lowys and others and subsequently dragged to gaol. He therefore asked to be returned to sanctuary.<sup>1</sup>

The violation of sanctuary was not a felony, but could result in death for the perpetrators.<sup>2</sup> Since it was a breach of an ecclesiastical institution however, the punishment for violators tended to range from excommunication for sacrilege, through heavy fines to whipping and penance administered by the church.<sup>3</sup> By the fifteenth century, secular sanctuaries were virtually non-existent<sup>4</sup> and the capital sentence for violation of sanctuary was subsequently also out of use. In this case which breached the liberty and the sanctuary of the church of St. Cuthbert's, the perpetrators would thus have faced adjudication before ecclesiastical officials if they were named. For Robert Ketilbere, the outcome of the trial would have meant either a sentence to the gallows or the temporary security of the church once again. Robert pleaded guilty to the theft charge and then placed himself upon the country regarding the sanctuary plea. The jury found him guilty of the two theft

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<sup>1</sup>P.ROOU, J173/210, m.4d.

<sup>2</sup>J. J. Jusserand, English Wayfaring Life in the Middle Ages (New York, 1950), p. 81.

<sup>3</sup>ibid., p. 81.

<sup>4</sup>I.D. Thornley, "The Destruction of Sanctuary", Tudor Studies, ed. R. W. Seton-Watson (New York, 1969), pp. 198-199.



charges for which William Reydon had appealed him, and also determined that Robert had been violently removed from sanctuary by persons unknown.

This verdict of the jury may indicate a compromise on the part of the jurors, and also raises several questions regarding the future of this particular sanctuary-seeker. In his testimony, Robert had accused John Lowys, a bailiff of Thetford, as one of the men who had seized him from sanctuary. The jury appears to have countered this accusation by claiming ignorance regarding who the perpetrators of the breach of sanctuary were, while at the same time upholding Robert's claim that he had reached the safety of St. Cuthbert's church. This may indicate an unwillingness on the part of the jury to condemn those who committed the breach while at the same time the jurors did not wish to perjure themselves to a greater degree by denying Robert's claim altogether. It is unlikely that there was much doubt that Robert had reached the sanctuary of St. Cuthbert's, for William Reydon's appeal stated that the hue and cry had been raised through the four neighbouring vills when the crime was discovered, and the jury acknowledged in their verdict that Robert had fled to the church knowing he could not evade capture of William. It also seems unlikely that the jurors were unaware of the names of the people who broke the sanctuary to seize Robert as the vills were responsible for guarding any felon in sanctuary to guarantee he did not escape.<sup>1</sup> This verdict perhaps

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<sup>1</sup>N. M. Trenholme, The Rights of Sanctuary in England (University of Missouri Studies, 1903), p. 24.

indicates the ability of a jury to ignore certain facts when confronted with offence that they were unwilling to see prosecuted such as a breach of sanctuary. By returning Robert to sanctuary, the jury may have been appeasing the ecclesiastical authorities whose intervention in this case is marked by its absence. One would expect some mention at least by the ordinary in the court regarding this flagrant affront to ecclesiastical privilege.

Other questions raised by the verdict concern the future of Robert himself, whose options were limited if he was returned to sanctuary. The normal procedure allowed him forty days grace to confess his crime to a coroner and arrange to abjure the realm. If he did not call for a coroner he could be starved out by the men of villis guarding him or under normal circumstances he could have decided to face a trial.<sup>1</sup> The problem which arises in Robert's case centers around the fact that he was already tried and convicted at gaol delivery which precludes the outcome of the latter option. The letter of the law regarding abjuration denied the right to ask for a coroner to a felon attaining sanctuary after conviction for a crime.<sup>2</sup> Technically, Robert was indicted, tried and convicted by the jury before he was returned to St. Cuthbert's, and thus forfeited the right to abjure. The actions of the secular law courts thus appear to have removed the privilege gained by Robert through his flight to the church. The processing of Robert by the secular justices was, however, apparently

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<sup>1</sup>Thornley, "Destruction of Sanctuary", p. 183.

<sup>2</sup>A. Reville, "L'Abjuratio Regni": Histoire d'une Institution Anglaise", Revue Historique, vol. 50 (1892), p. 19.

made possible through a breach of ecclesiastical jurisdiction. The only person who appears to have gained in this case was William Reydon, who was allowed to retrieve his stolen goods when the appeal was upheld by the jury.

Abjuration of the realm was the normal process by which a felon who sought sanctuary secured the safety of his life. This right was only allowed to those criminals who were threatened with capital punishment if tried and convicted in a secular law court. Therefore, clerics or those who committed sacrilege were exempt from claiming this privilege as ecclesiastical justice did not entail the threat to life and limb. Tried and convicted felons along with outlaws and criminals indicted for high treason or misdemeanour were also denied the right to abjure.<sup>1</sup> Also, once a felon had confessed to a coroner and agreed to abjure, he could not escape from sanctuary and return to ask to abjure again.

Once the coroner received a felon's confession, he assigned the route which the abjurer was to take to the nearest port for departure from the realm and designated the number of days allowed for the journey. Clothed in a long, flowing white robe the abjurer had to walk bare-headed and barefoot, carrying a wooden cross in front of him like a penitent, along the selected route.<sup>2</sup> If he deviated from his path, the abjurer could be brought before the king's justices for trial as a self-confessed felon. One such unfortunate fellow appeared before the gaol delivery tribunal at a session in Buckinghamshire in 1437.<sup>3</sup> John Slay,

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<sup>1</sup>Reville, "L'Abjuratio Regni", p. 20.

<sup>2</sup>ibid., p. 17.

<sup>3</sup>P.R.O., JI/3/210, m.32d.

a husbandman of Milton Keynes confessed before Thomas More, a king's coroner, to the theft of seven oxen and asked to abjure the realm. The coroner assigned the port of Southampton as Slay's point of embarkation, but the would-be abjuror was arrested by the constable of Lyndford before completion of his journey. When asked by the justices why he did not proceed directly to Southampton as required, John Slay responded that he had been coerced into delaying his journey at Lyndford by one John Hobbis of Stony Stratford who had spotted the abjuror's robe and stopped him. Unfortunately, the distinctive garment worn by an abjuror served not only to mark him as a man under protective sanctions until he left the land,<sup>1</sup> but also made him a clear target for enemies and mischief-makers.

John Slay's case was put to the jury to determine whether John Hobbis had coerced him into delaying the journey to Southampton or whether Slay acted of his own volition. The jury stated that the abjuror had tarried "ex spontanea voluntate sua" and John was sentenced to hang, for by delaying his journey, the recreant abjuror forfeited his life. It would be of interest to examine other cases of delayed abjuration to determine the frequency with which such felons were actually returned to their journey, in order to gain some insight into the sentiment of the people toward this institution. The lack of

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<sup>1</sup>Jusserand, English Wayfaring Life, p. 84. Men of the villis through which an abjuror passed on his journey were bound not only to guarantee that he did not stray, but were also responsible for his protection.

credibility shown toward other self-confessed felons on the gaol delivery roll, notably the approvers, suggest that the abjurator would not have been treated mercifully by juries.

Sanctuary and abjuration of the realm offered to those who completed the process successfully the chance to preserve life and limb and thus tempered the inevitable result of conviction for a capital offence. The pitfalls that could be encountered may have discouraged all but the most desperate felons from attempting it. The number of felons who sought sanctuary in England in the second half of the fifteenth century has been estimated at close to one thousand per year, but this projected figure could be inordinately high.<sup>1</sup> The forfeiture of goods and of country incurred by the successful abjurator left him stranded in a new country with little chance of returning to England unless a special licence was obtained from the king. What he thus faced may have been less enticing than initially appeared to be the case.

The temporary security of sanctuary was generally sought by the felon to avoid an appearance in the secular courts. A second ecclesiastical privilege that could be claimed by a felon was benefit of clergy, which was determined after conviction in one of the king's courts. The underlying concept of the claim of clergy lay in the belief that the ecclesiastical authorities had the right to judge and

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<sup>1</sup>Trenholme, *The Right of Sanctuary*, p. 70. His computation is based on figures from *Beverly-Durham*, two popular sanctuaries where Trenholme admits (p. 49) that sanctuary-seekers were well treated. The numbers are extrapolated for all of England from this basis.

punish the members of the orders of the church, an idea firmly entrenched in the medieval legal tradition and protected by the spectre of the murder of Thomas Beckett. Popular opinion in the fifteenth century regarding the special treatment received by criminous clerks and their protection from the full course of secular law is difficult to gauge. It is possible that the privilege aroused hostile sentiment on the part of the laity,<sup>1</sup> but the gaol delivery roll examined does not offer any evidence to this end. On the contrary, the test for clergy in use in the fifteenth century perhaps removed the basis for resentment toward the clergy by extending the use of the privilege beyond the clerical classes. The reading literacy test was the standard procedure used to determine the validity of claims to benefit of clergy contained in the eastern circuit roll. The examination of the knowledge of letters does not appear to have been overly stringent, and it has been suggested that the spread of lay literacy combined with the lax nature of the test served to allow the necessary proficiency to be rapidly gained.<sup>2</sup> If this was the case, the claim of benefit of clergy no longer separated the clerical class from the laity in the fifteenth century, but rather distinguished those people with a degree of education in letters from the completely illiterate. The privilege thus offered an advantage to all felons with the means to gain the necessary proficiency to pass a reading test.

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<sup>1</sup>L. O. Pike, A History of Crime in England (Montclair, New Jersey, 1968), pp. 297-298.

<sup>2</sup>L. C. Gabel, Benefit of Clergy in the Later Middle Ages, Smith College Studies in History, 1928, p. 72.

The classification of felons on the gaol delivery roll appears to support the view that the "privilegium clericale" was being extended beyond its intended use by lay felons who wished to escape the gallows. Of the thirteen felons who claimed benefit of clergy at the sessions only three were recorded as of clerical status. Three labourers, two yeomen, two cooks and a mason, plus a husbandman and a juggler accounted for the other ten claiming clergy. It is possible that these felons who were classified as laymen on the rolls were also members of the lesser clergy acting as deputies for absentee parish officials, however the implication that they were not remains a strong possibility. The juries of the eastern circuit during the time examined were not inclined to convict the felons who were classified as clerics on the indictments. Of thirty-four such enrolments, only four resulted in conviction of the criminous clerk which suggests that the privilege of benefit of clergy was most widely used by non-clerical felons.

The processing of a claim of clergy at gaol delivery involved the administration of the reading test only after the felon was convicted on the indictment or appeal against him. The ultimate authority in judging the validity of a claim appears to have lain with the king's judicial tribunal,<sup>1</sup> although a representative of the bishop, the ordinary, was present. The role of the ordinary seems to have been limited to the claiming and receiving of felons only after the secular court was satisfied as to their clergy. Once the felon had proved himself adequate in his knowledge of letters, the ordinary came forward and presented letters to the court which authorized his reception of

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<sup>1</sup>Gabel, Benefit of Clergy, p. 35.

convicted clerks for transfer to the bishop's prison. The counties of the eastern circuit were under the jurisdiction of two bishoprics and one archbishopric. Convicted clerks in Norfolk and Suffolk were received by John Kebelon, chaplain as the licenced representative of the bishop of Norwich while Cambridgeshire's ordinary acted on behalf of the archbishop of Canterbury. The counties of Huntingdon, Bedford and Buckingham delivered their criminous clerks to the bishop of Lincoln. The letters of the ordinary often named two or three men who could act in this capacity who were generally all members of the lower ranks of the clergy such as vicars, rectors, chaplains and men who were simply called literates.

When the claim of a felon to benefit of clergy was challenged the question arose regarding the jurisdiction of secular and ecclesiastical authority in determining the cases. In a Huntingdonshire case, the claim of John Weston, a yeoman of Northumberland, was challenged on the grounds that he was a "bigamus".<sup>1</sup> At common law, a bigamist was defined as a cleric twice married or married to a widow,<sup>2</sup> and as such was denied the right to claim "privilegium clericale". Determining marital questions would seem to be subject to adjudication by the church, while the felon's conviction in the secular courts should stand unless his claim to clergy was successful. In John Weston's case, the justices ordered John Almot, parson of the church of St. John the Baptist, and ordinary for the bishop of Lincoln, to charge the bishop to determine the truth of the matter and return with the verdict at the next session.

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<sup>1</sup>P.R.O., JI/3/210, m.28:

<sup>2</sup>Gabel, Benefit of Clergy, p. 88.



John Weston, however, was remitted to gaol in the custody of the sheriff, and not released to the custody of the ordinary. The secular justices recognized the right of the church to adjudicate the bigamy charge, but maintained control of the felon in question. In contrast, the justices of gaol delivery released John Rous, a yeoman of Suffolk to the custody of John Kebelon, ordinary for the bishop of Norwich apparently before he had responded to an outstanding indictment. Rous pleaded clergy at a session of oyer et terminer where he was convicted for diverse transgressions and felonies, and upon presentation to the justices of gaol delivery he faced an additional indictment for treason. However, he was immediately claimed by the ordinary and released by the justices with the stipulation that he return to the next session to respond to the treason indictment.<sup>1</sup> The authority of the secular court in this case seems much more pronounced than in the case of the bigamy challenge, and yet the same tribunal of justices that retained John Weston in the custody of secular officials, released John Rous to the bishop's prison. Both men were ordered to appear at the next session held in their respective counties, but the outcome of the two cases is not known. The contradictory treatment of the two prisoners reflects the problem that could arise when the jurisdiction of the spiritual and temporal courts collided in claims of "privilegium clericale".

The eleven felons whose claims of clergy were upheld by the court were released to the ordinary "sub periculo incumbente". The gaol delivery roll does not offer any further information on the fate of the convicted clerks, as their processing was complete at common law.

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<sup>1</sup>P.R.O., J1/3/210, m.15.

In spite of their conviction before the secular justices, these felons still had the opportunity to acquit themselves of their crimes in an ecclesiastical court by the process of compurgation which entailed an inquest into the alleged crime and an oath of innocence sworn in the bishop's court by the felon and twelve compurgators or oath-helpers.<sup>1</sup> Although the system of purgation could be blocked by strong opposition or the failure of the convicted clerk to secure enough compurgators, instances of this happening were extremely rare<sup>2</sup> and thus the felon who successfully pleaded "privilegium clericale" in the secular courts appears to have been equally likely to succeed in gaining complete freedom if he chose to enter compurgation.

Female felons were barred from claiming benefit of clergy, but had the option of pleading pregnancy if convicted of felony before the justices of gaol delivery in order to receive a stay of execution. A claim of pregnancy could be made after conviction and if it was accepted, the woman was remitted to gaol for the gestation period to await the birth of the child. The pregnant felon thus gained up to nine months grace during which time it was possible to apply for a pardon from the king or perhaps escape to freedom. In order to determine the validity of a claim of pregnancy, the justices empanelled a jury, usually numbering twelve, and comprised of matrons from the county where the gaol delivery session was being held. The jury was empowered to examine the womb of the claimant which was inspected for palpitations according to custom. The enrolment of two cases involving a claim

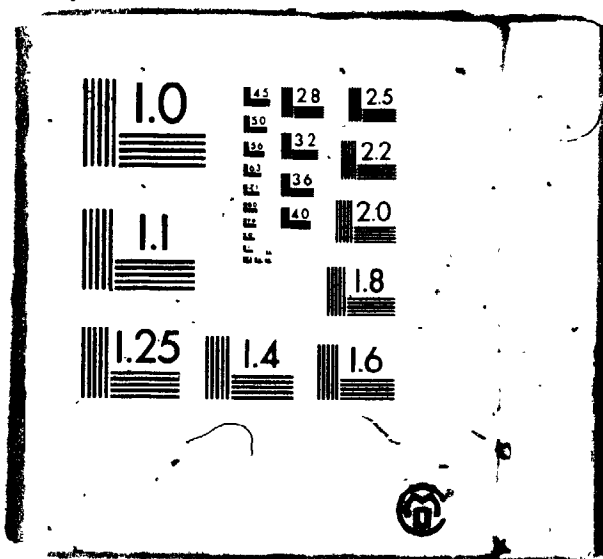
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<sup>1</sup> Gabel, Benefit of Clergy, pp. 96-105.

<sup>2</sup> ibid., p. 106.

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of pregnancy suggest that the examination by the jury of matrons was carried out as soon as the felon pleaded she was with child. No attempt appears to have been made to secure a jury from the region where the woman lived or where she committed her crime; as was the normal procedure for obtaining a trial. Presumably, this precaution was not deemed necessary and it was assumed by the court that any matron could determine pregnancy without additional knowledge of the life of the felon involved. It is also possible that a pre-arranged jury was on hand in the courtroom in case a claim of pregnancy arose.

The two female felons who claimed to be with child were duly examined and the jury of matrons upheld both pleas. Joanna Miller, the wife of a Suffolk tailor, was convicted of theft with a male accomplice and remitted to prison "sub periculo incumbente" to await the birth of her child.<sup>1</sup> At the next delivery, Joanna presented a pardon from the king to the justices and was released "sine die". The condition of life in medieval prisons, with the ever-present threat of gaol fever, appears to have been sufficiently well known, as the king's grace was granted to Joanna for fear of the "probable destruction of the child"<sup>2</sup> due to the mother's great want. The acceptance of Joanna's petition for such a reason suggests that any woman who had the means, and perhaps the connections at court, would have had sufficient grounds to obtain a pardon due to the perilous conditions of the gaols for the protection

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<sup>1</sup>P.R.O., JI/3/210, m.16.

<sup>2</sup>Cal. Pat. Rolls, 1436-1441, p. 255.

of an unborn child. The second female felon that successfully pleaded pregnancy, Alice Goby a housewife of Huntingdonshire was convicted on two counts of theft.<sup>1</sup> Her fate is not known after she was remitted to gaol for the duration of the pregnancy, but Joanna's case suggests that the possibility of gaining a pardon was not remote.

There was only one other pardon presented to the justices of gaol delivery during the time covered by the eastern circuit roll, by John Belsham of Hadleigh in Suffolk.<sup>2</sup> Belsham's pardon was obtained prior to his indictment for homicide and covered all felonies and treasons committed up to the date of issue. Pardons were normally obtained prior to appearance before the gaol delivery justices, although they could conceivably be obtained after conviction at the king's grace if the sentence of hanging was not immediately carried out, as in Joanna's case. The scarcity of pardons in the gaol delivery roll examined may in part be due to the long minority of Henry VI, which ended just prior to the commencement of the time period analysed. Pardons may appear with greater frequency in later gaol delivery rolls as the practice of granting general pardons, which could be purchased for sixteen shillings fourpence by almost anyone for all manner of offences, flourished with the majority of Henry VI and his generosity with the granting of pardons became notorious.<sup>3</sup>

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<sup>1</sup>P.R.O., JI/3/210, m.27d.

<sup>2</sup>Vide supra, p. 76.

<sup>3</sup>R. L. Storey, The End of the House of Lancaster (London, 1966), p. 37.

## VI. CONCLUSIONS

The foregoing study of the contents of the gaol delivery roll of the eastern circuit for the years 1437-1439 does not represent a complete picture of the processing of felons in the fifteenth-century courts, but rather examines the final stage in criminal cases. The trial of a felon before the king's justices of gaol delivery marked the culmination of an action begun in one of the various courts presided over by county officials. Few records of the proceedings of these local courts were preserved for the reign of Henry VI and the indictments contained in the extant gaol delivery rolls probably represent only a small portion of the business conducted at the peace sessions, tourns, leet courts and inquests that were held in the counties. The commission of gaol delivery ordered the sheriff of the county where the session was to take place to secure the appearance of the various shire officials with their records for when the king's justices arrived. A petition registered by the commons in parliament in 1439 complained that the clerks of the rolls at Westminster were unable to continue their work as the king's justices were keeping the records rather than turning them in for enrollings.<sup>1</sup> This tendency on the part of the justices may help to account for the shortage of documents for the reign of Henry VI which limits the possibilities for determining the degree of control

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<sup>1</sup>Rotuli Parliamentorum, V, 29.

exercised by the county regarding which felons finally reached gaol delivery. A study of the peace rolls preserved from other reigns revealed that the presenting juries at the peace sessions deliberately omitted to indict members of their own class who were well known offenders,<sup>1</sup> suggesting a plausible explanation for the absence of gentry felons in the gaol delivery roll examined.

In addition to supplying the indictments and the felons to be tried before the king's judicial tribunal, the county also provided the trial jury. The jurors were empannelled by the county sheriff and were required to have at least 100 shillings annual income from lands or rents to qualify. The wealth requirement placed the members of the jury much higher in social standing than most of the felons on whom they pronounced a verdict. The discrepancy in status between the jurors and the indicted felons raises the possibility that the verdicts at gaol delivery reflect the attitudes of the gentry class regarding the behaviour of men who belonged to the same social group that supplied their own servants and tenants. With this consideration in mind, the high conviction rate of 93 per cent determined for cases in which a felon was appealed for a crime may reflect the importance of the pledges of the appellant. The pledges for appeals were generally yeomen or gentlemen from the county and thus of a similar social status to the jurors. The ability of the victim of a crime to obtain men of good standing to swear to the truth of a suit may have been the determining factor in appeal cases due to this connection.

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<sup>1</sup>J. B. Post, "Some Limitations of the Medieval Peace Rolls", Journal of the Society of Archivists, vol. 4 (1972), p. 637.

While the juries appear to have been virtually oblivious to the plight of the felon in cases where an appeal was made, the verdicts returned on theft, homicides, rape and treason indictments indicate that the jurors exercised a great degree of discretion regarding which type of felon reached the gallows. Conviction for any felony resulted in a capital sentence according to the letter of the law, but the trial jury had the option to acquit a felon of the charge as they saw fit. In the homicide cases examined, the perpetrator of the crime was found guilty 69 per cent of the time, whereas the theft cases tried before the justices resulted in a conviction rate of only 31 per cent. Thus while the rigidity of the laws of felony allowed for no mitigation in punishment for offenders due to the nature of the crime or its circumstance, the jury itself may have supplied the necessary element to the gaol delivery trials that prevented the letter of the law from being carried to extremes. The failure of the records of gaol delivery to preserve the names of the members of the panels who served at the sessions limits the methods by which the role of this vital institution can be studied, but the verdicts returned suggest that the men who acted as jurors recognized the felonies as unequal regarding their degree of seriousness. Theft or rape trials did not receive the same harsh treatment by the jurors as cases of alleged homicide or treason which indicates that social attitudes to the felony laws affected the application of the king's law in criminal trials by determining which crimes were more heinous and deserved capital punishment.

The gaol delivery proceedings offer a glimpse at the king's felony laws as applied to the lower class of criminals in fifteenth-century



society with competitive courts such as the king's bench or the sessions of *oyer et terminer* most often handling the cases involving the gentleman felon. Even as a record of the cases against the poorer felon, the gaol delivery roll seems deficient due to the small number of cases presided over by the king's tribunal. In the three years examined for the eastern circuit, the six counties presented fewer than three hundred indicted felons for trial, and less than two hundred felons arrested on suspicion of committing a crime, at twenty-eight separate sessions of gaol delivery. The one county of Norfolk accounted for slightly over one-half of the total number of felons presented, perhaps due to its geographic size and greater population. At the first session recorded for Cambridgeshire in July, 1437, the justices apparently heard only the confession of William Pescod, the approver, as recorded by the coroner and presided over eight other felony trials. Either the incidence of crime among the lower classes was very low, or the methods of policing and detecting criminal activity were sadly inefficient. In addition, the possibility that the justices of the peace for the various counties were trying felons at the quarter sessions rather than merely recording indictments limits the conclusions that can be drawn from an examination of the court of gaol delivery regarding the criminal activity of even the lower class felon.

The county officials and legal personnel necessary to administer the laws of the realm must have played a vital part in the success or failure of the application of those laws in reality. The select biographies of some of the men involved in the legal machinery required to prepare for a gaol delivery session provide an added perspective to

the entire process. The accusations of the Pastons against William Yelverton regarding his abuse of the county sessions to gain advantage in the struggle for Fastolf's will suggests the potential weakness of the king's system of royal justice. The well known evidence of the Bedfordshire riots and John Enderby's open partiality to his wealthy patron, lord Grey of Ruthin along with the suggestion that Bartholomew Brokesby perhaps owed his successful career to the patronage of the Arundel family indicates that in some cases the application of the king's laws was decidedly partial. Although the evidence in these cases seems to display the potential for the corruption of the system of justice, most of the people whose careers were looked at did not display overt signs of biased legal activity. Patronage was an integral element of fifteenth century society, whether through connections to the king or a noble family, but did not in itself preclude the possibility of an adequate system of administering the law as it applied to gaol delivery. The legal personnel involved in the sessions of the county were actively pursuing personal interests, but not necessarily to the mutual exclusion of judicial interests. While there is evidence of corrupt justices, the voice of the complaints issued from members of the same social group including the commons of parliament, fellow justices of the peace and others of the gentry class and may have been generated through a natural competition between these men for local control. The view of the system of administering law in England that is preserved for the fifteenth century is very much a gentleman's statement due to the nature of the records that remain.

Although the records of the proceedings of the gaol delivery court

present limitations for a study of legal procedure in the fifteenth century due to the paucity of corroborating testimony from peace rolls, coroner's rolls and county administrative documents, the eastern circuit roll does provide material that suggests that the rigid formality of the legal code required a complex system of courts and officials to be applied. The processing of a felon was not as straightforward as one could expect in light of the direct nature of the law as it applied to felony. The jurors, the officials, the appeal system, the options of the felon and perhaps even the prestige of the king's gaol delivery tribunal combined to create not only a system for the application of the felony laws, but also a complex grouping of variables that provided for a degree of flexibility within an otherwise sterile procedure bound by the rigidity of the laws it upheld.

## APPENDIX

### The Bedfordshire Riots

The struggle between John Cornwallis, lord Faunhope and lord Grey of Ruthin has been discussed by a variety of historians to exemplify the lawlessness of the peace sessions in Bedfordshire. The riots which broke out in January, 1439 were preceded by an incident two years earlier where four commissioners of the king were unable to hold inquiry into trespasses, felonies, and insurrections in the county due to the presence of the two men and a group of their followers. The examination of the four justices who held the special commission from the king was held in the Star Chamber and discrepancies in their testimonies reveal the uneasy situation in Bedfordshire. Two of the justices, William Pekke and John Ludshop arrived at the town of Sisloe to hold the sessions in the company of lord Faunhope,<sup>1</sup> and were confronted by John Enderby, justice of the peace in Bedfordshire, and a group of men who supported lord Grey. Enderby accused Pekke and Ludshop of labouring to indict lord Grey's tenants and a squire of lord Grey's commented that it had been unwise of Pekke, as one of Faunhope's men, to choose to hold the sessions in Sisloe, which was lord Grey's territory.<sup>2</sup> John Fitz, a third commissioner of inquiry, was not told

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<sup>1</sup>Proceedings and Ordinances of the Privy Council of England, ed. H. Nicholas, V, (London, 1835), p. 58.

<sup>2</sup>ibid., p. 37.

he was to sit at the sessions until that morning, apparently because he was partial to lord Grey and Faunhope did not want Grey forewarned of his intentions.<sup>1</sup> John Enderby suggested to Fitz that the two of them, as justices of the peace, should hold a peace session when the commission had completed its business in order to balance the situation to the favour of lord Grey.

The examination of the four justices revealed that lord Grey was highly suspicious of the purpose of the commission along with his men, and so decided to remain to observe the proceedings. The sessions were postponed because of the hostility between the two parties. William Pekke claimed that lord Grey's men far outnumbered Faunhope's men and were defensibly arrayed, while John Fitz testified that both lords had many men and since Grey and his followers were unarmed he suggested the commission be cancelled, fearing the outcome of a clash between the two factions. Ludshop and Henry Lye, the fourth justice named to the commission, testified that the fear of the jurors caused the sessions to be cancelled, as only four or five remained once the trouble began.<sup>2</sup>

Although the matter was examined in the Privy Council, little appears to have been accomplished to further or settle the dispute between Grey and Faunhope, and the subsequent riots at the peace sessions of January, 1439 indicate that the hostility continued. An examination into the Bedfordshire riots was held by the king's council in February, 1439 upon certification made by John Enderby, Thomas Wauton, John Fitz and Henry Etwell, the four justices who attempted to hold the peace

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<sup>1</sup>Privy Council, p. 57.

<sup>2</sup>ibid., pp. 36, 57.

sessions, against lord Faunhope.<sup>1</sup> The examination reveals that the disruption of the court was of a more serious nature than the earlier one, with John Enderby and lord Faunhope as the antagonistic parties. Faunhope apparently arrived after the sessions had begun with sixty men defensibly arrayed causing much rumor and noise in the court house.<sup>2</sup> He proceeded to insult Enderby about his drinking and his rank on the peace commission which brought the two men to dagger-point. When riot broke out in the session house, Enderby asked for his sword to protect himself from the unruly Faunhope followers. The tension was diffused and the matter put to the king's council. The examination of the incident resulted in the granting of two pardons to the men involved by the king. Faunhope and forty-five of his followers were pardoned first in March, 1439. Included in this pardon were the names of eleven other gentlemen who were apparently involved in a skirmish on January 20, 1439, eight days after the incident at the peace session.<sup>3</sup> Why these eleven were pardoned separately was not specified, but their inclusion among the Faunhope supporters suggests that the offences committed on January 20 were related to the peace session incident.

John Enderby and his followers were pardoned on May 30, 1439,<sup>4</sup> and it has been suggested that the delay of two and a half months

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<sup>1</sup>Select Cases Before the King's Council, ed. I. S. Leadham and J. F. Baldwin (London, 1918), pp. 105-109.

<sup>2</sup>ibid., p. 105.

<sup>3</sup>Cal. Pat. Rolls, 1436-1441, pp. 246-247.

<sup>4</sup>ibid., pp. 282-283.

between this pardon and the one granted to Faunhope gave the lord a political advantage as Enderby was thus excluded from the peace commission and could not act in lord Grey's behalf.<sup>1</sup> However, the indictments that appear enrolled in the gaol delivery record for this time consistently bear the name of the unpardoned justice,<sup>2</sup> indicating that Enderby continued to sit at the sessions of the peace thereby limiting Faunhope's gain in the matter. Both bills issued by the king stated that the certifications made to council by Enderby and Faunhope appeared malicious upon examination and neither pardon evidences the king choosing favourites in the dispute.

The problems at the sessions in Bedfordshire reflect the struggle between lord Faunhope, a man of rising political power and lord Grey of Ruthin, a man of declining years used to maintaining local control in the county. Both men had justices of the peace willing to work at the sessions in their behalf, and the confrontations between the two parties were generated by a mistrust regarding the intentions of the justices when sessions were to be held and thus it appears that control of county justice was an integral part of this power struggle in Bedfordshire.

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<sup>1</sup>Roskell, Commons, p. 177.

<sup>2</sup>P.R.O., JI/3/210, m.31d.

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