A Consideration of the Emergence and Exercise of Judicial Authority in the Star Chamber

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This article offers a sketch of the development of the practice of 'law' in a room at Westminster known as the Star Chamber. The analysis is divided, according to modern categories, into three areas: the organisational, the jurisdictional and the procedural. These three spheres are preceded by an introductory historical framework, and are followed by an abstract of the political closure of the Star Chamber saga.

The emergence of the jurisdiction of the High Court of Star Chamber signifies certain critical elements in the rationalisation of the Kingdom of England during the late Middle Ages and Renaissance. To conflate the problem which this court symbolised for the more established parts of the common law with that reputation of the 'Star Chamber' (which grew from the revolution) is wrong. The name 'Star Chamber' itself has undergone the most gruelling of transformations. To speak of the emergence of the Court's actual institutional structure involves drawing upon well developed mythologies and clichés.

In an age noteworthy for change, the growth of the Star Chamber jurisdiction stood in stark distinction from the torpid common law. It was in the Star Chamber that legal reform was taken on. As Europe and England emerged from the mediaeval period shifts in technologies, populations, economies and beliefs meant that governments which failed to adapt, react and move were doomed to obsolescence. The versatility of the law was a measure of a government's ability to cope with these changes, and in England it was often in the Star Chamber where new initiatives and styles were tested.

The Star Chamber was one of the definitive expressions of conciliar diversification and as such the emergence of the unique Star Chamber jurisdiction has presented many legal historians with a great deal of trouble. There was never any constituting Act, yet the abolition of the court in 1641 required the repeal of legislation stretching back hundreds of years. Extant records are sparse, but enough still exists to fuel scholarly debate at a detailed level concerning just how the High Court of Star Chamber came into existence and from where it drew its authority. Whether keystone or red herring, the Act of 1487 (3 Hen VII c 1) is certainly a watershed in the history of Star Chamber.

The jurisdiction exercised in the Star Chamber encompassed a very wide field of law. The scope of this authority is difficult to define. The words 'criminal equity' have been employed to describe the jurisdiction of the Star Chamber, yet the Court did not restrict itself to dealing with criminal work, nor is it strictly appropriate to compare what happened in the Star Chamber

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with what happened at the Chancery corner of Westminster Hall. Areas of operations for the Court included a general supervisory jurisdiction over the judicial *fora* of the realm, criminal supervision and innovation and a civil jurisdiction with a special commercial flavour.

Although the courts of common law and 'conciliar' courts like Star Chamber had identical origins — in the Council, a distinguishing factor (other than the chronological order of institutional independence) was procedure. So as to circumvent the unwieldy system of the common law courts, Star Chamber procedure featured a comparatively simple and efficient routine: bill, address and prayer; indorsement of the bill; writs of summons etcetera; appearance, answer or demurrer; replication and rejoinder; the examination of witnesses and judgment. This alternative to the forms of the common law represented a significant rationalisation in the administration of justice; but opponents of novelty and royal consolidation eventually saw it as arbitrary and tyrannical.

Star Chamber's composition embodied members of the Council, presided over by the Lord Chancellor, and usually included the Chief Justices of the common law courts. On rare occasions the King attended in person. The Court eventually retained its own bureaucracy, separate from that of the Council. Lawyers who appeared also undertook work in the other courts of the realm, although some were known to be Star Chamber experts and their reputations ensured lucrative practices amongst litigants who found themselves before the distinguished panel at Westminster. Whether by compulsion or choice, parties in Star Chamber proceedings faced a court of immense power and adroitness.

Despite the developed perception of the Star Chamber as an infamous tribunal of despotic might, it is apparent that the dilemma which the operations of the Star Chamber represented for the common lawyers was illusory. There was never any discernible intention to override the regular law of the land with Star Chambers. The role of Star Chamber was akin to its sibling, the Court of Chancery, in that a supervisory and ameliorating jurisdiction was to be available to those subjects who were unable to achieve justice from the restricted avenues of the common law. Taken at its extended definition 'common law' includes, *inter alia*, all judge-made law and not merely the decisions of the judges of the courts of King's Bench, Common Pleas, Exchequer and Exchequer Chamber. As such the development of the Star Chamber jurisdiction was seen by contemporary lawyers to be entirely within established legal tradition.

The employment of the court for political trials in what were to be its final years made it the target of the political opponents of the Stuarts' attempts to introduce government based on the French formula. It needs to be said, however, that even under Charles I political trials accounted for only a tiny percentage of the Star Chamber's total business and that for many the Court remained as popular an institution as institutions can be. The political and theological crisis of the seventeenth century might easily be interpreted as one of the results of that anterior societal transfiguration and rejuvenation — played out comparatively recently, in bodies like the Star Chamber.

In much the same way as Magna Carta, or rather the *idea* of the 'Great Charter', became a legal and theoretical landmark for what Pocock calls the 'myth of confirmations' of the orthodox common law interpretation of history, Star Chamber developed a mythology of oppression and arbitrary justice.[1] Star Chamber historiography is an exotic amalgam of contemporary accounts, political invective, suppression and banality.

1. HISTORICAL OVERVIEW: EUROPEAN AND ENGLISH SOCIETY FROM THE 14TH TO THE 17TH CENTURY

1.1 Preamble

The development of the distinctive jurisdiction of the Star Chamber took place in a period remarkable for breakthroughs and rethinking.[2] This setting allows an appraisal of such a development as an instance of legal reform paralleling concurrent mercantile, administrative, religious and demographic rationalisation. The growth and application of judicial power in the Star Chamber represents one of the legal expressions of a 'systematic' cohesion and demystification of the human experience in the Kingdom of England. The common law was a sluggish mechanism in these circumstances, unable to effect change at the rate required by the force of circumstance.[3] While the King's courts of the common law were amenable to non-revolutionary reorganisation, they were hampered by an ideology of continuity similar to that understood today, and a more efficient and speedy system of legality was thought to be necessary.[4]

The period in which the Court of Star Chamber developed and carried out its special functions was one of exceptional change and creativity.

[1] J G A Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge, Cambridge University Press, 1987) 232. On Magna Carta see M Ashley, *Magna Carta in the Seventeenth Century* (Charlottesville, University of Virginia Press, 1965).

[2] See F M Powicke, 'Sir Henry Spelman and the *Concilia*' (1930) 16 *Proceedings of the British Academy* 345, 346–7; B Shapiro, 'Codification of the Laws in Seventeenth Century England' [1974] *Wisconsin Law Review* 428, 441–7; D N Wiesstub, 'Law and Telos: some Historical Reflections on the Nature of Authority' (1978) 12 *University of British Columbia Law Review* 225, 236–246; O Gierke, *Political Theories of the Middle Ages* (F W Maitland, Trans, Cambridge, Cambridge University Press, 1900) 73–8; C Morris, *Political Thought in England: Tyndale to Hooker* (London, Oxford University Press, 1953) 37–8; and T F Tout, *Some Conflicting Tendencies in English Administrative History during the Fourteenth Century* (Manchester, Manchester University Press, 1924) 20, 23–4.

[3] J H Baker, 'The Law Merchant and the Common Law before 1700' (1979) 38 *Cambridge Law Journal* 295; T G Barnes, 'The Prerogative and Environmental Control of London Building in the Early Seventeenth Century: the Lost Opportunity' (1971) 1 *Ecology Law Quarterly* 62; and T F Tout, 'The Beginnings of a Modern Capital: London and Westminster in the Fourteenth Century' (1921–3) 10 *Proceedings of the British Academy* 487.

[4] W Dugdale, *Origines Juridicales* (London, Warren, 1666) 23–4; Sir J Fortescue, *De Laudibus Legum Anglie* (S B Chrimes, ed, Cambridge, Cambridge University Press, 1942) 65–71; W Lambarde, *Archion: a Commentary upon the High Courts of England* (London, 1635) 88; Sir T Smith, *De Republica Anglorum: a Discourse on the Commonwealth of England* (L Alston, ed, Cambridge, Cambridge University Press, 1906) 115–18.

Populations in western Europe were on the move, new continents had been or would soon be 'discovered', and the whole of mediaeval cosmology was undergoing a radical reappraisal. Technological leaps ensured a physical, as well as a perceived, superiority for the traders and missionaries who carried Europe to the unsuspecting world.[5] On the domestic scene, state administration underwent a type of review which the more modern mind usually associates exclusively with its own time, but it would be the epitome of teleology to presume that the purposes of change were necessarily connected with an organised plan of development or later circumstance. Governments altered their processes, partly in response to external pressures, and partly in order to foster just the sort of external conditions which were thought to be of national importance.[6] The judicial aspect of government became ever more specialised and pervasive. Thinking itself took a new turn — away from the certainties which had proscribed contemplation for many centuries.[7] The age of a quasi-theocratic Europe had passed, but that is not to say that people's minds were less preoccupied with religion; religion became a problem to be dealt with rather than a constant issue.[8] The centres of intellectual activity had moved from the monastery to the court and to the university, and in these places curiosity was permitted to freshen presumptions. The fact that both the feudal system of social organisation and the Roman church had been restricted in England from the start by a strong monarchy meant that many of these transformations had a firm basis for further development.

England's constitutional history is to be traced to one ubiquitous institution — the Council.[9] From this body grew the parliament, the courts and the great offices of state which characterise a sophisticated and technical system of administration.[10]

1.2 Geography, Demography and Commerce

The Black Death soared across Europe in the few ruinous years following 1347.[11] Perhaps as much as one third of the population of the continent was affected. The immediate social effects of the plague, while difficult to state

[5] See generally: F Braudel, *Civilisation and Capitalism: 15th–18th Century* (London, Collins, 1982) 3 vols.

[6] Baker, loc cit; J G Crawford, 'The Origins of the Court of Castle Chamber: a Star Chamber Jurisdiction in Ireland' (1980) 24 *American Journal of Legal History* 22; S E Prall, 'The Development of Equity in Tudor England' (1964) 8 *American Journal of Legal History* 7.

[7] R J Terrill, 'William Lambarde: Elizabethan Humanist and Legal Historian' (1985) 6 *Journal of Legal History* 157.

[8] U Eco, *Travels in Hyperreality* (W Weaver, Trans, London, Pan, 1986) 130–1, 265; Morris loc cit.

[9] See J F Baldwin, *The King's Council in England during the Middle Ages* (Oxford, Clarendon Press, 1913).

[10] J F Willard & W A Morris (ed), *The English Government at Work: 1327–1336* (Cambridge, Mass, Mediaeval Academy of America, 1940) Vol I, 29–49, 141–59.

[11] Diseases were, however, part of everyday life. From 1486 until 1551 the 'sweating sickness' epidemics regularly visited the English population, and after 1493 syphilis was an enduring problem for the whole of Europe: Braudel op cit Vol I, 80–1.

briefly, might fairly and quite literally be described as outright anarchy. Governments ceased functioning, and those who could left the towns for the country where isolation brought some safety.[12] A lasting effect was the cultural institutionalisation of a psychological phenomenon — the cult of Death. In terms of legal structures, specific responses to the crushing epidemic included: the reimposition of sumptuary laws; a decrease in taxation; and, most importantly, the start of a comprehensive change in the concept of property. The evolving modes of 'holding' property, with the flourishing of enclosures, uses, rents and leases, came to reflect a society characterised increasingly by the functional interdependence of its human members. These structural changes, while to some extent expedients, inevitably advanced incipient trends towards more elaborate networks of social relations.

At the end of the fourteenth century the position of peasants had advanced somewhat from semi-slavery, although peasant agricultural labour still produced the economic surplus on which the upper classes thrived. Some few peasant families lived lives which may have resembled that of romantic fiction, the majority sustained themselves in a far less comfortable fashion, while the lowest existed on what could be earned or begged on a day to day basis. At the other end of the social hierarchy, the nobility did exceptionally little, if any, productive work. Their lives revolved around the collective enjoyment of goods and services produced by others. Everything depended on land ownership. A small middle class was beginning to emerge, but this unremitting percolation through the structures of class was hampered by enduring aristocratic attitudes and theological doctrine.

Violence was a common feature of everyday existence to an even greater degree than that recognised nowadays. There was an entrenched pathology of violent behaviour which permeated every aspect of society. From the dignification of formal armed conflict to the banality of accustomed assaults, rapes and murders, the fabric of community was a bloody one. As today, governments sought to monopolise, rather than terminate, this economy of force.

With the conclusion of the wars in France in 1453, England became an isolated and independent unit. Having lost the French empire, English energies were focussed inwards. This introspective attitude, amplified in 1523 when Henry VIII aborted his plans for a resumption of the French wars, is argued by Braudel to be the main ingredient in England's commercial potency.[13] The period in question, from about 1300 until about 1650, has been called a little Ice Age. Colder winters resulted in shorter growing seasons, especially in northern Europe. All the same, the production of grain in England underwent a spectacular boom in the years 1200–1700. English grain yields expanded steadily and incrementally over this period due to more efficient methods of agriculture and land management — a result which was

[12] Braudel op cit Vol I, 85–8.
[13] Id Vol III, 353–4.

matched in only a few other regions in Europe over the same time.[14] Beginning in the mid-fourteenth century, London's growing economic strength gave it real significance in the European as well as the British market.[15] London dominated the realm of England in a way in which no other (European) city dominated its hinterland. Over the next few centuries London became the greatest city of Europe because its economic zone, virtually the whole of Britain and Ireland, was in essence an exclusive one.[16] Another important factor in England's economic strength was the solidity of its currency. The value of the pound remained a constant after its ordering by Elizabeth in 1560 — even until the 1930s.[17] It has been estimated that as much as half the population under the Tudors were paid for their labour with wages.[18] England's foreign trade began to be organised along corporate lines as early as 1493. Aristocratic values, in the mediaeval sense, slowly ebbed away with the gradual extinction of older baronial families and the coincident social ascent of mercantilists. The newly elevated Tudor aristocracy was at the forefront of investment in overseas trade and domestic agriculture from about 1540 onwards.[19]

The importance of economic and social conditions to the development of 'superior laws' was understood by Fortescue in the late fifteenth century.[20] The Council, and its branches, played an intensifying role in the regulation of trade and the economy throughout the period.[21] This official supervision was a major component in the swift economic progression of England.[22] The Star Chamber and the Chancery became the preferred commercial courts for their comparative speed, their simple procedure, their lack of juries and their willingness of entertain novel actions.[23]

1.3 The 'System' of Government

From about 1340, with the return of the Exchequer and the Common Bench from York and the development of the palace at Westminster (including the building of the Star Chamber), the London area was again the capital of the realm. This administrative initiative was balanced by the simultaneous, and necessary, economic development of London and its surrounding parishes and boroughs.[24] Tout contends that while the English bureaucracy of the fourteenth century was the best in Europe, having profited from on-going

[14] Id Vol I, 122–3.
[15] Tout, 'The Beginnings of a Modern Capital: London and Westminster in the Fourteenth Century' op cit 489–90.
[16] Braudel op cit Vol II, 40–7, Vol III, 365ff.
[17] Id Vol III, 356ff.
[18] Id Vol II, 53.
[19] Id Vol II, 473, 477, 493.
[20] Fortescue op cit 65–71.
[21] G W Keeton, *The Norman Conquest and the Common Law* (London, Benn, 1966) 196.
[22] P M Neuhauser, 'Privy Council Regulation of Trade under James I' (1965) 50 *Iowa Law Review* 1032–72.
[23] Baker op cit 295–322.
[24] Tout, 'The Beginnings of a Modern Capital: London and Westminster in the Fourteenth Century' op cit 499–508.

refinement since the twelfth century, its perfection meant that the administrative apparatus was not entirely at the disposal of the monarch.[25] This proposition was not unknown to Fortescue.[26] Two other features of fourteenth century English government are noticed by Tout. The first is that administrative laicising should not be interpreted as embryonic anti-clericalism. The decreasing role of the church in national administration should reasonably be attributed to the spread of education to non-clerical institutions such as the universities, the Inns of Court and the Court itself.[27] The second is that the centralisation of power was already a perennial phenomenon, and its success was due to its subtlety and unhurried pace.[28] The one very noticeable thing about the execution of change throughout the period is that those who chose to rock the boat only a little, but persisted, eventually succeeded. Larger reform programmes were often fruitless. The idea of continuity, in England, was nowhere more evident than in the attitudes which enveloped the laws and the official structures of government.[29] This idea veiled a reality of constant renewal and adjustment.

The Mediaeval Council appears as a nebulous mass of what we now see as discrete offices. While the Council remained 'the mainstay of the King in government and an agent of his prerogative'[30], as well as its bureaucratic functions, a reserve power stayed with the *Consilium Regis*, 'in all matters and controversies'.[31] The Crown kept its global forensic rights, exercised as a rule in conciliar proceedings, but this did not represent a challenge to the jurisdiction of the courts of common law.[32] Diversification of jurisdiction stemmed from the abstract brief of the Council; to keep the King's peace. As 'the peace' was gradually assured, management in the loci of defamation, fraud, heresy and maritime and trade disputes was embraced.[33]

While vexatious suits sometimes clogged Star Chamber proceedings, this fact was the corollary to an extensive and versatile jurisdiction. The threshold which versatility provided to untried causes was open to all.[34] Incalculable

[25] Tout, *Some Conflicting Tendencies in English Administrative History during the Fourteenth Century* op cit 5. Cf D G Toole, 'The Star Chamber and the Origins of the Modern Administrative Agency' (1983) 13 *Stetson Law Review* 59, 64–5.

[26] Fortescue op cit 79–91.

[27] Tout, *Some Conflicting Tendencies in English Administrative History during the Fourteenth Century* op cit 20.

[28] Id 23–4.

[29] W S Holdsworth, 'The Elizabethan Age in English Legal History and Its Results' (1927) 12 *Iowa Law Review* 321.

[30] Willard & Morris op cit 29.

[31] Sir M Hale, *The Jurisdiction of the Lords' House* (F Hargrave, ed, London, Cadell, 1796) 35.

[32] R R Bridwell, 'Some Examples of Royal Intervention in Private Litigation during the Reigns of Edward I, Edward II and Edward III' (1963) 24 *South Carolina Law Review* 186, and M Blatcher, *The Court of King's Bench: 1450–1550* (London, Athlone, 1978) 30–3.

[33] Baldwin op cit 262–79.

[34] J A Guy, *The Cardinal's Court* (Sussex, Harvester, 1977) 110–11, cf 125–6, and T G Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641', in J H Baker (ed) *Legal Records and the Historian* (London, Royal Historical Society, 1978) 7, 15.

numbers of Star Chamber causes were begun as a ploy for the advancement of litigation elsewhere. The plasticity of Star Chamber's jurisdiction gave litigants the opportunity to exploit a 'collateral' action in the Star Chamber so as to bolster separate causes.[35] On the other hand, the preponderance of Star Chamber's criminal work was channelled to King's Bench.[36] The Star Chamber reserved to itself critical cases, which typically involved the rich and were mostly camouflaged property disputes.[37] This screening process also applied to the Star Chamber's personal 'corruption' suits.[38] Furthermore, Star Chamber's determination of mercantile and civic disputes principally concerned the town-dwelling, moneyed classes.[39] For these litigants the opening furnished by the riot jurisdiction was a substantial entrance through which the authority of the Court could be accessed.[40]

1.4 Ideas

In the late fourteenth century the world, by the upper classes anyway, was already suspected to be spherical. It was, however, situated at the centre of the universe and contained Eden. Other 'real' mysteries, such as the belief in the existence in China of men with dogs' heads, were also part of reality. All the same, this universe was a thoroughly structured and hierarchical *cosmos* in which each and every element played a determined and 'natural' role.[41].

The importance which the mediaeval world attached to visual imagery persisted for centuries.[42] Even at the end of this period only a small part of the population was able to read. Understanding was gained by actually seeing and hearing, rather than via written expression. Ballads, poetry, stained glass and public spectacle were compelling and dynamic media.[43] Schooling (for those who could afford it), although still principally aural, made some use of books. Subject matter emphasised the seven 'liberal arts' of grammar, logic, rhetoric, arithmetic, geometry, astronomy and music. Allegory figured as the overwhelming method of understanding. Witchcraft and the devil were real and dangerous problems which burdened society. For centuries the memory of the plague persisted as a hideous reminder of the power of evil and the wrath of

[35] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641', id 15–21.
[36] T G Barnes, 'The Making of English Criminal Law: (2) Star Chamber and the Sophistication of the Criminal Law' [1977] *Criminal Law Review* 316, 316–17, and G R Williams, 'The King's Peace: Riot Law in its Historical Perspective' [1971] *Utah Law Review* 240, 251–2.
[37] Blatcher op cit 54–5, Guy op cit 56, and Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 11.
[38] See infra section 3.3.2–3.
[39] See infra section 3.3.4.
[40] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 12–13.
[41] Morris op cit 14–16.
[42] R F Newbold, 'Boundaries and Bodies in Late Antiquity' (1979) 12 *Arethusa* 93, and R F Newbold, 'Centre, Periphery and Eye in the Late Roman Empire' (1981) 3 *Florilegium* 72. For some English images see H S Bennett, *England from Chaucer to Caxton* (New York, Freeport, 1928).
[43] See V J Scattergood, *Politics and Poetry in the Fifteenth Century* (London, Blandford, 1971).

God. Dissent and discontent involved, naturally, the risk of a perceived association with Satan against established order.[44]

In the fifteenth century, a period of dynastic conflict, a phony political principle — 'the people' — played a part in the propaganda war between Lancaster and York. The theory was 'phony' in that the actual aims of the writings of Fortescue and the Yorkist pamphleteers concerned dynastic legitimation; they utilised 'the people' as a stratagem to authenticate oligarchic programmes.[45] It was not until the late sixteenth century, when the sophistication of society had reached a critical point, that historical thought and political theory needed to confront contemporary political issues.[46] Mediaeval learning had tended to focus on ancient or theological prototypes, while lawyers, particularly English ones, had been safely preoccupied with the specialised problems of their profession.[47] The new pressures of heterogeneous and composite relations made traditional legal processes increasingly hollow. Eventually thinkers developed two ideas of the *State*. From the old Germanic idea of the *recht*-state evolved a theory of 'positive law' which placed the idea of law above the immediate concerns of the government. Against this theory stood a theory of the *State*, or 'natural law', which prioritised those concerns as the proper ones of historical, legal and political thinking. The former's ultimate theoretical expression was popular sovereignty, while the latter's was divine right.[48] A common element in the thought of both evolved structures was the certitude of teleology.[49] The humanists of the late sixteenth and early seventeenth centuries did not share the teleological predilection of the majority, and were, in this respect, a marginalised sect.[50]

2. STRUCTURE: THE COUNCIL, THE COURTS, 3 HEN VII c 1 (1487) AND THE STAR CHAMBER

2.1 Praefatio

There are at least two contingencies which must be dealt with in order to appreciate the position occupied by the Court of Star Chamber in the context of English government. The first contingency inheres in the practice of examining the process of the emergence of discrete institutions from a common ancestor: it concerns a topology or cybernetics of political institutions. The

[44] J K Van Patten, 'Magic, Prophesy and the Law of Treason in Reformation England' (1983) 27 *American Journal of Legal History* 1.
[45] P E Gill, 'Politics and Propaganda in Fifteenth Century England: the Polemical Writings of Sir John Fortescue' (1971) 46 *Speculum* 333.
[46] E Durkheim, *The Division of Labour in Society* (G Simpson, trans, New York, Macmillan, 1933) 262, 396–409, and generally: F Tonnies, *Community and Association (Gemeinschaft und Gesellschaft)* (London, Routledge, 1955).
[47] M V Clarke, *Mediaeval Representation and Consent* (London, Longmans, 1936) 5.
[48] Gierke op cit 73–8 and Morris loc cit.
[49] Wiesstub loc cit.
[50] Terrill loc cit and Powicke op cit 345–79.

other contingency relates to a subsequent politicisation of that examination; the policial historiography of that topology. These two elements of understanding, the empirical and the interpretative, are intimately affiliated.[51]

This dilemma facing the legal-institutional historian is explained by Plucknett:

> To describe the constitutional place of several institutions, each of which exhibits every sign of self-consciousness, regarding the others as quite external to itself, and pursuing a policy of its own, and yet which are at the same time inextricably entangled in all directions, is no easy matter, when one has to use modern words with their clearly defined associations.[52]

To put things as simply as possible Flower states, 'the Curia Regis is the trunk from which every form of governmental activity has successively branched'.[53] It is correspondingly elemental that in 1641 there was an autonomous Court of Star Chamber. The question here is — how, and at what stage, did this differentiation and specialisation from Curia to Star Chamber occur?

The first 'clue' is an analogy provided by the emergence of a unified, albeit stratified, central government after 1066. However, this is plainly more a red-herring than a true lead, as perhaps the most that may be said with any certainty here is that the King's court (the 'Council' of latter days) in its various forms, simply did, for the time being, whatever was perceived to be necessary for effective government. There was no operative 'theory' or 'settled plan', which some have called feudalism.[54] This approach is supported by Dawson, whose analysis warrants reciting:

> In judicial functions, as in the administrative powers of royal officials, these impulses toward growth had been met in each case by new resistance, which aimed to arrest and contain them. As new functions became organised they generated their own routines; the routines became invested with

[51] Having said this, this section shall deal principally with the cybernetic angle, with only limited reference to political interpretations. The political historiography is dealt with, *infra* in section 5. On hermeneutics and institutional evolution in England see: S J Astorino, 'History and Legal Discourse: the Language of the New Legal History' (1984–5) 23 *Dusquene Law Review* 363; F K Archer, 'The Practial Importance of Legal History' (1928) 165 *Law Times* 165; S B Chrimes, 'Sir John Fortescue and his Theory of Dominium' (1934) 17 *Transactions of the Royal Historical Society* (4th ser) 117, 138–42; H Kantorowicz, 'Savigny and the Historical School of Law' (1937) 53 *Law Quarterly Review* 326, 332–5, G Bradford, *Proceedings in the Court of Star Chamber in the Reigns of Henry VII and Henry VIII* (Somerset, Record Society, 1911) Vol 27, 2; and *pace* V H Galbraith, *Studies in the Public Records* (London, Nelson, 1948) 6.

[52] T F T Plucknett, 'The Place of the Council in the Fifteenth Century' (1918) *Transactions of the Royal Historical Society* (4th ser) Vol 1, 157, 173. See also Baldwin op cit 1: 'in the minds of the men of a former generation there was a prevailing rigidity of thought which failed to comprehend the extreme flexibility of institutions in a formative stage'. Hale, however, is praised for his perspicacity, and '[the Council] was a body vaguely outlined, uncertain in composition, undefined in function, and unrestricted in scope of authority': 2, 459.

[53] C T Flower, *Introduction to the Curia Regis Rolls: 1199–1230 AD* (London, Selden Society, 1944) Vol 62, 13.

[54] Cf F Pollock, 'The King's Justice in the Early Middle Ages' (1898) 12 *Harvard Law Review* 227, 229, 232; and J V Capua, 'Feudal and Royal Justice in Thirteenth Century England: the Forms and Impact of Royal Review' (1983) 27 *American Journal of Legal History* 53.

an imperative 'law' or almost-law; as action was then hampered, the central institutions of the monarchy reasserted their power to override restraints and create new functions, which in their turn built into regularity and became 'law' or almost-law.[55]

Was it the case, as Bradford asserts, that after Edward III, despite the scarcity of records, 'the Court [of Star Chamber] was continous and its character unempaired'?[56] To answer this question requires an examination of a number of issues, respectively: the gradual evolution of the courts, councils and parliaments of England; various legislative acts regulating (or failing to regulate) this evolution, particularly 3 Henry VII c 1; and the media by which our knowledge of these matters has been received.

2.2 The Council

The Council may be traced back to Frankish, not Anglo-Saxon, origins, going by names such as *curia*, *placitum*, *conventus*, *colluquium*, *synodum* and *concilium*.[57] Adams sees that a coherent programme of 'differentiation' took place in England's institutional polity, something like a perfect model of 'feudalism', which may be readily charted out.[58] As previously indicated, this is much too crude an approach to the intricacies of governmental development. Models have limited utility. Oddly enough they are perhaps most significant and telling when they begin to break down. It is at this stage that it becomes clear to the researcher how much any model or paradigm is dependent upon a static environment — and thus to a large extent profitless to the historical thinker.[59] The Adams thesis is effectively revised by Wilkinson, via the introduction of some political and temporal vitality to the otherwise essentially lifeless edifice of Adams' conciliar genealogy.[60]

[55] J P Dawson, 'The Privy Council and Private Law in the Tudor and Stuart Periods' (1950) 48 *Michigan Law Review* 393, 395. See also Keeton op cit 214.

[56] Bradford op cit 4.

[57] G B Adams, *Council and Courts in Anglo-Norman England* (New York, Russell & Russell, 1965) xx–xxi. For these linguistically evolving terms see Baldwin op cit 15. On the question generally see Keeton op cit 81–90.

[58] Adams, *Council and Courts in Anglo-Norman England* op cit xiii, 200–4. See also G B Adams, *The Origin of the English Constitution* (New Haven, Yale University Press, 1912) 157–60, 343–9 where a less assured stance in adopted. This interpretation is followed by B Lyon, *A Constitutional and Legal History of Mediaeval England* (2nd ed, New York, Norton, 1980) 621 — Lyon takes this line to the extreme of regarding the Star Chamber jurisdiction as the formalisation of an incipient despotism during the fourteenth and fifteenth centuries: 594, 613, 616.

[59] F Braudel, 'History and the Social Sciences: the Long Term' (1979) 9 *Social Science Information* 145, 159–68. Cf C E Shannon & W Weaver, *The Mathematical Theory of Communication* (Urbana, University of Illinois Press, 1964) 3–28, 65ff.

[60] B Wilkinson, *Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries* (2nd ed, Manchester, Manchester University Press, 1952) 122–4, 176–7, 206–7: where the writer holds up the Council as the scene of political activity, rather than as an arid organisational vehicle. Baldwin regards a model of feudalism as useful in so far as it demonstrates the Norman lord's entitlement to the 'aid and counsel' of his vassals — the origin of the King's 'Council': Baldwin op cit 3. For an excellent overview of the administrative, rather than strictly legal, history of this development (albeit admittedly generalised) see S B Chrimes, *An Introduction to the Administrative History of Mediaeval England* (Oxford, Blackwell, 1952).

2.3 The Council and Courts

The early splitting, of that 'judical' part of the Council called the Curia Regis, is fairly easy to demonstrate, with the periodic removal of the Justices in Eyre from the Justices of the Curia Regis, from about 1176.[61] It seems that the Courts of common law could be regarded as absolutely separated from the Council, with the keeping of separate records, at sometime during the reign of Richard II.[62] While the King did retain his general judicial prerogative, exercised principally in conciliar proceedings but also before the common law courts, this exercise was not in conflict or disagreement with the autonomy of the courts of common law.[63]

The common law Courts aside, the Council continued to specialise its functions as the passing of time brought new challenges. Larger conciliar gatherings, embracing the broad base of the aristocracy, and eventually the bourgeoisie too, were called sporadically for special purposes (usually related to war time taxation) and came to be known as parliaments rather than as the *magnum Consilium*. While Great Councils were still called from time to time to deal with particular questions, from the late thirteenth century 'parliaments', consisting of an ever widening membership, were held on increasingly regular and formalised occasions. The early fourteenth century was a period in which the institutional differentiation between the parliaments and other conciliar meetings was beginning to become clear. By 1461 the procedures, functions and membership of *the* Parliament were almost completely established.[64]

Notwithstanding the autonomy of these institutions, the Council remained 'the mainstay of the King in government and an agent of his prerogative'.[65] As well as its advisory and administrative functions, a reserve sphere of duty remained with the *Curia Regis*, when acting *in foro contentioso*, as part of what Hale termed the King's *potestas jurisdictionis* 'in all matters and controversies'.[66]

[61] See L O Pike, *A Constitutional History of the House of Lords* (London, Macmillan, 1894) 29–33. Nb the full Curia Regis would still hear cases of great importance, for example, *The King of Castille* v *The King of Navarre* (1176) Benedictus Abbas (Rolls Ser) Vol I, 138. Id 38–40. See Baldwin op cit 7–10, 38–68.

[62] Id 46: After stating, nicely, the standard line on conciliar development — 'all the judical branches of the royal court . . . can be traced back to the *curia regis* of the Norman kings. This was an inchoate and constantly changing core of great officers of state . . .'. Turner advances the thesis that the first example of the King creating new courts to suit administrative imperatives and unclog the existing system is within the common law (as we now see it) with the establishment of the court *coram rege* (King's Bench), as distinct from the court of Common Pleas, under John and Henry III: R V Turner, 'The Origins of Common Pleas and King's Bench' (1977) 21 *American Journal of Legal History* 238, 239ff. The paleographic evidence surveyed — Galbraith op cit 20.

[63] Bridwell loc cit and Blatcher op cit 30–3.

[64] See Willard & Morris op cit 145, Baldwin op cit 307–44 and A L Brown, *The Governance of Late Mediaeval England: 1272–1461* (London, Arnold, 1989) 156–237.

[65] Willard & Morris op cit 29.

[66] Sir M Hale, *Analysis of the Law* (fascimile of 1713 ed, New York, Garland, 1978) 8–19, Hale, *The Jurisdiction of the Lord's House* op cit 23–4, 32–5, 37–9, Sir M Hale, *The Prerogatives of the King* (D E C Yale, (ed) London, Selden Society, 1976) 107–8, 183 and see *Henry de Novo Burgo* v *William le Moyn* Hil 3 Ed 1. See also C L Scofield, *A Study of the Court of Star Chamber* (New York, Franklin, 1900) xxiii, and *Parson of Langar* v

Thus the Council, confirming Plucknett's worst fears, looms as a hazy conglomeration of what we now call executive, legislative and judicial offices. Membership of the Council, to a greater extent than its operative spheres, was cross-fertilised to such an extent that well after the 1340s a body sitting in the room at Westminster known as the Star Chamber might still be exercising functions of a non-judicial character. Originally, there were never any set times for judicial sittings; they took place on an *ad hoc* basis.[67] The on-going process of differentiation and specialisation within the Council gave rise to permanent collateral boards, such as the Court of Chancery,[68] the Court of Star Chamber, the Council Learned In The Law, and the Privy Council, each with its own apportionment of the total business of the Council.[69] The process was on-going in the sense that improvement of organisational practices was a perpetual goal; unprecedented modification, not timeless immutability, was the stamp of a robust and energetic societal framework.[70]

The pace of institutional particularisation outstripped the development of any ideas of personal expertise or responsibility. These numerous sub-Councils all took advantage of experts. For the purpose of judicial proceedings judges were included with the councillors, but powerful magnates usually sat irrespective of the type of business at hand, as they had done since the conquest.[71]

The Court of Star Chamber, by 1641, fell short of the institutional distinctiveness of Chancery, however it had a greater degree of definition than had, say, the Council Learned In The Law.

Conyngsby in I S Leadam & J F Baldwin (eds), *Select Cases before the King's Council: 1243–1482* (Cambridge, Mass, Selden Society, 1918) 47.

67 Leadam & Baldwin op cit xv–xx, and Willard & Morris op cit 34–5, 142.

68 On which see J M W Bean, *The Decline of English Feudalism: 1215–1540* (New York, Manchester University Press, 1968) 162–8.

69 It is clear, despite some little confusion, that the Council Learned in the Law is distinct from the Star Chamber — see R Somerville, 'Henry VII's "Council Learned in the Law" ' (1939) 54 *English Historical Review* 427, 430, 439. See generally, Baldwin op cit 103–14.

70 Not surprisingly, we find a correspondence between common law stagnation, conciliar creativity and dynamic monarchy: F W Maitland, *English Law and the Renaissance* (Cambridge, Cambridge University Press, 1901)18–22 and n 43 re, *inter alia*, a proposal in 1534 to establish yet another conciliar court (from *Letters and Papers of Henry VIII*, Vol 7, 603). See *Statutes of the Realm*, II, 36ff; N H Nicolas, *Proceedings of the Privy Council*, I, 18aff; (Minutes of the Council, *Proceedings and Ordinances of the Privy Council* (N H Nicolas, ed) I, 18, from B M, Cottonian MS. Cleopatra, F III and *Atte Wode* v *Clifford* in Leadam & Baldwin op cit 85ff.

71 Baldwin op cit 460. See infra section 2.6. See also A E Stamp, 'Some Notes on the Court and Chancery of Henry III' in J G Edwards, V H Galbraith & E F Jacob (eds), *Historical Essays in Honour of James Tait* (Manchester, 1933) 305–11. See also A L Brown, 'The King's Councillors in the Fifteenth Century' (1969) 19 *Transactions of the Royal Historical Society* 95. As for any Tudor 'revolution', Hooker, with Elton, reasserts the timeless, unplanned, haphazard 'system': J R Hooker, 'Some Cautionary Notes on Henry VII's Household and Chamber "System" ' (1958) 33 *Speculum* 69; Elton's 'revolution' is 'safe ... never ... breaking its lifeline with the past': G R Elton, *England under the Tudors* (London, Methuen, 1962) 160.

2.4 The Star Chamber

By the end of the Tudor period the Star Chamber itself was a three storey building containing three principal rooms; an inner and an outer meeting room and a reception area. The original building of 1343–1348, probably destroyed in the fire of 1512, had perhaps only one room. We know of extensive improvements completed by 1518.[72] There were further renovations in 1602.[73] The site of this evolving structure was on the east side of the Westminster Palace yard 'near the Exchequer'.[74] The present complex still contains an open colonnade called the Court of Star Chamber. However the architecture does not provide answers to questions of a historico-legal nature. Pollard correctly states that 'primarily the phrase star chamber indicates neither a council nor a court, but simply a building'.[75] Non-judicial work was daily transacted there.

Not surprisingly, of the statutes enacted prior to 1487 concerning the jurisdiction of the Council, it is hard to find where any line of development lies in relation to a cohesive interpretation of the English constitution. What is apparent is that the judicial authority exercised by the Council was disputed by various parliaments, to greater and lesser degrees, with similarly fluctuating degrees of success.[76] By the same token, the Council, often notwithstanding parlimentary prohibition, continued its judicial work. A number of statutes, ultimately traceable to Magna Carta, demonstrate the intentions of successive parliaments to restrict the operations of the Council and vest authority in either the Courts of common law or the corporate entity of parliament itself. There is, equally, parliamentary evidence of the undeterred assertion of conciliar power by royalty, thus recognising the jurisdiction of the Council.

Without attempting to advance any theory as to the relative successes or failures of Kings or baronial parliaments, the table below sets out, in two columns, the two legislative themes concerning the judicial authority of the King's Council before 1487. The appearance of the same Acts on both sides of the table serves to demonstrate that no more precise term than 'themes' is appropriate to this cyclic political tension between King and parliament. Clearly, as Scofield points out, the Acts of 25 Ed III c 4 (1350) and 42 Ed III c 3 (1368) both indicate an attempt to restrict the Council's functions, and are thereby a recognition of the fact of that functioning, by parliament.[77] Similarly, the other Acts cited below, taken as a corpus, are indicative of the

[72] J Hawarde *Les Reports del Cases in Camera Stellata: 1593–1609* (W P Baildon (ed), London, 1894) 453–64. See also Baldwin op cit 354–8.

[73] Hawarde op cit xlii–xliii.

[74] So designated in *Atte Wode* v *Clifford* in Leadam & Baldwin op cit 91, see also Baldwin op cit 356.

[75] A F Pollard, 'Council, Star Chamber and Privy Council under the Tudors' (1922) XXXVII *English Historical Review* 516.

[76] See *Rot. Parl.* iii, 55–6; *Rot. Parl.* IV, 175: Nicolas, *Council Proceedings* III, 148 from B M, Cottonian MS. Cleopatra, F IV and *Rot. Parl.* IV, 326–34.

[77] Scofield op cit xxvii–xxix and Hale, *The Jurisdiction of the Lord's House* op cit 35. Nb Baldwin op cit 459: 'these acts . . . were never comprehensive in their scope, nor was the conduct of the Council seriously affected by them'.

flux in the power relations of the evolving, specialising, central government.

Pre-1487 Conciliar Judicial 'Regulation' By Parliament[78]

Statutes Recognising The Judicial Authority Of The Council	*Statutes Restricting The Judicial Authority Of The Council*
18 Ed I c 5	Magna Carta*
20 Ed III c 6	
25 Ed III c 4*	5 Ed III c 9*
27 Ed III c 1	25 Ed III c 4*
36 Ed III c 9*	28 Ed III c 3*
37 Ed III c 9	37 Ed III c 18
38 Ed III c 1	42 Ed III c 3*
42 Ed III c 3*	38 Ed III c 9
5 Ric II c 8	13 Ric II c 5
8 Ric II c 4	15 Ric II c 3
12 Ric II c 10	2 Hen IV c 11
12 Ric II c 11	2 Hen V c 8
13 Ric II c 2	1 Hen VI c 4
16 Ric II c ?	8 Ed IV c 2
17 Ric II c 6	
7 Hen IV c ?	
13 Hen IV c 7	
2 Hen V c 8	
31 Hen VI c 2	

*These Acts recited in 16 Car I c 10 1640 (the Abolition Act).

The thematic trends referred to above were eventually, and anachronistically, polarised into a rigid political stand-off.

2.5 3 Hen VII c 1 (1487)[79]

Few statutes have undergone the tremendous scrutiny that 3 Hen VII c 1 (1487) has been subjected to. The so-called *Pro Camera Stellata* of 1487 either establishes the Court of Star Chamber, or has nothing to do with it all, depending upon the particular interpretation adhered to. The balance of considered opinion seems to favour the proposition that 3 Hen VII c 1 did not establish the Court of Star Chamber, and that the statute simply addressed special problems associated with an extended period of civil unrest, perhaps setting up what was to be a temporary tribunal within the Council. This

[78] See Scofield op cit xxvii–xxix, F W Maitland, *the Constitutional History of England* (Cambridge, Cambridge University Press, 1926) 216–22, Hale, *The Jurisdiction of the Lord's House* op cit 36, Dugdale op cit 36, Lord Percy, *The Privy Council under the Tudors* (Oxford, Basil Blackwell, 1907) 51, Leadam & Baldwin op cit xv–xxxi, I S Leadam (ed), *Select Cases before the King's Council in the Star Chamber: 1477–1509* (London, Selden Society, 1903) lix–cliv. On the minutiae of Council-Parliament struggles before the Tudors see Baldwin op cit 307–44.

[79] *Statutes of Realm*, II, 509ff: 3 Hen VII c 1 (1487).

construction entails a view of the Court of Star Chamber as the progeny of the long established judicial division of the Council. The state of analysis in 1834 still reflected some vestige of creationist theory — Palgrave states:

> These statutes [3 Hen VII c 1 and 21 Hen VIII c 20] were not strictly pursued, and they were considered merely declaratory of the authority of the Council; yet, virtually, they created the Court of Star Chamber as it existed under the Tudors.[80]

This enquiry stands at the threshold of modern, disinterested research. In 1834 a whole new round of political and constitutional struggle had just begun. In the face of the latest ideas about democracy and socialism, disputes concerning royal prerogative and judicial power could be safely left to the professional historian or antiquarian.

In 1868 Hearn noticed that the Act of 1487 did not constitute the Star Chamber as a court. He preferred the evolved-Council approach. This conclusion, ostensibly based upon statements in the judgments of Coke and Lord Howard in *Earl of Northumberland* v *Sir Stephen Proctor* (to the effect that the Court of Star Chamber was not created by the Act of 1487) and upon Hudson's analysis, owed more, perhaps, to the author's nascent structuralism than to a thorough analysis of source materials.[81]

The realities of 3 Hen VII c 1 were fully investigated by Scofield in her 1900 monograph *A Study of the Court of Star Chamber.*[82] Scofield set up two theoretical options: that the Court of Star Chamber is established by 3 Hen VII c 1 (and therefore exceeded its authority regularly); or that the Court of Star Chamber grew from the Council (and that the statute had little relevance to its operations).[83] Literary support for the latter option was supplied by Hudson, Mill, Lambarde and Coke.[84] Documentary support for the latter option was detailed by Scofield, starting with transactions in the Star Chamber in 1487 showing business was by no means confined to those matters contained in the statute.[85] Support for the latter option by reference to the constitution or judicial membership of the Court was also covered.[86] Scofield's conclusion was that it was during the time of Henry VII that the Star Chamber became the essentially judicial specialist branch of, and organisationally distinct from, the Council. Yet, in terms of the Court's jurisdiction and composition, this

[80] Sir F Palgrave, *An Essay upon the Original Authority of the King's Council* (London, Public Record Commission, 1834) 98–9. Palgrave also notes, howver, that the Act of 1487 is not merely an aggregate of the King's power, but remedial of specified wrongs, and was coupled with another statute (of the same year) which enabled Justices of the Peace to empanel special inquests to deal with problems that other inquests had concealed: id 104.

[81] W E Hearn, *The Government of England: its Structure and its Development* (Melbourne, Robertson, 1868) 287.

[82] Scofield loc cit.

[83] Id 14.

[84] Id 14–16.

[85] Id 16–24. The source is the 'Liber Intrationum' in the Add. and Harg. MSS at 4521 and 216 respectively. See, for a pre-1487 Star Chamber judgment which itself exceeds the 1487 bounds: *Whele* v *Fortescue* in Leadam & Baldwin op cit 117ff.

[86] Scofield op cit 24–7.

specialisation is not referable to the statute 3 Hen VII c 1.[87] Her final word on the purpose of the Act of 1487 was that it strove to bolster the authority and credibility of the Court by ensuring the presence of common law judges on the Court.[88]

Soon after Scofield had clarified the whole field of Star Chamber study, the production by the Selden Society of Leadam's *Select Cases Before the King's Council in the Star Chamber* in 1903 meant that serious attention to the 1487 creation theory was obsolete.[89] Leadam continued the Scofield thesis:

> So far as the statesmen of the day appear to have intended, they were obtaining fresh parliamentary powers to deal with the disorders which were then rendering the task of government difficult. The tacit enlargement of the powers of the court undoubtedly arose from the accredited belief that it inherited the undefined powers of the Council to deal with new emergencies. To this may be added the natural tendency to the extension of jurisdiction common to all courts and the political advantages which the control of a powerful judicial tribunal was eventually seen to confer upon the Sovereign.[90]

Once this ground had been broken, however, the Scofield thesis itself underwent a degree of revision. Bradford and Pollard endorsed the '1487-supplement to powers' approach.[91] However Pollard, much to the dissatisfaction of Ogilvie, interpreted the Act of 1487 as part of a scheme, together with another act of the same year (3 Hen VII c 14) concerning the royal household.[92] Ogilvie rejected this approach for want of non-circumstantial evidence.[93] Maitland, and later in 1958 Bayne, grafted onto the Scofield thesis the creation, by 3 Hen VII c 1, of an additional statutory judicial committee, running, as it were, parallel to the Star Chamber.[94] This confusion appears to

[87] Id 28–9, 36–40. 'Some distinction there evidently was, even in Henry VII's reign, between the Star Chamber and the Council. An adherence, evidently imperfect, in the judicial proceedings to the four Terms of the Law Courts, and perhaps the severity of the penalties meted out in the Star Chamber in general at least by the Lord Chancellor, were probably already identifying that room with one of the many kinds of work done there, and so, in spite of the jumbling of records and the loose constituency of the Court, "the Star Chamber" was even then in common parlance no longer a name for the Council in general, but a nickname for the tribunal which sat most frequently in that room, and before which suits were brought by bills of complaint:' 28–9.

[88] Id 40–4. Nb this is not to say that the Act created any conciliar sub-committee, but rather that it added members to an already existing sub-committee — and hence the 'genesis' of the creationist myth: 42.

[89] Leadam loc cit, see also Toole op cit 68–70.

[90] Leadam op cit lxv. This is entirely consistent with Baldwin op cit 439–42.

[91] Bradford op cit 6–7: 'the Act of 1487 created no new court; it simply gave statutory sanction to the judicial powers long exercised by the Council', and Pollard op cit 520: 'the Act of 1487 had little or nothing to do with the star chamber, and its provisions are inconsistent with what we know of the personnel, the practice, and the procedure of that court'.

[92] Pollard op cit 526.

[93] C Ogilvie, *The King's Government and the Common Law: 1471–1641* (Oxford, Blackwood, 1958) 60–1.

[94] Maitland, *The Constitutional History of England* op cit 262: 'the general opinion seems now to be that the jurisdiction of the Court of Star Chamber was in truth the jurisdiction which the king's council had exercised from a remote time, despite all statutes and protests made against it. The act of 1487 constituted a committee of the council to deal with certain crimes; this however did not deprive the council itself of any jurisdiction

evince a fundamental misreading of Scofield, who states, perhaps somewhat ambiguously: 'Into the committee which took up its abode in the Star Chamber had been introduced, however, the two Chief Justices'.[95]

This 'committee' is the specialist section of the Council — what will be known as the Court of Star Chamber, not a creation of 1487, as a literal reading of Scofield shows.[96] The Court's membership was again supplemented in 1529 by the statute 21 Hen VII c 20 officially adding the recently created Lord President of the Council to the Court.[97] Some of the confusion may be attributable to the practice of Wolsey of delegating Star Chamber business. Under the Cardinal, work was redirected to committees, or sometimes even individuals, who either remained in the capital or toured across the realm, on an ad hoc basis.[98] These committees were never permanent, nor had they any statutory or other foundations, save the Cardinal's own precept. More confusion comes from the establishment in 1539 of a separate statutory tribunal, which sat in the Star Chamber and was constituted in the same way as the Court of Star Chamber.[99]

There were other statutes after 1487 which dealt with the jurisdiction exercised in the Star Chamber. The statute 33 Hen VIII c 1 indicates that the Star Chamber punished counterfeiters; 4 & 5 Philip & Mary c 8 authorises the punishment of seducers of heiresses; 5 Eliz c 9 recognises the jurisdiction over cases of perjury; and 5 Eliz c 14 recognises the jurisdiction over cases of forgery. Authority to hear cases of 'covenous and fraudulent conveyances' is recognised by the statute 27 Eliz c 4. Building controls are the subject of 39 Eliz c 1. A jurisdiction over causes with respect to letters patent is presumed by 43 Eliz c 1. The statute 1 Jac I c 10 puts the Star Chamber on the same footing as the other courts at Westminster concerning liveries. None of

that it had ... before the end of Henry VIII's reign this statutory committee seems to disappear, it is merged in the general body of the council.' and C G Bayne & W H Dunham (eds), *Select Cases in the Council of Henry VII* (London, Selden Society, 1958) Vol 75, lxvii: 'when the Act first became law two contrary opinions were held of its scope ... the Star Chamber and the court that the Act created differed ... whatever inferences may be drawn from the Act the fact remains that from within a year of its enactment men were associating the court that it created with the Star Chamber.' A view first endorsed by T G Barnes, 'Review of Bayne & Dunham, *Select Cases in the Council of Henry VII*' (1959) 34 *Speculum* 649, and then later qualified in T G Barnes, 'Mr Hudson's Star Chamber' in D J Guth & J McKenna (eds), *Tudor Rule and Revolution* (Cambridge, Cambridge University Press, 1983) 285, 286 n 4.

95 Scofield op cit 42.

96 A literal reading of Hale, *The Prerogatives of the King* op cit 107–8 sanctions this approach. It is worth noting that at the same time as Bayne's work was published, the trap of the parallel committee was avoided, again perhaps not unambiguously, by Ogilvie who qualifiedly endorses the judical bolstering interpretation of Scofield: Ogilvie op cit 58–62, particularly 62 where the author makes reference to Steele, Vol 1 — see also Vol 5, 1–2 on royal proclamations around 1487: R Steele, *A Bibliography of Royal Proclamations of the Tudor and Stuart Sovereigns: 1485–1714* (Oxford, Clarendon Press, 1910).

97 *Statutes of the Realm* III, 304: 21 Hen VIII c 20 (1529). See I S Leadam (ed), *Select Cases before the King's Council in the Star Chamber: 1509–1544* (London, Selden Society, 1911) Vol II, ix–xii.

98 Guy op cit 38–41ff, especially chapter 2, n 103.

99 31 Hen VIII c 10 (1539), Leadam, *Select Cases before the King's Council in the Star Chamber: 1509–1544* op cit Vol II, 226 n 8.

these statutes actually grant jurisdiction, they simply indicate that the Star Chamber does exercise this authority.[100]

2.6 Personnel[101]

2.6.1 *The Composition of Star Chamber*

Although the monarch's judicial functions had been effectively delegated beyond retrieval at common law since the thirteenth century,[102] the station of the monarch was less isolated in the conciliar courts. The comparative newness and considerable importance of these courts went side by side with the more intimate concern of a monarch interested in the legal foundations of authority.[103] The three monarchs mentioned by Hawarde as having sat personally in a judicial capacity in the Star Chamber were, each for his peculiar reasons, interested in the utilisation of the Court as a representation of royal power: Richard III; his successor Henry VII and James I.[104]

When the King was not present, which was the normal state of affairs, the leadership of the Court of Star Chamber vested in the Lord Chancellor. In the absence of the Lord Chancellor the position of leader was assumed by the Lord Treasurer, the Lord President of the Council (after 1529) or the Lord Privy Seal.[105] One visible indication of the secularisation of government was that the lawyers appointed to the position of the King's chief minister steadily

[100] There is, perhaps, one statute which adds jurisdiction: 25 Hen VIII c 1 (1533) — on which see Scofield op cit 29–30.

[101] 'There is yet in England another Court, of the which that I can understand there is not the like in any other country. In the term-time . . . every week once at the least (which is commonly on Fridays and Wednesdays, and the next day after that the term doth end) the Lord Chancellor and the Lords and other of the Privy Council, so many as will, and other Lords and Barons which be not of the Privy Council, and be in the town, and the judges of England, specially the two chief judges, from nine of the clock till it be eleven, do sit in a place which is called the Star Chamber, either because it is full of windows, or because at the first all the roof thereof was decked with images or stars gilded. There is plaints heard of riots . . . And further, because such things are not commonly done by the mean men, but such as be of power and force, and be not to be dealt withal of every man, nor of mean gentlemen: if the riot be found and certified to the king's council, or if otherwise it be complained of, the party is sent for, and he must appear in the Star Chamber . . .: for that is the effect of the court, to bridle such stout noblemen or gentlemen which would offer wrong by force to any manner men, and cannot be content to demand or defend the right by order of law. This court began long before, but took augmentation and authority at that time that Cardinal Wolsey, Archbishop of York, was Chancellor of England, who of some was thought to have first devised that court, because that he, after some intermission by negligence of time, augmented the authority of it . . . The judges of this court are the Lord Chancellor, the Lord Treasurer, all the King's Majesty's Council, the barons of this land . . . The punishment most usual is imprisonment, pillory or fine, and many times both fine and imprisonment . . .': Smith op cit Bk III, chapter 4.

[102] Capua loc cit.

[103] Cf Baldwin op cit 395–6.

[104] Hawarde op cit lv. Guy notes that Henry VII ceased to attend with any regularity after 1504: Guy op cit 24. This puts James I's return to personal supervision squarely a century subsequent and these appearances mark out the boundaries of the Tudor dynasty. Lambarde adds, before the Tudors, Edward III and Edward IV to this tally: Lambarde op cit 149–54.

[105] Scofield op cit 61.

outnumbered the clerics.[106] In 1530 Wolsey's demise marked the finale of the great priest-Chancellors.[107]

The Council under Edward III comprised about 30 members, with about nine the average number in attendance at any given time.[108] Institutional differentiation was rather restricted at this early stage, and the Council was a more homogeneous body than it later came to be.[109] Edward III had, according to Baldwin, a peculiar talent for balancing the constituent elements of his Councils (barons, bishops, jurists, ministers and others) for maximum utility.[110] The Council continued its function of providing advice to the King generally under the latter Plantagenets, the Lancastrians and the Yorkists.[111] It appears that for most of this time the number of Councillors was about 30, however the number of members in regular attendance varied according to many factors, such as Henry VI's minority or particular political or military requirements.[112] Hawarde notes that while Henry VII and Henry VIII maintained large Councils of about 40 members, under Elizabeth I the number was significantly reduced to between five and 19 members.[113]

According to Hawarde, the original composition of the Court was the whole of the Council. The effective number of Councillors who attended to the judicial functions of the Star Chamber during the latter years of Henry VII and the initial years of Henry VIII is estimated by Guy to have been between eight and 25.[114] After 1515 the new Lord Chancellor, Cardinal Wolsey, encouraged the King to bolster the partially drained Council with new members, and the Chancellor himself enforced more frequent and fixed attendance requirements. The effective number of Councillors increased slightly.[115] This 'effective' core of personnel comprised the Lord Chancellor, the Lord Treasurer, the Lord Keeper, the two common law Chief Justices, the Chief Baron of the Exchequer, the puisne judges, the King's sergeants-at-law, the Attorney-General, the Solicitor-General, the Master of the Rolls and other sworn Councillors who, for the time being, were required, by the general or specific terms of their oaths, to attend to the legal business of the Council.[116]

106 Brown loc cit.
107 Ogilvie op cit 107.
108 Willard & Morris op cit 31–2.
109 The Council itself underwent gradual and irregular 'professionalisation': A L Brown, *The Governance of Late Mediaeval England: 1272–1461* op cit 41–2 and Brown, 'The King's Councillors in the Fifteenth Century' op cit 95–118.
110 Willard & Morris op cit 141–3.
111 Lancastrian 'continuity': A L Brown, 'The Commons and the Council in the Reign of Henry IV' (1964) *English Historical Review* 1.
112 Brown, *The Governance of Late Mediaeval England: 1272–1461* op cit 30–42. Two attendance lists: Brown, 'The Commons and the Council in the Reign of Henry IV' op cit 29–30 and J L Kirby, 'Council and Councillors of Henry IV, 1399–1413' (1964) 14 *Transactions of the Royal Historical Society* 61–5.
113 Hawarde op cit liv. The numbers shrank slightly during the early years of Henry VIII: Guy op cit 23.
114 Guy op cit 24.
115 Id 26–9, 36.
116 Id 36–7. For the Councillors' oath and responsibilities see Baldwin op cit 345–54, 402–3ff, Baldwin also gives a cross-section of 'interested others' during the reign of Edward III: Willard & Morris op cit 142–3. On the Councillors generally see Pollard op cit 352–8, 536–8 and cf Leadam op cit xxxix–xli.

Originally the office of Clerk of Star Chamber entailed the receipt, endorsement, entry and keeping of the Star Chamber's documentation.[117] Eventually the Clerk became the supervisor of the bureaucratic elements of the Court's business, with whom even the Chancellor contested for rights of appointment of junior officers.[118] There appears to have been some dispute towards the close of the sixteenth century about which of the conciliar clerks was in fact the clerk of the council (*clericus consilii*).[119] The claim was made by many, but quite forcefully, and successfully, by Mill, the Clerk of Star Chamber from 1573 until 1608.[120] In 1588 the position of the Clerk of Star Chamber as the premier clerk of the conciliar bureaucracy was confirmed.[121] According to Aylmer, the position of Clerk of the Star Chamber brought with it a healthy annual stipend of 1600 pounds in 1600, which by 1630 had been increased to 2000 pounds.[122] The question, however, of the remuneration of the Clerk remains unresolved. Prior to Egerton's reforms in 1596 and 1597, the Clerk was entitled to the fees charged by the Court to litigants in accordance with Tudor remunerative practice, giving rise to doubt as to the exact composition of the Clerk's income.[123]

The Usher was a court monitor responsible for keeping the chamber orderly, seating and calling parties.[124] The Usher also participated in a share of the Court's fees to supplement his stipend.[125]

Judicial robes were first distinguishable from other nobles' attire at sometime during the fifteenth century. During the reign of Henry VII red, also the colour of the house of Lancaster, replaced green as the official judicial colour.[126] After 1635 judges attending the Star Chamber wore violet or black.[127] From at least the end of the sixteenth century the Lord Chancellor, and apparently all Councillors, when acting judicially, wore black with gold braiding.[128] The Clerk wore scarlet.[129] The visibility of power, as expressed through (amongst other things) attire, was a matter of great importance for the mediaeval mind. Faith was placed in ocular evidence.[130] The splendid

[117] Lambarde op cit 160.
[118] Scofield op cit 62–3. See Pollard op cit 341–51, 534–5 generally.
[119] This controversy was of long standing: Baldwin op cit 362–71 notes confusion as early as 1355. The question was obviously tied to the institutional development of the Council itself.
[120] A F Pollard, 'The Growth of the Court of Requests' (1941) LVI *English Historical Review* 300, 302.
[121] Scofield op cit 62.
[122] G E Aylmer, *The King's Servants: the Civil Service of Charles I 1625–1642* (London, Routledge, 1961) 244.
[123] Elton op cit 54–7, 209, 410–11 and Scofield op cit 63–7.
[124] Lambarde op cit 159.
[125] Scofield op cit 67–8.
[126] W N Hargreaves-Mawdesley, *A History of Legal Dress in Europe until the End of the Eighteenth Century* (Oxford, Clarendon Press, 1963) 51. There was perhaps a Councillor's uniform as early as Edward I: Baldwin op cit 411.
[127] Hargreaves-Mawdesley op cit 61, see 46–60 for judicial garments generally.
[128] Id 68–9.
[129] Scofield op cit 62.
[130] Newbold, 'Boundaries and Bodies in Late Antiquity' op cit 93–114 and Newbold, 'Centre, Periphery and Eye in the Late Roman Empire' op cit 72–103.

uniforms of the members of the Star Chamber served to demonstrate their significance.

By the time of Charles I the Star Chamber's complement was large indeed. Its judicial face consisted of the Councillors *ex officio* (from 28 to 42 in number under Charles) and the two common law Chief Justices. Its officials included the Clerk, a Deputy Clerk, between two and four under-clerks, a Registrar (possibly amalgamated with the Clerkship in the 1630s), a Clerk of Files And Warrants, a Clerk of Affidavits and a Clerk of Records. Non-bureaucratic staff comprised the Usher, a Steward, a Butler, and numerous kitchen and other domestic personnel.[131] Of a semi-permanent attachment to the Court were the Attorney-General, three (or four) attorneys and two Examiners for the Crown's causes.[132] It is not hard to imagine the incredibile bustle which must have occurred on those sitting days each year when this retinue was joined by the crowds of litigants, lawyers and any interested citizens.

Yet this group did not comprise 'mean' men. The Star Chamber concerned itself with eminent matters, not petty ones. The attitude of the masses, if it can be imagined at all, may very likely have been one of understandable disinterest. It is equally easy to imagine the crowd at the Globe scoffing at Justice Shallow's vacuous fulmination 'I will make a Star Chamber matter of it'.[133]

2.6.2 *Lawyers*

Advice on pleading and advocacy was the preserve of barristers and sergeants-at-law. The proportion of advocacy to other work generally indicated a counsel's seniority.[134] Under Wolsey some sixty-nine counsel can be noticed, including prominent specialists Robert Chydley, John Densell, John Hynde and John Orenge.[135] The Star Chamber bar was an energetic and extensive group numbering as many as 1500 under James I, with a specialist nucleus of about 50.[136] Notwithstanding Hawarde's assertion that unsuccessful counsel were often debarred, it seems unlikely that any such ruthless mandate existed.[137] It is hard to envisage an operative institution of the size and significance of Star Chamber isolating itself to such a degree. There are examples, however, of the imprisonment of dishonest or fraudulent lawyers by the Star Chamber: Sir Humphrey Browne, Sir Nicholas Hare and William Conyngesby were fined and committed to the Tower in 1540 for negligent and/or dishonest advice concerning taxation.[138]

Attorneys handled the immediate preparation of litigation and briefed counsel. The job of Attorney was at first exercised by common attorneys

[131] See Scofield op cit 68.
[132] Aylmer op cit 485 and Barnes, 'Mr Hudson's Star Chamber' op cit 288.
[133] W Shakespeare, *The Merry Wives of Windsor*, I, i.
[134] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 24.
[135] Guy op cit 112 and Leadam *Select Cases before the King's Council in the Star Chamber: 1509–1544* op cit 197–9.
[136] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 25–6.
[137] Hawarde op cit lx citing: *Pettie* v *James* (4/2/1596–7); *Wheeler* v *Dean of Worcester* (1/7/1596) and *Kerkam* v *Smith* (21/10/1597).
[138] J H Baker, *The Reports of John Spelman* (London, Selden Society, 1978) Vol 1, 351–2.

for their clients.[139] From the 1520s this function became institutionalised, and by the reign of Elizabeth there were two permanent officers known as Attorney.[140] There appear to have been some solicitors who were also attorneys-at-law, performing a dual role.[141]

Solicitors based outside London were legal all-rounders who managed the affairs, of whatever type, of their clients. Unlike today, the rustic county solicitor usually had only one major client, and performed a role which today would be equated with that of a secretary. All the same, the preparation of litigation was a profitable part of the provincial solicitor's business. If an action had reached the Star Chamber it can be assumed that much arrangement of evidence, and very probably preliminary causes before other courts or authorities, had already been conducted by a local solicitor.[142] Counsel maintained close affiliations with the litigants and their solicitors of the particular counties from which their practices were almost exclusively made up.[143]

2.6.3 *Parties*

The geographical diversity of Star Chamber litigants was great. All the same, closeness to London and wealth were characteristics common amongst parties.[144] Legal activity was a costly business, as was travel, and these economic factors determined to some extent the types of concerns brought before the Star Chamber. Minimum costs for the institution and pursuit of a Star Chamber action under Henry VIII would have amounted to many pounds,[145] placing it beyond the reach of those below propertied status. But there were certainly many with enough money to fund actions, and for the reign of James I Barnes has compiled a thorough list of matters heard by the Star Chamber.[146]

Vexatious suits were well known to Star Chamber proceedings.[147] It is vital to understand, nevertheless, that not all attempts to utilise fully a wide jurisdictional scope, attempts which might to some (and no doubt to adversaries) seem frivolous, amount necessarily to an abuse of process. The consequence of a broad and flexible sphere of operations was an open door to untested and innovative causes. One group of litigants deserves a special mention: the marriage disputants of the counties. A significant proportion of county

[139] Lambarde op cit 159.
[140] Guy op cit 112. The number was increased to three, and then four: Scofield op cit 67.
[141] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 22.
[142] W B Willcox, 'Lawyers and Litigants in Stuart England: a County Sample' (1938–9) 24 *Cornell Law Quarterly* 533, 540–1.
[143] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 26–7.
[144] Guy op cit 109–10 cf Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 10–11. See supra section 4.
[145] See Guy op cit 114 and infra section 4.3.
[146] T G Barnes (ed), *List and Index to the Proceedings in Star Chamber for the Reign of James I (1603–1625) in the Public Record Office, London, Class STAC8* (Chicago, American Bar Foundation, 1975) 3 vols, and Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 9–10.
[147] Guy op cit 110–11 and cf 125–6 and Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 15 for the 'problem' of vexatious litigation.

conflicts which were heard by the Star Chamber concerned efforts to prevent, annul or compel marriages. Although the Star Chamber had no designated marriage jurisdiction, country folk were keen to invoke its authority when it was possible to obtain standing by pointing to some collateral Star Chamber recognised matter such as parochial corruption.[148] In his detailed study of the last years of Star Chamber litigation Barnes states that the primary use of the Star Chamber by private litigants was as a venue to escalate a pending action in another court or in the Star Chamber itself. Almost invariably this involved a property dispute, with a collateral or 'shoring' action.[149]

In respect of those defendants who found themselves before the Star Chamber in criminal matters it should be remembered that while the Attorney-General might prosecute any subject in the Star Chamber, the majority of criminal work was handed on to the court of King's Bench.[150] The Star Chamber retained the more consequential cases,[151] which almost always involved the wealthier elements of the community and were more often than not masked property disputes.[152] A similar de facto filtering occurred with respect to the Star Chamber's 'corruption' suits by private litigants.[153] The other general field of Star Chamber proceedings was the determination of commercial and municipal disputes, which again involved the prosperous town dwellers and traders.[154]

2.6.4 *'Connections'*

The natural caution required of the analyst when blending raw data of positions-held with other data of known, or suspected, associations is such as to greatly constrain the ambit of detection. For the subject in question here, this caution is only amplified by the dual menaces of the restricted character of raw evidence and the smallness of the sample.[155] It would be well beyond the

[148] Willcox op cit 551–3.

[149] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 14–22. See supra sections 3 & 4.

[150] Barnes, 'The Making of English Criminal Law: (2) Star Chamber and the Sophistication of the Criminal Law' op cit 316–17 and Williams, 'The King's Peace: Riot Law in its Historical Perspective' op cit 251–2.

[151] Blatcher op cit 54–5.

[152] Guy op cit 56 and Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 11.

[153] See infra section 3.3.2–3.

[154] See infra section 3.3.4.

[155] T F Carney, 'Prosopography: Payoffs and Pitfalls' (1973) 27 *Phoenix* 156, 170–1 — 'the imponderables, even with contemporary levels of evidence, involve such subjectivity as to make any findings questionable . . . The activists, for example, might be merely the "leg men" for power figures who dominated the action without ostensibly participating in the decision making at all'. See also: C Nicolet, 'Prosopographie et histoire sociale: Rome et l'Italie a l'epoque republicaine' (1970) 5 *Annales: Economies, Societies, Civilisations* 1209, 1226. 'Il s'agira donc, des le depart, de bien mesurer le degre d'incertitude que comporte necessairement toute enquete prosopographique, et d'abord d'evaluer le rapport entre les individus connus et etudies et le nombre total de membres du groupe envisage, tel qu'on peut l'etablir.' Prosopography is not a technique (for we dare not say a method!) for the faint-hearted. Cf more confident views: L Stone, 'Prosopography' (1971) 100 *Daedalus* 46 and J E Neale, 'The Biographical Approach to History' in *Essays in Elizabethan History* (London, Cape, 1958) 225–37.

scope of this article to embark upon a defensible analysis of the recoverable connections between the protagonists in the Star Chamber. However, a few examples, at different levels of observation, give at least an idea of both the complexity of such connections, and hence, the immensity of such a task.[156]

2.6.4.1 *The Individual*[157]

The motives of the individual are seldom entirely detectable. The situation of Raleigh, for example, might be interpreted in the light of his financial dependencies rather than via his more public acts.[158]

William Hudson began his legal career as one of the under-clerks of Star Chamber in 1594 at the age of seventeen, and became one of the Star Chamber Attorneys in 1604.[159] In 1608 Hudson vacated his position as Attorney and commenced specialist practice as a counsellor on his own account.[160] Over the next thirty years Hudson towered above all other practitioners in the Star Chamber becoming their master, first in matters of pleading and then in advocacy. According to Barnes, Hudson regarded both Bacon and Coke as menaces to the Court of Star Chamber. He felt the former was something of a gifted radical responsible for the weakening of the Court's credibility and the latter a shellbacked doyen of the entrenched common law. Egerton was the man for Hudson.[161]

2.6.4.2 *The Group*

One of the on-going trends with respect to the personnel of the Star Chamber which must be recognised was the steady, although exceedingly sluggish, bureaucratisation of government. The tendency was for a change from a situation where individuals exercised their functions more by virtue of their connections with leadership than as holders of offices to a situation where office holding *per se* was a manifestation of power.[162] The career of Sir John Fortescue attests to the importance of allegiance over post, and under Henry VII the Councillors' functions depended on their association with the King rather than with any intrinsic powers of office.[163] Similarly, it was through More's successes as an advocate in maritime and international

[156] The alternative, an anecdotal collection of yarns is provided in G R Elton, *Star Chamber Stories* (London, Methuen, 1958).

[157] No individual's connection with the Star Chamber is better covered than that of Wolsey: Guy op cit, especially 119–31.

[158] See the Preface to his *Prerogative of Parliament* for such a 'public act' and (1812) 16 *Archeologia* 188 for a more intimate insight into Raleigh's motives.

[159] Barnes, 'Mr Hudson's Star Chamber' op cit 288.

[160] Ibid.

[161] Id 297.

[162] Durkheim op cit 396–409.

[163] See J P Gilson, 'A Defence of the Proscription of the Yorkists in 1459' (1911) 26 *English Historical Review* 512, Gill loc cit and Hooker loc cit.

law, on behalf of the Pope against Henry VIII, before the Star Chamber, which brought More to the attention of the King, and ultimately resulted in his appointments.[164]

A tremendous degree of interchangeability of personnel at the upper levels of government meant that members of the Star Chamber, as Councillors, would normally have at least one other official function and probably many.[165] The judges had, of course, their own courts to see to. The Lords Chancellor, Treasurer and Privy Seal had their own departments or courts. This was the inherent 'nature' of the mediaeval cosmos. As well as holding other official positions, the associates of Star Chamber were also county magnates, local lords, businessmen and family members.[166] Appointments to office, as we have seen, depended much on patronage, nepotism and the purchase of positions or reversions. Tenure might be *durante beneplacito* or *quamdiu se bene gesserint*. Good behaviour appointments, virtually for life, were difficult for the executive to manage. Payment by salary was rare. The remuneration of officers was more usually secured by fees, fines, gratuities and profits.[167]

One particular group of people was centred around historian William Lambarde. Lambarde was a barrister, bencher, Justice of the Peace, Master in Chancery and Keeper of Records at the Tower and the Rolls Chapel. In 1591 he completed a work called *Archion* in which he formally refuted the growing theory that the Star Chamber's existence was referable to the Act of 1487.[168] Terrill situates a small but very significant group around Lambarde including William Camden; Henry Spelman; John Selden; Laurence Nowell; Mathew Parker; Julius Caesar; John Puckering; Thomas Egerton and Robert Cotton.[169] The intellectual milieu indicated by the existence of such a group, whose interests lay in the fields of philology, genealogy and antiquarianism, was one which emphasised the significance of critical thought to the emerging post-mediaeval world. Their individual and group studies in legal history, far from being mere scholasticism, should be recognised as a portal through the sanctified mists of the mediaeval cosmos and also as a small warning light against the ensuing epistemological tabula rasa.

[164] R J Schoeck, 'The Place of Sir Thomas More in Legal History and Tradition: some Notes and Observations' (1978) 23 *American Journal of Jurisprudence* 212.

[165] For example see Somerville loc cit and Brown, 'The King's Councillors in the Fifteenth Century' op cit 95–118.

[166] See T K Rabb, *Enterprise and Empire: Merchant and Gentry Investment in the Expansion of England, 1575–1630* (Cambridge, Mass, Harvard University Press, 1967) for this type of analysis; and L J Edinger & D D Searing, 'Social Background and Elite Analysis: a Methodical Inquiry' (1967) *American Political Science Review* 428 for its nadir.

[167] G E Aylmer, 'Office Holding as a Factor in English History, 1625–42' (1959) 44 *History* 228, 229–33 and L Stone, *The Crisis of the Aristocracy: 1558–1641* (Oxford, Clarendon Press, 1965) 424, 442.

[168] Lambarde op cit 81ff, 116–217.

[169] Terrill op cit 158–9. See also Powicke op cit 345–79. For some 'humanist' forebears: R Weiss, *Humanism in England during the Fifteenth Century* (Oxford, Blackwell, 1957) and Pocock op cit 1–29.

2.6.4.3 *The Community*

At the end of the Star Chamber's duration the population of England was probably not more than five million.[170] Of this number probably not more than one hundred thousand possessed enough of the qualifying attributes of station, wealth, masculinity and primogeniture to figure in any socio-legal statistical reckoning.[171] From this relatively small group Barnes has collated some 8500 Star Chamber cases for the years of James I, which show a marked tendency towards elevated status amongst litigants.[172] Using the records of the Star Chamber as a source (rather than a subject), Collinson's *The Elizabethan Puritan Movement* explores the religious divisions of the elite of society and *The Yorkshire Gentry From The Reformation To The Civil War* by Cliffe provides insight into a geographical group.[173] During the 1630s and 1640s the allegiances of the members of the Star Chamber were, not surprisingly, with the King.[174] They could hardly have been otherwise, irrespective of the time.

2.7 Conclusion

The topological and political difficulties associated with charting the emergence of the Court of Star Chamber from its parent, the Council, mean that there is no definitive truth or guaranteed bloodline. As was suggested at the outset, interpretative practice is of equal importance to the so called facts of institutional growth. One fact is certain: the Act 3 Hen VII c 1 was not originally known as *Pro Camera Stellata.* An examination of the Act itself reveals that these words, written in the margin of the Act, are clearly written in different ink, by a different hand.[175] The business of naming Acts does not occur until at least ten years after 1487, and paleographers suggest that the offending words were annotated sometime during Elizabeth's reign.[176] This leaves 3 Hen VII c 1 bereft of any reference to the Star Chamber.

The emergence of the Court of Star Chamber as a discrete institutional entity took place against a background of slow, and unplanned institutional development. The image of feudalism tends to obscure the day by day interpenetration of the royal 'courts', in the very widest sense, into the lives of

[170] Braudel, *Civilisation and Capitalism: 15th–18th Century* op cit vol 1, 54.

[171] Brown, *The Governance of Late Mediaeval England: 1272–1461* op cit 159 where the number of 'substantial' men is estimated to be between 10 and 20 000 at the start of the period (circa late thirteenth century).

[172] Barnes, *List and Index to Proceedings in Star Chamber for the Reign of James I (1603–1625)* loc cit and Stone op cit 248–9.

[173] P Collinson, *The Elizabeth Puritan Movement* (London, Cape, 1967): reliance on Star Chamber material — 132, 155, 197, 233, 318, 320, 323, 347, 351, 353, 390, 401–2, 409–12, 414, 416, 417–31; J T Cliffe, *The Yorkshire Gentry from the Reformation to the Civil War* (London, Athlone, 1969) 36, 38, 136, 138, 192, 205, 207, 212–13, 217, 255, 364.

[174] Aylmer, *The King's Servants: the Civil Service of Charles I 1625–1642* op cit 407.

[175] The actual Act, 3 Hen VII c 1 (1487), is held in the Public Record Office and is reproduced in facsimile in (Nov 1925) *Bulletin of the Institute of Historical Research* III, 115.

[176] Pollard, 'Council, Star Chamber and Privy Council under the Tudors' op cit 521–3, see also Bayne & Dunham op cit lxiv-lxv.

the King's subjects. By a similar process, the mirages of the timelessness of the common law and the independence of parliament blur the central form of the Council throughout the mediaeval and early modern period, the body from which both these institutions derived. The Court of Star Chamber emerged from the Council via this same process of unconscious differentiation and sophistication. Although this conclusion endorses a particular partisan line, it carries the weight of evidence.

3. JURISDICTION

> In a word, there is no offence punishable by law, but if the court find it grow in the Commonwealth this court may lawfully punish it, except only where life is questioned.[177]

3.1 Introduction

As the offspring of the Council, the Star Chamber carried on the traditionally comprehensive jurisdiction of its ancestor. Leadam and Baldwin show that the Council was always concerned with crimes of violence.[178] Furthermore, despite the hiving-off of the majority of civil equity to the Chancery, the Council (and ultimately the Star Chamber) retained its ancient equitable jurisdiction.[179] In addition, Pollard lists the huge variety of non-judicial and quasi-judicial functions carried out in the Star Chamber.[180]

The most important characteristic of the jurisdiction of the Star Chamber was its ability to intervene in all provinces of the administration of justice, save where capital punishment was involved. The consequence of this apparently boundless authority was twofold: a supreme capacity translated to a practical policy of remittance to a more appropriate tribunal in many cases; but as the kingdom became a less overtly violent place, and 'civilisation' brought new legal difficulties, difficulties which the common law often disregarded, the Star Chamber was able to scale down its violence-related activities and use its power to fill the expanding gaps left by the common law.[181]

Hawarde lists the normal cases heard in the Star Chamber as follows:

[177] W Hudson, 'A Treatise on the Court of Star Chamber' (1792) 2 *Collectanea Juridica* Pt 2, s xv. Scofield explains this — '... it was also the King's Council exercising large and indefinite powers by a very ancient right ... the Council's jurisdiction, which [Star Chamber] claimed, had never been clearly defined [and it] felt at liberty to lay claim to an almost unbounded jurisdiction ... [it was] a tribunal which was justified as well by its early history as by its later history in regarding itself as the natural inheritor of the Council's judicial authority': 40.

[178] Leadam & Baldwin op cit xxx–xxxi, see, in partiuclar, Baldwin op cit 265–78.

[179] Leadam & Baldwin op cit xxxi–xxxiv. See also Pollard, 'Council, Star Chamber and Privy Council under the Tudors' op cit, 535–6 and Dawson op cit 396–400. Hearn gives an interesting, although ultimately faulty, analysis of the jurisdictional segmentation of the Council: op cit 286–7.

[180] Pollard id 519–20.

[181] The common law courts' restrictive forms of action meant that flexible conciliar proceedings were frequently an attractive option for plaintiffs: Blatcher op cit 26.

perjury; forgery; riot; maintenance; fraud; libel[182] and conspiracy[183] — without, however, forgetting to add the rider that this repertoire in no way limited the all expansive residuum of jurisdiction exercised by the Court.[184]

3.2 Official Prosecutions

The proportion of official prosecutions, including those prosecutions brought by the Attorney-General known as *ore tenus* proceedings, to civil actions before the Star Chamber was quite small. It is difficult to estimate accurately any figure, due to the scarcity of records and the naturally fluid complexion of the totality of Star Chamber business. However, for the operations of the Star Chamber during Cardinal Wolsey's Chancellorship and shortly thereafter, Guy is able to identify only nine such cases.[185] Of these cases, three dealt with regional corruption in Surrey, one with the wearing of a livery, one with a riot, one with a group of jurors 'for perjurye', two were actions of *praemunire* (attributable to the might of Wolsey) and the last was an investigation into a murder conspiracy.[186] Barnes recognises a similarly light caseload for the Attorney-General during the reigns of the early Stuarts.[187]

3.3 Civil Actions

3.3.1 *Violence*

Barnes makes two very significant points concerning the topic of the criminal law and Star Chamber.[188] The first is that it is an inaccuracy to say that it was only after 1641 that the Star Chamber's criminal work was transferred to the common law court of King's Bench. All the time that the Star Chamber worked in and developed the criminal law it simultaneously transferred this experience to the courts of common law, by way of both official remittance and subjective percolation. The second is that after the victory of Henry VII at Bosworth Field England was, generally, a much more peaceful place, and therefore the major concern in the development of the criminal law was in the area of covert crimes, for example defamation, perjury, forgery, fraud and sedition, which the flexible Star Chamber was best suited to deal with. Barnes sees this as the sophistication of laws for an increasingly sophisticated society.

With respect to the jurisdiction over riots, it is clear that the Star Chamber, from time to time, exercised control over the prosecution of fracas, but that in perhaps the majority of cases these matters were referred to King's Bench.

[182] For an example see Bill of Complaint in Hawarde op cit 28, Hilary Term of 38 Eliz (28 January 1595).
[183] Ibid.
[184] Id lvi–lvii.
[185] Guy op cit 72, nb earlier 51, Guy notes that the total number of private suits may have numbered somewhere near 1685 for the same period.
[186] Id 72–8, nn 146–95.
[187] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 9.
[188] Barnes, 'The Making of English Criminal Law: (2) Star Chamber and the Sophistication of the Criminal Law' op cit 16–17.

Even though the statute of 1487 gave specific authority to those persons mentioned to deal with riot, it becomes evident that it was only necessary to activate such a powerful tribunal when the circumstances of the offence merited it.[189] Furthermore, Williams contends that remittance to the common law of the bulk of matters had been the practice of the Star Chamber prior to 1487.[190]

In so far as private actions regarding violent acts are concerned, Guy points out that the majority of the plaintiffs in these cases were indifferent towards any ultimate determination of the suit. The actions masked underlying disputes about proprietary rights.[191] Many of these cases were settled by negotiation or compromise (with or without judicial participation) — a benefit of the Star Chamber routine.[192] On the other hand, there were also many disputes which constituted bona fide trespasses.[193]

3.3.2 *Forensic Corruption*[194]

On 2 May 1516 the Lord Chancellor Cardinal Wolsey announced a policy of suppression of the perversion of the administration of justice.[195] Aside from the infrequent Attorney-General's prosecutions, the Star Chamber heard private cases alleging, *inter alia*, the abuse or contempt of judicial process. These matters included hearing allegations of vexatious litigation as well as the corruption of juries and judicial officers.[196] It made no difference whether the allegations related to other conciliar proceedings or to actions in the common law courts.[197] The Star Chamber dealt with these matters in a variety of ways. Usually the determination of the court was for the matter to be retried before the appropriate body, however sometimes the Star Chamber took on the matter itself — thus acting as a court of general appeal or supervision.[198] If the matter which was taken up to the Star Chamber involved a felony, the felony was treated as a misdemeanour.[199]

[189] Blatcher op cit 54–5, that is, when common law penalties (usually small fines) were regarded as an inadequate demonstration of official anger towards riotous behaviour and an example was to be made of the offenders.

[190] Williams op cit 251–2, see also Maitland, *The Constitutional History of England* 219.

[191] Guy op cit 56. For example: *Mulsho* v *The Inhabitants of Thingden* (1529) in Leadam, *Select Cases before the King's Council in the Star Chamber: 1509–1544* vol II, 38ff; *Petyt* v *Jobber* (1540–1) in *Collections for a History of Staffordshire* (1912) 140; *R* v *Ludlowe* (1606) in Hawarde op cit 316 and *A-G* v *Neste, Rogers & Smythe* (1613) in A K R Kiralfy, *A Source Book of English Law* (London, Sweet & Maxwell, 1957) 335–7.

[192] Guy op cit 56–8.

[193] Id 58–9.

[194] See: *Collections for a History of Staffordshire* op cit 194ff and *Acts of the Privy Council* N.S., VII, 12, 62.

[195] Guy op cit 60. Also noted in Blatcher op cit 28.

[196] Scofield op cit 45–6.

[197] See *Fraser* v *The Queen (No 2), Meredith* v *The Queen (No 2)* [1985] 1 NSWLR 680 per McHugh JA (obiter).

[198] Nicolas, *Council Proceedings*, III, 22 from B.M., Cottonian MS, Cleopatra, f.IV [latin].

[199] Guy op cit 60–5.

3.3.3 *Other Official Corruption*

Private and *ore tenus* suits alleging other official or administrative malfeasance were also heard by the Sar Chamber. All types of administrative officers, royal, municipal or otherwise, were subject to the jurisdiction exercised there.[200]

3.3.4 *Municipal and Commercial Disputes*

As that tremendous current of activity known as the Renaissance swept England, the Star Chamber's jurisdiction extended to areas of commercial and civic dispute resolution. Matters heard under this locus of operations ranged from great public law issues such as the accountability of University administrations, to everyday quarrels concerning, for example, the price of grain.[201] A special jurisdiction dealing with corporations, both municipal and commercial, inhered in the Star Chamber, as part of the royal prerogative exercised there.[202] Other specific areas of Star Chamber authority included the regulation of printing,[203] trades' demarcation,[204] building controls[205] and soap boiling.[206] Here, in the Star Chamber more than in any other area of application, it is possible to glimpse the timely variegation of legal matter.

3.3.5 *Miscellaneous*

The Star Chamber worked, sometimes alone, and sometimes hand in hand with the ecclesiastical courts and commissions, in the area of punishing heresy.[207] Suspected witches were also, it appears, brought before the Star Chamber in exceptional cases.[208] One of the great issues of the Reformation, the status of (church) sanctuaries, was argued in the Star Chamber.[209]

200 Id 65–7: Guy refers at n 89 to Bayne & Dunham op cit cxxvii–ix. See also Pollard, 'Council, Star Chamber and Privy Council under the Tudors' 528–9.

201 Guy op cit 67–71, these two cases are, respectively, 2/25/63 and 2/22/340. On the latter see also Scofield op cit 54–5. See also *Bishop of Worcester* v *Thomas* (1505) in Leadam op cit 230ff.

202 Scofield op cit 49–52.

203 Id 52. See G W Prothero (ed), *Select Statutes and other Constitutional Documents Illustrative of the Reigns of Elizabeth and James I* (Oxford, Clarendon Press, 1906) 168–9 and *State Papers (Domestic)* Eliz exc 48.

204 Scofield op cit 52–3.

205 Ibid. See especially Barnes, 'The Prerogative and Environmental Control of London Building in the Early Seventeenth Century: the Lost Opportunity' (1971) 1 *Ecology Law Quarterly* 62, especially 85–92.

206 Scofield op cit 53–4.

207 Id 46–8.

208 For example the famous case of John Dee in 1590: W Notestein, *A History of Witchcraft in England from 1558 to 1718* (New York, Crowell, 1912) 52. The Star Chamber refused to punish Elizabeth Barton in 1533–4 for treason stemming from her prophesies forcing Henry VIII to turn to Parliament for an act of attainder: Van Patten op cit 9 and J G Bellamy, *The Law of Treason in the Later Middle Ages* (Cambridge, Cambridge University Press, 1870) 210–13.

209 Baker, *The Reports of John Spelman* vol II, 343–4, on 4/2/1516 the matter was mentioned, on 7/2/1516 the matter was heard in the presence of judges, other lay lawyers and doctors of spiritual law and an 10/11/1516 it was decided, in the inner Star Chamber before the King (Henry VIII), that there would be reform.

Lawyers who gave negligent or dishonest advice were liable to imprisonment by the Star Chamber, as was the case with Sir Humphrey Browne, Sir Nicholas Hare and William Conyngesby in 1540.[210] It was even possible for unsuccessful counsel to be disbarred temporarily, or even permanently, according to Hawarde.[211]

Other miscellaneous matters included: rents; debts; seduction and enticement; poisoning; drainage and waste disposal; rights of way and rights of water; forgery; poaching and hunting offences; enclosure disputes; tithes; slander[212] and leasehold disputes.[213]

3.4 Summation

A number of writers have provided us with categorised statistical breakdowns of the compass of Star Chamber business. For the period 1485–1509 Lehmberg deals with 128 cases, 80 of which relate to riot and forcible entry.[214] For the period 1515–1530 of a possible 1685 cases, sufficient records exist for Guy to classify 473, with 194 falling into the area of riot and trespass.[215] Barnes' comprehensive tabulation of Star Chamber matter for the years 1603–1625 shows, of a total of about 8500 cases, only about 30 percent relate to violence.[216] These figures, while far from definitive, indicate a trend away from riot-centred business and towards a more diverse and complex jurisdiction, as asserted by Barnes and demonstrated by the progressive adoption of sundry actions.[217]

From the point of view of the litigant, the elastic properties of the Star Chamber's jurisdiction afforded opportunities to initiate process as a tactical weapon to shore up or cross-sue in actions, in the other courts or in the Star Chamber itself. For these parties the window provided by 'riot' was an important aperture through which the jurisdiction of the Court could be invoked and utilised for multifarious purposes. Eventually 'riot' became a fiction for standing.[218]

This process of diversification, according to Baldwin, began with the general concern of the Middle Ages — keeping the peace. As this was slowly established, at least in an official sense, the control of fraud, prerogative, maritime and commercial disputes, heresy, poverty and trusts was addressed

[210] Id 351–2. Also noted in Bean op cit 296. The advice was about tax evasion.
[211] Hawarde op cit lx vide *Pettie* v *James* (4/2/1596–7), *Wheeler* v *Dean of Worcester* (1/7/1596) and *Kerkam* v *Smith* (21/10/1597).
[212] *Vale* v *Broke* (1493) in Leadam op cit cxxxii, 38.
[213] See Guy op cit 71–2 for his motley jumble.
[214] S E Lehmberg, 'Star Chamber: 1485–1509' (1961) 24 *Huntingdon Library Quarterly* 189, 202.
[215] Guy op cit 52–3.
[216] Barnes, *List and Index to the Proceedings in the Star Chamber for the Reign of James I (1603–1625)* op cit vol 3, 151–707.
[217] Barnes, 'The Making of English Criminal Law: (2) Star Chamber and the Sophistication of the Criminal Law' op cit 316–26.
[218] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 12–13.

by the Council.[219] The Star Chamber continued this 'extensive but ill-defined jurisdiction' and in so doing ran foul of the common law/parliamentary purists as Baldwin describes:

> Not until the peculiarity of this authority in contrast to the common law began to be perceived was any serious question raised with regard to it. It then came to be looked upon with jealousy and dislike by all the conservative classes in parliament, by lords and commons even more emphatically than lawyers and judges. Instead of a policy of progressive legislation, that might have precluded the need of courts of equity, the efforts of parliament were directed preferably to a defence of the common law from all encroachments.[220]

4. PROCEDURE

4.1 Introduction

It is submitted by Leadam and Baldwin that rather than in the field of substantive jurisdiction, it was in the area of procedure that the conciliar courts differed from the courts of common law.[221] Conciliar process generally followed the ensuing sequence: bill; indorsement; writs of summons; appearance; replication and rejoinder; examination and judgment.[222] Just as the jurisdiction of the Court of Star Chamber emerged from that of the Council, so too the procedure of the Council, and that of the Star Chamber's elder sibling Chancery, shaped the routine in the Star Chamber. Differences in conduct of proceedings from the courts of common law should not, however, be unconsciously equated with injustice and unfairness.

4.2 Documentation and Routine

The initiating documentation required to begin an action before the Star Chamber was known as a 'bill of information', or often simply as a 'bill' or an 'information'. It had to be filed with the clerk of the Council (and at a later time with the clerk of the Star Chamber) and its length was fixed at 15 pages each of 15 lines.[223] The bill set forth the facts giving rise to the contemplated

[219] Baldwin op cit 262–78. Toole regards many of Star Chamber's functions as 'quasi-legal', perhaps overlooking the differing classifications of the respective realms of 'justice' and 'government' between mediaeval and more recent times: op cit 75–9.

[220] Baldwin op cit 279.

[221] The moulding of Star Chamber's procedure by Roman and ecclesiastical law has been perceived by many writers. These were important, although not constant, influences: Leadam & Baldwin op cit xxxv. On this see C S Lobingier, 'Lex Christiana: the Connecting Link between Ancient and Modern Law' (1931) 20 *Georgetown Law Journal* 1, 10–16 generally and 160–95 for specifics. This idiosyncratic duality was generally regarded as acceptable to the contemporary common lawyers, but Star Chamber's acceptability was obscured by 'Whiggish shibboleths' according to T G Barnes, 'Due Process and Slow Process in the Late Elizabethan — Early Stuart Star Chamber' (1962) 6 *American Journal of Legal History* 221, 224–5.

[222] See Leadam & Baldwin op cit xxxv–xlvi.

[223] Harl MS 2310 art 13, the length was extended under Charles I to 20 pages, id art 12.

action, though no set formulae were obligatory.[224] Two formal elements, however, appear in all the existing evidence: address and prayer.[225]

'Address' refers to the opening words of the bill, directing it towards a person or body. Until 1500 the address is made to either the King or the King and his Council.[226] After 1500 it was usual to address the Lord Chancellor.[227] Notwithstanding the fact that 3 Hen VII c 1 expressly requires that bills for the determination of disputes under that Act be 'put to the seid Chaunceller', the practice of addressing bills in the fashion common before 1487 persisted.[228] Coke indicates that this was because those bills addressed to either the King or the King and his Council were for determination by the Court of Star Chamber in its wider, traditional jurisdiction.[229] It is safer to interpret this overlap as an instance of genuine bureaucratic confusion.[230] This is because, shortly after 1487, there were bills addressed to the Lord Chancellor which actually named the Star Chamber as the determining tribunal.[231] Leadam's suggestion is that Coke's explanation, while not necessarily incorrect, is a seventeenth century procedural anachronism.[232]

'Prayer' refers to the order sought by the complainant. This was usually that the defendant be summoned to appear before the King in Council, although there are some instances of a prayer for examination before them.[233]

Once the bill was filed, it was necessary that the writ of summons requiring the attendance of the defendant obtain indorsement. Star Chamber indorsements took a similar form to those employed by the other courts of the kingdom.[234] The fees payable for the filing, issue and service of the various forms of the Star Chamber were comparable to those of the other courts of the realm.[235]

After the *curia regis* (in its restricted configuration) had become permanently established at Westminster, the general indorsement form of 'coram domino Rege ubicunque fuerit . . . ' was retained by that body known as 'The King In Council'.[236] However writs of summons issued from the Star

[224] If the bill failed to charge the defendant with crimes punishable in the Star Chamber the complainant was rendered liable to indictment for slander — see Scofield op cit 73 n 3. The bill was required to be signed by counsel, Hawarde notes that questions of fact were often submitted to the common law courts: op cit lvi.

[225] See Leadam op cit xiv–xvi.

[226] For example see *Mayor of Excestre* v *Stoden* and *Tayllour* v *Att Well* in id 1 and 6 respectively.

[227] See *Petition of the Mayor of Gloucestre* (1504) and *Abbot of Byland* v *Warcoppe* (1507) in id 209 and 253 respectively.

[228] See *Idele* v *Abbot of Saint Bennettes Holme* (1495) in id 50.

[229] Coke, *Institutes* part IV, c5, f62, Leadam op cit xv–xvi.

[230] The spectrum of address forms at this period means that the temptation to adopt the Coke assertion (ie evidence for the entirely discrete existences of either the 1487 Statutory Tribunal or the Court Of Star Chamber) must be resisted.

[231] *Abbot of Shrowesbury* v *Bailiffs (Whereof)* (1509) in Leadam op cit 189.

[232] Id xvi. See Leadam's postscript: op cit vol II, xvi–xix.

[233] Id xv and see *Goryng* v *Earl of Northumberland*, 94.

[234] Id xvi.

[235] T Powell, *The Attourneys Academy* (Amsterdam, Norwood, 1974, facsimile of 1623 ed) 173–87.

[236] Leadam op cit xvi.

Chamber did not contain the words 'ubicunque . . . '.[237] Star Chamber writs usually contained the indorsement 'coram Rege et Concilio suo', sometimes with the words 'apud Westmonasterium' following.[238] Other forms of Star Chamber indorsements included: 'coram dominis de consilio nostro in Camera Stellata'; 'coram consilio Regis apud Westmonasterium'; 'coram Domino Rege et Consilio suo apud Westmonasterium';[239] 'coram Domino Rege in Camera Stellata coram consilio ibidem' and 'coram Nobis et dicto Consilio nostro apud Westmonasterium'.[240]

As to the writs' time of issue, Hudson notes that although a writ of *subpoena* refers to matters which are contained in the already filed bill, since about the time of Henry V it had become a practice, especially among provincial solicitors, 'to have the process before the Bill'. He adds that this practice was restrained by Lord Ellesmere, but that after the death of the Lord Chancellor in 1617 this practice was revivified.[241] Existing indorsements indicate that the normal sequence was filing of the bill and then the issue of a writ.[242]

The original spectrum of process included: the sending of a serjeant-at-arms by the Lord Chancellor to admonish the defendant to appear; service of the Privy Seal by a messenger of the King's Chamber; summons by Letters Missive under the Kings' signet and service of a writ of *sub poena* by the party.[243] There was also, initially, a distinction between process issued under the Privy Seal and that issued under the Broad or Great Seal.[244] Certainly, by the mid sixteenth century procedural diversity was giving way to standardisation.[245] However, there are two very important points which may be drawn from this tangle. The first is, that the forms of process of actions before the Council, the Star Chamber and the Chancery are similar.[246] The second is, as Leadam theorises, that the subtle changes in the wording of whichever type of writ one

[237] Id xvii.

[238] Ibid; examples — *Carter* v *Abbott of Malmesbury* (1500) 118, 121; *Abbot of Shrowesbury* v *Bailiffs (Whereoff)* (1509) 189, 208; *Powe* v *Newman* (1504–1513) 227, 229 and *Butlond* v *Austen* (1507) 262, 265.

[239] Id; examples — *Lady Jane Straunge* v *Kenaston* (1508) 274. 275, and *Jones* v *Lichfeld* (1509) 275, 276.

[240] See respectively, Hawarde op cit 302 and Hudson op cit 145. These latter two forms are from the reign of James I. A good deal of controversy exists in respect of the issuing of writs. For much of our information, and indeed the controversies involved here, we are reliant upon Hudson. The problems fall into two areas: the time of issue and the type of writ issued. These items shall be dealt with separately. See also *Institutes*, part IV c5 for Coke's etcetera.

[241] Hudson op cit 143.

[242] Leadam op cit xviii.

[243] Id xix and Hudson op cit 143.

[244] Id xx–xxi. The distinction related to whether the writs were issued pursuant to the Chancellor's discretion under the Privy Seal (after about 1401) or were issued, more formally, under the Great Seal. This was s tactical 'distinction' made, apparently, in the course of litigation. All the seals were royal seals and as such had equal authority: 'I doubt of the aniquity of this grace (if it be so esteemed); the king's broad seal being as honourable as the lord chancellor's letter . . .' Hudson op cit 144. See also L W Larbaree & R E Moody, 'The Seal of the Privy Council' (1928) XLIII *English Historical Review* 190,190–3.

[245] Leadam op cit vol II, xiii–xvi.

[246] Hudson op cit 143 and Leadam op cit xxiv. See also Brown, *The Governance of Late Mediaeval England: 1272–1461* 132–4.

chooses to examine are of greater importance than the process form itself. They may express an 'exaltation of the prerogative', over the attempts of the parliaments to stem the tide of royal justice, perhaps as early as 1402.[247] Leadam favours this political interpretation, which he infers from Hudson, to explanations concerning either the status of the alleged wrongdoer or the nature of the act complained of.[248] This theory should not be exaggerated. The notion that the Star Chamber was a *de facto* government via its proclamations jurisdiction is effectively discounted by Heinze, who makes it clear that the Star Chamber's authority was invoked as a last resort, for example when local officials could not deal with a powerful offender.[249]

Service in private matters was left to the plaintiff. This often proved difficult or dangerous, and methods of service frequently included service in church or by nailing the writ to the door of the defendant's residence.[250]

The next step was the appearance of the defendant. By the time of Henry VIII the Star Chamber sat for one to three days per week during term; something like 100 sitting days per calendar year.[251] Hudson notes that 'in antient times' it was necessary for the defendant to enter into a bond by way of surety not to leave the jurisdiction, but that by the early seventeenth century this formality was rarely employed.[252] Failure to appear within the relevant period resulted in the issue of a writ of attachment, and ultimately a proclamation of rebellion.[253] Upon appearance the defendant was required to file a sworn answer.[254] This took the form of either a plea, an answer or a demurrer; however, with increasing frequency, the answer often combined all three of these elements.[255] Failure to answer resulted in imprisonment and possibly the treatment of the plaintiff's bill *pro confesso*.

An interesting issue is raised by the concept of demurring to the jurisdiction exercised in the Star Chamber. The first kind of demurrer relied upon what is referred to as the legal or formal 'insufficiency' and, or, 'uncertainty' of words used in the bill.[256] This presents no problem. The defendant was dimissed with costs if the demurrer was upheld.[257] Another kind of demurrer involved an

247 Leadam op cit xxii–xxiv.
248 Id xxiv–xxvii, citing Hudson op cit, apparently from remarks at 49, 139 and 145. Cf Williams op cit 252–3.
249 R W Heinze, *The Proclamations of the Tudor Kings* (Cambridge, Cambridge University Press, 1976) 62–3, 281–2, see also Steele loc cit.
250 Guy op cit 83–4.
251 Id 29–30, 37–8.
252 Hudson op cit 159.
253 Scofield op cit 73 n 3, 74 n 1.
254 Id 74 n 4. The answer was required to be signed by counsel.
255 Leadam op cit: examples — *Prior of Bathe* v *Abbot of St Augustyn's, Caunterbury* (1489) 20, 20–1; *Smyth* v *Broke* (1493) 41, 43–5; *Madeley* v *Fitzherbert* (1496) 54, 61–4; *Carter* v *Abbot of Malmesbury* (1500) 118, 122–5; *Halle* v *Essexe* (1503) 168, 175–7, *Powe* v *Newman* (1504–13) 227, 229–30; *Abbot of Byland* v *Warcoppe* (1507) 253, 261 and *Butlond* v *Austen* (1507) 262, 266. Leadam also notes simple demurrers: *Pynson* v *Squyer* (1500) 114, 116–17 and *Colthurst & Furbur* v *Principal of Furnyvals Inn* (1507) 248–50; and two informal answers: *Mayor of Excestre* v *Stoden* (1477) 1, 3–4 and *Jones* v *Lichfield* (1509) 275, 276–8.
256 Id xxx–xxxi. See *Collections for a History of Staffordshire* op cit 180.
257 Hudson op cit 165.

appeal to have the matter heard before a more appropriate court. Hudson indicates that some matters were thought to be too petty, or the province of the ecclesiastical courts, properly to be heard in the Star Chamber.[258] Leadam goes some way towards showing that this practice may be extrapolated to encompass cases which might be heard before the common law Courts generally. This type of demurrer, as Leadam indicates, was actually a plea, praying for the transfer of the action, rather than a denial of jurisdiction.[259]

In addition to the answer process, at the stage of appearance the defendant was put to an examination. This interrogation was part of the oath taken by the defendant, and in the reign of Henry VIII consisted of up to seven short questions put by the Lord Chancellor in the Court.[260] The practice of examining the defendant on oath is held by Coke to have been introduced by 3 Hen 7 c 1 (1487).[261] The questions were prepared by the plaintiff, who had four days from the time of the defendant's answer to draw these up, or risk the release of the defendant upon licence.[262]

There were two further rounds of pleadings which might occur before the examination of witnesses took place. The first was known as the 'replication', to which the defendant responded with his 'rejoinder'. It was possible for the plaintiff to follow up this exchange with a 'surrejoinder', the defendant replying with a 'rebutter'.[263] These pleadings are extremely rare in the extant records, sustaining Hudson's belief that because no novel charges might be brought in these forms, they were mere formalities.[264]

The examination of witnesses was held either before the clerk of the Court or, if in the country, before a commission of prominent citizens appointed by the Court.[265] Sometimes such commissions comprised prestigious lawyers and had the dual function of pre-hearing arbitration.[266] Interrogatories and depositions were made, either before the clerk or the commission, and these were later read to the Court with counsels' oral submissions.[267] While judicial proceedings within the Star Chamber were open to the public, the questioning of witnesses, at least for the most part, was held in private.[268]

[258] Id 164.

[259] Leadam op cit xxix–xxx, for example *Tayllour* v *Att Well* (1482) 6, 12–13. See also Guy op cit 86. See *A-G* v *Neste, Rogers & Symthe* (1613) in Kiralfy op cit 335–7.

[260] Hudson op cit 168. Apparently the same procedure subsisted under Henry VII, see Leadam op cit: *Culford* v *Wotton* (1494) 45, 48; *Madeley* v *Ftizherbert* (1496) 54, 67–8; *Kebell* v *Vernon* (1502) 130, 134–7 and *Abbot of Shrowesbury* v *Bailiffs (Whereof)* (1509) 178, 184–7.

[261] *Institutes*, part IV, c 5 for Coke this shows that the Court of Star Chamber pre-existed the statute of 1487. See Hawarde op cit 316.

[262] Scofield op cit 75, n 2.

[263] Leadam op cit xxxiii.

[264] Hudson op cit 191–2.

[265] Leadam op cit xxxiii–xxxiv, and Hudson op cit 202.

[266] Examples: Leadam op cit, *Hewyt & the Mayor of Exciter* v *Mayor of London* 71, 80–8 and *Carter* v *Abbot of Malmesbury* (1500) 118, 121. See also Guy op cit 97–105 and *Collections for a History of Staffordshire* op cit 71ff.

[267] Leadam op cit xxxiv.

[268] Hudson op cit 204. See also the trial of *Lilbourne* (1649) 4 How St Tr 1269, 1273 and obiter per Kirby P in *Raybos Australia Pty Ltd* v *Jones* [1985] 2 NSWLR 47.

The hearing of an action occurred in a number of ways. The normal procedure (outlined above) was known as *secundum allegata et probanda.* However, if the plaintiff wished to rely solely upon the defendant's answer, then he might proceed, *super confessionem*, the Court hearing only the defendant's answer. As has been noticed, *pro confesso* proceedings resulted from the defendant's failure to answer. Lastly, a form of summary proceedings, known as *ore tenus*, occurred when the Attorney-General apprehended the defendant, and the defendant agreed to private examination, not upon oath, and confessed. Then the Court heard the charge and whatever excuses the defendant wished to make from the bar, and proceeded directly to sentence.[269]

The delivery of judgment by the Star Chamber was a simple announcement of finding by those members of the court sitting on the instant case, in order of precedence from lowest to highest.[270] In the case of an equal division of opinion it seems that the Lord Chancellor had the casting vote.[271]

It is crucial to comprehend the fact that many, and by the time of James I almost all, Star Chamber causes were instituted as a strategem for the furtherance of litigation outside the Star Chamber. Jurisdictional tactics involved the initiation of actions in nuisance, discovery, or for the inculpation of witnesses, juries and authorities. Procedural tactics, for example the making of demurrers and insufficient responses by a defendant, might frustrate the anxious plaintiff. On the other hand, a plaintiff might have been able to have had the Attorney-General take up his suit as a relator action, thus gaining procedural priority. All this was in order to accelerate or impede a larger strategic plan of litigation.[272]

4.3 Costs, Damages, Punishments and Fines

The utilisation of the Star Chamber, like any other court, was not practically available to every subject because of the costs and fees involved in litigation. A bill of costs from 1531 is preserved in the records of *Cade & Others* v *Clarke & Others* which totals more than twenty pounds.[273] Such costs were, however, taxable by the Court.[274]

With the exception of trespasses, damages were rarely awarded in criminal cases. In civil matters the successful party claimed damages as part of the final bill of costs which was delivered to the court at the end of the matter.[275]

Punishments, other than damages, imposed by the Court of Star Chamber included imprisonment and fining. While capital punishment was not inflicted by the Court, corporal punishments such as the pillory, branding,

[269] See Scofield op cit 75–6, see also Hawarde op cit liv, 28: Hilary Term of 38 Eliz (28 January 1595).
[270] Hudson op cit 223.
[271] Id 3, cf Coke, *Institutes* part IV, c 5, f 64 and Hawarde op cit liv.
[272] Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 15–21.
[273] Leadam op cit vol II, 196–205.
[274] Guy op cit 114.
[275] Id 114–15.

whipping, mutilation and public humiliation, were common.[276] Large fines, sometimes out of all proportion to the prisoner's means, were frequently ordered.[277] It is apparent, however, that in many cases these severe punishments were never intended to be actually exacted, but that they were imposed, *in terrorem populi*, with the opportunity for mitigation being permanently available at the end of Trinity and Hillary terms.[278]

4.4 Conclusion

Star Chamber procedure was of a thoroughly regular nature, and was far from adverse to the common law — indeed common lawyers of such note as Dyer, Moore, Widrington, Hobart and Coke appeared as counsel (if not as Attorney-General) before the Court. There is clear evidence of the Star Chamber's methodical and ordered procedure: so much so that the procedural steps necessary to pursue a cause in the Star Chamber, by the time of Elizabeth, had become so entrenched that almost endless tactical delays, by way of 'motion' (something like a procedural *voir dire*), were a recognised problem for the prompt administration of justice.[279]

5. DENOUEMENT: THE EXECUTIVE GOVERNMENT AND ABOLITION

> [Kings and Magistrates] for a while governed well and with much equity decided all things at their own arbitrement, till the temptation of such a power, left absolute in their hands, perverted them at length to injustice and impartiality. Then did they who now by trial had found the danger and inconveniences of committing arbitrary power to any, invent laws, either framed or consented to by all, that should confine and limit the authority of whom they chose to govern them: that so man, of whose failing they had proof, might no more rule over them, but law and reason, abstracted as much as might be from personal errors and frailties: while as the magistrate was set above the people, so the law was set above the magistrate.[280]

[276] Scofield op cit 77. Elton holds that corporal punishments were not employed until the Stuart reigns: *Star Chamber Stories* op cit 13.

[277] Scofield op cit 78–9 and Guy op cit 115–16.

[278] Harg MS 482, art 1, folio 9, Harl MS 6448, folios 45–6 and Stowe MS 397, folio 50. Hawarde notes that cruel punishments were often statute based: 5 Eliz c 14 (1563) (double damages, life imprisonment, pillory, cutting off both ears, nostril slitting and life forfeitures) and 5 Ed VI c 4 (1551) (excommunication) Hawarde op cit lxi.

[279] Barnes, 'Due Process and Slow Process in the Late Elizabethan — Early Stuart Star Chamber' op cit 231–41. It would, all the same, be inappropriate to equate this procedure too closely with modern experience: whilst it is possible to discern elements of contemporary judicial administration in bygone forms, it is always incumbent on the historian to resist the sometimes alluring siren of teleology — on which see Toole op cit 72–5.

[280] J Milton, 'The Tenure of Kings and Magistrates', in K M Burton (ed) *Prose Writings* (London, Dent, 1958), (first published February 1649, shortly after the execution of Charles I).

5.1 A Challenge to the Common Law?

In his 1901 monograph Maitland noted that almost in spite of the Renaissance, the law of England had remained both intact and cohesive.[281] The corollary to this statement, for Maitland, was that by the mid-sixteenth century the common law had fallen into stagnation, and that the 'executive' part of government (and the monarchy itself) constituted the source of administrative verve.[282] Opposed to princely creativity were those who, for their various reasons, saw the exercise of royal power as an unhealthy attack on the traditional complexion of English society. The strongest adversaries of regal power were to be found in the bastions of the common law, the Inns of Court.[283]

The Star Chamber had played a strategic role in the Kings' intensifying management of the laws. It was also a popular forum: the Court possessed many advantages for litigants in terms of its speed and efficiency; its accessibility and remedies were generally wider than those open to the common law; and as a more centralised tribunal it had a greater degree of independence from the particular vested interests of a powerful gentry than that available to the common law courts. To say, however, that the Star Chamber in particular, and this process to Tudor consolidation of rule in general, was a threat to the established order is insipid. The 'common law', as the generic system of law and order in England is known, had a long history of rebirth, renovation and reform.[284] The law was one of many battlefields in the struggle for social, economic and political power. In the mid-sixteenth century, there clearly was a powerful, though not unchecked, monarchy.[285]

A few examples of the functional interaction of the operations of the Star Chamber and the common law (in its more restricted sense) suggest that, far from being a legal conflagration, the challenge, so called, in fact takes the form of a delicate cotillion of forensic method. While the legal conservatives strenuously resisted attempts by the Star Chamber to arbitrate the internal affairs of the Inns of Court,[286] the common law courts readily adopted breakthroughs in the field of defamation made by the Star Chamber where their jury system permitted, and left actions involving an imputation that a person

[281] F W Maitland, *English Law and the Renaissance* op cit 3–5. A view also subscribed to by Holdsworth, 'The Elizabethan Age in English Legal History and Its Results' op cit 322–3.

[282] F W Maitland, *English Law and the Renaissance*, op cit 18–22 and n 43.

[283] Id 23–8, and see Ogilvie op cit 15–24 for a detailed picture of the common law ethos and cf J H Baker, 'English Law and the Renaissance', (1985) 44 *Cambridge Law Journal* 46 for the intellectual and jurisprudential atmosphere of the Inns.

[284] Ogilvie op cit 9–14, J H Baker, 'English Law and the Renaissance', op cit 50–1 who emphasises the progressive elements of the Inns of Court and Dawson op cit 394–6.

[285] The potency of Wolsey as a spiritual, political and legal marshall was pivotal: Ogilvie op cit 67–72.

[286] F W Maitland, *English Law and the Renaissance* op cit 23–8 and J D Eusden, *Puritans, Lawyers and Politics in Early Seventeenth-Century England* (Yale, Archon, 1968) 87 (citing F A Inderwick, *A Calendar of the Inner Temple Records* (London, Sotheran, 1898) lxxxi–lxxxvii and 218).

had intent to commit a crime for the Star Chamber alone.[287] The Star Chamber formulated concept of perjury was also embraced by the courts of common law, albeit with some degree of friction.[288] Heinze demonstrates that amongst specific courts commanded by proclamation to try offenders or exact penalties, the traditional common law courts are cited more frequently during the Tudor period than the Star Chamber, undermining the fallacy that the Star Chamber was the organ of despotism by its enforcement of royal proclamations.[289] In so many cases the Star Chamber can be seen to remit, as of course, certain types of matters for determination by other courts.[290]

Yet these procedural basics are easily obscured by the more emotive matters attendant. Political, theological and economic issues tend to dominate, naturally, more extensive histories. The law was a region over which these battles raged in the sense that it was the technology with which the antagonists grappled in order to secure their political or other goals. There was never any challenge to the common law because the law, as a dynamic system, was a means to diverse ends — not an end in itself.[291] By the conclusion of the reign of Elizabeth the common lawyers' growing opposition to conciliar justice must not be seen as a dogmatic legal debate between the Inns and the Councillors.[292] It was one of the hammerheads, along with the activities of the House of Commons,[293] of a revived gentry with economic interests at variance with the central government and of Puritan extremists for whom that government represented a return to Catholicism.[294] When James I chose to sit personally in the Star Chamber for the first time 'with great magnificence' in 1616, the year of Coke's trial, and said: 'sharpe edge and vaine popular humour of some Lawyers at the Barre, that thinke they are not eloquent and bold spirited enough, except they meddle with the Kings Prerogative' much more than juridical clarification was on his agenda.[295]

[287] W S Holdsworth, 'Defamation in the Sixteenth and Seventeenth Centuries' (1924) 40 *Law Quarterly Review* 305–15, 397–412, citing *Eaton* v *Allen* (1598) 4 Co Rep 16 b.

[288] M D Gordon 'The Invention of a Common Law Crime: Perjury and the Elizabethan Courts' (1980) 24 *American Journal of Legal History*, 145–70.

[289] Heinze op cit 62–63. See M L Bush, 'The Act of Proclamations: a Reinterpretation' (1983) 27 *American Journal of Legal History* 33–53.

[290] G R Williams, 'The King's Peace: Riot Law in its Historical Perspective' [1971] *Utah Law Review* 240, 252 and generally Dawson op cit 396–400. And see supra section 3.

[291] M Foucault, *Discipline and Punish* (Middlesex, Penguin, 1977) 26–7. A good example is provided in *Calvin's* case 7 Co Rep IV 10a–11 on which see E H Kantorowicz, *The King's Two Bodies* (Princeton, Princeton University Press, 1957) 317–18.

[292] Cf Ogilvie op cit 131, 151–2, who emphasises the role of legal doctrine as a motive.

[293] W Notestein, 'The Winning of the Initiative By the House of Commons' (1924) XI *Proceedings of The British Academy* 125, 171–3.

[294] Ogilvie op cit 130–2.

[295] J H Baker 'The Common Lawyers and the Chancery' (1969) 4 *Irish Jurist* 368, 383–4 and Eusden op cit 2. See 'A speech in the Star Chamber on 20 June, 1616, *Works of James I* (ed 1616) 556.

5.2 Law Reform

The idea of reform was central to the idea of the common law, but this is not to say that particular policies or programmes were pursued by the relevant actors with design. As always, it was an ability to answer problems and challenges, as they arose, with what worked, which characterised dexterous government.[296] There is little evidence of jurisprudential doctrine underlying the Tudor success story.[297] Therefore it is with no surprise that one finds the genesis of 'modern' political theory coinciding squarely with the opening of the divisions which marked English public affairs under the Stuarts.[298] Political theory, from this point, focussed its attention upon 'theories of State' and 'the person of the sovereign'.[299]

The disorder of Lancastrian times was substantially brought under control (with the consent of the Commons) by the augmented 'riot' jurisdiction of the Star Chamber, in such Acts as that of 1487.[300] Under Wolsey, crimes of mass violence virtually became a thing of the past.[301] The Star Chamber broke new ground in its regulation of building controls in London. This early foray into what has become known as Environmental Law has been seen by Barnes as 'The Lost Opportunity' in this field.[302] In 1596 and 1597 Egerton introduced major procedural reforms to speed the ever slowing process of the Star Chamber due to the endless putting on of motions by counsel. Broadly speaking, the procedure of the Court was tailored to suit more fully the needs of private litigants.[303] While it must be said that torture became a fixed mechanism of the conciliar courts under the Tudors, there is no evidence of the Star Chamber ever putting any person to torture.[304]

Towards the close of Elizabeth's reign there was also a move, promoted strongly by Bacon, to undertake a wholesale rationalisation of the law. It

296 Ogilvie op cit 56.

297 W S Holdsworth, 'The Elizabeth Age in English Legal History and Its Results' op cit 326 and J H Baker, 'English Law and the Renaissance' op cit.

298 C M A McCauliff 'Law as a Principle of Reform: Reflections from Sixteenth-Century England' (1987–88) 40 *Rutgers Law Review* 429.

299 W S Holdsworth, 'The Elizabethan Age in English Legal History and Its Results' op cit 326–7 and C Gordon (ed) *Power/Knowledge: Selected Interviews and Other Writings 1972–1977: Michel Foucault* (New York, Pantheon, 1980) 'Truth And Power', 121–3.

300 Cf Ogilvie op cit 65.

301 Id 67–72. See supra section 3.

302 T G Barnes, 'The Prerogative and Environmental Control of London Building in the Early Seventeenth Century: The Lost Opportunity' op cit 85–92.

303 T G Barnes, 'Due Process and Slow Process in the Late Elizabethan — Early Stuart Star Chamber', (1962) 6 *American Journal of Legal History* 221 and 315, 243–9, 315–19 and 335–6 and T G Barnes, 'Star Chamber Mythology', (1961) 5 *American Journal of Legal History* 1, 6 for the Lord Keeper's 'Orders for reformacion of the dilatory proceedings in causes preferred and prosecuted in her Majesties most honourable courte of Starre Chamber'. See also Toole op cit.

304 J Heath, *Torture and English Law: An Administrative and Legal History from the Plantagenats to the Stuarts* (Westport, Greenwood, 1982) 71–2 and G R Elton, *The Tudor Constitution* (Cambridge, Cambridge University Press, 1968) 169–70 where it is stated (despite the likes of Dicey, Maitland and Holdsworth!) that torture was not part of the Star Chamber method. Tortures were criticised and regarded as un-English by (among many, many others) Fortescue: Sir J Fortescue, S B Chrimes (ed) *De Laudibus Legum Anglie* (Cambridge, Cambridge University Press, 1942) 47–53.

involved the mitigation of severe sentences, the review of fees and costs, the simplification of process and (significantly) codification. These proposals were later amplified and radicalised in the increasingly heated vessel of Stuart rule.[305] The differences between Noy's *Maxims* and Prynne's *The Sovereign Power of Parliaments and Kingdoms*, published in 1641 and 1643 respectively, indicate the degree to which the law became the locus of public controversy under the Stuarts.[306]

5.3 Economic, Theological and Political Crisis

The breakdown of any system which had hitherto coped with demands and pressures placed on it can be termed a 'crisis' in that system, yet it is always difficult to discover the origin of a 'crisis'.[307] Some of the unbalancing stresses may have existed for much longer than others, and it is indisputable that immediate flare-ups are typically indicative of longer term problems.

England had saved itself from invasion in 1588, but the defeat of the Armada heralded an ebb in the Spanish economy whose consequences were felt across all of Europe. By the beginning of the seventeenth century, accelerating agricultural entrepreneurialism and urbanisation (with the accompanying ruin of copyhold village society) meant an increase in unemployment, a decline in wages and widespread poverty.[308] For the first time there was a property market, and leases rather than estates became the dominant form of landholding.[309] At the same time the emerging bourgeoisie, among whose number London lawyers figured prominently, clamoured for an opening which would delineate their intensifying grip on commercial development and their newly found interests in a culture which had hitherto been the preserve of the aristocracy.[310]

[305] Shapiro has developed this area of enquiry with particular attention to the role and legacy of Bacon: B Shapiro, 'Codification of the Laws in Seventeenth Century England' [1974] *Wisconsin Law Review* 428, B Shapiro, 'Law Reform in Seventeenth Century England' (1975) 19 *American Journal of Legal History*, 280 and B Shapiro, 'Sir Francis Bacon and the Mid-Seventeenth Century Movement for Reform' (1980) 24 *American Journal of Legal History* 331. On codification in England generally see C J Friedrich 'Law and History' (1961) 14 *Vanderbilt Law Review* 1027, 1042–3.

[306] W Noy, *The Principal Grounds and Maxims with an Analysis of the Laws of England* (Littleton Colorado, Rothmann & Co., 1980) (fascimile of 1845 3rd U.S./9th English ed) and W Prynne *The Sovereign Power of Parliaments and Kingdoms* (New York, Garland, 1979) (facsimile of 1643 ed).

[307] M Foucault, 'Nietzsche, Genealogy, History', in D F Bouchard (ed) *Language, Counter-Memory, Practice* (Ithaca, Cornell University Press, 1977) 139 expresses the ingenuousness of the search for origins as ideals in history.

[308] See M Foucault *Madness and Civilisation*, in P Rabinow (ed) *The Foucault Reader* (Middlesex, Penguin, 1984) 131.

[309] S E Thorne, 'Tudor Social Transformation and Legal Change' (1951) 26 *New York University Law Review* 10, 11–16.

[310] D J Ibbetson, 'Common Lawyers and the Law before the Civil War' (1988) 8 *Oxford Journal of Legal Studies* 142, 145–8. See generally re England: E Bernstein, *Cromwell and Communism* (New York, Schocken, 1963) 12–18, and re England's global position: F Braudel, *Civilisation and Capitalism: 15th–19th Century*, (London, Collins, 1984) especially at: vol 1, 54, 80–1, 122–6, 228, 471–2, 514 and 528; vol 2, 40–7, 53, 171, 281–2, 473–4, 507–8 and 570 and vol 3, 39, 51–3, 61–2, 68, 79, 352–85 and 576.

Another 'crisis' which became obvious at around the turn of the seventeenth century was that involving the popular legitimation of fundamentalist Christian theology. The cosmic order of the mediaeval universe had been based on a rigid hierarchy of elements and the 'natural' rule of law. This ontic macrocosm had been almost definitively settled by Aquinas nearly four hundred years previously (in the ultimate feat of 'Mediaevalism'[311]) by synthesising pagan philosophy from the pre-Socratics to Aristotle with judeo-christian theology.[312] This was the context in which the early Stuarts saw their throne: as the kingdom's 'natural' source of authority, under God.[313] It was only natural, therefore, that conciliar courts like the Star Chamber were superior to the courts of common law — because the monarchs had bestowed more of their own authority upon them.[314] Against all this was an advancing current of de-naturing. Beginning under Henry VIII with the establishment of the Church of England (a royal political initiative)[315] and carried on by writers such as Tyndale, this tide culminated in the extreme, yet also diametrically opposed, beliefs of Winstanley and the Fifth Monarchy a century later.[316] It is not really possible to speak of a polarisation of religious stances, but in general the supporters of the 'natural' monarchy understood the Thomist equation of the constitution of law as a combination of reason and spiritual purity (with, for example, Bacon stressing the former and Laud the latter). A return to the scriptures and an emphasis on the flock characterised their opposition.[317] The turning tide is flagged by Morris some time after 1572 when the thrust of protest seems to move from a clerical objection to the secularisation of religion to a lay criticism of the sacerdotal influence over government.[318]

Under Henry VIII and, to only a slightly lesser extent, under Elizabeth, the Commons were firmly controlled by the monarch via the agency of the Speaker and the presence in Parliament of the Councillors. The increased

311 See, for example, *In duodecim libros Metaphysicorum expositio*, XII.9.2566 & III.1.342, 1270–2 [trans in V J Bourke (ed) *The Pocket Aquinas* (New York, Washington Square, 1960) 89]. Also: Eco op cit 'Dreaming of The Middle Ages' 61–72 and 'In Praise Of St Thomas' 257–68. Another 'new' *ism:* E W Said, *Orientalism* (Middlesex, Penguin, 1978).

312 See Wiesstub op cit 241 and S A Siegel, 'The Aristotelian Basis of English Law: 1450–1800 (1981) 56 *New York University Law Review* 18.

313 Hardly a Stuart 'invention': E H Kantorowicz, *The King's Two Bodies* (Princeton, Princeton University Press, 1957) 21 and S B Chrimes 'Sir John Fortescue and his Theory of Dominium' op cit 139–40.

314 Eusden op cit 141–2.

315 McCauliff op cit 432–3.

316 Morris op cit 3ff. See also McCauliff op cit 429–65. Re the extremists and their relations: see G Winstanely, *The Law of Freedom in a Platform or, True Magistracy Restored*, R W Kenny (ed) (New York, Schocken, 1973) first published 1652 and dedicated to Cromwell.

317 See G E Aylmer, *The King's Servants: The Civil Service of Charles I 1625–1642* op cit 404–5.

318 Morris op cit 37–8. This is the date of the puritan 'Admonition to Parliament': McCauliff op cit 437 and G R Elton, *England under the Tudors* (London, Methuen, 1963) 309–12. The trend was not recent: A L Brown, 'The King's Councillors in the Fifteenth Century (1969) 19 *Transactions of the Royal Historical Society* 96; nor did its impact diminish under the Stuarts — ultimately playing the trump card in the twilight of 1641: H E I Phillips, 'The Last Years of the Court of Star Chamber 1630–41', (1939) 21 *Transactions of the Royal Historical Society* 103, 120–8.

utilisation of Committees, particularly the Committee of the Whole House after 1610, tells of the loosening grip of James I on the Commons.[319] Under the Stuarts Parliament ceased to be the stamp of the King and, through stages of failing to ratify and refusing to pass the King's bills, it actually began formulating alternatives to governmental policy. James neglected to 'manage' elections as carefully as had his predecessors, and he also failed to keep enough of his Councillors in the Parliament to direct policy.[320] All the same, the monarchy managed, until the reign of Charles I, to deal with these strains separately. Gradually, however, a collective opposition to the government crystallised with the common lawyers as its shock troops.[321]

5.4 Political Trials and Test Cases: The Star Chamber and Other Courts

Soon after his appointment to the position of Chief Justice of the Common Pleas in 1606 Coke adopted the strict common law style in a rebuff to the personal judicial authority of the King.[322] The common law judges had issued a writ of prohibition against the Court of High Commission, and the Archbishop of Canterbury asked James to intervene personally. According to Coke himself, his majesty was told, upon calling his judges together, that the King's 'natural' authority was subject, in practice, to 'the artificial reason and judgment of law'.[323]

The Tudor exercise of royal power via proclamations, issued by the Council and enforced in the Star Chamber (as well as other courts) was a method to which James I turned with increasing frequency so as to avoid opposition in the Parliament. In 1610 the Commons declared their opposition. Again the judges were called for their opinion. Again the judges, according to Coke, voiced a restrictive view of the ambit of royal power.[324] Nevertheless James' utilisation of proclamations continued.

By 1613 Coke was the Chief Justice of the Court of King's Bench, albeit with the connivance of his rival Bacon.[325] The Chief Justice led an attack on the Court of Chancery by responding to Lord Chancellor Ellesmere's injunctions with writs of prohibition (as he had done to the High Commission). The stalemate was eventually referred to the King in 1615, who, in a single stroke, confirmed the equitable jurisdiction of the Chancellor to ameliorate the severity of the common law and his own position as ultimate adjudicator.[326]

319 W Notestein, 'The Winning of the Initiative by the House of Commons' op cit 139–45.
320 Id 148–60.
321 Ogilvie op cit 131 and V H Galbraith, *An Introduction to the Use of the Public Records* (Oxford, Clarendon Press, 1934) 46.
322 Ogilvie op cit 129–30 (generally).
323 (1607) 12 Co Rep 64.
324 (1619) 12 Co Rep 74. However the terms of Coke's account are somewhat equivocal as regards the functions of the Council and the Star Chamber, notwithstanding F W Maitland, *The Constitutional History of England* (Cambridge, Cambridge University Press, 1926) 258.
325 See A Mockler, *Lions under the Throne* (London, Muller, 1983) 32.
326 *Earl of Oxford's* case (1615) 1 Ch Rep 1; Ogilvie op cit 118–22.

In the *Commendams* case (1616) a royal grant of two benefices was the subject of a challenge at common law. James required his Attorney-General, Bacon, to order the judges to stay the proceedings pending consultation with the King. The judges refused, saying it was contrary to law to do so. James brought them before the Council, where all retracted their stances, bar Coke who chose to argue the point.[327] Shortly thereafter Coke returned to the Council, this time on his knees, but his judicial career was over.[328]

The former Chief Justice shifted his efforts to Parliament, and it was this body — that other ancient court — which, a year after Coke was returned as a member of the Commons in 1620, revived the procedure of impeachment, dormant since 1449.[329] In 1621 Bacon, by then the Lord Chancellor Viscount St Albans, and in 1624 the Earl of Middlesex (the Lord Treasurer), were tried and impeached by the Parliament. When Charles I, who succeeded his father in 1625, was immediately faced with the impeachment of their cherished Buckingham he dissolved Parliament.

Meanwhile the Star Chamber carried on its normal business of forensic adjudication. The procedural reforms of Egerton and his indirect successor Coventrye notwithstanding, Attorney-General's *ore tenus* matters made up an increasing proportion of Star Chamber activity, especially once the opposition to royal power was denied parliamentary ventilation.[330] In 1632 a puritan barrister Henry Sherfield was fined 500 pounds for the destruction of a window in the Salisbury church of St Edmund's. The accused saw the images depicted in the window as heretical, however the harsh sentence preferred by Laud was moderated by the lawyers who also sat.[331] Another puritan lawyer, William Prynne, soon after condemned the sinful practices of music and dancing. In 1633 he added to his *Histriomastrix* of the previous November with an attack on actresses. The attack was seen as casting aspersions upon the Queen who had taken part in a masque sponsored (ironically) by the Inns Of Court that January. The Star Chamber sent Prynne to the Tower for a year. The next year, when he returned to the Court for sentence, his counsel (a luxury not permitted before King's Bench when the charge was treason[332]) pleaded contrition. Prynne was sentenced to be pilloried, to lose both this ears and pay 5 000 pounds, which even Laud, now Archbishop, thought too severe.[333]

During this time, in and out of the Tower, Prynne had continued to write books and pamphlets criticising the bishops. In 1637, immediately after the judgment in Hampden's case, he was again sentenced by the Star Chamber to

[327] M Evans and R I Jack (eds) *Sources of English Legal and Constitutional History* (Sydney, Butterworths, 1984) 308–12.

[328] *Collectanea Juridica*, Vol 1, 1792, 1–78, and C Stephenson and F G Marcham, (eds) *Sources of English Constitutional History* (New York, Harper, 1937) 443–4.

[329] F W Maitland, *The Constitutional History of England* op cit 246 and Ogilvie op cit, 141–2.

[330] T G Barnes, 'Due Process and Slow Process in the Late Elizabethan — Early Stuart Star Chamber', (1962) 6 *American Journal of Legal History* 221 and 315, 329–34, cf T G Barnes, 'Star Chamber Litigants and their Counsel, 1596–1641' op cit 9.

[331] Mockler op cit 55.

[332] Bellamy op cit 166.

[333] Mockler op cit 56.

similar punishments. Other Puritan propagandists, Burton, Bastwicke and Leighton, were also sentenced to fines and humiliating punishments by the Star Chamber. Early the following year Prynne's ally Lilbourne suffered an analogous lot before the same court.[334]

This crisis of economic, political and theological lineages was played out in the courts with increasing intensity during the reigns of James I and Charles I but of the major political trials, only one — that of Prynne — actually took place in the Star Chamber. It also needs to be noted that through all this period the legality of Star Chamber's judicial functions was directly called into question only once, in *Carewe's* case,[335] where the authority of the court was strongly, and promptly, defended by Egerton.[336] Coke, who was Attorney-General (Carewe's prosecutor), later affirmed Star Chamber's jurisdiction.[337]

5.5 Abolition

The King was forced by the menace of war with Scotland to at last recall the Parliament in 1640 after eleven years. The pandemonium which ensued when the King again asked for funds compelled Charles to dissolve the Parliament. However in November of the same year, destitute, Charles again summoned the assembly and bent to its demands in exchange for the tender of supply. After the most immediate concerns of the Parliament's own life and fund raising methods had been addressed, the sights of the Commons turned upon the organs through which the King had applied his non-parliamentary government. While the Star Chamber alone had not been the principal tool of executive rule, because its proceedings (and sometimes its punishments) were open to the public, its value as a corporeal sign of personal rule and the episcopacy made it a tantalising target.[338]

The Commons established a committee to reform the Star Chamber, and two reform bills were considered, before it was reported to the House by Edmund Prideaux on the last day of May, 1641, that abolition was the sole option. Slight opposition to the measure was quickly quelled by Simonds D'Ewes.[339] The bill for the abolition of Star Chamber, and most of the rest of the conciliar courts' jurisdictions, was passed and gained the assent of the defeated Charles on 5 July 1641.[340]

The absence of the Star Chamber by no means meant the end of political trials such as that of Prynne. Prior to its appropriation of power the Parliament had already established its own 'star chamber' in the Committee for

[334] Mockler op cit 58–9 and Ogilvie op cit 156. See (1649) 4 How St Tr 1269, 1273 for the continued (necessary) openness of the Court.
[335] *A-G* v *Carewe* (1603) in Hawarde op cit 164.
[336] See especially D R Mummery, 'Due Process and Inquisitions' (1981) 97 *Law Quarterly Review*, 287, 299, 304–9 cf F W Maitland, *the Constitutional History of England* op cit 274–5.
[337] See *Institutes*, Part IV, cap 5.
[338] Ogilvie op cit 156.
[339] Id 157.
[340] 16 Car I c 10. On the report of the Committee and the extraordinary proceedings in the Commons and the Lords see: Phillips op cit 103–6, 129–30.

Examinations and Parliamentary Justice.[341] The jurisdiction exercised by the Star Chamber was taken up by the court of King's Bench with no real sense of recalcitrance. In addition, after the experiment of republicanism had degenerated into military dictatorship and the monarchy was restored, albeit subject to the restrictions of 1641, the non-existence of the Star Chamber resulted in the conduct of political trials exclusively before those courts to which the death sentence was available.[342]

6. ENVOI

The emergence of the Court of Star Chamber as an autonomous institution came about against an environment of rapid social change, yet also one of unhurried and unplanned structural ordering. The images of feudalism and the timelessness of the common law tended to overshadow the continual infiltration of the operations of the royal courts, and their key structure, the Council, into English life, even in a period of social transition. Recorded examples of Star Chamber cases show a drift away from riot/violence activities and towards a more miscellaneous and sophisticated jurisdiction. As the King's peace was assiduously implemented, the regulation of a new range of legal concerns fell to the Council. From the litigant's perspective, the flexibility of the Star Chamber's jurisdiction meant that a case which had little chance of being heard in the common law courts might be brought before the Star Chamber. This flexibility also meant that the available 'collateral' action added a new consideration to the undertaking of legal actions. Star Chamber procedure was of an altogether methodical character, and far from inimical to the common law. There is clear evidence of the Star Chamber's systematic, ordered, procedure. Like other courts, few of the community had access to the Star Chamber. Characteristics of prestige, wealth, masculinity and primogeniture were common to that element of the populace who can be shown to have been associated, in some way, with the Court. The Star Chamber played a necessary part in the Kings' continual direction of the laws. But opposing royal resourcefulness were those who saw the practices of the conciliar courts as a harmful incursion into the established identity of the community. The most energetic challengers were to be found in the Parliament and the Inns Of Court. The common lawyers' dislike of conciliar justice was not so much a theoretical legal controversy between the Inns and the Councillors as one of the strategies of a reinvigorated elite with economic claims which were in competition with the central government and of godly revolutionaries opposed to the government's religious policies.

[341] W Epstein, 'The Committee for Examinations and Parliamentary Justice' (1986) 7 *Journal of Legal History* 3.

[342] See R Zaller, 'The Debate on Capital Punishment during the English Revolution' (1987) 31 *American Journal of Legal History* 126, A F Havighurst, 'The Judiciary and Politics in the Reign of Charles II' (1950) 66 *Law Quarterly Review* 62–78 and 229–52 and A F Havighurst, 'James II and the Twelve Men in Scarlet' (1953) 69 *Law Quarterly Review* 522. See generally F W Maitland, *The Constitutional History of England* op cit 311–20.