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SEBASTIAN SOBECKI

Lancastrian Literature

This chapter will provide an overview of how both major and lesser-known Lancastrian writers and texts engage with the law and legal contexts. Covering the period between Henry IV and Prince Edward of Westminster, this chapter will address legal aspects in Thomas Hoccleve's *Regement of Princes*, Osborn of Bokenham's *Mappula Angliae*, George Ashby's *Active Policy*, John Fortescue's *De laudibus legum Angliae* and such anonymous works as the *Libelle of Englyshe Polycye* in order to demonstrate how they intervened in and commented on shifting legal ideas and practices during the first two-thirds of the fifteenth century.

The sixty years of unbroken Lancastrian rule between Henry IV's usurpation of the crown in 1399 and the first deposition of his grandson Henry VI in 1461 'exceeded the longest prescription limit in the laws of the church applicable to secular kingdoms'.¹ The doctrine of prescription means that possessing something *de facto* over a certain period of time amounts to a right to this possession. This may not seem to be a particularly scintillating benchmark if viewed with 500 years' worth of hindsight, yet at the time the relatively smooth and refreshingly unchallenged royal transitions binding together three kings through the principle of primogeniture offered a sense of continuity rarely seen in medieval England's public politics. Sixty years covers three generations and spans the shared biological memory of the better part of a century. Although the Lancastrian period is now often perceived as a time of dynastic unease and repressed guilt over the manner of Henry IV's seizing of the crown (an impression fostered by Shakespeare's history plays and reinforced by New Historicist readings of the ideological aspects of Lancastrian rule), many contemporary documents betray no such institutional instability or fragility of governance. On the contrary, the continuity of Lancastrian rule created the necessary framework for an institutional consolidation and a strengthening of royal authority, while, at the same time, sustaining and developing the conciliar outlook on which the Lancastrians had founded their rule and which they used to justify their

ascent to the throne. Paradoxically, the same conciliarism and consultative character that Henry IV summoned to present himself as a more competent ruler than Richard II became the touchstone of much Lancastrian communication, to the extent that it genuinely changed – for better and for good – English practices of governance. In other words, conciliar politics moved from being a utilitarian means to becoming a political principle. Consequently, one of the greatest beneficiaries of this period of institutional development was the law itself, primarily in its secular, and common, form.

The first half of the fifteenth century does not offer any engaged or complex literary interest in specific areas of the law. There are glimpses of the law in Lydgate's writings, but these instances are neither sustained throughout his oeuvre nor do they tackle specific aspects of the law. Instead, in *Saint Austin at Compton* Lydgate champions legal flexibility and interpretive mitigation. Jennifer Sisk observes that Lydgate's 'poem in fact argues against a legal practice that strictly follows the letter of the law, instead bowing to legal and affective discernment on a case-by-case basis'.² Royal justice is at the heart of his *Disguising at Hertford*, a work that, according to Emma Lipton, 'shows Lydgate's inability to imagine a viable model for celebrating kingly justice and perhaps his own dissatisfaction with the ending'.³

Thomas Hoccleve's *Regement of Princes*, on the other hand, is centrally concerned with the art of statecraft. Written for Prince Henry (the future Henry V) in the tradition of mirrors for princes,⁴ Hoccleve's most ambitious work was composed in 1410–11, when Prince Henry was temporarily head of the council during Henry IV's prolonged illness.⁵ Sometimes read as an attempt to profile the young prince politically,⁶ the work is usually understood as delivering a critique of the king's policies by contrasting the virtues of his designated successor, Prince Henry, with those of his father's reign.⁷ Surviving in twenty-six manuscripts, Hoccleve's poem appears to have been read widely and, more importantly, by publicly significant individuals.⁸

The arithmetic middle of the poem, and therefore perhaps even its central place, is reserved for the 500-line section entitled 'De justitia' (On Justice) (ll. 2,465–996).⁹ Given the lofty expectations of Hoccleve's genre – the mirror for princes – the poem's understanding of justice and law is calibrated for future monarchs and their political needs. Hoccleve's passage on justice, and much of the *Regement* itself, is assembled from readily available commonplaces, while the basic definition of 'justice', as introduced in the first stanza of this chapter, conforms to orthodox views prevalent at the time: 'justice is libertee / Of wil, gevyng unto every wight / That longith to his propre dignitee' (ll. 2,465–7). 'Dignitee' is one's social rank, so that 'justice' is understood not as a form of equality before the law but as equality *within* one's tier in a stratified society. But Hoccleve is quick to adjust to the

formative needs of a prince cast into the turbulent world of politics by shifting in the fourth stanza to the paramount importance of accepting counsel and working within conciliar structures:

Of conseil and of help been we dettours,
 Eche to othir, by right of brethirheede;
 For whan a man yfalle into errour is,
 His brothir owith him conseil and rede
 To correcte and amende his wikkid dede (ll. 2,486–90)

Conciliar rule was not only a cornerstone of late medieval political theory but also the self-declared basis of Lancastrian political thought.¹⁰ To Hoccleve a king is a constitutional instrument, ‘maad to keepen and maynteene / Justice’ (ll. 2,514–15). Kings are thus ‘made’ to uphold justice in accordance with divine law (‘The lawe of Cryst’, l. 2,502) and natural law (‘of the kynde and the nature / of God’, ll. 2,507–8). Anticipating the conciliar and constitutional thought of the legal thinker John Fortescue, Hoccleve reiterates the late medieval maxim that kings are bound to uphold the law: ‘A kyng is by covenant / Of ooth maad in his coronocioun / Bouwnde to justices sauviacioun’ (ll. 2,518–20). Lexically this sentence is held in balance by ‘maad’ – the first instance invoking kings not as active individuals but as purposive social constructs, while the second use (‘by covenant / Of ooth maad’) appears to gesture at the same meaning, thus stressing the sacramental and politicised nature of the coronation, before turning ‘maad’ into an auxiliary part of the verbal phrase ‘maad . . . Bownde’: kings are not only tied to justice but created as limited political actors bound by the act of their coronation. The upshot of this circumspect phrasing is that kings are never free to begin with; at the very moment of their public creation, that is, their crowning, they are already limited in the scope of their actions.

In a series of case studies, mostly drawn from antiquity, Hoccleve illustrates the basic principles of peaceful and just rule. But then, in an interpolation, he adduces the Lancastrian protoplast and father-in-law of John Gaunt as a law-maker and defender of justice: ‘Of Lancastre good Duke Henri also, / Whos justice is writen and auctorysid’ (ll. 2,646–7). By embedding the first duke of Lancaster in a string of Classical precedents for just and lawful rule (Gaunt was Prince Henry’s grandfather), Hoccleve historicises Lancastrian principles of governance and creates a constitutional pedigree for Prince Henry.

As a next step, the poem reinforces the dynastic principle behind constitutional and just governance by invoking the tale of a Persian judge who knowingly condemned an innocent man to death (ll. 2,685–709). On hearing of this case, the king of Persia has the judge flayed alive before using his skin

as upholstery for the justice's chair on which he places the judge's son – to serve as a reminder for the need to uphold justice without compromise. The gruesome punishment meted out by the king and the macabre decision that follows detract from the point (perhaps not readily noticeable for a modern audience) that in this tale the role of the judge is hereditary. This is Hoccleve's essential building brick for the ensuing analogy between kings and judges, one that turns monarchs into justices, presiding with their instruments of grace and equity over a country's legal system. And yet Hoccleve's king is not above the law: 'Prince excellent, have your lawes cheer; / Observe hem and offende hem by now weye' (ll. 2,773–4). For all his power, a king must observe the laws of his polity. And it is here that Hoccleve turns to technical speech, in admonishing the prince to combat what the narrator perceives to be a tendency to resort to vigilante justice (ll. 2,787–97). 'Armed folk' participating in unlawful 'assemblee' (ll. 2,791–2) do not wish to pursue actions at common law: 'Hem deyneth nat an accioun attame / At commun lawe' (ll. 2,795–6). Here, Hoccleve's understanding of constitutional law is fully uttered: his king is not only the head of the executive and judicial branches of government but he also presides of the legislative domain: 'Is ther no lawe this to remedie?' (l. 2,801).

But it was not until the troubled reign of Henry V's son, Henry VI, that England's waning fortunes in the Hundred Years' War triggered a renewed literary impulse to question governance and law. The first wave was formed by the political poems of the 1430s and 1440s, primarily the remarkable *Libelle of Englyshe Polycye* (henceforth: *Libelle*).¹¹ The *Libelle* is a combative political poem, written in response to the collapse of the Anglo-Burgundian alliance at the Congress of Arras in 1435, an event that marked a turning point in the Hundred Years' War. Burgundy's reconciliation with France could not have come at a worse time for England: the king, Henry VI, was still in his minority, and the ruling council was bitterly divided into the feuding camps of Cardinal Beaufort and the king's uncle, Humphrey, Duke of Gloucester. In the following year, Burgundy's Philip the Good turned on his former ally and swiftly laid siege to Calais. Duke Humphrey led a successful relief effort and, as a punitive measure, raided Flanders. This relief effort coincided with the end of Henry's minority, and the writer behind the anonymous *Libelle* appeared to have seen an opportunity to rally the country's elites around a unifying political project that now sounds all too familiar: xenophobia at home, isolationism abroad, all propped up by a jingoistic mercantilist regime of import taxes. The *Libelle* – which means small book or booklet – survives in two versions or editions. The first was composed after the siege of Calais but before the end of 1438. A second version circulated before June 1441 and was followed by a subsequent

revision. The poem, as I have argued elsewhere,¹² probably originated in the young king's immediate circle of educators and advisors, and I believe that the *Libelle* is most closely linked with Richard Caudray, Clerk of the Council until 1435, thereafter secretary to John Holland, Admiral of England, and Dean of St Martin le Grand in London.

Although the *Libelle* is firmly situated in a clearly defined set of fifteenth-century political and economic circumstances – I like to think of it therefore as an acute political poem – this work is crucial to understanding the legal implications of England's European and global political ambitions during the Lancastrian, Tudor and even Jacobean periods. Given that the *Libelle* is an anonymous work of just over 1,100 lines, it is remarkable that we have twenty surviving manuscript copies, and we know of at least another handful of lost exemplars. More tantalising still is the list of known early owners of copies of the *Libelle* – a list that reads like a who's who of lawyers and public figures in early modern England: in the fifteenth century, John Paston, who was trained in the law, owned a copy of the poem; in the sixteenth century, Queen Elizabeth's chief advisor and secretary of state William Cecil owned a manuscript, while the travel writer Richard Hakluyt had access to two exemplars; in the seventeenth century, both Chief Justice Matthew Hale and Samuel Pepys, Clerk of the Acts to the Navy Board, owned copies. In fact, Hale's copy may have been previously owned by the leading seventeenth-century legal thinker John Selden, who quotes thirty-four lines from the poem in his influential treatise *Mare clausum* (*The Closed Sea*), a repudiation of Hugo Grotius's influential plea for open seas *Mare liberum* (*The Open Sea*).

In addition to its reception by leading lawyers in subsequent centuries, the *Libelle*'s investments in the law and legal thought are twofold. The reason why both Pepys and Selden took an interest in the poem is its remarkably sophisticated approach to the notion of territorial waters in international law. Although the notion of viewing the sea as territorial already existed in late medieval England, the law had not yet formulated the concept of territorial waters. The *Libelle* may very well have been the first work to have done so. The poem resourcefully draws on a number of legal mechanisms to stake its claim. The detailed case made by the *Libelle* is complex and has been discussed in detail,¹³ but the poem relies on a number of principal arguments to advance the notion of territorial waters which include employing Emperor Sigismund's imperial *regalia* following his visit to Henry V; using precedent by adducing a list of sea-keeping kings of England; citing the need to curb piracy; and frequently restating the territorial equivalence of land and sea. While the *Libelle* may not have succeeded in effecting a shift in legal thought and policy at the time of its composition and initial circulation, the poem's

subsequent use by John Selden underscores its long-lasting influence on the theory of territorial waters and on the development of international law.

The second area in which the *Libelle* stands out if viewed through the prism of the law is its ingenious use of the petitionary form of the *libellus*, the technical term for the bill of complaint submitted to the Court of Admiralty.¹⁴ The *Libelle* is an unusual variation on the theme that Matthew Giancarlo calls the ‘bill-poem’.¹⁵ Such poems embed themselves in the complaint tradition, usually invoking complaints made by individuals. Instead, the *Libelle* advances an instance of collective complaint or clamour.¹⁶ Essentially, the *Libelle* is a policy complaint requesting redress, basing the poem on a petitionary *libellus* employed in certain civil law courts, including the Court of Admiralty and various mercantile jurisdictions. The appropriate legal model for the *Libelle* is therefore the Latin *libellus*: ‘A *libellus* is a writing in which are contained the suit which is sued, the case for the suit, and the name of the disputant and the action’, as one early English jurist puts it.¹⁷ In civil law, the *processus ordinarii*, or legal suit, opens with the presentation of the bill of complaint’ (*oblatio libelli*). And this is how the *Libelle* refers to itself at the outset: ‘[t]he trewe processe of Englyshe polycye’, followed by ‘the processe of the Libelle of Englyshe polycye’.¹⁸ Contemporary readers understood the legal allusions embedded in the poem’s format, and one scribe of the *Libelle* modifies the envoi in one of the manuscripts of the second edition, replacing the word ‘libelle’ (l. 1,142) with the phrase ‘little bylle’ – a bill of complaint as used in the common law.

A few years later, in about 1440, Osbern Bokenham composed in English the prose work *Mappula Angliae*, a text designed to accompany his saints’ lives.¹⁹ Bokenham based the *Mappula* on the opening survey of England in Ranulph Higden’s *Polychronicon*, one of the most widely read and authoritative medieval encyclopaedias. In his text, Bokenham engages with the technical language of the common law and its lexical complexity. He opens his section on law with an acknowledgement of the specificity of English law: ‘knowlege of lawis and of suche termys as been straunge and vsyd yn lawis, is nessessary to hem þat byn vndur þe lawis & nedis muste be gouernyd & rewlyd by þe lawis’.²⁰ The progressive idea underlying this statement – that those to whom the law applies must understand that law – is an early forerunner of early modern attempts to disseminate the law more widely across the population. Bokenham’s sentiment is his own and marks a departure from his source.

Bokenham then offers a brief history of English laws which leads him to put into practice his own belief in the need to render understandable to his audience some of the arcane laws that govern them, or, as he calls it, terms

that are ‘straunge to vundurstonde’.²¹ To do so, Bokenham explains a series of Old English legal terms, but he does so simultaneously in Middle English and in Law French, claiming both accessibility (through the use of English) and authority (by employing the French terms):

Mundebryche: that is to sey on frensshe blesmure de honneire, on Englyshe hurte of worschepe. | Boragebriche is in frensche blesmure de court ou de cloys, In englyshe hurt of Court or of cloos. Grythebriche is brekyng of pees. Myskennynge is variacioun or chaunge of speche in court. | Sheawyng is leyng forthe of marchaundise.²²

References to the law are not frequent in the *Mappula*, but this passage is unique in its enlightened understanding of the need to disseminate legal education – a principle by which Bokenham himself abides.

The dynastic turmoil of the Wars of the Roses precipitated a Lancastrian windfall of legally informed and jurisprudential works and manuscripts, including the poetry of George Ashby, the writings of John Fortescue, Thomas Littleton’s *Tenures*, and the circulation of the *nova statuta*. In a circumstantial way, the Wars of the Roses, the dynastic struggle in the 1460s, 1470s and 1480s that ended the Lancastrian hold on the throne, also created the conditions necessary for political and legal reflection. The hopes of the Lancastrians rested on Prince Edward of Westminster, Henry VI’s only son. His education and safe-keeping became the focus of the exiled party, and two writers, drawn from Henry VI’s inner circle of administrators and bureaucrats, emerged at the helm of the project to guide the young prince: George Ashby and John Fortescue. Ashby, for many years clerk of the signet to Henry and Queen Margaret, is best known for *A Prisoner’s Reflections* and his mirror for princes, *The Active Policy of a Prince*. The second text was written for Prince Edward, much in the tradition of Hoccleve’s *Regement of Princes*. Although not overtly concerned with the law, at one point Ashby’s poem urges the young prince to implement and guard the laws of England:

Provide that lawe may be excercised,
And executed in his formal cours,
Aftur the statutes autorised
By noble Kynges youre progenitours
Yeving therto youre aide helpe & socour.
So shall ye kepe folk in subieccion
Of the lawe and trewe dispocision. (ll. 520–6)²³

For Ashby, laws primarily exist to be kept; they ensure that people remain ‘in subieccion’. Yet, as Rosemary McGerr has shown, this moment in Ashby’s

text is significant because the narrator expects Edward to have read the statutes of the realm since he urges the prince to respect the statutory legislation enacted by his ancestors.²⁴

It was Ashby's fellow Lancastrian exile, the former chief justice John Fortescue, who took it upon himself to instruct Prince Edward in legal custom and statutory legislation. Fortescue's *De laudibus legum Angliae* (*In Praise of England's Laws*) stands out among his three major legal treatises as a literary work, a mirror for princes – the other two are *On the Governance of England* and *De natura legis naturae* (*On the Nature of Natural Law*). Unlike Ashby's *Active Policy*, Fortescue's work is written in Latin, thereby assuming an authoritative quality that is denied to vernacular texts. The *De laudibus* and the English *On the Governance* establish Fortescue's celebrated theory of constitutional and political law, that of the *dominium politicum et regale* (the political and royal realm). In this model, which applies to England in Fortescue's thought, the king as sovereign is subject to the will of the people, as expressed in the institution of parliament. Addressing Edward directly, Fortescue clarifies his legal theory:

For you doubt whether you should apply yourself to the study of the laws of the English or of the civil laws, because the civil laws are celebrated with a glorious fame throughout the world above all other human laws. Do not, O king's son, let this consideration trouble you. For the king of England is not able to change the laws of his kingdom at pleasure, for he rules his people with a government not only regal but also political.²⁵

The degree to which Fortescue's king is constitutionally limited in his power has been the subject of much debate,²⁶ but English legal thought would hark back to Fortescue's *dominium politicum et regale* for the coming centuries. If we situate this work historically in the context of political exile and the predicament of the Lancastrian side, then it is tempting to read Fortescue's legal theory as occasional and conditioned by the needs of his losing side. Yet if read from within fifteenth-century political narratives, then the *De laudibus* emerges as a visionary, almost apolitical, work that applies equally to all rulers of England, whether Yorkist or Lancastrian, and that is marked primarily by a deep understanding of and loyalty to England's legal system rather than to any particular political faction.

In his three major treatises, Fortescue was able to articulate a legal definition of England's political structures precisely because the political stability afforded by sixty years of consecutive Lancastrian rule allowed these structures to unfold, while Thomas de Littleton's *Tenures* – a work belonging to

the law proper rather than to literary discourses – emerged towards the end of this period as a first comprehensive attempt to write down the principles of the common law.

Notes

1. Paul E. Gill, 'Politics and Propaganda in Fifteenth-Century England: The Polemical Writings of Sir John Fortescue', *Speculum* 462 (1971), 344; S. B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge: Cambridge University Press, 1936), 64–5.
2. Jennifer Sisk, "'We Must Be Tretable': Law and Affect in Lydgate's *Saint Austin at Compton*", *Modern Philology* 112:1 (2014), 93.
3. Emma Lipton, 'Law, Chaucer, and Representation in Lydgate's "Disguising at Hertford"', *JEGP* 113: 3 (2014), 364.
4. On this genre in the fifteenth century, see Matthew Giancarlo, 'Mirror, Mirror: Princely Hermeneutics, Practical Constitutionalism, and the Genres of the English *Fürstenspiegel*', *Exemplaria* 27:1–2 (2015), 35–54.
5. David Watt, 'Thomas Hoccleve's *Regiment of Princes*', in *A Companion to Fifteenth-Century English Poetry*, ed. Julia Boffey and A. S. G. Edwards (Cambridge: D. S. Brewer, 2013), 47. Hoccleve revised the poem in 1412 (Watt, 47).
6. Ethan Knapp, *The Bureaucratic Muse: Thomas Hoccleve and the Literature of Late Medieval England* (Philadelphia: Pennsylvania State University Press, 1997), 80.
7. Judith Ferster, *Fictions of Advice: The Literature and Politics of Counsel in Late Medieval England* (Philadelphia: University of Pennsylvania Press, 1996), 89–159.
8. Watt, 'Thomas Hoccleve's *Regiment of Princes*', 48–9.
9. All quotations to *The Regiment of Princes* are taken from Thomas Hoccleve, *The Regiment of Princes*, ed. Charles Ramsay Blyth (Kalamazoo, MI: Western Michigan University, 1999).
10. Sebastian Sobekski, *Unwritten Verities: The Making of England's Vernacular Legal Culture, 1463–1549* (Notre Dame, IN: University of Notre Dame Press, 2015), 70–101.
11. The standard edition is George Warner, ed., *The Libelle of Englyshe Polycye: A Poem on the Use of Sea-Power, 1436* (Oxford: Clarendon Press, 1926).
12. Sebastian Sobekski, *Last Words: The Public Self and The Social Author in Late Medieval England* (Oxford: Oxford University Press), forthcoming.
13. Sebastian Sobekski, *The Sea and Medieval English Literature* (Cambridge: D. S. Brewer, 2008), 145–60.
14. Sebastian Sobekski, 'Bureaucratic Verse: William Lyndwood, the Privy Seal, and the Form of *The Libelle of Englyshe Polycye*', *New Medieval Literatures* 12:1 (July 2011), 251–88.
15. Matthew Giancarlo, *Parliament and Literature in Late Medieval England* (Cambridge: Cambridge University Press, 2007), 144–5.
16. On clamour writing, see Wendy Scase, *Literature and Complaint in England, 1272–1553* (Oxford: Oxford University Press, 2007).

17. *Select Bills in Eyre AD 1292–1333*, ed. William Craddock Bolland, *Selden Society*, 30 (London: Quaritch, 1914), xiii–xiv. The translation is from Scase, *Literature and Complaint in England, 1272–1553*.
18. See the incipit as well as ll. 1, 1049, 1078, and the English explicit.
19. Osborn Bokenham, 'Mappula Angliae', ed. Carl Horstmann, *Englische Studien* 10 (1887), 1–34.
20. Bokenham, 'Mappula Angliae', 21.
21. Bokenham, 'Mappula Angliae', 21.
22. Bokenham, 'Mappula Angliae', 21.
23. *George Ashby's Poems: From the Fifteenth-Century MSS at Cambridge*, ed. Mary Bateson, repr. 1965, EETS e.s. 76 (London: Kegan Paul, Trench and Trübner, 1899), 28.
24. Rosemarie McGerr, *A Lancastrian Mirror for Princes: The Yale Law School New Statutes of England* (Bloomington, IN: Indiana University Press, 2011), 106.
25. John Fortescue, *De laudibus legum Anglie*, ed. Stanley B. Chrimes (Cambridge: Cambridge University Press, 1949), 25.
26. For a summary, see Sobecki, *Unwritten Verities*, 70–101.

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