THE POLITICAL KINGDOM: PARLIAMENTARY INSTITUTIONS AND LANGUAGES OF LEGITIMACY IN ENGLAND AND CASTILE, 1450-1520

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By

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ABSTRACT

Between 1450 and 1520 there were frequent uprisings in England and Castile, many directed at royal councilors, a few aimed at monarchs themselves, but nearly all claiming to seek some sort of reform. They occurred during a period of critical development for political thought in Western Europe. Languages and ideas that previously had belonged to the realm of philosophical thought moved into the world of operative politics, taken up by a broad contingent of subjects and citizens demanding accountability, good government, and, occasionally, inclusion in the legislative process. The ideas under consideration in this dissertation are: the political kingdom; the common weal, *res publica*, *cosa pública*, and *buen público*; conciliarism and the *corpus mysticum*; and historical precedent. The same languages of legitimacy and representation were used in Castile and England. However, in Castile these languages were contested by a discourse of kingship that permitted no limitation, real or theoretical, on the king’s *auctoritas*. This and the failure to fully implement the aforementioned languages in operative discourse ultimately hindered participation of Cortes and community in the life of the kingdom. It also explains why the Cortes found it difficult to assert itself, and the community found it even more difficult to reform royal government, including the Cortes. In England, discourses of royal authority were far less developed and successful than in Castile. Subjects integrated into the development of the state in England because they had recourse to languages
of communal representation and civic participation that validated their involvement in the political community. Englishmen identified Parliament as the legitimate forum for channeling communal discontent or desires. The legitimacy Parliament achieved in this period remained with the body. This was due in large part to the strength of the languages used to legitimate Parliament, and their continued presence in English discourse.
The research and writing of this thesis is dedicated to everyone who helped along the way.

Many thanks,
Darcy Kern
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**INTRODUCTION**

In 1449, Pedro Sarmiento, chief warder for the city of Toledo, rebelled against Juan II, king of Castile. He and his allies were particularly upset by the request of Álvaro de Luna, duke of Trujillo and pre-eminent royal counselor, for more taxes to support the liberation of the city of Cuenca from the king of Aragon. The following year, Jack Cade took up arms against Henry VI’s government in England. Cade and his supporters complained about the undue influence of William de la Pole, duke of Suffolk and the king’s favored councilor. In both kingdoms rebels complained of royal officials enriching themselves at the expense of the king’s subjects, the king’s failure to uphold justice and maintain peace, violations of the common weal, and general mis-governance. For the next seventy years there were frequent uprisings in both kingdoms, many directed at royal councilors, a few aimed at monarchs themselves. In nearly every instance, the participants claimed they wanted reform.

These revolts occurred during a period of critical development for political thought in Western Europe. Languages and ideas that in previous centuries had belonged to the realm of philosophical thought – the realm inhabited by Albertus Magnus, Thomas Aquinas, John of Salisbury, William of Ockham, and Marsilius of Padua, among others – became embedded in operative politics, taken up by a broad contingent of subjects and citizens demanding

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1 Sarmiento targeted Toledo’s Jewish and *converso* communities. Pope Nicholas V issued a bull excommunicating both the rebels and those who helped them. He did not issue a similar bull in response to Cade’s uprising in England. It is possible that he issued the bull against Sarmiento because the latter had attacked clerics as well as laymen, but in the bull the pope links offenses against the Catholic faith with those against the king, the “natural lord.” “Sarmiento committed other evils against the Catholic faith… and endangered the king and his subjects, as well as their souls.” Pope Nicholas directed his criticism not only against Sarmiento but against his “cruel and tyrannical companions.” The specific charge leveled against the offenders was *lèse majesté*. For the bull against Sarmiento, translated by contemporaries into Castilian, see *Memorias de Don Enrique IV de Castilla*, eds. Fidel Fita and Alfonso Bonilla (Madrid: Real Academia de la Historia, 1913), II, 26-38.
accountability, good government, and, occasionally, inclusion in the legislative process.² Legitimate authority was questioned and contested on a scale of greater magnitude than either England or Castile had experienced for centuries.

The contemporary political landscape was complex and diversifying. By the fifteenth century Western Europe was comprised primarily of territorial political societies characterized by “variations which it is hard not to describe as, in some sense, ‘national.’” These societies each had their own distinctive political history and means of projecting that experience in image, symbol, myth, and idea. One indication of their national sensibility is “the actual language of political discourse,” that is, their use of the vernacular. The Iberian kingdoms already had a substantial political literature in Castilian and Catalan by 1400. Castilians adopted the vernacular sooner and with more alacrity than the English, who continued to use Latin through the sixteenth century. Yet even when the English jurist Sir John Fortescue wrote in Latin and sought to express his arguments in terms of a general “European” discourse, he concentrated overwhelmingly on the institutions and problems of his native England, which he saw as distinctly different from other societies.³ Both Castile and England were proud of their unique histories and cultures, so much so that the Castilians belligerently accosted the English over national preeminence at the Council of Basel in the 1430s, while several decades later Fortescue wrote a treatise on the superiority of English government to French rule.

Despite the rhetoric, the situation on the ground in both kingdoms was dispiriting. By the mid-fifteenth century England was losing its lengthy and costly war with France; Normandy, its

² Donald W. Hanson, From Kingdom to Commonwealth (Cambridge, MA: Harvard University Press, 1970), 11-12. Hanson defines operative political thought as “the ideas and assumptions which accompany and inform the actual political life of the age.”
duchy across the Channel, was lost; the Crown had huge debts from the war; and there were significant abuses of the king’s patronage and beneficence. This, in addition to extensive civil disorder, armed quarrels among the nobility, Henry VI’s mental instability, factional rifts in the royal council, corruption in the administration of justice, and lavish spending in the king’s household, created the impression of a kingdom in chaos. It is difficult to know the full extent of these problems or their effect on local and regional government, but the common opinion was that they were widespread and unsettling. Certainly, their influence on national politics was significant, and Englishmen frequently complained about them.⁴

Castile, like England in the fifteenth century, was a kingdom riven with weak and ineffective monarchs; occasional incursions from Aragon, Navarre, and Portugal, often with French support; abuses of justice; financial corruption at court; high taxes; and armed personal quarrels among the nobility. In addition, there was friction between the traditional Christian population and the indigenous Jewish and converso communities and conflict within the royal family, especially between Enrique IV’s daughter Juana and his half-siblings, Alfonso and Isabel. Many Castilians, especially nobles, clerics, and townsmen, were acutely aware of these problems, frequently complaining of high taxes, corruption, the influence of undeserving favorites on the royal government, and the lack of leadership from king and Cortes. Civil disaffection created fertile ground for the consideration of political ideas with long, indeed ancient, histories in Europe.

Any number of medieval writers, influenced, for example by Ciceronian and Aristotelian political ideas addressed concepts such as consent, legitimacy, counsel, and the rights of the community, as well as the relationship between central and local government, representation, rights of resistance, and the distribution of power and authority within a complex political body, although they did not always agree on the meaning of these terms or their application. The thirteenth and fourteenth centuries were particularly fruitful for the development of these ideas, and it is to these centuries that parliamentary institutions trace their origin. Most began as some form of baronial council and gradually expanded to include prelates, urban representatives, and occasionally rural representatives. After the inclusion of the commons in Parliament in 1327, consent to taxation and legislation became more broadly based, “so much so that by the end of the fourteenth century it had become an axiom that what parliaments did only parliament could undo.”

Throughout the Middle Ages, parliamentary institutions were dependent directly on the monarch’s will for their meetings. In England, when the king summoned a general parliament “he was exacting a response to his own power of command and seeking his own ends, rather than consciously providing a channel of communication for the nation’s will in answer to a demand.

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from below which it would have been imprudent to resist."

8 The same is true of the Cortes, the parliamentary assembly of Castile-León, although the statement is a bit tenuous for the fifteenth and sixteenth centuries for both polities, when pressure from the political community for reform often forced a reaction from monarchs. 9 Even though no stable rule existed obliging the monarch to call Parliament or the Cortes, the two institutions met frequently in the fourteenth and fifteenth centuries. Although dependent on the monarch, their political legitimacy did not derive solely from him or his writ of summons. Their foundation was broader, with more depth. Before examining the languages of legitimacy that validated parliamentary institutions, however, it is necessary to understand the concept of legitimacy itself.

Language has three important functions: it identifies, defines, and legitimizes or delegitimizes human behavior. It is, in short, how we explain the world around us. According to Robert Zaller, “All political languages express legitimacy, the cluster of ideas, assumptions, and significations by which men explain, enact, and contest authority.” The discourse of these languages is

Understood, in its broadest sense, as the sum total of articulated statements from, to, or about power and its instruments. Such statements may be intentional (a command, a petition), ritualized (bowing, kneeling, and other forms of ceremonial address; the wearing and doffing of certain articles of clothing; the taking of oaths and the recitation of prescribed texts), representational (the likeness of a ruler on his coinage; his personification in pageantry; the depiction of his predecessors on the stage), or expressive (toasts and jests; lighting bonfires; ringing bells). 10

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8 Roskell, Parliament and Politics, I, 448, 452.
Such discourses are also found in the written word – contemporary chronicles, religious texts, poetry, literature, self-improvement works, and others. It is not necessary for those who accept a government as legitimate to accept it for the same reasons. A government can mean different things to different people based upon their beliefs, their personal circumstances, or their ambitions. Consequently, there can be a variety of sources with which to establish and sustain legitimacy. Because of the multitude of sources from which legitimacy is drawn, its details are occasionally fluid and contingent, especially in a period before written constitutions existed.

There are two degrees of legitimacy: one that validates institutions broadly, and one that validates individuals or singular meetings of institutions. Institutional legitimacy, once attained, is difficult to lose, provided the institution generally serves the purpose for which it exists and there is some symbolic or theoretical renewal of it to the political community. Individual legitimacy within the institutional framework is more tenuous and must be constantly renewed.\(^\text{11}\) Legitimacy includes ideas about the descent of the crown, good or acceptable governance\(^\text{12}\), and proper responses to evil, tyrannical, or corrupt government. It includes the observable flourishing or destruction of the body politic of the realm, and it involves social, cultural, and economic factors over which a contemporary monarch had little control. Failure to persuasively communicate or comprehend the terms of legitimacy can lead to the collapse of a regime, institution, or individual, and its replacement with a new leader or type of government that may

\(^{11}\) On ritual forms of legitimacy for individual monarchs, see Jeroen Deploige and Gita Deneckere, eds., *Mystifying the Monarch: Studies on Discourse, Power, and History* (Amsterdam: University Press, 2006).

\(^{12}\) This term was essential to the scholastic philosophical framework in which much of the discussion of political thought occurred. The Thomist interpretation of Aristotle argued that the ‘gubernator’ or governor was the helmsman who directs the ship safely to port – “to govern is to guide that which is governed to its appointed end.” The end was Aristotle’s happiness of living in a community in accordance with the moral virtues. Fortescue, *On the Laws and Governance of England*, xix.
override legitimate institutions and practices, as in the case of a tyrant. In such instances the discourse of legitimacy must be repaired or begun anew.

Both reality and perceptions of reality, judged through the prism of religion, economics, political and personal allegiance, and philosophy, sustain legitimacy. Every government must legitimate its rule to those it governs in order to maintain its position in society. It does so by becoming the visible manifestation of commonly accepted political ideas or by maintaining popularly agreed upon political forms, ceremonies, and rituals; by issuing effective propaganda; by engaging and countering those who oppose it; or by appealing to outside sources to validate itself, regardless of the original intent of such sources. Though it is not necessary for all persons within a political community to accept specific terms and sources of legitimacy, either a sizable proportion of the population or those with the most military, financial, and institutional power must do so. Hence, the legitimacy of nearly every monarch and some parliamentary assemblies (such as Coventry in 1459) in both kingdoms in this period was vigorously contested even though the institutions of monarchy, Parliament, and Cortes were not. Because the legitimacy of those with the most power was often called into question in this period, people sought to justify communal participation in government and demand reforms. The war and civil unrest of the fifteenth century created space for languages of communal representation to take hold in popular political discourse.

To understand Parliament’s role in the government of England and the role of the Cortes in Castile between 1450 and 1520 one must understand the political discourse sustaining and renewing their legitimacy. The focus here is on political ideas in operative discourse, evaluating the lines of continuity and change, similarity and difference, especially as these bear on
“constitutionalized” politics. As Penny Tucker has observed, “Among late medieval Englishmen of what one might describe as the ‘constitutionalist’ turn of mind there almost certainly was something approaching a consensus about what was, and was not, proper practice in government.”

The use of legitimacy as a means of historical analysis broadens the historiography of parliamentary institutions. Early interest in parliaments owed as much to the political philosophies of parliamentary sovereignty and democratic representation popular in the long nineteenth century as it did to the events of the fifteenth century. Historians studied the bureaucratic and administrative development of parliaments to understand the precise composition and function of parliamentary bodies within royal governments. They investigated such topics as when parliaments were held; who attended and why; what statutes they enacted and who initiated the statutes; what petitions they received; what the precise relationship was between the various social groups attending and, in England, their formation into “houses”; and when each body began employing clerks, keeping journals of proceedings, and developing a more elaborate bureaucracy to support their business.

Applying the idea of parliamentary sovereignty to the fifteenth and sixteenth centuries proved a serious historiographical problem because scholars read into the early Tudor period

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13 Hanson, *From Kingdom to Commonwealth*, vii.
ideas that did not exist then in an effort to prove the eventual triumph of Parliament. It also led to the portrayal of Parliament as an institution separate from the monarch. Led by K. B. McFarlane, historians gradually overturned this teleological approach by insisting that sources be explained within their contemporary framework rather than forced into a modern one to which they were ill-suited. McFarlane argued for the importance of social relationships in forming the political culture of fifteenth-century England. In regard to Parliament, these relationships engendered loosely-knit political affinities based on “voluntary interdependence, competition for place, and the absence of any separate fund of political principle.” The result was dispersed, rather than concentrated power.\textsuperscript{17} The rejection of the earlier approach to parliamentary history re-oriented the field away from institutional power and practices towards a greater awareness of the relationships of those involved in the government of the realm.\textsuperscript{18}

Just as political history cannot restrict itself to the structural, procedural, and legal development of organizations of power and authority, it cannot restrict itself to theory. As John Watts has argued, political history must address the communal languages that supported the existence of such organizations.\textsuperscript{19} Watts’s observation that by the mid-fifteenth century the English polity was seen less as a set of particular groups, “constituted by their individual liberties and privileges, and more as a…nationally united community, with a set of common concerns,


\textsuperscript{18} See, for example, the work of R. A. Griffiths, Gerald Harriss, B. P. Wolfe, Michael Hicks, Stephen Gunn, John Watts, Paul Strohm, Paul Cavill, Christine Carpenter, Mark Ormrod, and Robert Zaller.

ventilated by and before a wide public,” rings partially true also for Castile. The king’s government was accepted as necessary for the well-being of the polity in both realms, and problems generally were ones of unjust or corrupt governance, “improper exclusiveness, and failure to deliver what [was] expected.” But in Castile the body politic was unable to overcome its division into particular groups in the same way the English did. The structure of the Cortes reflected this absence of a unified national community. By the end of the fifteenth century it had become an assembly of representatives from eighteen principal cities of the realm without significant participation from lay and clerical lords or rural representatives. The lack of unity in Castile stunted the development and incorporation of ideas of communal representation. Nonetheless both the English and Castilian communities shared similar concerns for good government, inclusivity of a sort, and the fulfillment of certain expectations, particularly for justice and peace. There were numerous forums and means of expressing one’s grievances or desires for reform, but the ones recognized by all as theoretically representing the full body politic were Parliament and the Cortes.

The ideas under consideration in this dissertation are: the dominium politicum et regale; the common weal, res publica, cosa pública, and buen público; conciliarism and the corpus mysticum; and historical precedent. Chapters one through four focus primarily on England, while chapter five looks at these terms in the comparative case of Castile. Chapter one examines the essential theory of the dominium politicum et regale in legitimating political government, the

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20 The only qualification I would add to Watts’s statement is that a perceptible north-south divide persisted in England, as can be seen in southern complaints and fears, real or imagined, about Queen Margaret and her partisans in the reign of Henry VI and Richard III’s supporters three decades later.


22 The Castilian nobility made a final, concerted attempt to participate in the Cortes in the sixteenth century, under Carlos I, but thereafter they abandoned the body. See chapter five of this dissertation.
application of that theory to the body politic of the realm, and its implications for parliamentary
government in England. Chapter two similarly surveys the rhetoric of the common weal, which
was widespread and frequently employed. Familiar ecclesiastical concepts and their application
to the body politic and, more particularly, the English Parliament, are the subject of chapter
three. This chapter is an initial foray into a subject that to date the historiography has
undervalued, so the conclusions are tentative. Chapter four relates the attempt by Englishmen to
trace the origins of Parliament to Anglo-Saxon antecedents. It also analyzes their historical
interpretations of more recent domestic political events, which enabled them to legitimate the
role of Parliament in crucial ways. The final chapter compares all of these phenomena with
similar ones in Castile. Comparing the application of these languages to operative discourse
enables new observations of the consequences of these political concepts. It also strengthens the
argument of this thesis with regard to the role of political languages in legitimating the
expression of the common weal through parliamentary bodies.

Previous study of these ideas relied on readings of classic treatises of political theory.\textsuperscript{23} The language of the common weal, for example, was ubiquitous in fifteenth-century England,
and historians have duly acknowledged this. However, its importance generally gained currency
with scholars only with Thomas More’s use of it in \textit{De optimo rei publicae statu deque nova
insula Utopia} (1516).\textsuperscript{24} Many simply disregarded it for the earlier period. Consequently,

\textsuperscript{23} See, for example, Janet Coleman, \textit{A History of Political Thought from the Middle Ages to the Renaissance}
(Oxford: Blackwell, 2000) and M. S. Kempshall, \textit{The Common Good in Late Medieval Political Thought}

\textsuperscript{24} For examples of those who begin the study of the common weal with More, see Quentin Skinner, \textit{The
eds., \textit{The English Commonwealth, 1547-1640} (New York: Barnes and Noble, 1979); Jonathan Scott, “What Were
Revising Thomas Cromwell,” \textit{The Historical Journal}, 23:3 (1980), 681-687; Eric Nelson, \textit{The Greek Tradition in
treatment of it as an operative political concept in the fifteenth century has been cursory in scholarly literature. Charles Ross, for example, viewed it as a tool of propaganda. Invariably it was put to such use, but it could not have been employed successfully in a propaganda campaign had it not had more depth and resonance than he acknowledged. Recently, however, several scholars have offered a more thorough assessment of it as a legitimate political language that influenced governance.

Several other historiographies are at work in this dissertation: of English politics and Parliament, of Castile and the Cortes, of conciliarism and the cross-fertilization of ecclesiastical and temporal government, and of pan-European political languages and thought. Modern scholars have been so critical of fifteenth-century English political thought that dismissal of the

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26 Mary-Rose McLaren makes a similar point about contemporary chronicles, arguing that if we consider them simply as propaganda, we miss “the complexity of what the chroniclers were doing – they sought ways to communicate what they believed to be happening, not simply what they wanted others to believe was happening.” McLaren, “The Aims and Interests of the London Chroniclers of the Fifteenth Century,” in Trade, Devotion and Governance, eds. Dorothy J. Clayton, Richard G. Davies, and Peter McNiven (Dover, NH: Alan Sutton, 1994), 170.
period was standard in the historiography for much of the twentieth century. They generally argued that its political thought was essentially conservative and entirely unoriginal. This, in spite of the valiant, early efforts of S. B. Chrimes, Bertie Wilkinson, and others to emphasize the richness of fifteenth-century discourse. To cite but one example, Franklin Baumer claimed there was no political tendency in the fifteenth century “apparent enough to the public eye, or of sufficient scope, to warrant an ebullition of political speculation.” Baumer noted the absence of extensive printed pamphlet literature and political treatises in the fifteenth century and described it as “a century of comparative inactivity, during which men clung largely to their traditional notions.”

Neither Lancastrian parliamentary activity nor the civil struggle between York and Lancaster constituted a political movement of any scope or permanency, in his estimation. This was true because neither Crown nor commons advanced claims of exclusive sovereignty. Here, then, was a central problem with the historiography – it set up a battle between king and Parliament over sovereignty when such a thing did not exist.

Other historians have tried to locate the divide between medieval and modern in order to criticize the medieval. J. R. Lander wrote, “No startling new theory of the constitution appeared [in the fifteenth century], perhaps because a people almost obsessively preoccupied with questions of property, inheritance and law regarded their kings as little more than the protectors of these ancient liberties and privileges…and therefore wrote of their authority in terms resembling the prudent exhortations of a catechism rather than in the persuasive appeals of

28 For a succinct summation of the general dismissal of fifteenth-century political thought, see Burns, Lordship, Kingship, and Empire, 7-8.
30 Ibid., 3.
political philosophy.” Donald Hanson observed that the “most meaningful line of division” between the medieval and the modern is found in the seventeenth century because “the essential mark of the transition to modern political perspectives was the appearance of civic consciousness and loyalty.” By civic consciousness Hanson meant the development or recovery of a uniquely public, that is, general or common, dimension in social life, one that recognized a network of shared problems and purposes, and placed that recognition at the center of political ideas and conduct. He later betrayed his true meaning when he argued that Parliament became the indisputable center of politics in place of the monarchy once the monarchy was deprived of its claim to a source of legitimacy independent of the kingdom. It was the reduction of the king to a mere officer of the realm that indicated the transition from medieval to modern. Certainly historians must make contrasts stand out if they are not to trade in banalities, but they should also be aware of fundamental continuities and false divisions. The emphasis on new constitutional theories and prominent thinkers as well as the beginnings of the “modern” era led to little sustained analysis of political languages employed by engaged subjects, individually or collectively, to legitimize institutions and political developments in the fifteenth century.

32 Hanson, From Kingdom to Commonwealth, 1, 18, 29. Hanson writes, “It was the constitutional crisis of the seventeenth century which produced the prolonged political and intellectual struggle in which a substantial minority of the English people became explicitly aware of the shared and general nature of their status as citizens and the issues that were at stake.” His argument can only turn on the word “citizens,” a word not used extensively in the fifteenth century; otherwise, everything else already existed in the fifteenth century.
33 J. H. Burns noted in Lordship, Kingship, and Empire (11), “At a certain level of analytical penetration, or when a certain degree of systematic originality has been achieved, the contemporary significance of political ideas is subsumed in a broader relevance which (to a greater or lesser extent) transcends the limits imposed by a particular time and place.” The point Burns makes is understandable: Niccolò Machiavelli, for example, has had influence far beyond the time and place in which his work is grounded. Yet one must contextualize his work in the politics of early sixteenth-century Florence and his own career in government in order to fully appreciate his writings. Although many of the writings in this dissertation were responses to particular contemporary events in a particular place, they nonetheless were subsumed in a broader relevance — they indicate familiarity with and an intentional use of the political languages of antiquity and the high Middle Ages, adapted to the general political context and to
The argument that civic consciousness did not arise until the seventeenth century is incompatible with the sources for the fifteenth, which show that a broad civic consciousness existed not only in England but in Castile two hundred years before Hanson claims it did. The idea that political generality or universality was altogether alien to pre-seventeenth-century Europe simply cannot stand on the sources. One need only read the languages of the *corpus mysticum*, the *dominium politicum et regale*, and the common weal to see that political generality existed, even if egalitarianism or social leveling did not. Hanson’s assertion that prolonged struggle in the seventeenth century revealed the “indispensable” need for a set of institutions and procedures for the management of conflicting claims affecting the full political community is precisely my point for the fifteenth century. In the midst of civil conflicts in England, this role gradually devolved to Parliament, inclusive of the monarch. In Castile similar struggles occurred, but with a somewhat different outcome, in part because of gradual changes in the structure of the Cortes, but also because the languages of parliamentary legitimacy encountered greater resistance and the nature of Castilian representation was more diffuse, more regionally oriented than nationally oriented. Nevertheless, there were concerted efforts to use languages of political universality and communal participation to bring about reform also in the royal government in Iberia.

Scholars in each field have sought alternatives to the prevailing orthodoxy. One of the earliest to do so was Arthur Ferguson. In his study of early Tudor England, Ferguson...
acknowledged that there were few new questions of theory because the purpose of political discourse was practical, and “for practical purposes the forms of an inherited culture could...be made to suffice.” According to Ferguson, early Tudor Englishmen pursued commonwealth ideas, developing “new attitudes toward the problems of government and citizenship and achieved insights, at times startlingly original, into the workings of social forces.”36 The Tudor political commentator, he observed, was concerned primarily with actual English government, not philosophies of government, with the conditions of English life, not the philosophical foundations of English institutions, and with his duty as a “citizen-counselor” to diagnose the problems of the political body and offer a remedy.37 Adhering to the traditional late Plantagenet/early Tudor divide, Ferguson argued that under the latter, “modern” thought began to take shape but his recognition of the vitality of English thought was important.

Quentin Skinner and J. G. A. Pocock reoriented the historiography of political thought by emphasizing language and contextualizing it within its contemporary circumstances. Skinner’s analysis of rhetoric and texts in context broadened the scope of texts and authors under consideration as political thought. There are, however, two shortcomings with Skinner’s method: first, it continues to focus on political theorists, rather than the language used by the broader political community in public discourse; and second, it is overly concerned with the “influence,” or lack thereof, of ideas on later, especially seventeenth-century thought. As Francis Oakley puts it, Skinner initiated “anxieties of influence,” something Cary Nederman also

37 Ibid., 402. In Ferguson’s classification, early Tudor extends to the end of the 1540s.
criticizes him for.\textsuperscript{38} Nederman observed that there is no direct road from the fifteenth to the seventeenth centuries, and scholars should not get lost trying to find one.\textsuperscript{39} Pocock recognized the limitations of relying only on political theorists and maintained that it is important for “the study of political language [to] take its departure from the languages of ruling groups, which articulate their concerns and are biased in their favor; but it is also important that the more institutionalized a language and the more public it becomes, the more it becomes available for the purposes of a diversity of utterants articulating a diversity of concerns. This diversification will originate within the ruling group; but it may not remain confined within the original clerisy, profession or whatever it was.”\textsuperscript{40}

Pocock’s and Skinner’s emphasis on authorial intent, as well, is essential for reading someone like William Caxton, the English printer and translator, who generally informs his reader of his intent, or at least part of it, in the prologues of his texts. Caxton had a didactic as well as economic purpose in printing and translating, and one must be sensitive to that in reading him and the language he used.

In spite of the crucial contributions of Skinner and Pocock, the political discourse of the fifteenth century continued to struggle for recognition in the historiography. David Starkey blamed G. R. Elton for this. By making the sixteenth century the period in which “medieval” methods were abandoned in favor of “modern” ones, Elton implied that the fifteenth century was

\textsuperscript{38} Francis Oakley, “‘Anxieties of Influence’: Skinner, Figgis, Conciliarism and Early Modern Constitutionalism,” \textit{Past and Present} (1996), 60-110.

\textsuperscript{39} Cary J. Nederman, \textit{Lineages of European Political Thought: Explorations along the Medieval/Modern Divide from John of Salisbury to Hegel} (DC: Catholic University Press, 2009), xvi-xvii, xxii.

not only “unreformed,” but that the “need for reform was not even perceived.” On the contrary, Starkey observed, “the fifteenth century displayed a lively and effective concern for the things of this world.”

Starkey analyzed the origins of the term “commonweal,” arguing, as this dissertation does, that Richard, duke of York, was the spokesman for a “sophisticated program of reform.”

Starkey’s own analysis, however, was inadequate for several reasons. First, he argued that the term did not appear until 1450 because his sketch of its Latin equivalents and contemporary attempts to render them in the vernacular is too brief. Second, he claimed that until 1459 it was “only one of the planks of the Yorkist platform, and it often tended to be obscured in the welter of specific charges of malice and misgovernment directed against the king’s favorites and ministers.” Here he fundamentally misunderstands the characteristics of the common weal. This dissertation argues that common weal was a comprehensive political concept, and that “specific charges of malice and misgovernment” were used because misgovernment was a violation of the common weal, not something distinct from it. Finally, he overlooks the implications of its increasing popularity for understanding the role of Parliament. As the term became more common, and as the good government of individual monarchs failed, it bolstered Parliament’s legitimacy to govern in the interests of the community.

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42 Ibid., 14, 19.
43 He mentions the res publica as an equivalent in one paragraph, and then only in reference to its use in The Boke of Noblesse.
45 John Watts has an important article forthcoming on the terms “common,” “commune,” communitas, and related concepts. He observes that there are two primary meanings for them: political collectivity and “social ordinariness” (5). Over the course of the fifteenth century, the word “commons” gradually shifted from the former meaning to the latter (3). The implications, if any, of this change for Parliament are something I intend to address in a future study.
More recently, Paul Strohm and John Watts have examined the languages Englishmen used to explain and respond to their political circumstances. According to Strohm, the period between 1450 and 1485 encompassed a “pragmatic political discussion of a sort not previously seen in England and not to be seen again before the middle of the sixteenth century.” Strohm’s analysis is based on vernacular political texts, which contained, he argues, “shrewdly informed, unsentimental writings, keenly concerned with political practice in the world.”

If one extends the analysis to contemporary Latin texts and to those that contain broader ideas of community, the political discussion becomes even more pronounced. Such texts were a normative form for the transmission of ideas. That many ideas and terms were derivative does not decrease their significance; most were comprehensible and politically coherent to contemporaries. By analyzing these texts and the use of familiar terms, one discerns how people understood government, applied ideas to contemporary events, and used them as the basis for legitimizing or de-legitimizing structures of authority. “Common weal,” in particular, was the language with which Englishmen expressed their ideas of good governance for the corporate body of the realm. It was a social justification for monarchical rule, but was not limited to justifying monarchy. It played an integral role in the legitimization of Parliament and of consensual government.

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46 Strohm, *Politique*, 1, 18. Strohm’s analysis chronologically contrasts with Ferguson’s. Again, the problem is the artificial chronological divide, which this dissertation disregards.


48 Hicks, *English Political Culture*, 23. S. B. Chrimes argued in *English Constitutional Ideas* (304) that fifteenth-century English political thought was becoming “less exclusively a theory of monarchy, and rather more a theory of the State.” For Ferguson, however, Englishmen of this period had “no theory of the state but only of society.” *The Articulate Citizen*, 402.
This dissertation positions itself in the tradition established by Skinner and Pocock and developed by Watts, Strohm, Zaller, and others. It is concerned with understanding what happened in England and Castile in this period for its own sake, not because this is a transitional period. It also is a response to the extensive “New Monarchy” literature, which has emphasized strong, formative kingships across Western Europe at the end of the fifteenth century. Because of their emphasis on rulers centralizing power in the Crown, limiting the power of the nobility and other groups, and creating unified states and nations, the New Monarchists tend to neglect representative institutions. Arthur Slavin noted this fact, and G. R. Elton’s criticism of it, in the mid-twentieth century, but nonetheless argued that the thesis was entirely historical. Their historiography tends to distort the politics of England and Castile, at least, in favor of a coherent narrative of state development. By examining common and frequently used political languages, particularly in their relationship to parliamentary bodies, this dissertation provides a more comprehensive picture of the politics of the late fifteenth and early sixteenth centuries and contributes a more balanced analysis of these centralizing states.

One brief criticism of Watts: he seems to assume or accept that conciliarism influenced fifteenth-century thought and that constitutionalism failed in France and perhaps Spain. This dissertation shows how conciliarism was relevant to fifteenth-century temporal politics, particularly when combined with other ecclesiastical concepts, such as the corpus mysticum. Likewise, it shows that constitutionalism did not fail in Spain. Languages of representation and

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49 James M. Blythe has argued this point as well, insisting on the continuity of medieval and Renaissance political thought, including that of the common weal, in “Civic Humanism’ and Medieval Political Thought,” in Renaissance Civic Humanism, ed. James Hankins (Cambridge: University Press, 2000), 32-33.
communal authority were available and accessible. Castilians simply took longer to integrate into a national political community, partially because of geographical and social reasons than because of deficiencies in the language. A comparative analysis of languages provides a crucial study of the Castilian political situation, especially when read in conjunction with works such as those of Annabel Brett, which suggest that Spanish scholastics did not emphasize either absolutism or constitutionalism, but an amalgamation of both, in varying degrees.51

What historians have said of England they have said of Spain: its contribution to political thought in this period “presents something of a paradox.” By the end of the sixteenth century Spain became the “paradigmatic instance of absolute monarchy.” Yet in earlier centuries the kingdoms of the peninsula appear to some “to be almost as exemplary in their ‘constitutionalism.’”52 Because the Cortes structurally contracted, some historians claim that it became functionally irrelevant by the end of the fifteenth century. John Edwards refers to it as “an almost wholly passive advisory body, giving automatic assent to legislation which had been drafted by the royal administration.”53 As a representative of the political community the Cortes had “a checkered history,” according to Joseph O’Callaghan, who argues that in times of crisis its importance increased, but once a crisis passed its “influence” waned.54 Henry Kamen posited that Isabel and Ferdinand “pacified” the Cortes.55

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52 Burns, Lordship, Kingship, and Empire, 71, 75.
When one examines operative political thought in Castile, however, it becomes apparent that several discourses existed uncomfortably together and that this weakened the constitutional discourse. One discourse respected the position of the king while arguing that the political community and the law could judge his actions. The other discourse recognized him as divinely ordained, with no earthly superior, above statutory law, and exempt from correction by his subjects, individually or collectively. Some who argued in the first instance believed the Cortes represented the political community and it could limit, for example, the taxes the community gave the king.

Little scholarship of the Cortes and contested political languages emerged for much of the twentieth century – one of the few works to appear was Enrique de Tapia Ozcariz’s *Las Cortes de Castilla* (1964). The publication of J. M. Pérez-Prendes’s *Cortes de Castilla* in 1974 significantly shifted the historiography of the Cortes. Pérez-Prendes argued that the right to counsel was a fundamental source for the legal existence of the Cortes. Since the 1980s a great deal of work has been done on the Cortes and Castilian political thought, most notably by Joseph O’Callaghan, José Luis Martín, José Manuel Nieto Soria, and José María Monsalvo Antón. Much of the current historiography of the fifteenth and early sixteenth centuries focuses on two things: urban civic politics and aristocratic networks of power. The literature on operative political languages is small but growing. For example, Nieto Soria has shown how political debates over tyranny in the University of Salamanca influenced broader political debates within

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56 J. M. Pérez-Prendes, *Cortes de Castilla* (Barcelona: Ariel, 1974).
the kingdom, and Remedios Morán Martín’s has analyzed political languages in the “veritable battle” between Crown and Cortes over authority.\(^{58}\) However, very little still exists in a non-Iberian comparative framework.

One of the only works focused on both England and Castile is I. A. A. Thompson and Pauline Croft’s article on the role of the aristocracy in representative government between 1529 and 1664. Thompson and Croft conclude from the Anglo-Castilian example that the participation of the aristocracy in the parliamentary process was a function of the relative power of the aristocracy as a whole within the polity. Castilian aristocrats, as a whole, were immensely more powerful than their peers in England, “in resources, in jurisdiction, in administrative authority, in access to a government which had so much more patronage to offer than in England. They had correspondingly less need to participate in the regime through parliament.”\(^{59}\) In England, the existence of the House of Lords, the upper chamber of Parliament, had the effect of concentrating aristocratic power within the “constitution,” channeling its exercise through Parliament and within constitutional limits. That in turn reinforced the prestige, the power, and the political nature of Parliament in England. The Cortes of Castile, however, was marginalized and reduced to fiscal and administrative functions because it became unicameral, composed only of representatives from eighteen cities of the realm. As a result, “aristocratic power in Castile

\(^{58}\) José Manuel Nieto Soria, “*Rex inutilis y tiranía en el debate político de la Castilla bajomedieval,*” and Remedios Morán Martín, “*Alteza...mercenario soys: Intentos de ruptura institucional en las Cortes de Léon y Castilla,*” in *Coup d’État à la fin du Moyen Age?*, eds. François Foronda, Jean-Philippe Genet, and José Manuel Nieto Soria (Madrid: Casa de Velázquez, 2005), 73-114.

was left to be exercised (in the localities and the palace) in ways which were at once more naked and more covert.\footnote{60}

Historiographically, then, this dissertation has three central features: first, it brings an entirely new contribution to the study of Castile; second, it builds on the work of Skinner, Pocock, Watts, Strohm, Zaller, Oakley, and many others, but does so by looking specifically at Parliament and the Cortes and the languages that legitimized them as the representative of the full political community; third, its comparative nature allows us to draw conclusions about domestic politics that sweeping overviews of classic texts, thinkers, or institutional structures obscure.

Philosophical political thought forms the starting point for this discussion of legitimacy, but ideas must enter the realm of quotidian political discourse to be effective. For this reason, one must analyze ideas and behavior together.\footnote{61} Ideas not used in communal or civic discourse simply cannot confer legitimacy on people or institutions. The combination of theory and practical usage is crucial to understanding parliamentary legitimacy, because they sustained each other. The two means of investigation – by reference to the history of ideas and by reference to the immediate political, social, and economic context – are complementary.\footnote{62} As John Watts observed, “Ideas influence politics because in order to promote and defend their activities in a particular public environment, [political actors] are forced to explain themselves with reference to its ‘accepted principles,’ and this consideration, in turn, shapes their behavior.” Therefore, it is essential for historians to explore these principles and the rhetorical processes through which

\footnote{60} Ibid., 86.  
\footnote{61} Hanson, From Kingdom to Commonwealth, 11-12.  
\footnote{62} Tierney, Religion, Law, and the Growth of Constitutional Thought, 81.
political actors invoked them in order to understand the political milieu in which they participated. Rhetoric does not have to reflect the true feelings of its exponents to be effective, nor does it have to present the “truth.” A historical actor’s true feelings or motivations are often difficult to ascertain anyway, as we will see most prominently with Richard, duke of York. To achieve its impact, rhetoric simply has to intersect with other rhetoric and with publicly recognized values that dominate the organization and experience of a given society.\(^{63}\)

Political languages generally are effective only if they are in common currency, at which point they inform political action.\(^ {64}\) Hanson claimed that the political thought of the Middle Ages was paradoxical because it did not relate to reality: “Deriving its vocabulary and organizing ideas from classical antiquity, as it did, it expressed institutional ideas and ideals generated in a period of civic loyalty and integrated rule, and this corresponded not at all to the conditions of governance in medieval Europe. Hence it is difficult to disagree with the observation that ‘medieval political theory is only rarely related to actual conditions.’”\(^ {65}\) Depending on one’s dates for the Middle Ages, it actually is not difficult to disagree. Certainly by the time the Council of Constance met in 1414, “medieval” political thought was rapidly catching up to actual conditions, and by mid-century the gap closed. Few understood this better than Thomas More. More indicated “a preference for knowledge that directly assists in the right conduct of life,” rather than remote knowledge in his non-polemical works. It is seldom knowledge of a remote kind. Further, and concordantly, knowledge is seldom delivered by abstract theorizing; it is far more likely to be conveyed through wit and the dramatic interplay of personas. Knowledge


\(^{64}\) An English Chronicle, 1377-1461, ed. C. William Marx (Woodbridge: Boydell Press, 2003), xcvi.

\(^{65}\) Hanson, From Kingdom to Commonwealth, 13.
is, in short, shared rather by means of \textit{philosophia\nobreak\hspace{1pt} civilior} than by means of \textit{philosophia\nobreak\hspace{1pt} scholastica}.”

This dissertation pursues the same preference as More with regard to political ideas. It studies the value accorded to words and language in civic society, particularly through political action, rather than abstract theories. Why, for example, did Parliament, contemporary chroniclers, and private petitioners frequently employ the term “by authority of Parliament?”

In “The Myth of Parliamentary Sovereignty,” J. W. McKenna wrote that the phrase, which William H. Dunham, Jr. and Charles T. Wood relied upon heavily to support their argument for parliamentary sovereignty and “constitutional” kingship, had great significance for the “status of the commons in Parliament” when it was altered in 1444-1445, but it had become “a formulaic commonplace by the 1460s,” implying that it had no meaning from then on. To support this

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66 Cousins, \textit{Pleasure and Gender in the Writings of Thomas More}, 3. Cousins writes, “[More’s] non-polemical works do not show him theorizing abstractly about the common good or the nature of the good state – even \textit{Utopia}, notwithstanding its full title. They show him fashioning versions of \textit{philosophia\nobreak\hspace{1pt} civilior} through which he considers those topics in a more broadly effective way: \textit{philosophia\nobreak\hspace{1pt} civilior} is a sophisticated, humanist enactment of \textit{accommodatio}.”

67 Among the London chronicles, one author wrote, “And vpon All halon Evyn, in the begynnyng of this Mayrs yere [1460], it was condescended and aggreed by all thauctoritie of the parliament, that the kyng shuld enjoye the Crowne for the terme of his naturell lyf, and after the kynges deth the Duke of York to be kyng if he then lyued, and after theym both the Dukes heeres to be kynges.” The writer also observed of a later parliament, “During this parliament [1470] kyng Edward was proclamation through the Cite vsurpur of the Crowne, and the Duke of Gloucetur his yonger broder Traitour, and both were atteynted by thauctorite of the said parliament.” \textit{The Chronicles of London}, ed. C. L. Kingsford (Oxford: Clarendon Press, 1905), 172, 183. A different chronicler described the banishment of the duke of Suffolke as being “demyd by aucutorye of the floresaid parlement [1449-1450].” He also stated that Edward IV and others were attainted and that money was raised to pay for the king’s wars by authority of Parliament. Robert Fabyan, \textit{The Great Chronicle of London}, eds. A. H. Thomas and I. D. Thornley (London: G. W. Jones, 1938), 181, 213, 221. Similarly, a private petition to Parliament that was neither enacted nor entered on the roll, declared, “And in case, wiche God defend, any of youre juges þat nowe er, or any of þer successours wyche shalbe juges in youre tyme or in the tyme of any of your heyres kynges of þis realme, make any iugement contrary to þe lawe wryten and ordeyned by auctorite of parliament or parlyamente, that then the party hurt thorghge any suche corrupte iugement may by auctorite of þis acte all his interest with triple damage rekovere of þe juge or juges þat breke þis holy ordynance. ... Item, sythe every statute is gronded by auctorite of parliament, that every word comprised in every statute be only undrestond as þe vulgar or comon receveth every suche word, bot if þe significacion þerof be amplyfyed by auctoris of som parliament, so þat þe declaracion of suche statute, actes or statutes rest not uppon þe opynyon and fume of þe juges.” \textit{PROME}, XIV, 342; D. A. L. Morgan, “The Political After-life of Edward III: The Apotheosis of a Warmonger,” \textit{English Historical Review}, 112 (1997), 872-874.
assertion, McKenna writes, “The new formula was employed indiscriminately to ratify agreements great and trivial from 1444-1445 onwards. Thus, for instance, it sanctioned the exchange of some manors between Henry VI and Queen Margaret [in 1459] in which the subsidy of cloth was involved as a differential payment: Rot. Parl. V. 352.” Did mere repetition deprive it of meaning, as McKenna suggested, or was it used to signify that Parliament, which included the king, had an authority not possessed by the king himself to deal with specific issues within the kingdom? Contemporary evidence points to the latter. Parliament had authority as the political manifestation of the full body politic that other government bodies and the king by himself lacked, and contemporaries were acutely aware of this. Over the course of the fifteenth and early sixteenth centuries one can see the term “Parliament” gradually embedded in the vernacular as well. As Shelley Lockwood writes, “The realm was corporately visible when the king was in his parliament and it was represented by the abstract notion of the Crown. The king was guardian of the Crown; he could not alienate its property, nor could he take his subjects’ goods without their consent.”

Most Western European governments at this time were monarchies. Parliamentary bodies were not institutions distinct from or oppositional to the monarchy. They convened at the request of the king and could be dissolved or postponed at will. Moreover, the monarch could veto bills or influence legislation and membership, employ parliaments irregularly or for

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long periods of time, or ignore them. But by the fifteenth century English and Castilian kings could not govern entirely without them, and no monarch did. Because, as in Fortescue’s formulation, England was a *dominium politicum et regale* and the king did not possess the authority to dictate law by himself, Parliament was an accepted, indeed essential, part of the structure of legitimate government. Few, if any, in this period would have argued for the complete abolition of the central political institution representing the community of the realm. Even in Castile, a kingdom commonly associated with a strong monarchy under Ferdinand and Isabel, the demand was for reform and greater representation in the Cortes, not its abolition.

The Castilian Cortes did not have the breadth of membership the English Parliament had. Consequently, it did not hold the same centrality of place in the political reality of the kingdom. But it did in the political imagination of the community. It was supposed to be the forum in which the representatives of the three estates (*tres estados*) gathered to address problems relating to the common good (*el buen público*). That it devolved into a meeting of select town representatives, and a corrupt one at that, was a cause for complaint among contemporaries. A remedy, however, was difficult to find for several reasons: entrenched interests in represented cities and the royal government believed a change in the status quo would diminish their authority; powerful noblemen saw little benefit to themselves in attending; and the languages of

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71 McKenna, “The Myth of Parliamentary Sovereignty,” 505-506. In 1485 Sir Thomas Betanson wrote of Henry VII’s first Parliament, “Also, ther be divers lords and gentlemen attended by the Parliament.... Howbeit, ther was many gentlemen agaynst it, but it wold not be, for yt was the Kings pleasure.” *Plumpton Correspondence*, ed. Thomas Stapleton (London: J. B. Nichols, 1839), 48-49. In Castile the monarch appointed and paid the salaries of the *procuradores* (urban representatives) in the Cortes by the first half of the fifteenth century. See chapter five of this dissertation.


political legitimacy that supported the Cortes were contested by counter languages of greater vitality than in England.

One of the claims of this thesis is that Parliament and the Cortes were representative institutions. Representation in pre-Reformation Western Europe did not signify the individualism common to modern democratic societies. Its nature tended toward the communal rather than the individualistic. Even the conciliarists in the Catholic Church, perhaps those most ardently arguing for representative government, tended to see representation in communal terms. Conciliarists asserted that the *congregatio fidelium*, not the individual, was the entity that needed representation, and it found its natural expression in general councils of the institutional Church.\(^\text{74}\) For temporal government, the political community was the natural body that needed some form of representation in government. The political community chose, nominated, or elected representatives to present issues of communal concern or provide solutions to problems of governance. As early as 1365 a justice of Edward III declared, “Parliament represents the body of the whole realm.”\(^\text{75}\) There was therefore a precedent, however limited, equating Parliament with representation, and the community of the realm with a body.

Those included in representative political institutions change from culture to culture. In late-medieval England representative meant that men from the commons would be present and authorized to speak for their communities. In order to contribute to the political kingdom, such representatives had to possess a mandate both temporary and general to act for their constituencies. Likewise, they owed to their electors not obedience, but judgment exercised in

\(^{75}\) *Year Books*, 39 Edward III, f. 7a. See also Ernst H. Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University, 1997), 225.
cooperation with other representatives, similarly empowered. These men recognized that they
represented their fellow subjects when they reminded the duke of York and the lords in the
parliament of 1453 to keep the peace, “whiche shuld be right joyous and comfortable to theym
[the Commons], and to all the commune of this land, for whom they be come at this tyme.” 76
Strictly speaking, the lords serving in Parliament represented themselves, although under the
theory of the common weal they had a responsibility to pursue the common good for the entire
realm. In the Cortes, the three estates – clergy, nobility, and commoners – were to meet together
to counsel the king and assist in the governance of the realm.

Because representation was communal, delegates to these assemblies could consent to
taxes and legislation in the manner of a modern representative “only when the constituents
expressly granted plena potestas,” the fullness of power for their particular community.
Nederman has argued, “The struggle between prince and locality over the granting of full powers
persisted for several centuries, such that it is anachronistic to call all medieval assemblies
representative institutions in the political sense.” 77 Perhaps one cannot call “all” medieval
assemblies representative institutions in this sense, but certainly contemporaries believed the
Trastámaran Cortes and late Plantagenet and early Tudor parliaments were.

What, then, does one mean by the term “political?” The term itself derives from
Aristotle’s polis, a community of people whose goal is to promote the good life, that is, a life of
virtue and rational thought for its citizens. The polis could be structured in several ways – as a
monarchy, an aristocracy, or a democracy – but for a government to be political it had to

76 PROME, XII, 256. See also RP, III, 424; Roskell, Parliament and Politics, I, ix; M. V. Clarke, Medieval
Representation and Consent: A Study of Early Parliaments in England and Ireland, with Special Reference to the
77 Nederman, Lineages of European Political Thought, 106.
incorporate ideas of governance that involved the community. Otherwise one was simply left with what Fortescue referred to as a *dominium regale*, a royal dominion, in a monarchy. These ideas of governance are “operative and effective to the extent that they are deployed in actual situations, in the relationships that are characteristic and constitutive of concrete political systems.” In the Middle Ages, the major change that occurred in political thought was the transition from mixed governance applied only to the small-scale society of the traditional *polis*, the city-state, as found in Aristotle, Polybius, and Cicero, to a whole nation or a whole church. As the language of the *polis* migrated to the national community, broad-based representative institutions became political.

Comparative history offers a valuable means of tracing changes in the meaning of words such as the *polis*. Hugues Neveux and Eva Österberg, citing Marc Bloch, write of three purposes for comparative history: “To discover genuinely unique features in different societies; to formulate problems; to contribute to causal explanations by testing hypotheses on different societies.” I would add a fourth: to discover common features in different societies. This is particularly useful for societies that inherited a common culture and religion but modified them through local or national custom. In Western Europe, “specific and sometimes unique historical

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78 For Fortescue the political meant the rule of law, which restrained royal power. The law in Fortescue’s formulation was created with the assent of the community. It did not originate from the king himself.
79 Burns, *Lordship, Kingship, and Empire*, 11.
80 Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 87-88. Polybius claimed that the Greek city-states were similar to Rome, even during its expansion, although political authority in Rome did not correspond directly to Greek examples. On the linguistic difficulty Roman authors, including Cicero, had translating Greek concepts into Latin ones, see Clifford Ando, “Was Rome a Polis?” *Classical Antiquity*, 18:1 (1999), 5-34.
81 It has limitations. Comparisons can never fully reflect the complexity of historical situations and tend to selectively follow certain lines of analysis that work in a comparative way. Nevertheless, comparative projects have great value.
contingencies which were experienced by geographically and ethnically disparate societies, and which produced separate, core historic cultures…were based on regionally distinct common customs and myths of descent, with common memories of a (mis)remembered collective past.”

As David Rundle astutely observed,

“If we are to understand English politics of the fifteenth century, we have to place events in a context which is pan-European; that means looking beyond France, however far English kings like Henry V were driven by a desire to be master of that land of *dominium regale*. And if political events should be placed in this context, so too should any political mindset or constitutional mentality; after all, the fifteenth century has been claimed as both a period when the English political outlook was resolutely ‘insular’ [for example, Fortescue’s condemnation of France and exaltation of England] and the point at which, in terms of political concepts, ‘the Renaissance really arrived in England.’

This dissertation compares the political history of England and Castile. In broad terms, they had similar histories. Both belonged to the Roman Empire and looked to Rome as an example to emulate. Neither belonged to the Carolingian Empire of the early Middle Ages. Both adopted Christian theology as well as the ecclesiastical structure of the Catholic Church. They had extensive contacts in the fourteenth and fifteenth centuries and had relatively good relations. The purpose of comparison in this dissertation is to understand how two countries with extensive connections and broadly similar political circumstances used general concepts to

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legitimize parliamentary bodies without ignoring important differences between them. Were the same concepts of political legitimacy common to both kingdoms? If so, were they put to use in similar ways, or did their use differ? What implications did they have for the development of political thought and discourse as well as for political action and institutions? Because this was a period rife with civil strife in both kingdoms, the crucial questions center on identifying “those elements of analogous and contrasting courses of development that seem to account for the successful management of crisis or the lack of it. It is, after all, fascinating to reflect on the fact that the diverse outcomes of European development took their point of departure in the Middle Ages from amazingly similar sets of social, political, and technological conditions.”

In conflict, particularly in the crucible of civil war, the boundaries of political legitimacy are reset, responsibilities more clearly defined, and new ideas or ideas developed prior to the conflict are called into the service of contending factions. As the governments of Henry VI and Juan II began to disintegrate from internal complications and external pressures in the late 1440s, instability in the monarchy and the larger body politic of the realm became common. Parliament was intimately involved in the conflicts of the ensuing decades; the Cortes less so, in spite of pleas for its reform and restoration as the representative of the three estates.

For England’s monarchs Parliament became an instrument with which to enhance the legitimacy of their contested rule. In Castile, individual cities and magnates, not the Cortes, played a similar role. For Richard, duke of York, Parliament eventually became a means to an end, the most important political forum in which he could assert his claim to the throne. Isabel bypassed the Cortes and went directly to cities and magnates to receive support for her claim to

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85 Hanson, *From Kingdom to Commonwealth*, 8.
the throne. For those opposed to Henry VI’s domestic and foreign policies Parliament became a place to register and debate points of contention. The Cortes abdicated its responsibility for this, leaving Castile without such a central forum. For Englishmen of the boroughs and shires Parliament was the body through which they could express their concerns and opinions of government as well as petition individually or collectively for justice, redress of grievances, or royal favors. For Castilians living in non-royal jurisdictions and outside of the eighteen cities represented in the Cortes, other forums, such as the audiencia and the ayuntamiento, had to serve the purpose. When the king failed to listen to the recommendations of Parliament, as Henry VI did with the complaints against his advisors, the result could be, and frequently was, armed resistance or a popular uprising. Castilian nobles, clerics, and townsmen revolted frequently, too, but when they used the aforementioned concepts of legitimacy to demand reform and representation, they encountered languages of monarchical authority that, by and large, were absent in England. As the sole government body that assumed such distinct functions, Parliament’s centrality to events in England in the late fifteenth and early sixteenth centuries is not in doubt.

What is little understood is the basis for the legitimacy of Parliament and the Cortes and the corresponding influence of ideas on political actions over the duration of their civil wars and during the tentative peace and stability that followed the enthronement of Henry Tudor in England and Isabel and Ferdinand in Castile. This dissertation seeks to clarify both.

Fifteenth-century England was a kingdom. The roots of its monarchy extended deep into the Anglo-Saxon past. The institution of the monarchy was as much a part of late-medieval English culture as was the Christian religion, the production of wool, and animosity with the Scots. It was the center of government, but the king did not have unlimited authority over his subjects. He was limited in the first place by the ancient charters, liberties, and customs of individual towns and corporate structures, such as the *Ecclesia Anglicana*. Though towns and clerics sought royal confirmation of their franchises and liberties, they did not derive them from the royal government. Rather, liberties originated from other sources of authority, most notably from the divine or from longstanding custom, but also from communal consent. The presentation of liberties and customs for royal confirmation reinforced distinct spheres of authority and facilitated a healthy political dialogue between local communities and the head of the realm.

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87 The thirteenth-century English jurist Henry Bracton wrote of customary law, “Cum autem fere in omnibus regionibus utatur legibus et iure scripto, sola Anglia usa est in suis finibus iure non scripto et consuetudine. In ea quidem ex non scripto ius venit quod usus comprobavit. Sed non erit absurdum leges Anglicanas, licet non scriptas, leges appellare, cum legis vigorem habeat quicquid de consilio et consensus magnatum et reipublice communi sponsione, auctoritate regis sive principis praeecedente, iuste fuerit definitum et approbatum.” *The Publications of the Selden Society: Bracton and Azo*, ed. F. W. Maitland (London: B. Quaritch, 1895), VIII, 3. From Bracton’s *De Legibus et Consuetudinibus Angliae*, I.1.§2. An English translation reads: “Though all countries use statutes and written law, England alone uses unwritten law and custom. Unwritten law is established or defined by precedent. It will not be ridiculous to accept the unwritten law of England as law, since that has the force of law which has been defined and approved by royal authority and by the advice and assent of magnates and the common consent of the realm.” Clarke, *Medieval Representation and Consent*, 250.

88 One example, from the charter of London granted by Edward II and re-confirmed by Richard II in November 1384, will suffice. It acknowledged that the king confirmed it with the assent of Parliament. Henry VII re-confirmed it through letters patent, which did not usually require parliamentary assent. The charter reads: “Wetith that we for the amendement off our cite of london…of assent of prelat[es] Erlis barons Iusticis and of all other comonalte of owr Reame being in our parlement at westm[inster] haue grauntyd and oure present chartour
Another limitation on the monarch’s authority was the law. Because one of Parliament’s primary functions was to create and amend statutory law, it served as the primary means through which the king’s singular authority was limited by positive law.\(^9\) Parliament was a comparatively new institution, and the monarch was an integral part of it. It was his high court of Parliament. But by the mid-fifteenth century it had come to represent something greater than the king himself. It was the physical manifestation of the political kingdom, and as such a legitimate participant in royal government.\(^9\) This chapter will examine contemporary understandings of the theory of the *dominium politicum et regale* and their application to

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\(^{89}\) According to Steven Ellis, by the fifteenth century, “the role of provincial legislation (march law, for instance) was relatively unimportant, and royal proclamations and judge-made law constituted other exceptions to this principle, but these were all minor.” Peter Blicke, Steven Ellis, and Eva Österberg, “The Commons and the State: Representation, Influence, and the Legislative Process,” in *Resistance, Representation, and Community*, 126. On the king’s relationship to the common law, see Alan Cromartie, *The Constitutionalist Revolution, 1450-1642* (New York: Cambridge University Press, 2006); S. F. C. Milsom, *A Natural History of the Common Law* (New York: Columbia University Press, 2003).

Parliament. Parliament’s identification with the law and representation of the community were essential to its legitimacy.

The most familiar contemporary exposition of the idea of the political kingdom belongs to Sir John Fortescue, chief justice of the King’s Bench and faithful adherent to Henry VI during the fighting between Lancaster and York until Henry’s death in 1471. Fortescue argued in *The Governance of England* that England was a *dominium politicum et regale*. By this he meant that the “kyng may not rule Hys people by other lawes then suche as they assent vnto. And therfore he may not set vppon theym imposicons without their owne assent.” The *dominium politicum et regale* originated in history through the will of the divine. It was God’s design for the government of his people, according to Fortescue. When God reigned over the children of Israel prior to the reigns of kings Saul and David, he did so “polytykely and royally.” He governed them in the same manner through his judges. By contrast, government that was solely a *dominium regale* originated in the pagan kingdoms of the ancient world. When the Israelites desired to have a human king as their Gentile neighbors had, they received not a true king but a man who reigned over them “sub lege tantum regali,” or by only royal laws, rather than

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92 According to Shelley Lockwood, the date of the first draft of *The Governance* is unknown, but an updated and revised version was presented to Edward IV after 1471. Fortescue wrote another treatise, *De Laudibus Legum Angliae*, during his exile in France with the royal family between 1463 and 1471. Fortescue, *On the Laws and Governance of England*, xviii-xix.
politically and royally as God had. This new type of kingship humiliated them, according to Fortescue, and diminished their likelihood of securing good government.\(^93\)

Princes in both types of kingdoms are of equal estate and power (potestas). What distinguishes them from each other is the way in which their kingdoms are founded and the subsequent authority (auctoritas) they have. The will of one man creates and governs a dominium regale through might and force for his own glory.\(^94\) It is possible to have a good prince in a dominium regale, in which case the laws will be good. But it is equally possible to have a tyrant without any means of mitigating his malignant will. A dominium politicum et regale, by contrast, arises when people (populus) willingly and through their own agency unite and form themselves into a body politic, with a head to govern them.\(^95\) Historically people incorporated themselves by agreeing to submit their own will (arbitrium) to the government of a king in order to maintain “themselves and their own” (se et sua) with greater security than they could before forming a political community. Such an agreement would be meaningless if the king of the new community could arbitrarily deprive them of their persons and goods.\(^96\) Upon incorporation, all agree that the realm will be ruled and governed by laws to which they give

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\(^94\) Fortescue, *De Laudibus Legum Angliae*, 233-234.

\(^95\) Ibid., 235. “Hoc ordine, sicut ex embrione corpus surgit phisicum uno capite regulatum, sic ex populo erumpit regnum, quod corpus extat misticum uno homine ut capite gubernatum.” Translated in *On the Laws and Governance of England* (20) as: “Just as in this way the physical body grows out of the embryo, regulated by one head, so the kingdom issues from the people, and exists as a body mystical, governed by one man as head.” By using the analogy of the embryo growing a head as the physical body itself is formed, Fortescue implies that the body politic self-incorporates and grows a head (the king) simultaneously. In *The Governance of England*, however, he specifically states that groups of people willingly unite themselves into a body politic, called a realm, then choose their head and king to govern them. Fortescue, *On the Laws and Governance of England*, 86.

their assent. Consensual law, therefore, is the political part of the kingdom, and its administration by a monarch is the royal part. The king does not hold the kingdom together; the law does. It protects the rights (jura) of individuals within the community from other individuals, including the monarch. Thus, the king is separate from the law, which cannot be altered without the assent of the people. According to Fortescue and his contemporaries, the only way to prevent a prince from governing his people tyrannically was to restrain royal power with political law.

Contemporary myth maintained that Brutus, the great-grandson of Aeneas, a hero of the Trojan War, and a group of exiled Trojans founded England as a dominium politicum et regale after his exile from Rome. Brutus and his compatriots were the primary example of people who willingly united themselves into a body politic, then chose a king to govern them.

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97 Fortescue explicitly relied on Augustine and Aristotle, whom he referred to as “the Philosopher,” in formulating his theory of the body politic. More than a hundred years after Fortescue, Richard Hooker wrote, “Sith men naturally have no ful and perfect power to commande whole politique multitudes of men, therefore utterly without our consent we could in such sort be at no man’s commandment living. And to be commanded we do consent, when that societie whereof we are parte hath at any tyme before consented without revoking the same after by the like universal agreement. Because corporations are immortall, we were then alive in our predecessors, and they in their successors do live still. Lawes therefore humane, of what kinde soever, are available by consent.” Hooker, Of the Lawes of Ecclesiastical Politie Eytt Bookes (London: John Windet, 1593), 74.

98 Fortescue, On the Laws and Governance of England, 85-86. Fortescue was not the first to claim that the law was the political part of a kingdom and that it bound the ruler. Thomas Aquinas and his continuator, Tolomeo of Lucca, had defined it in similar terms in the thirteenth and early fourteenth centuries. See Anthony Black, Guilds and Civil Society in European Political Thought from the Twelfth Century to the Present (New York: Cornell University Press, 1984), 79-81. According to M. V. Clarke, one cannot properly call an activity political unless that activity directly helps to create or modify public law. Clarke, Medieval Representation and Consent, 291.


Consequently, England’s law was distinct from the king, and he could not change it without the consent of the people, as a monarch could in a *dominium regale.*102

Fortescue presented the most detailed and coherent analysis of England as a political kingdom, but his argument was not unique in the fifteenth century.103 George Ashby (c. 1385-1475), the noted poet declared, “The kyng that maketh his Region to be obedient to his iuste lawe, that reigne peasiably in an vnyon. He that makethe his lawe souget to awe or to his Roialme, his wyt is not worth a strawe. He that dwelle in grete prosperite, must obey lawe, and therto subget be.”104 The king was not only distinct from the law, he was beneath it in Ashby’s conception of a peaceable and rightly-ordered realm.105 Another poet, Thomas Hoccleve (c. 1367-1426), writing at the beginning of the fifteenth century, likewise placed the king under the law, declaring that the king was to “do right to grete and smalle, and kepe your lawe.”106 Among the grievances of Jack Cade and the men from Kent who rose up against the government of Henry VI in 1450 was that the king’s advisors had falsely led him to believe he “is above his

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102 Ibid., 17; Fortescue, *De Laudibus Legum Angliae,* 232. S. B. Chrimes wrote, “For the due performance of his duties, [the king] wielded great power with unquestioned authority…authority coming to him from above, and from below as well; power great enough to maintain the rights and to protect the lives of his people; authority by the will of God, and by the will of his people to be subject to him. But all-powerful he was not; he could neither break nor make the law. To impose upon his people new laws…he was dependent upon the consent of his very subjects.” Chrimes, *English Constitutional Ideas,* 61. This is a near-summation of Fortescue’s *dominium politicum et regale,* with the qualification that subjects occasionally questioned the authority of individual monarchs, even if they did not question the institution of the monarchy.


105 Ashby, “Active Policy of a Prince,” in *George Ashby’s Poems,* 29. He wrote this poem between 1460 and 1470.

lawe and that the lawe is made to his plesure, and that he may breke hit as ofte as hym lyst withouten any distucsione107: the contrarie is trew.\textsuperscript{108} The substance of these statements is remarkably similar and suggests that the belief that the law was distinct from the monarch and could not be made or altered without the community’s consent was common enough, prior to Fortescue’s written exposition and summation of it, to legitimate the participation of the political community in the legislative process and to give them cause for complaint if the king failed to live by the just laws of the kingdom. The famous Roman legal dictum that what pleases the prince has the force of law had no relevance in the English legal system because of this mixed political capacity. On the contrary, “the laws of England do not sanction any such maxim, since the king of that land rules his people not only royally but also politically, and so he is bound by oath at his coronation to the observance of his law.”\textsuperscript{109} The parliament of 1472 asked Edward IV to ensure that he enforced the laws so peace would come to “the pollitique body” and reminded him that the revered Edward III “understode that the lawes of this land, which he by his othe was bounde to maynteyn, were not [being] kept.” So he acted in “conservation of his seid othe” and sought justice.\textsuperscript{110} Fortescue does not state directly but insinuates that if a monarch violated his coronation oath, he left himself open to the possibility of rebellion and removal from the throne.\textsuperscript{111}

\textsuperscript{107} \textit{Sic}. The modern transcriber of the text suggests the word may be “distinction.” I believe it is “discussion,” which would be more appropriate to the petition, which Cade intended to send to Parliament, and to the common understanding of the role of the king and the law. If he needed to break a law, the king ought to discuss it with the body politic in advance and possibly amend or eliminate the specific law.


\textsuperscript{110} \textit{PROME}, XIII, 22-23.

\textsuperscript{111} “[E]t quod non iugum sed libertas est politicæ regere populum, securitas quoque maxima nedum plebi sed et ipsi regi alevatio non minima sollicitudinis sue.” Fortescue, \textit{De Laudibus Legum Angliae}, 263; \textit{On the Laws and
The anointing and coronation ceremony was the single most important ritual for a king.\textsuperscript{112}

Prior to the formation of Parliament as an official body with distinct rules and procedures in the mid-thirteenth century, English kings solemnly swore to three things in their coronation oath. First, the king would protect the church. Second, he would exercise just and equitable governance. Finally, “he would annul any evil laws and customs that might have been introduced into the realm, and make good laws and keep them without fraud or evil intent.”\textsuperscript{113}

The passive construction of the verb in the original Latin indicates that before Parliament existed some aspects of the law, as well as traditional customs, were constructed outside of the king’s purview. When read in conjunction with the second part of the phrase, the oath seems to indicate that the king made “good” laws but was absolved of blame for “bad” laws and customs if he eliminated them. Clearly, limits on the king’s authority existed within the coronation oath prior to the formation of Parliament. The role of the monarch was to eradicate negative customs, but he did not have the authority to create new customs. He could make good laws, and he was to honestly oversee their implementation within the community. The language of this oath necessarily changed as Parliament developed into the principal legislative body of the realm.


\textsuperscript{112} “[H]ow importantly the coronation was regarded is clear from the fact that down to Henry III (himself included, r. 1216-1272) [English] kings reckoned their accession and the legally effective beginning of their reign from its date.” Roskell, \textit{Parliament and Politics}, I, 1.

\textsuperscript{113} “[Q]uod malas leges et consuetudines peruersas si que in regno suo inducte sunt deleret et bonas leges conderet et sine fraude et malo ingenio eas custodiret.” L. G. W. Legg, ed., \textit{English Coronation Records} (Westminster: A. Constable, 1901), xxviii, 49, 52. This oath is taken from Hoveden’s account of the coronation of Richard I in 1189. Legg assigned it to the third recension of the coronation, but its language differs significantly from that used in the early twelfth-century order that he labeled the “third recension.” See p. 15, 30-31. Legg wrote, “The first three recensions retain the oath in much the same words; it is of the nature of a charter issued by the King, which may have had its origin in a bid for election by a candidate for kingship. It contains three promissory clauses” (ibid., xxviii).
The king no longer made laws of his own accord but with the advice and consent first of the lords, then of the lords and the commons.

The legitimacy the coronation oath gave Parliament was indirect but no less valid to contemporary writers. By the fifteenth century coronations followed a recension of the ceremony devised after the formation of Parliament and simultaneous to the fourteenth-century reigns of Edward II and Edward III. This version is best known in its general form from the *Liber Regalis*. The four-part oath in this, the fourth recension, was revised and expanded considerably. The first part asked: “Will you grant and keep, and by your oath confirm, to the people of England, the laws and customs to them granted by the kings of England, your lawful and religious predecessors; and namely the laws, customs, and franchises granted to the clergy and people by the glorious king St. Edward?” The king then swore to keep the peace, especially to the Church, and to exercise justice and discretion in his judgments. The final part of the oath asked: “Will you grant to hold and keep the laws and rightful customs which the people have chosen (quas vulgus elegerit); and will you defend and uphold them to the honor of God, according to your strength?” The king responded, “I grant and promise.”

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115 Legg, *English Coronation Records*, 251. “Si leges et consuetudines ab antiquis iustis et deo deuotis regibus plebi anglorum concessas cum sacramenti confirmacione eidem plebi concedere et seruare voluerit et presertim leges consuetudines et libertates a gloriose rege Edwardo clero populoque concessas” (ibid., 87). This language is similar to the admonition to princes found in the mid-fifteenth century *Tractatus de Regimine Principum*: “Decet vos scire et intelligere leges et consuetudines bonas, et alia que possunt esse principia agendorum.” *Four English Political Tracts of the Later Middle Ages*, ed. Jean-Philippe Genêt (London: Royal Historical Society, 1977), 120.

The language is noticeably different from that used in the twelfth century. The first and final parts of the oath are more detailed and express similar concerns about the maintenance and enforcement of the good laws and customs of the realm. The difference between these two parts is that the focus of the first is on the past, on ancient laws and customs recognized and granted by kings of old, particularly Edward the Confessor. The fourth part, by contrast, removes all historical associations and uses language in the future tense and in a general sense. As in the recensions of the twelfth century, there is no mention of Parliament, but a crucial phrase, “quas vulgus elegerit,” consistent with the development of the concept of the *communitas regni* in the fourteenth century was added.117 The addition of “quas vulgus elegerit,” along with the removal of “bonas leges conderet,” suggests that the understanding of who made the laws of the kingdom had changed dramatically. The active role given to the king in this part of the oath is to uphold, protect, and strengthen the laws and customs of the realm. He no longer has the singular responsibility to make law, in accordance with the earlier oath. That responsibility belongs to the *vulgus*, a general term used without reference to a particular body or group of people within the kingdom and probably inclusive of the monarch.118 Though it could include the monarch, it clearly did not signify him alone. Either the *vulgus* (the people, the public) all had to come together to choose the laws, or there had to be a mediating institution representing the *vulgus* that

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118 Richard Fitzjames, chaplain to Henry VII, wrote a sermon, published in 1495, in which he castigated the Jewish king Jeroboam for building idols at the northern and southern ends of his kingdom. “Thys was euyn a meane to drawe (mobile volgus) the Inconstaunt people to be vnkynde to god their maker and lene vnto the deuyll their distroyer.” The “Inconstaunt people” is God’s description of the tribes of Israel and includes all people, including the king, belonging to the Jewish nation. When the king speaks to or is separate from the people of his kingdom, Fitzjames uses populi. “(Qm fecit sacerdotes de extremis populi qui non erat de filiis leui) He made...preestes of euery tribe indifferently...wherfore he sayd vnto the people That it neded not take preestis oonly of the tribe of Leui.” On the following page the same phrase, *de extremis populi*, is translated “of the worste of the people.” Richard Fitzjames, *Sermo die lune in ebdomada Pasche* (Westminster: Wynkyn de Worde, 1495).
would do so. The first option would not have been feasible for a government lacking any sophisticated bureaucracy in a kingdom the size of England. The best option, according to contemporary Englishmen, was Parliament.

As use of the written vernacular became more common in the late fifteenth century, translations of the coronation oath into English began to appear. One of the first of these works was devoted to the coronation of Edward IV. In it the scribe translated the fourth part of the oath, which he labeled “the third poynt,” as, “Graunte ye all rightfull lawes and custumes to be hold and will ye be hoote that ye will defende them and strengthen them to the worship of god to your myght and power the which all the Comune shall chose and the kyng answere I graunte and be hoot.”119 Like its corresponding part in the Latin, the phrase “all the Comune” is inclusive and ambiguous. It is not specific to one body, such as Parliament or the royal council, or the nobility. It could mean multiple bodies, including Parliament, local corporations and guilds, or town councils setting laws and customs within their own jurisdictions.120 Nonetheless, it clearly indicates that one person, in this case the monarch, cannot create law on his own, nor can he do so in conjunction with a small and closed group of advisors. The legislative function of the realm belongs instead to “all the Comune.”121

The absence of a straightforward association of Parliament with the fourth part of the oath would not endure through the end of the century. Within Edward IV’s reign Fortescue was equating Parliament with the fourth part of the coronation oath in his theory of dominium

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119 BL Cotton MS Tiberius E viii, f. 44.
120 For more on guilds, their relationship to the common good, and the paucity of their contribution to political debates and corporatist ideology, see Black, *Guilds and Civil Society*, 72-75, 77. According to Black, scholastics did not see the craft-guild as a morally significant community, which partially accounts for their dismissal of it.
121 The phrase should not be read as an endorsement of direct democracy or of universal suffrage. Such concepts were not part of the political discourse of fifteenth-century England. The role of women, for example, was somewhat ambiguous: they did not serve as members of Parliament, but they could petition the body.
Another Englishman, whose identity is unknown, made the link between Parliament and the coronation oath explicit in his copy of the *Little Device for the Coronation of Richard III* (1483). The *Little Device*, written in English, contains similar language to that used in the *Liber Regalis*. According to one of its manuscripts, the archbishop of Canterbury first asks the king, “Woll ye graunte and kepe to the peopill of England the lawes and the custumys to them as of olde rightfull ande devoute Kinges graunted and the same ratefye and conferme by your othe and specially the lawis custumys and liberties graunted to the clergie and peopell by your noble predecessours and glorieux Kyng Seinte Edward?”  

The last question of the oath read: “Doo ye graunte the rightfull lawes and custumes to be holden and promytt ye after your strength and power lawes as to the worship of God shalbe (made) chosyn by your people (in parlement) by you to be strengted and defended? The King shall answer I graunte and promytt.” “Chosyn” is written above “made.” “In parlement” is underlined. Anne Sutton and P. W. Hammond argue that it was underlined for deletion for either Richard III or Henry VII, “although underlining is used for emphasis in this section.”

The phrase “in parlement” in this text has stimulated numerous historiographical interpretations. H. G. Richardson wrote, “With the development of parliamentary government the translator found this [phrase] a natural meaning to give to the Latin ‘per te esse protegendas et ad honorem dei roborandas quas vulgus elegerit.’ But however natural this interpretation

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122 Sutton and Hammond, *The Coronation of Richard III*, 219. Henry VII also used the *Little Device*, but the manuscript was altered for him because he was not crowned with his queen.
123 Ibid., 220. They also note that the clerk’s effort to translate *quas vulgus elegerit* into English leaves no doubt that he believed the oath covered laws to be made in the future because of his use of the future tense in his verbs (ibid., 4). See also Schramm, *A History of the English Coronation*, 206. Not until 1689 did the oath formally mention Parliament. In the sixth recension of the ordo (1689) the monarch swore to govern according to “the statutes in parliament agreed on.” Legg, *English Coronation Records*, xviii.
124 Ibid., n. 84 and 85.
might be, the reference to parliament was an obvious gloss on the Latin words of the office, and it might be construed as a limitation on the crown.”

William H. Dunham, Jr. and Charles T. Wood used the oath to support their argument for parliamentary sovereignty. They claimed that it limited the powers of the monarch so much that he was “virtually alongside his people.”

J. W. McKenna disputed Dunham’s and Wood’s contention, arguing that “neither successive depositions nor the apologias that justified them nor the parliamentary enactments which recorded and confirmed them established a principle or erected a lasting doctrine of restraint on the crown. The cautionary tale of fifteenth-century strife did not make parliament a kingmaker. Henry VII, like his royal predecessors, was beneath the law but above his parliament.”

The problem with these interpretations is that they are so distracted by the question of sovereignty and the fictitious perpetual struggle between Parliament and the king that they miss the oath’s less grandiose but more crucial significance for the fifteenth century. It did not imply a limitation on the power of the Crown, as Richardson suggested, even if “parlement” was the “obvious gloss on the Latin words.” To include “parlement” in the oath was not to subject the prerogative of the monarch to that of Parliament, but to recognize that the king alone did not make law. The monarch, in conjunction with the lords and representatives of the commons of Englandmen did not immediately resolve all the constitutional questions raised by the removal of a king, nor did they do so in 1689 when they erected the modern monarchy on medieval foundations that the Glorious Revolution refurbished.” At the end of the article they concluded, “By 1485 five depositions and Henry VII’s Act of Succession had somewhat dimmed those ‘sparkles of Divinity’ with which James I attempted to adorn his imperial person before parliament in 1605. In their stead, many an Englishman saw the glittering spangles of nationality that had begun to embellish the king’s high court of parliament, now also the kingdom’s representative” (ibid., 761). For the counter-argument, see McKenna, “The Myth of Parliamentary Sovereignty,” 505.

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127 In “The Right to Rule in England” (739), Dunham and Wood argued that through multiple depositions of the monarch, Parliament became the sovereign authority in the kingdom. “In 1398 [estate] was joined by another new term, ‘the authority of parliament,’ which eventually absorbed the kingdom’s authority—and the people’s too. Englishmen did not immediately resolve all the constitutional questions raised by the removal of a king, nor did they do so in 1689 when they erected the modern monarchy on medieval foundations that the Glorious Revolution refurbished.” At the end of the article they concluded, “By 1485 five depositions and Henry VII’s Act of Succession had somewhat dimmed those ‘sparkles of Divinity’ with which James I attempted to adorn his imperial person before parliament in 1605. In their stead, many an Englishman saw the glittering spangles of nationality that had begun to embellish the king’s high court of parliament, now also the kingdom’s representative” (ibid., 761). For the counter-argument, see McKenna, “The Myth of Parliamentary Sovereignty,” 505.
the realm, made English law. The authority of English monarchs was circumscribed not by Parliament but by “the prevailing general theoretical recognition of the sovereignty of the law, and of the existence of private rights which their [monarchs] own must not unjustifiably conflict with or deny.”¹²⁸ Formally, as sworn to, even without the inclusion of “parlement,” the fourth part of the oath ensured that the monarch alone could not create the laws of the realm.

The scribe’s addition to the text is significant not because it creates a fictional parliamentary sovereignty superior to the king but because it reveals how contemporaries perceived the legislative process and understood which part of the royal government had authority to act in the name of the people, the vulgus, to create law. Fortescue expressly supported such an interpretation in De Laudibus Legum Angliae. He wrote, “Nor can the king there, by himself or by his ministers, impose tallages, subsidies, or any other burdens whatever on his subjects, nor change their laws, nor make new ones, without the concession or assent of his whole realm expressed in his Parliament.”¹²⁹ Fortescue’s inclusion of Parliament clarifies that not only is the king under divine and natural laws, he is beneath statutory law as well. Fifteenth-century writers thus began to identify Parliament with the vulgus that establishes the laws of the realm according to the fourth part of the king’s coronation oath. Though the Latin of the oath remained unchanged, its translation into the vernacular in the latter half of the fifteenth century reveals individual men rendering the oath as an explicit endorsement of the legitimacy of Parliament to “choose” laws. This association strengthened Parliament’s legitimacy as the

¹²⁹ Fortescue, On the Laws and Governance, 52; De Laudibus Legum Angliae, 266. See also Ashby, “Active Policy of a Prince,” 34.
representative of the political kingdom and as the primary legislative forum within the government.

The coronation oath, as a public ritual, delineated the legitimate authority of each part of royal government, affirming the right of the people to make law. The oath legitimized the rule of individual kings, provided they upheld their promises to ensure the administration of the laws and customs of the realm with justice and without prejudice. As J. S. Roskell observed, “The oath itself...was all but sacrosanct; it enshrined a living principle that kings only forgot to their cost; here was the ark of the constitutional covenant.”

Contemporaries were aware that the oath bound the monarch to govern justly and administer the laws of the realm. Hoccleve warned against a king’s violation of his coronation oath, advising, “Thoo othes that at your creacioun, Shalle thurghe your tonge passe, hem wele observe; Lete no colourede excusacioun, You make fro hem slippe aside or swerve.” During the trial of Richard II in the parliament of 1399, his coronation oath was entered on the roll as a specific point of contention. It was followed by the charges against him:

At his consent and command, certain prelates and other temporal lords had been chosen and appointed for the government of the realm by the whole parliament...nevertheless the king...proposed to impeach the said lords...of high treason.... Also, although the said king had pardoned all the offences of the said duke of Gloucester, and the earls of Arundel and Warwick...and others, in a full parliament, by the assent of the same...nevertheless the same king caused the said duke of Golucester...to be captured and arrested...and he also arrested the said earls of Arundel and Warwick, and caused the duke himself to be taken outside the realm of England to the town of Calais, and to be imprisoned there...and caused him, without any legitimate response or process whatsoever, to be secretly suffocated, strangled and murdered, inhumanly and cruelly: and the earl of Arundel, although he cited both the charter of the said general pardon and a charter of pardon afterwards granted to him, and demanded that justice be done to

130 Roskell, Parliament and Politics, I, 2.
131 Hoccleve, De regimine principum, 79
him, he damnably caused to be beheaded in his parliament, which was surrounded by a great number of armed men and archers, to overawe the people gathered there by him for this reason; and he consigned the earl of Warwick and lord Cobham to perpetual imprisonment. Also, in the last parliament held at Shrewsbury, the same king, aiming to oppress his people, subtly procured and caused it to be granted, that the power of parliament...should remain with certain persons, in order to complete, once parliament had been dissolved, certain petitions delivered into the same parliament and at that time not dealt with. By authority of this concession, the persons thus appointed proceeded to other things touching generally upon that parliament; and this by will of the king: to the detriment of the estate of parliament, and to the great disadvantage of the whole realm, and as a pernicious example. And so that they should be seen to have some pretext and authority for their deeds of this sort, the king caused the rolls of parliament to be altered and erased, by his own will, against the intention of the aforesaid grant.\textsuperscript{132}

The king had commanded Parliament to pass legislation he consented to and confirm appointments that he then sought to undermine by extra-legal means. He also coerced, deceived, and intimidated Parliament and altered its rolls. Such crimes were egregious violations of the \textit{dominium politicum et regale}. The Commons in the parliament of 1449 echoed the language of the coronation oath in their petition against William Tailboys, the incorrigible troublemaker of the late 1440s whom they impeached. The king’s honor depended on “conservation of his peas, kepyng of justice, and due execution of his lawes, withouten which no roialme may long endure in quyete nor prosperite.”\textsuperscript{133}

The theory of the political kingdom and its origin in communal consent conferred on Parliament legitimacy to make, alter, and amend statutory law. Parliament was the only body in which the king’s council and the \textit{communitas communitatum} were present with the king.\textsuperscript{134}

\begin{footnotesize}
\textsuperscript{132} RP, III, 417-418; PROME, VIII, 417-419.
\textsuperscript{133} PROME, XII, 147. See also BL MS Lansdowne 204, f. 221v, 222v.
\textsuperscript{134} A. F. Pollard suggested the phrase “council and community” in his book \textit{The Evolution of Parliament} (New York: Longmans, Green, and Co., 1926), 80. Pollard argued that the term “estates” could not be used because it is not a plausible indication of Parliament’s essential function as a high court. Judicature simply is not a function of
\end{footnotesize}
Archbishop William Warham, in his sermon at the opening of Henry VIII’s first parliament in January 1510, observed that “not only should good and fruitful laws be established in this Parliament but should be observed and justly carried out by all.” For Warham, as for Fortescue and the anonymous scribe, Parliament was responsible for making good laws. Under the king’s leadership (duce) and by his orders, the spiritualty, temporalty, and commonalty were present to ensure justice and the preservation of the kingdom. To that end, “things badly done in previous times [were to] be reformed, unjust laws abolished, harsh or rigorous ones tempered or mitigated, and good laws, fruitful and useful for the republic, established and decreed and so published should be observed, with the greatest reverence, sacrosanct and inviolable.”

Warham’s explication of the duties of Parliament towards the law and its role in the political structure of the “republic” echoed the language Parliament itself used in an act of 1460 that repealed all statutes and ordinances passed in the parliament of Coventry the previous year. Henry VI had used the meeting at Coventry to enact bills of attainder against Richard, duke of York, and his partisans, who opposed Queen Margaret, the royal counselors, and their adherents. The parliament at Coventry, so it was claimed, had been “unduely” summoned in order to pass certain acts, statutes and ordenances, “ayenst all good feith and conscience,” to seize land and goods from some lords in order to satiate the greed and malice of others. Some members of the parliament at Coventry had been returned “without dieu and free election, and som...withoute

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any election, ayenst the cours of [the king’s] lawes and the libertees of the commens.” 136 What mattered was not what the king wanted to achieve in Parliament, but whether he had violated the law and communal liberties in the process of calling Parliament. Parliaments had to be summoned through legal means and adhere to communal customs and liberties. If the king did not follow these requirements, a subsequent meeting of the parliamentary body could reject a previous one. Because of Henry’s alleged failure to follow established law and accepted liberties in 1459, the realm had been brought close to “ruyne and universall subversion.” It therefore fell to the subsequent parliament to reform “thing badly done in previous times.” In spite of the purported illegality of the formation of the Coventry parliament, the king could not overturn its acts himself had he wanted to. Another act of Parliament was required to void prior acts and to establish in law that the previous meeting “be taken for noo parlement.” 137

In that same parliament of 1460, when Richard, duke of York, descendant and heir general of Edward III, claimed the crown as his own, the lords first tried to rebuff his argument. The second objection they made to York’s title was the “grete and notable acts of parlements, made in dyvers parlements of dyvers of the kyngs progenitours, the which acts be sufficient and resonable to be leyde ageyn the title of the seid duc of York: the which acts been of moche more

136 Representatives for the commons were elected in their boroughs and shires. In 1430 a parliamentary statute limited the county franchise to “forty-shilling freeholders and the majority principle was recognized in the election of knights and burgesses.” Fortescue, On the Laws and Governance of England, 27, fn. 98. Forty-shilling freeholders were, in effect, “the wealthier peasantry, and sixteenth-century inflation considerably extended the electorate.” In boroughs the franchise varied widely. In a minority of constituencies “it was relatively wide, sometimes extending to all male householders or inhabitants.” Blickle, Ellis, and Österberg, “The Commons and the State,” 120. See also Hannes Kleineke, “The East Anglian Parliamentary Election of 1461,” in Parliament, Personalities, and Power, 167-188; Simon Payling, “Identifiable Motives for Election to Parliament in the Reign of Henry VI: The Operation of Public and Private Factors,” in The Fifteenth Century: Identity and Insurgency in the late Middle Ages, ed. Linda Clark (Rochester, NY: Boydell Press, 2006), VI, 89-106. Edward IV referenced the requirement of the forty-shilling freehold in a letter to his chancellor about elections for the parliament of 1463. PROME, XIII, 83. Elections were not always impartial or without outside interference, as can be seen from the Yorkist attempt to influence shire elections in 1450.
137 PROME, XII, 514.
auctorite than eny cronycle [which York cited in his lineage claims], and also of auctorite to
defete eny manere title made to eny persone.” York’s response to the charge is revealing: he
made no attempt to counter the declaration of Parliament’s superior, legitimate authority.
Rather, he disputed the validity of a specific parliamentary act made in the reign of King Henry
IV (r. 1399-1413) that bestowed the realms of England and France upon that king and his heirs.
Had Henry IV obtained the two crowns through rightful inheritance or succession, York argued,
he would not have needed Parliament to grant them to him through a statute. York’s premise
was that Parliament had given Henry IV his title. In doing so it had violated “Godds lawe, and
all naturall lawes,” both of which superseded Parliament’s legislative authority. Aside from this
specific statute of Henry IV, “all other actes and ordenaunces made in the said parlement and
sithen been good and suffisant ayenst all other persones.”

The parliament of 1460 repealed the offending statute of Henry IV that entailed the
crowns to his descendants. The important phrase within the repeal declared that “all other acts
and statutez made afore this tyme, by auctorite of eny parlement, nat repelled or adnulled by lyke
auctorite or otherwise voide, bee in such force, effect and vertue as they were afore the makyng
of this ordynaunce.”138 Parliament could invalidate a previous parliament’s acts and in extreme
cases, such as illegal elections or summons, could invalidate an entire parliament. However, the
illegality (literally, not de jure) of a specific monarch’s reign did not impact the legitimacy,
status of, or statutes made in his parliaments. In the debate over York’s title both sides
fundamentally and explicitly recognized the legitimate legislative authority of Parliament within
the dominium politicum et regale. Henry VI further confirmed this legitimacy when he accepted

138 Ibid., 520.
the settlement offered to him by the lords – that he would remain king during his natural life, but York and the heirs of his body would succeed to the crowns of England and France after Henry’s death.\textsuperscript{139}

Throughout this period, monarchs consistently reinforced Parliament’s legitimacy to participate in royal government and shape policy by conceding in practice that they could not unilaterally dictate law, seize property, attain people for treason, impose taxes on the realm, or treat foreign affairs, particularly warfare and issues regarding commerce and resident aliens. Royal concession of a parliamentary role in the governance of the realm had precedent in England. Early in 1379 Richard II needed money to finance his military expeditions on the continent. Royal officials searched the Crown’s finances for sufficient funds but found none in the treasury. When they announced this unfortunate circumstance to the king’s council, the council decided “they could not correct this mischief without taxing the community of the realm. The tax could not be granted without Parliament.”\textsuperscript{140} Although Richard II desperately needed money if he was to fight across the Channel, he could not unilaterally impose a new tax or seize the goods of his subjects to acquire it. Their property was their own and could not be justly taken without their consent. The full community could not give its assent in the royal council – it had no representative there. The most efficient legitimate means of securing assent was through Parliament.

Seventy years later Henry VI acknowledged Parliament’s legitimate role in royal government as criticism of his policy in France became more vociferous. The king called

\textsuperscript{139} Ibid., 524-525.  
\textsuperscript{140} RP, III, 55-56. “Ils ne poaient celle meschief remedier sanz charger la commune du roialme. Quelle charge ne poait estre fait ne grantez sanz parlement.”
Parliament in 1449 “on account of certain difficult and urgent business concerning the
governance and [defence] of his realm of England, which could not be progressed outside
parliament.” He summoned Parliament in order to discuss this business with the lords and
commons. Edward IV likewise sought the assistance of Parliament when he returned to the
throne in 1471. The following year

The king caulyd a parlyament...wherein first wer revyved all suche his
constitutions and lawys, which had been repealyd and abrogatyd a lyttle before by
king Henry the VI, and statutes made for the forfature and sale of all his
adversaryes possessions, and the cawlyng home again from exile of them who a
few monethes before had bene attaintyd of treason by his enemies; secondly, a
taske was imposyd for money...; thirdly, as well publyk as pryvate quarrells rysen
emongst the nobyltyie...was pacfyfed, appeasyd, and taken upp.

As these sources reveal, there were two broad areas of policy that required the monarch’s
consultation with the lords and commons in Parliament by the mid-fifteenth century: requests for
money and taxes, and what may be called affairs of state.

The Crown’s need for revenue was the most common reason the king summoned
Parliament. The king could not impose taxes of his own accord because he could not
arbitrarily confiscate the property of his subjects. The appropriation of someone’s property, real
or moveable, required consent, unless the person was attainted of high treason or convicted of a

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141 PROME, XII, 81.
refers to Henry VI’s parliament of 1470-1471, in which Edward IV’s previous acts had been repealed.
Unfortunately, many of the specific details of this parliament are unknown because the roll is no longer extant.
143 According to the fourteenth-century Modus Tenendi Parliamentum, there were three categories of parliamentary
business: “Primo de Guerra si guerra sit, et de aliis negotiis personas regis, regine et suorum liborum tangentiibus;
secundo de negotiis communibus regni, ut de legibus statuendis contra defectus legum originalium, judiciale et
executoriarum, post iudicia redita que sunt maxime communia negotia; tercio debent rememorari negotia
singularia, et hoc secundum ordinem filatarum petitionum, ut predictum est.” Clarke, Medieval Representation and
Consent, 381.
144 For an analysis of the royal finances, see G. L. Harriss, “Maramduke Lumley and the Exchequer Crisis of 1446-
1449,” in Aspects of Late Medieval Government and Society, ed. J. G. Rowe (Toronto: University Press, 1986), 143-
178; G. L. Harriss, King, Parliament, and Public Finance in Medieval England to 1369 (Oxford: Clarendon Press,
1975).
serious felony.\textsuperscript{145} Both the king and the community recognized this as the reality of government in a \textit{dominium politicum et regale}. In 1407 Parliament established that “the Lords should merely assent to what had been granted independently by the Commons, who were literally to be left with the last word” on issues of taxation since the final declaration of a grant was reserved for their speaker.\textsuperscript{146} Once the Crown lost the legal right to levy taxes without consent, the body that gave that consent secured its legitimacy over any other authority in regard to taxation.\textsuperscript{147}

Addressing Henry VI in Parliament late in 1449, the Commons declared that they had come at the king’s command but had granted him a subsidy of their own accord with the assent of the lords assembled in Parliament.\textsuperscript{148} They granted the subsidy through an indenture, or contract, between Parliament and the king. During Cade’s uprising against the king’s ministers in 1450, the agitators specifically referenced “the Commons’ right to vote supply in refutation of the claim that the property of subjects belonged to the king.”\textsuperscript{149}

Bishop John Russell, chancellor of England, declared that this responsibility was central to Parliament’s existence, practically begging the lords and Commons to provide funds for the new King Edward V in 1483. Arguing for the particular virtues of the young monarch, Russell declared that if it was acceptable to them, they should renew, “by auctoryte parliamente,” such

\textsuperscript{145} For the early history of consent in England, particularly in regard to taxation, see Clarke, \textit{Medieval Representation and Consent}, 247-277. She argues that English kings of the twelfth and thirteenth centuries exchanged rights of taxation, fully recognized in law, for the practical advantage of free cooperation and consent.
\textsuperscript{147} Clarke, \textit{Medieval Representation and Consent}, 276. Clarke argues that the “ultimate ascendancy” of the representative body can be dated from the loss of the Crown’s legal control over taxation. I am not comfortable with such a linear statement, but the loss of the right to levy taxes was a significant shift from the authority of the monarch to Parliament.
\textsuperscript{148} \textit{PROME}, XII, 84.
\textsuperscript{149} Loades, \textit{Politics and the Nation}, 47.
grants for the maintenance of Edward V’s estate and supervision as previous kings could not spare. Russel’s inclusion of the phrase “by auctoryte parliamente,” which he did not need, indicates the importance contemporaries gave to the expression, and to the authority Parliament had in fiscal affairs.

The young king’s father, Edward IV, had received numerous grants of taxation from Parliament, many given under the auspices of defending the realm from foreign enemies. In the first decade of his reign Edward concluded that he should retake English territories in France from Louis XI, but he needed money to afford an expedition. He turned to Parliament for help. The sources that record his request for funds emphasize the role of the Commons in voting supply, although the lords had to assent to the taxes. In 1472 he called Parliament “to studie and fynde the most convenable meanes and waies howe this Reame might be restored to his olde fame and renoune with encrease of riches and prosperite, Justice to be set vp and sur peas to be kept inwarde, Idilnesse and riot auoided, entercourse of merchaundise frely to be had and vsed, [and] the land [and] thinhabitantes therein mightly to be defended ayenst oure aunช advarsaries and enemies.” Supposedly, one way to restore England’s fame was to win a war against France. But waging war required money, and Parliament authorized grants only for soldiers’ wages, not for ordinance, ships, victuals, and other necessities. Therefore, Edward requested money from the city of Coventry to cover expenses not met by Parliament.

152 The Coventry Leet Book, 409-410. The letter was sent to Coventry on December 21, 1472.
A reversal of this scenario occurred in the reign of Henry VII, who also intended to lead an army into France. Like Edward, he needed money for the voyage, so he asked the mayor and aldermen of London to grant him funds. Some withheld payment from the king, however, for the duration of their lives, intending to pay only through their executors after death. As a consequence of this evasion, an act was passed “by authority of a parliament holden at Westminster” in 1495. The act compelled the mayor and aldermen to pay the entire tax.\textsuperscript{153} It is notable that the king had to seek a parliamentary act to enforce his demands for taxation. Otherwise, he would have been in violation of the theory of the political kingdom and exceeded his authority.

There were limits to Parliament’s ability to grant supply, and monarchs occasionally sought to circumvent its authority. Parliament’s legitimate responsibility for taxation extended only to the political community. It did not have the legitimacy to tax the Church as the Church. English kings had to request separate grants from the Convocation of the Clergy, usually held at the same time as Parliament.\textsuperscript{154} On occasion, the king also levied loans instead of requesting taxation, though to do so regularly and in the absence of war or urgent necessity would have been unwise for any monarch. Even under threat of war a wise and good monarch would not over-burden his subjects because he would have prepared for contingencies in advance. A prince should have enough money in his treasury that if war was waged against him, “he may purveye him in tyme...of all ablementis for his werrys necessarye, with oute taking or encroching of the

\textsuperscript{153} \textit{EHD}, V, 116.  
\textsuperscript{154} \textit{The Chronicles of London}, 212.
goodys of the porayll and his subgites forsiblely and ayenst theire good will.”

In spite of this injunction to good governance, *in extremis* an English monarch could levy loans on his subjects. Unlike taxes, however, the premise of a loan was that it be repaid. Edward IV accepted liability for all loans made to his government as well as to those of “any of his progenitors or any pretended king [Henry VI]” by the Staplers (wool merchants) of Calais. In the parliament of 1463 he agreed to repay the Crown’s debts to the Staplers “by auctorite of this said parlement.”

Eleven years earlier, at the beginning of 1452, as fear of a French attack on Calais grew, Henry VI issued letters patent to commission men in Kent, Surrey, and Sussex to negotiate loans financing the king’s planned expedition to France. The letters that it was not possible to convene the “three estates and commonalties of the realm to parliament.” No reason was given, though the urgency of the language suggests there was not sufficient time. By the end of the year Henry was in desperate need of revenue to repay his loans, so he called Parliament, again confirming that Parliament was the authority to grant new or augmented tax monies from the political community. When Parliament convened in March 1453, the Commons granted the king provision for the defense of Calais. Later the Commons appeared before the duke of York

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155 “The III Consideracions Right Necesserye to the Good Governaunce of a Prince,” in *Four English Political Tracts of the Later Middle Ages*, 187. In addition to loans, the king could tax royal grants without parliamentary consent (but usually with the consent of the royal council). See, for example, Edward IV’s proclamation of such a tax in 1464 in the *Calendar of the Close Rolls, 1461-1468* (London: H. M. S. O., 1949), 230, 259; *PROME*, XIII, 86.

156 *PROME*, XIII, 249.


158 The king had to issue summons to Parliament at least forty days in advance of its assembly. Horrox and Curry write in their introduction to the parliament roll of 1453, “It is interesting to speculate why a parliament was not summoned at this point. Perhaps the need for money was seen to be too urgent. On the same day that the commission for loans was issued, [Richard] Woodville and others were appointed to arrest ships to resist the enemy and for the king’s voyage to Calais.” *PROME*, XII, 211.

159 Ibid., 212.
and the lords to remind them of this grant, “whiche been as grete as they kan calle to remembaunce to have be made to the kyng by his communes, or to eny of his full noble progenitours.” They believed the grant was sufficient to defend Calais and keep the sea, provided it was spent only for those two reasons and not wasted on anything else. Therefore, they requested exemption from further grants at that time, on account of the “grete povert and penurie that be among the communes of this land, for whom they be comen at this tyme.”

Finally, they asked that this excuse be enacted in Parliament itself in order to confirm their request.\(^{160}\)

Parliamentary grants of taxation to English kings were not always well-received among the general population, but their popularity or lack thereof has no bearing on whether Parliament proceeded in accordance with its legitimate authority.\(^{161}\) Kings, chancellors, and commons all recognized and confirmed that Parliament was the sole legitimate body that could enact general taxes on the entire realm because it consented to the taxes on behalf of the political community, the men and, occasionally, women, whose property and livelihoods were affected.

Richardson, writing about the medieval Commons, argued that its members frequently criticized the king’s expenditures and sometimes demanded an accounting of particular taxes, yet

\(^{160}\)Warkworth, \textit{A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth}, 3. According to Thomas More, taxation, or the “gathering of money,” was the only thing that made “the hearts of Englishmen [withdraw] from the prince.” More, \textit{The History of King Richard III and Selections from the English and Latin Poems}, ed. Richard S. Sylvester (New Haven: Yale University Press, 1976), 5. Part of the problem for English monarchs was that the tax system was ineffective, lacked a sufficient bureaucracy, and relied upon local compliance. “Attempts to introduce a more effective system of taxation led to localized unrest or resistance in 1489, 1513, and 1523 in Yorkshire, and in 1497 in Cornwall. Not until the introduction of the excise duty during the Civil War were the lower classes subject to taxation. Without the necessary financial resources, English kings were unable to develop the bureaucratic and military base which underpinned royal absolutism in continental Europe.” For example, in France the \textit{taille}, the direct land tax on the French peasantry, became a regular annual tax in 1439 and was used by Charles VII and his successors to support a standing army. Blickle, Ellis, and Österberg, “The Commons and the State,” 138-139. On the \textit{taille}, see James B. Collins, \textit{From Tribes to Nation: The Making of France, 500-1799} (Thomson/Wadsworth Publishing, 2002), 169-170.
the Commons could not formulate policies, even those that dealt with expenditures. Richardson proceeded to casually dismiss the role the Commons played in “matters of high politics,” stating that the body was “not agents [sic] of the revolution.”162 But if Parliament had the right to fund the Crown (separate from the king’s own revenue), it also had the right to refuse funding if it believed the taxes would be too onerous or disagreed with the uses to which the money would be put.163 By its very nature this involved the full body in the general policies of the royal government, regardless of whether the Commons actually formulated specific policy.

Acts of resumption were another means for Parliament to provide revenue for the Crown. At Henry VI’s parliament late in 1450 all parties agreed to an act of resumption. The king was allowed to resume numerous lands and monies by “thadvyse and assent of the lordes spirituell and temporell beyng [in the same] parlement, and by thauctorite of the same parlement.”164 Parliament granted similar resumptions in the reign of Edward IV. At the parliament of 1467 the king resumed lands to the Crown through Parliament.165 One chronicler observed that the resumption in the twelfth year of Edward’s reign was granted “by the desyre of the Kyng,” but, crucially, it was done in Parliament, not by his own authority.166 Edward IV often initiated resumptions himself, whereas in earlier reigns the Commons requested them. Henry VII followed a policy similar to Edward IV. When Parliament passed an act of resumption for Henry

163 For example, under Edward II the clergy refused the king’s demands for subsidies several times. See Clarke, Medieval Representation and Consent, 332.
164 PROME, XII, 191.
166 John Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, ed. James O. Halliwell (London: J. B. Nichols, 1839), 23. Edward IV wanted the money from the resumption to support his planned invasion of France in order to regain his “right and title” to his territories there.
VII in 1485, one contemporary wrote, “The Kyng hat resumyde by the Parlament into his hands all maner of patayns, geftys, and offyces.” Regardless of who initiated these resumptions, all parties agreed that they must be enacted through Parliament.

Parliament’s authority to grant resumptions to the king furthered its members’ participation in the political kingdom. It allowed them the opportunity to criticize the financial policy of the Crown and, in extraordinary circumstances, to attempt to secure further powers for themselves as a body. Members of the Commons were particularly vociferous in their condemnation of Henry VI’s management of his household finances. One of the marks of good governance was that a prince or great lord ensured that “his householde, his demaynes, his meynee and servauntz and alle his othir menage ben well rewld and governyd.” The revenue from his lands ought to be “ordeyned and sagely dispoosid for the good governaunce of his estate, and for the defence of his reame, of his Princewyke, of his landes and also of his subgites in tyme of werre yf it be necessite.”

The Commons complained that despite the large grants of goods they had given the king, Henry was endebted with such outrageous sums that he could not easily repay them. Yet he had to repay them according to God’s law. In 1449 the Commons complained to the king in Parliament that “his pore liege peple…by full longe tyme have been grevously charged, with continuell takyng of theire goodes and catell for the espenses of his honourable houshold, wherof they have not been sufficiantly contented nor paied, to theire grete empoveresyshyng.” As a consequence, Henry ordained, by the advice and assent of the lords and commons, that the sums of money Parliament assigned and annotated to him be applied to the

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167 Plumpton Correspondence, 49.
debts of the royal household. The king’s inability to maintain his household according to his royal status and to effectively implement earlier acts of resumption had important consequences – it caused his subjects to lament the loss of the kingdom’s prestige and other princes to hold England in contempt.

Ensuring the peace, security, and prosperity of the kingdom was a fundamental duty of kingship. Henry failed this duty because he could not govern his own finances, so the Commons took the unusual step of demanding that if any exceptions not explicitly enumerated in their petition were added, they were to be “sende doune unto us, to that ende that we may gife oure assentz thereto, if it be thought to us expedient.” They also proposed that anyone who violated the resumption by receiving grants from the Crown in the future be fined 1,000 marks each time they accepted a grant. Although the king, in conjunction with the lords, rejected these proposals, the failure of the Commons should not obscure the fact that its members believed they could supervise the specifics of the statute on the basis of Parliament’s legitimate authority and the failure of the king to govern wisely. Inadequate or self-interested kingship in a community that recognized the legitimacy of communal consent invited the exposition of ideas that in normal circumstances might have seemed outrageous but that nonetheless built upon Parliament’s pre-existing legitimacy.

Affairs of state, such as the defense of the realm and general good governance, also fell under the purview of Parliament. At the opening of Parliament in 1453 William Waynflete, bishop of Winchester, observed that the reasons for the summons to Parliament were “to have

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169 PROME, XII, 87. From the parliament of 1449.
170 Ibid., 381. From the parliament of 1455.
171 Ibid., 387.
wise and sound governance within the realm of England and the defence of the same externally.”¹⁷² Henry VII summoned Parliament to meet in 1487, in the wake of Lambert Simnel’s claim to the throne as the Yorkist heir, “for the consideration of divers urgent and important matters touching the state and defence of the kingdom and the church of England.”¹⁷³ Three years earlier Richard III had determined, by the advice of the lords spiritual and temporal assembled in Parliament, to subdue the Scots in order to save England from such “inconveniences” and other problems that were likely to ensue from raids along the northern border.¹⁷⁴

Each time monarchs needed to raise troops, they had to take their requests to Parliament, in part because of the funds required to support such forces, but also because there was no standing army in England and men had to be levied as soldiers for individual campaigns. Lacking a standing army, the government was very sensitive to the threat of popular disorder and tried to regulate the economy so as to ward off trouble, a feat at which it was often unsuccessful.¹⁷⁵ Rather than maintain a standing army, Parliament passed statutes against retaining armed men in order to minimize the rampant, though often localized, violence in the kingdom.¹⁷⁶ Edward IV’s parliamentary statute against liveries (1468) prevented the retaining of anyone other than a “menyall servaunt, officer, or man lerned in the oon lawe or the oder,” with

¹⁷² PROME, XII, 229.
¹⁷⁶ Retainers often wore their lord’s livery badge or collar, making it easy for others to recognize their allegiance. When significant numbers of a particular lord’s retainers gathered, they gave the appearance of a private army, in part because of the livery outfit.
a fine of five pounds (100 shillings) for every livery given, or for every month the relationship lasted. Henry VII’s parliament of 1504 passed a statute, *De Retentionibus Illicitis*, which contained the same prohibitions as the 1468 statute but limited retaining even further by requiring a license from the king for any livery, badge, or oath given. Parliament passed another act declaring retaining illegal in 1511. When, in 1518, Henry VIII sought to create something of a standing army by arming and retaining “a good and competent” number of his subjects in spite of the statutes against retaining currently extant, he confirmed in a letter of the signet to Sir Henry Willoughby that he needed parliamentary permission because of the pre-existing statutes against retainers. He had received permission in 1515.

In addition to containing civil unrest and raising armies, Parliament occasionally had to protect foreigners from Englishmen, particularly foreigners who were allied with England or protected by a safe conduct and yet were attacked at sea or in English ports. Common law did not apply to foreigners in England. Therefore, Parliament was obliged to pass statutory law for their relief. The defense of the realm, specifically raising and funding troops; the peace of the realm, specifically prohibitions against retaining and livery; and the treatment of resident aliens

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177 *PROME*, XIII, 384-385.
180 In 1511 England joined the Holy League against Louis XII of France. Throughout the following decade Henry VIII campaigned actively and frequently in France. In the process, he depleted much of the money his father had bequeathed him in the treasury. By 1515 the king’s debts required significant attention from Parliament. Three years later Henry VIII’s successive French campaigns culminated in the Peace of London, crafted by Thomas Cardinal Wolsey, in which the king received a pension from Francis I of France in return for a guarantee of non-aggression and the return of Tournai to French control.
181 *PROME*, XII, 313. This is from the parliament of 1453.
182 Though they could not sue at common law, they could sue in the Chancery courts.
thus were areas of government in which Parliament had authority. This authority derived, as multiple monarchs acknowledged, from its legislative function.

As the century progressed, attainders for treason and, occasionally, confirmation of a king’s title became prominent parliamentary issues. The law of treason was the ultimate legal defense of the realm, and high treason was the ultimate denial of the order established in the body politic.¹⁸³  According to the Statute of Treason of 1352, treason meant encompassing or imagining the death of the king, his wife, or their heir; levying war against the king within his realm or providing aid and comfort to those who did; and un-enumerated cases that might arise in the future. The statute specifically stated that the king and his council did not intend to convict of treason every man who armed himself against another with the intent to kill or rob. Such men could be convicted of a lesser felony.¹⁸⁴  Treason cases were to be decided on an individual basis before “the king and his parliament.” In 1398 Parliament extended the law of treason. The new statute began by acknowledging that the king, “by assent of all the spiritual and temporal lords of parliament, and the commons,” ordained and established the law. In addition to the crimes mentioned in the Statute of 1352, Parliament added the intended deposition of a monarch and the violation of one’s oath of homage to the king. Cases touching any of these issues were to be “attainted and adjudged in parliament.” The new act also removed the prohibition on encompassing or proposing the death of the monarch’s spouse or heir. Only crimes against the king were considered treasonous under this act. Whereas the previous statute referred to the intentions of the “the king and his council” in enacting the bill, the Statute of 1398

referred to “the intention of the king, the lords, and the commons.”\textsuperscript{185} The change of language is an important indication of the evolving role of Parliament within the legislative process, particularly in regard to the definition of treason. The development of parliamentary attainder in the fifteenth century proceeded from these two statutes and generally adhered to the specific proscriptions of the law.\textsuperscript{186}

By 1459, when the parliament at Coventry attainted prominent Yorkist leaders for waging war against the king, “the salient features of parliamentary attainder – condemnation by the king’s assent to a bill setting out the offender’s treason and extension of at least some of the penalties to the offender’s heirs – were” part of English political culture, although in this case the application of parliamentary attainder “to numerous lords and gentry, especially given the inclusion of their entailed lands, was controversial” and needed to be defended.\textsuperscript{187} To ensure that he received the outcome he intended at Coventry, Henry VI packed the Commons with men nominated by the royal household. The accused Yorkists were absent from the proceedings, primarily because they feared for their lives. The Yorkists ultimately derided the outcome of this parliament as malicious in intent and claimed that Henry VI had illegally summoned it, but there is no indication that they accused the members at Coventry of abusing the law of treason or of unfair practice within the body.\textsuperscript{188} The consequences of this parliament were several: it established the degree of forfeiture the government wanted to exact as punishment and protected interests that otherwise might have endured extensive legal battles in court; the various types of

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\textsuperscript{185} \textit{Statutes of the Realm}, II, 98-99. \\
\textsuperscript{186} Bellamy, \textit{The Law of Treason in England}, 102, 123. \\
\textsuperscript{187} \textit{PROME}, XII, 449. See also J. R. Lander, “Attainder and Forfeiture, 1453 to 1509,” \textit{The Historical Journal}, 4:2 (1961), 120. A sentence of treason could be given in judgments of the common law courts and by special commissions. \\
\textsuperscript{188} Bellamy, \textit{The Law of Treason in England}, 197.
\end{flushright}
attainder common from 1400-1459 melded into a standard act that proved useful for the proscription of defeated rebels and the forfeiture of their lands until the end of the Wars of the Roses; and henceforth acts of attainder were issued against men who had not been in front of any court and who had not even been outlawed. Richard III followed a similar process against Henry Tudor in 1485. The king issued a proclamation against Tudor in which he listed certain men as “his rebels and traitors.” These men had been “disabled and attainted by the authority of the high court of parliament.” As his position weakened and those opposed to his kingship grew stronger, Richard sought to buttress his rule with parliamentary authority.

Parliamentary statutes defining treason were of great consequence precisely because the king could not govern outside the law, even when he dealt with men he believed were a threat to him. George Ashby warned the young Prince Edward, son and heir of Henry VI, that when he suppressed “false conspiratours,” he must do so “aftur the lawe and constitucion, Established ayenst opyn traiterous.” The king had to obey the law. Cade complained in his petition to Henry VI that the king’s counselors “sey whom the Kynge wulle, schalle be traytours, and whom he wulle none schalle be none. Ffor ziff enny of the traytours aboute hym malygnne azenst eny mane hyghe or low they [the king’s counselors] wulle ffynde ffalse menes that they may dye as a traytoure, to have londes and goodes, but they wulle not in suche case to suffur the Kynge to have hem to paye eyther his dettes or for his vitayles therwhit, nor to be the rycher of on penny.” Cade very carefully explained that royal counselors arbitrarily accused men of treason under false pretenses so that they could seize people’s property to enrich themselves.

189 Ibid., 137, 178-179, 204.
Such false accusations were unethical and illegal. This inversion of the law, in which counselors became wealthy from prosecutions for treason while the king failed to pay his debts, threatened to do great harm to the body politic, as no man could be secure in his life or possessions against arbitrary judgment.

If prosecution for treason was decided by parliamentary statute, it had to be done with the consent of the whole body, as Henry VII learned when he tried to enact bills of attainder in Parliament without the consent of the Commons. His judges informed him that the consent of the Commons was necessary.\(^\text{193}\)

On rare occasions Parliament granted the king broader latitude in regard to attainders. In the parliament of 1504 Henry VII declared his intent not to call another parliament for some time, which would leave his subjects who sued for a reversal of attainder in limbo. He therefore sought and received from Parliament the authority, during his lifetime, to “reverse, annull, repele and avoyde” the attainders of those men convicted during his reign or that of Richard III.\(^\text{194}\)

Parliament was careful to limit the act’s duration to Henry’s lifetime. Should his successor want a similar grant, he would have to return to Parliament to ask for it. To do otherwise would have invalidated Parliament’s role as the representative of the dominium politicum.

As can be seen from the parliament at Coventry, treason was a frequent and at times controversial charge.\(^\text{195}\) Humphrey, duke of Gloucester and uncle to Henry VI, was arrested and charged with multiple articles of treason after arriving at Bury St. Edmunds for Parliament in

\(^{193}\) Lander, “Attainder and Forfeiture,” 120, fn. 7. In the parliament of 1450-1451, the Commons pursued a posthumous judgment of treason against William de la Pole, duke of Suffolk and royal counselor. Their petition failed.

\(^{194}\) PROME, XVI, 332.

\(^{195}\) For instances in which speech and seditious writings were sufficient for an accusation of treason, see Bellamy, The Law of Treason in England, 119-120; Elton, The Tudor Constitution, 61-62. See also Hicks, English Political Culture.
February 1447. Precisely what the allegations were is unclear. His subsequent death in suspicious circumstances and the crimes many believed were falsely attributed to him gradually became a mark of the corruption in Henry’s household. Others, including Cade, who opposed the government’s policies were indicted for treason. Cade stood accused of “falsely and traiterously ymagyn[ing the king’s] deth, destruction and subversion of this reame, in gederyng and reryng grete nombre of people, and hem steryng to ryse agayns [Henry] falsely and traitorously…agayns [the king’s] roialte, coroune and dignite, and…made and rered werre falsely and traiterously agayns [the king] and [his] highnes.” On this occasion the charges clearly conformed to the Statutes of 1352 and 1398 and justice was delivered through Parliament rather than by extra-judicial means, as in Gloucester’s case. The bill against Cade explicitly stated that he was to be punished “by auctoritie of the seid parlement,” in accordance with statutory law, to prevent further uprisings. It passed, and Cade was posthumously attainted of treason. His lands and goods were forfeit and his blood corrupted and disabled forever.

Convictions for treason proceeded apace throughout the century. They become particularly common from the 1450s to the 1470s. Parliament indicted Sir Walter Devereux of treason for his support of the duke of York. Devereux subsequently received a royal pardon in

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196 John Benet’s Chronicle, eds. G. L. Harriss and M. A. Harriss (London: Royal Historical Society, 1972), 192-193. In footnote 91, the editors observe that Benet’s Chronicle “appears to be the most specific reference to the existence of actual charges, though Davies, English Chronicle, p. 62, refers to ‘points of treason’ and Hatfield MS 281, edited by C. L. Kingsford in E. H. R., xxix (1914), p. 513, to the ‘diverse points upon him putte.’”
197 PROME, XII, 202-203. From the parliament of November 1450. Cade’s attainer was significant because it was “ordained,” rather than “declared and adjudged” or “declared and awarded.” The only previous instance of such wording was in the case of the Percy rebels in 1404 under Henry IV. From Cade’s case forward, the “formula” to ordain by advice of the lords, with the king’s consent, became accepted practice. Bellamy, The Law of Treason in England, 186.
198 The act of 1450 was perceived to be insufficient because it contained no declaration of treason, just a bill of penalties on him personally. In 1453 Parliament specifically asked that Cade be “take, hadde, named and declared a traitor” and that all of his acts in London be voided and forgotten. RP, V, 265a.
1452, but the Commons in 1455 petitioned to void the act of attainder. The king’s grace was not sufficient to do so.\textsuperscript{199} The annulment had to come through Parliament. A similar scenario occurred with Sir William Oldhall, accused and convicted of outlawry and treason in 1453 for providing counsel to Jack Cade, fabricating and displaying bills, ballads, and writings against the king, assisting the duke of York, and rallying men to destroy Henry VI.\textsuperscript{200} He was acquitted in the court of King’s Bench but petitioned Parliament in 1455 to void the act of attainder against him. As with Devereux, the king accepted Oldhall’s petition in Parliament and restored his lands and name.\textsuperscript{201} In the early months of Richard III’s reign, fourteen attainted men sought and received pardons from the king. Their pardons “did not cancel their attainder or restore forfeited land.” Rather, they “lifted the death penalty and brought the individual back within the law, so that family and friends could ‘receive or cherish him with victuals and other things necessary to his sustenance’ without incurring the king’s displeasure.” Rosemary Horrox argues that by pursuing a pardon these men recognized Richard III’s kingship, though they were not necessarily

\textsuperscript{199} See Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, 7; The Historical Collections of a Citizen of London in the Fifteenth Century, ed. James Gairdner (London: Camden Society, 1876), 195; BL MS Royal 17 B XLVII, f. 55b. This latter one is a petition to the king asking for compassion on a man “appeached of treason.” Pardons usually were granted by letters patent under the great seal. However, the king did grant pardons through Parliament on occasion – see HMC Report on the Manuscripts of Wells Cathedral (London: H. M. S. O., 1885), 196, 224-225, 227.

\textsuperscript{200} Oldhall was chamberlain to the duke of York in the 1440s and speaker of the Commons in the parliament of 1450-1451. Roskell charges that he was “one of the great professional captains of the French wars, from which he and many like him, some of them his fellow-members of York’s retinue, emerged as disappointed, sour, and unforgiving men, shut off from profit in 1450 both at home and abroad, even then ready for mischief, and soon to be eager to bring down a dynasty which has failed itself and them, too.” Parliament and Politics in Late Medieval England, III, 177.

\textsuperscript{201} PROME, XII, 445, 446. With regard to annulment, the king could reserve to himself the ability to grant full pardon and restoration to those who sought his mercy, but in order to void the actual act of Parliament one had to secure another act of Parliament. For another example of this, see the act of Parliament in 1460 in which all acts and statutes agreed to in the parliament of 1459 were invalidated by the subsequent act even though the king, through the royal council, had begun to reverse some of the forfeitures imposed in 1459. Ibid., 509, 514.
committed to it.202 If that is true, then it unambiguously signified that they accepted as legitimate Parliament’s ability to convict for treason and enact bills of attainder.

In 1483 Henry Stafford, duke of Buckingham, obtained Richard III’s agreement to dismember the duchy of Lancaster on behalf of Buckingham. In a signet letter of July 13, the king granted the Lancastrian share of the Bohun inheritance to Buckingham as if the act of attainder against Henry VI (1461) had never been made, with the promise that the next parliament would endorse the transfer.203 Parliament needed to ratify the change because it involved an attainder and the redistribution of the substantial personal property. Richard III was not the first king to pursue parliamentary ratification of a disputed property division. Edward IV had taken a similar step to resolve the quarrel between his two younger brothers, the dukes of Clarence and Gloucester, over the Warwick inheritance. The brothers had married Isabel and Anne Neville, the two children of the earl and countess of Warwick. Most of the property belonged to the living countess of Warwick. Nonetheless, Parliament divided it in two acts of 1474–1475 that excluded the countess of Warwick in preference to attainting Warwick, who died fighting against Edward IV at the battle of Barnet in 1471.

203 Horrox, Richard III: A Study of Service, 143. Humphrey (IX) Bohun, earl of Hereford, left two daughters as coheirs when he died in 1373: Eleanor, later married to Thomas of Woodstock, duke of Gloucester and fifth surviving son of Edward III; and Mary, who married the future Henry IV. Eleanor’s moiety descended to Buckingham, Mary’s to the Lancastrian kings. The deaths of Henry VI and his son in 1471 extinguished the line of Mary’s descendants, making Buckingham heir to her moiety, thirty-eight manors worth £1100 per annum in East Anglia and the south of England. Unsurprisingly, Edward IV kept Mary’s estates in his possession. Edward might have been concerned that the claim could draw attention to Buckingham’s Lancastrian connection (he descended from John of Gaunt, duke of Lancaster and third surviving son of Edward III, through his Beaufort mother). But neither Edward nor Richard had any problem acknowledging Buckingham’s royal blood as it derived from Thomas of Woodstock. C. S. L. Davies, “Stafford, Henry, second duke of Buckingham (1455–1483),” Oxford Dictionary of National Biography, Oxford University Press, 2004; online edn, Sept 2011.

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The area of greatest complexity regarding bills of attainder for high treason resulted from the deposition of one king by another, and the victor’s subsequent leveling of the charge against his opponent. Edward IV moved Parliament to convict Henry VI of high treason in 1461, accusing his opponent of levying war against his [Henry VI’s] sovereign Edward IV. Several men also were accused of conspiring to imagine the death and destruction of the new king in “prophecies and false heresies.” For these men, Henry VI was still the rightful king. The situation was complex for Edward in 1461 because Henry’s parliament two years earlier had attained him as earl of March. The same was true for Henry VII, whom Richard III had attained while Tudor was earl of Richmond. From the very moment these two men became king they were under attainder. During Henry VI’s brief re-adeption in 1470-1471, he had Edward IV proclaimed “usupur of the Crowne, and the Duke of Glowcetur [later Richard III] his yonger broder Traitor, and both were atteynted by thauctorite of the said parliament.” Henry VII put forward a similar charge against Richard III in 1485, declaring that the Yorkist king had traitorously levied war against his sovereign lord, that is, Henry Tudor. That each monarch used Parliament to declare his rival an attained traitor presents an obvious dilemma: how does one king attain another for treason?

The question is particularly pertinent to the second reigns of Henry VI and Edward IV because both had been anointed and crowned and had reigned for many years. In the case of these two monarchs, theoretically everything rested on two issues: rightful succession (heir

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204 Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, 1; BL MS Add. 45357; RP, V, 476b.
206 The Chronicles of London, 183.
207 RP, VI, 276a.
208 Though neither man accepted that the other was king de jure, their subjects, with notable exceptions, had.
general versus heir male) and whether Henry had broken his coronation oath, thus releasing his subjects from their allegiance to him. These issues remained unresolved. One way around the problem of attainder was the frequent assertion that a monarch was late *de facto* but not *de jure* king of England.209 This simplified and incomplete solution to the problem allowed Edward IV, Richard III, and Henry VII to call Parliament at the beginning of their reigns.

More sensitive was the question of attainders passed through Parliament by a *de facto* but not *de jure* king. In 1470 Henry VI called a parliament at which all attainders made in the reign of Edward IV were annulled, “and Kynge Herry was amitted to his crowne and dignite ageyne, and alle his men to their enherytaunce.”210 This contemporary observation implies that Parliament restored Henry to the throne. Richard III, whose reign more than any other in this period was shrouded in controversy, asked Parliament in 1484 to refute all rumors of his lack of legitimacy. His purpose in doing so was clear: “He wished to use the authority of parliament, and the publicity of a parliamentary act, to refute the general disbelief in the validity of his title. It was at once an appeal to popular opinion and an attempt to quash ‘doubts and seditious language.’”211 That Richard believed Parliament’s legitimacy secure and authoritative enough to overcome the doubts about his title to the throne is revealing. But questions persist: how does a king under attainder call Parliament?212 Could a king *qua* king be attainted?

The legal status of the king presents other problems. Did the status of the king, whether *de jure* or *de facto*, affect the legislation he superintended through Parliament? Did it affect the

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209 In Henry VII’s first parliament in 1485 Richard III was declared “late in dede and not of right king of Englond” numerous times. Richard had achieved this status “by usurpacion.” *PROME*, XV, 107.
status of the parliament itself, since he called it? According to G. R. Elton, “only a true king can summon a true Parliament.” Whether by “true” Elton meant *de jure* is unclear. M. V. Clarke maintained that because the king was the essential part of Parliament, if a king were forcibly detained by his subjects, as was the case with Richard II in 1399, no Parliament, in the strict sense of the word, could be held. This was true even if the king were compelled to appoint commissioners. His constraint invalidated the commission. Any action taken by the political kingdom without the monarch could be effective and justifiable, but it would not be properly parliamentary. On the basis of this argument, a king such as Henry IV could have been *de facto* king by right of conquest but not *de jure* through the legal approval of Parliament after a conviction of Richard II or the legal right of inheritance. One could argue, then, that his parliaments were not actually parliaments, and therefore their statutes were *ipso facto* void.

The contemporary answer to these questions, however, would seem to be “no,” suggesting that although the monarch initiated Parliament and had to approve its legislation, its legitimacy was not dependent on his legal status but on its own unique status within the political kingdom. In a letter to the archbishop of Canterbury, Edward IV wrote that although “it is so that in the statute in ye parlement of kynge Henry the iiij lately of the deede and not off the lawe at leyceter the seconde yere of his reygne [sic] whan so euer the copey of the lybell or the articles by lawe of the cause is to be graunted and bee delyuered vnto y\(^e\) party wythout difficulty,” the law was not being followed in the case of a petitioner named Richard. Edward, “wyllinge the same statute in eury of his articles vndefyled to be kepte, commaunde you y\(^l\) ye graunt to the sayd Richard the copy of the lybell or articles of the cause aforesaid…and delyuer to the same

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Richard the same copy wythout any dificulte aftir the strengeth fourme and effecte of the 
forsayde statute.” For Edward the statute and the parliament stood, even if Henry was not 
lawfully king.

Both Henry IV and Henry VII had their claims to the throne confirmed by Parliament, the 
former in 1406, the latter in 1485. This recognition took the form of a special petition from the 
Commons, with the assent of the king and lords, rather than a strict act of Parliament. By 
emulating his ancestor’s example, Henry VII implicitly upheld the parliaments of the first 
Lancastrian king as valid, regardless of the legal status of the monarch.

Uncertainty over the throne in the latter half of the fifteenth century gave Parliament an 
opportunity to assert its role in the governance of the kingdom. J. G. Bellamy argued, “Nothing 
could be further from the truth than the verdict that [attainder] was judgment by means of 
legislation.” He then explains how the use of attainder was influenced by the desire to “set 
penalties which were beyond the powers of [courts of common law],” yet he never elucidates 
why this was so. Rather, he lays responsibility for this development at the feet of Henry IV, who 
in 1400 and 1404 used attainder against prominent rebels. “A king more sure of himself and less 
worried about placating public opinion would not have bothered,” writes Bellamy. Possibly, 
but the fact is that he did. In doing so, he established a precedent for future attainders. If a king 
intended to enact a penalty of legal death and the forfeiture of all property held in fee simple,

215 Arnold, The names of ye baylifs custos mairs and sherefs of the cite of Londo[n] from the tyme of king Richard 
the furst. The text states that the parliament was held at Leicester the second year of Henry IV’s reign, but the 
parliament in the second year of Henry IV’s reign was held at Westminster. The parliament in the second year of 
Henry V’s reign was held at Leicester.
216 Elton, The Tudor Constitution, 1.
penalties that were beyond the authority of the courts of common law, he needed the consent of the political community. He secured consent in Parliament.

Attainder was a sensitive and drastic means of exacting penalties. If members of Parliament were to deal effectively and honestly with such serious and potentially controversial matters, they had to have the freedom to do so without fear of retribution. A bill in response to the arrest of one Richard Strode, burgess for Devonshire, in 1512 ensured that speech in Parliament could not be the basis for action in other courts. That members had such freedom is further confirmation of Parliament’s legitimacy in the political kingdom. The royal bureaucracy and courts issued writs of parliamentary privilege during each parliament. These writs protected the liberties of men, and their servants, summoned by the king to Parliament during the time of their service. The writs signified the right of every member to avoid arrest by the order of any inferior court while Parliament was in session. A member arrested improperly could be released by a writ of privilege, granted by Chancery at the request of the speaker of the Commons and addressed to the jailer. Should a member of Parliament be arrested without recourse to a writ of privilege while the body was in session, his detention could cause “grete delay and retardation of procedyng, and goode expedition of such matiers and bosoignes, as for your Highnes, and the commen wele of this your Reame, in...Parlement...to be doon and spedde.”

Parliament’s legitimacy as the repository of the *dominium politicum* protected those called to serve in it. When one Richard Dygan, servant to John Wyke, a burgess in Parliament,

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219 *RP*, III, 53-54.
220 It was not sufficient to release a prisoner accused of a felony.
222 *RP*, VI, 160-161. From the Parliament of 1472.
was arrested for a debt, he sued in the court of Chancery for a writ of privilege of Parliament. Once he had it, Dygan was released. 223 In 1460 Walter Clerk, a burgess of Chippenham in Parliament, was arrested and imprisoned “at [the king’s] sute” for a fine he owed Henry VI. The Commons presented a petition to the king in Parliament claiming that Clerk’s detention was “ayens the libertees and fredomes used, had and enjoyed afore this tyme by youre seid commons.” They demanded his discharge from prison “so that the seid Waulter may tende daily of this youre parlement, as his dute is to doo.” Once the king dissolved Parliament suits against Clerk could resume, but while Parliament was in session he had to be free and at liberty to attend. 224 During the reign of Edward IV a servant of the duke of Clarence who was imprisoned for trespass received from Chancery “a supersedeas of the peas and another of priuilege of the parlement as servuant vnto the seid duke accordyng to the custume in suche case vsed” in order to secure his release from prison. 225

That the courts recognized and accepted these writs indicates that the integrity of the dominium politicum et regale was intact: royal officials could not arrest those serving in the central institution of the political kingdom. Not even the king could interfere with the liberties of a man who had been elected or appointed to represent his community in Parliament. Justice was paramount to the maintenance of good government, but for political governance to exist and function effectively in conjunction with royal government, the king had to refrain from enforcing justice on members of Parliament while the body was in session. That English monarchs and

223 NA C1/31/16. Dygan’s suit was from 1465-1471 or 1480-1483.
224 PROME, XII, 515. Henry granted the petition.
225 NA C1/46/269.
royal officials accepted this practice reveals the extent to which they conceded parliamentary legitimacy.

Yet local authorities at times did not adhere to the writs and release their prisoners. In such cases those in prison appealed to the chancellor to enforce the privilege. George Willerby, a servant to Richard, duke of Gloucester, during the 1470s, had a parliamentary writ on him when he was arrested for debt, yet the bailiff refused to comply with it and release him. 226 Likewise, the mayor and aldermen of London arrested John Batesson, a servant of Thomas, earl of Arundel, while the earl served in Parliament. After Batesson’s arrest the earl “purchased a writ of privilege of the parleament and the same delyuered vnto the seyd mayre and aldermen for the delyuerance of your seyd Oratour accordyng to the anncient and laudable custume of the seyd courte of Parleament.” Notwithstanding the writ, the mayor and aldermen refused to release Batesson. This was “contrary to the priuilege and custume in derogracion of the same.” 227 Members of Parliament and men such as Batesson realized that the refusal of authorities to comply with the writs of privilege was a violation of the *dominium politicum et regale* from which Parliament derived its legitimacy, which is why they petitioned for redress, explicitly condemning the cavalier disregard royal and local officials showed the writs.

The general recognition of Parliament’s legitimacy by the royal bureaucracy reveals the extent of its acceptance based on the *dominium politicum et regale*. Fortescue argued that the king’s council could not make law because that was Parliament’s responsibility, but it could discuss provisions of the law and present its conclusions for amending them to the legislative body. The king’s counselors were to deliberate on matters pertaining to the king and the realm.

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226 NA C1/48/173.
227 NA C1/117/44.
If the council did its work well, Parliament would “be able to do more good in a month to the mending of the law, than they shall be able to do in a year.” The justices of the kingdom also were “to discuss the king’s business for the parliament.” When they met at the beginning of Henry VII’s reign they noted that there were several statutes, primarily those dealing with retainers, that would benefit the kingdom, provided not only that Parliament enacted them but that the king upheld them as law. The justices recommended that Parliament consider an article requiring lords to swear not to retain or maintain any man. Henry VII agreed with the recommendation of the justices, and on November 19, 1485, he summoned many knights as well as men of the royal household and the commons, with the lords spiritual and temporal present, into the parliament chamber. When “the aforesaid Article had first been publicly recited before them, [they] swore and promised separately on the sacred gospels to observe and keep that article.”

Parliamentary legitimacy in England was predicated, in the first place, on the idea of communal consent to government and Parliament’s role as the physical manifestation of the full body politic through which the king’s subjects assented to the law. That the king was below the law and could not make it of his own accord meant that Parliament’s existence was necessary for the proper functioning of a well-ordered society. Every king confirmed his responsibility to defend and protect the law through his coronation oath. As the fifteenth century progressed, contemporaries increasingly associated the legislative function in the coronation oath with Parliament. The king himself sanctioned Parliament’s existence as the central legislative body in the kingdom every time he called it into being. Because this period in English history was so

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tumultuous for the Crown, several kings sought parliamentary recognition to validate their rule. Their appeal is an indication of how widespread acceptance of Parliament’s legitimacy was by the mid-fifteenth century. Yet recognition of Parliament’s legitimacy extended far beyond the halls of Westminster. As the physical manifestation of the political community of the realm, Parliament had a responsibility to ensure that “the commen wele of this [the king’s] Reame” was secure. Englishmen of all ranks knew that the common weal, like the *dominium politicum et regale*, was a foundational source of Parliament’s legitimacy, and between 1450 and 1520, they appealed to Parliament to fulfill its duty to the common weal by reforming the king’s council and ensuring good governance throughout the realm.
CHAPTER 2: THE COMMON WEAL

When the English king conceded that he ruled a *dominium politicum et regale* and his authority could not transgress the limits of statutory law, he confirmed Parliament’s legitimacy as a political body. Every English monarch between 1450 and 1520 did. The concession was most obvious with taxes and attainders, both of which involved the property of the king’s subjects, and the latter of which involved conviction of high treason, but it extended to other areas as well, most notably reform. When Henry VI failed to properly manage the royal finances and requested ever-increasing sums of money from his subjects, they used Parliament as a forum in which to demand accountability, reform, and good governance. Parliament was one of the institutional channels through which people’s complaints could reach the administrative center of government.\(^\text{230}\) Rapacious taxation was contrary to the purpose of kingship in a *dominium politicum et regale*. The king was to protect and advance the prosperity and liberties of the people and ensure justice. Overzealous taxation was, in short, a violation of the common weal.

This chapter examines contemporary definitions of the common weal, their application to Parliament, and the institution’s role in securing the weal and the good governance of the realm.\(^\text{231}\) In general the debate in the fifteenth century was not over definitions of the common weal or who had a responsibility to protect it, but who could decide when it had been violated and how it should be restored. At this point it became controversial.

The idea of the common weal derived from Aristotle’s writings on ethics and politics. According to the Greek philosopher, the goal of the political community (the *polis*), as

\(^{230}\) Ferguson, *The Articulate Citizen*, 404.
\(^{231}\) For a thorough review of the relationship between the common weal and the polity in England over several centuries, see Knights, Watts, et al., “Commonwealth,” 659-687.
distinguished from the household and other forms of organization, was the promotion of the
good life, that is, a life of virtue and rational thought for its citizens. A polis could be organized
in one of three ways – rule by one (monarchy), by the few (aristocracy), or by the many
(constitutional government) – but the purpose of each was to serve the common interest, which
meant ensuring justice within the community so that all who belonged could live a good life.
The inverse of each form was its corrupted state: tyranny for a monarchy; oligarchy for an
aristocracy; democracy for constitutional government. In these corrupted forms, the common
good was subverted to the will of those who governed.

Two translations of Aristotle’s Politics spread his ideas across Europe: those done by
William of Moerbeke (c. 1269) and Nicolas Oresme (1371-1377). Similarly, two
commentaries on Aristotle had extensive influence: Giles of Rome’s De Regimine Principum
(1277-1280) and Walter Burley’s critical commentary on the Politics (1343). An essential

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234 For more on Giles of Rome, see Kempshall, The Common Good in Late Medieval Political Thought, 130-156; Burns, Lordship, Kingship, and Empire, 19-21; Coleman, A History of Political Thought, 61-70; Graham McAleer, “Giles of Rome on Political Authority,” Journal of the History of Ideas, 60:1 (1999), 21-36; Watts, The Making of
source for De Regimine Principum was the popular Secretum (or Secreta) Secretorum, a pseudo-Aristotelian advice book that emphasized good governance and the importance of counsel for the ruler.\textsuperscript{235} French treatises and translations were important in the transmission of Aristotle’s and Giles of Rome’s political ideas to England. The III Consideracions Right Necesserye to the Good Governaunce of a Prince, originally a French tract written in 1347, was translated into English in the mid-fifteenth century. In it the author declared that if his three considerations were found in wise people, “they profiteth and availeth the more effectuely as the booke of Politiques in sentence raporteth.” Just before the mention of the Politics, the author referenced Giles of Rome’s “tretyse of Regiment” and “many othir writinges of souffisaunt autorite.” The author cited the Politics and the Nicomachean Ethics throughout the treatise. The unknown author of the Tractatus de Regimine Principum likewise cited both Aristotle and Giles of Rome, among others, throughout his treatise.\textsuperscript{236} In the early 1430s Humphrey, duke of Gloucester,
commissioned Leonardo Bruni to produce another Latin translation of Aristotle’s *Politics*. Aristotle’s influential texts, combined with the works of Cicero, Seneca, Sallust, Plutarch, and Augustine of Hippo, served as the basis for medieval exegeses of government. Because of the popularity of these and similar authors, the phrases used in their texts to describe political life, civil government, and the obligations of members of the community to each other became standard.

Medieval philosophers employed several Latin terms to denote the common weal: *bonum commune; utilitas communis; bonum publicum;* and *res publica*. Cicero had defined *res publica* as “an association of a multitude united by a common sense of what is right and by a common interest. *Bonum commune* and *utilitas communis* were used to denote the common good, which was considered a positive value of the common people.”

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237 Saygin, *Humphrey, Duke of Gloucester*, 58. Saygin argues that the translation was intended specifically for the education of the young Henry VI rather than for any personal interest Gloucester may have had in literature, humanist studies, or patronage. Gloucester’s personal collection of texts was extensive for the time. He owned “Latin and French versions of Giles of Rome’s *De Regimine*, copies of the *Secretum Secretorum*, Boethius’ *De Consolatione* and Valerius Maximus’ *De Dictis et Factis Memorabilius*, a French translation of the anonymous tract *De Administratione Principum*, Walter Burley’s commentary on Aristotle’s *Politics*, John of Salisbury’s *Policraticus*...Decembrio’s translation of Plato’s *Republic*, Tito Livio Frulovisi’s *De Republica*, Piero da Monte’s *De Vitiorum et Virtutum Differentia inter se* and Poggio’s *De Varietate Fortuanae*” and many other manuscripts (ibid., 60, fn. 17). See also Alfonso Sammut, *Unfredo Duca di Gloucester e gli Umanisti Italiani* (Padua: Antenore, 1980); David Rundle, “On the Difference Between Virtue and Weiss: Humanist Texts in England During the Fifteenth Century,” in *Courts, Counties and the Capital in the Later Middle Ages*, ed. Diana Dunn (New York: St. Martin’s Press, 1996), 193-198. Though Gloucester may not have read nor had interest in these works himself, they would have been accessible to members of his household.


239 For use of the common weal in continental Europe, especially in the German-speaking lands, see Eberhard Isenmann, “Norms and Values in the European City, 1300-1800,” in *Resistance, Representation, and Community*, 190-215. The common weal (*Gemeinwohl*), which Peter Blickle equates to the common good (*gemeiner Nutzen*), encouraged city residents to strive for peace rather than pursuing self-interest (*Eigennutz*) and seigneurial interest (*Herrennutz*). Blickle’s assertion that the common good was a positive value “of the common people, whereas [it was] more-or-less alien to the medieval nobility” in Europe is fundamentally incorrect, as this chapter will show. Blickle, “Conclusion,” 330, 332.

community of interest.” Fortescue used Cicero’s definition of the res publica in De Laudibus Legum Angliae, although he cited it from Augustine’s City of God rather than from the Roman orator himself. Once filtered down to the level of practical politics through the numerous mirror-for-princes texts, petitions, bureaucratic documents, and preachers, terms such as utilitas communis and res publica were no longer limited to the precise definitions they may have had in classical scholarship. S. B. Chrimes, writing about the application of political theory to events in fifteenth-century England, conceded as much when he equated res publica, common weal, utilitas regni, public good, and the State with each other.

For contemporaries the res publica had multiple meanings. Bishop John Russell translated it literally as the “thynge public,” though precisely what that was fluctuated. Russell’s “public thing” was synonymous with the public life of a community, and its organization into political structures and institutions. It also was comparable to the whole body of the realm, an analogy he used extensively. Occasionally he used nostra respública to designate this second meaning. John Lydgate also described the res publica as the actual community of the realm.

The monarch was responsible for the governance and defense of the temporal realm. If he

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241 “Est igitur, inquit Africanus, res publica...coetus multitudinis iuris consensu et utilitatis communiione sociatus.” Cicero, De Re Publica, Liber I, XXV, 39. Translated in Kempshall, The Common Good in Late Medieval Political Thought, 19.
242 Fortescue, De Laudibus Legum Angliae, 235.
243 William Caxton wrote in one of his introductions, “Submyttynge me to the amendyng and correction of the reder and vnderstonder that is disposed to rede or haue ony contemplacion in thystoryes of this book whiche were drawn and compyled out of the bookes of thauncyent phylosophers of Grece.” Caxton, “Prologue,” in Marcus Tullius Cicero, De senectute (Westminster: William Caxton, 1481). His statement implies that those who were literate and had a basic understanding of the Greeks and Romans had a potential role to play in the interpretation of classical works, thus significantly broadening the community involved in the transmission and discussion of political and historical ideas. Caxton himself did much to expose his contemporaries to a wide variety of literature, some of it philosophical.
244 Chrimes, English Constitutional Ideas, 304-305.
245 Grants, etc. from the Crown during the Reign of Edward the Fifth, xliii. The reference is from Russell’s sermon prepared for the opening of Edward V’s first parliament in 1483.
246 Ibid., liii. See also Watts, “The Policie in Christen Remes,” 43.
fulfilled his duty, the *res publica* would endure for a long time “voyde of discorde and fals duplicite, of one body in longe prosperity.” Archbishop William Warham used the term *res publica* in a comparable manner in his sermon to Parliament in 1510.

Yet *res publica* could also be associated with the prosperity and defense of the realm. The anonymous author of the *The Boke of Noblesse* declared that the *res publica* “in Englissehe tong [is] clepid a comyn profit.” Here the term “common profit” was a vulgarization of the more accurate term “governaunce of comon publique,” to which the office of the prince was principally directed for “the suerte and saufegarde of alle the saide contreis.” In the introduction to his English translation of Cicero’s *Cato Maior de Senectute* in 1481, William Caxton wrote of how Ennius, a Roman philosopher, commended a Roman senator for taking “grete thought and charge for the gouernaunce of the comyn prouffyght, ffor whiche he deserued grete lawde and honoure in preferryng the same named in latyn *Res Publica* kepyng the Romaynes prosperous and defendyng them fro theyr aduersaryes and rebelles.” Caxton implied a further definition of *res publica* by comparing the Roman senator with Sir John Fastolf, who had fought in the French wars for the “diffence and vnyuersal welfare” of England and France while administering justice and politque governance under three kings. According to these authors, then, *res publica* was equivalent to the common profit of a flourishing community assured by armed defense against enemies, the administration of justice, the prosperity of the community, and good governance. Attempts by Englishmen to explain the Latin concept in an

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248 *The Boke of Noblesse*, 68.
249 Ibid., 55.
250 Caxton, “Prologue,” in *De senectute*. 
accessible vernacular reveal the flexibility of the term res publica in describing social and political organization.

The same flexibility occurs with the common weal, which occasionally was referred to as the “publyk profyte,” and was to be “soueraynly and pollytikly rulid.” In fifteenth-century texts, “common weal,” in its various spellings, is used as a synonym for the common good or common profit, while “common wealth,” usually spelled “welthe,” generally refers to the actual community or body politic. A translation of Bernardino da Siena from 1511 seems to describe the common wealth as a community but is so closely related to the common good that it could be taken for the latter. “[I]t ought to be exturped and defended by the auctoryte of the prynce after the documents of Plato in his polytykes yt he hathe made de regime of the comon welthe.”

Defining the common weal in late-medieval England has appeared to some historians to be a fruitless task. It has been referred to as “vague” and “ambiguous.” Others have summed it up as “political harmony at the center.” While it may be impossible to limit the term to one strict definition, it had fundamental characteristics recognized by all who employed it. It began with the premise that everyone had a responsibility to the community, to protect it as

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251 Caxton, De senectute.
252 Bernardino da Siena. The chirche of the euyll men and women wherof Lulyfer [sic] is the heed, and the membres is all the players dyssolute and synners reproued (Paris: Printed for Wynkyn de Worde, 1511).
253 Loades, Politics and the Nation, 11.
254 Hicks, English Political Culture, 126; Guenée, States and Rulers, 42; Ferguson, The Articulate Citizen, 402. The charge that it was ambiguous has some validity. For example, Anne Curry and Rosemary Horrox, in their translation of the parliamentary rolls, render res publica as common weal, though whether the definition would be akin to that of Russell or of Caxton is unclear. The original text reads: “[P]redicte communitatis rei publiceque dicti regni augmentum....” It is likewise difficult to ascertain whether the res publica was synonymous with the regnum, a subset of it, or a distinct entity. PROME, XII, 356.
255 John L. Watts, “When Did Henry VI’s Minority End?” in Trade, Devotion and Governance, 124. Earlier in the essay Watts writes, “The king’s good was the common good: optimal peace and justice achieved and maintained by the labor of his people, a labor shaped – indeed, governed – by the security his rule afforded” (116). Although this is a more expansive definition than that on page 124, it stratifies the common good too deeply, distorting the communal nature of the idea by focusing on the king.
a community. Edmund Dudley, counselor to Henry VII, wrote, “[E]very man is naturally bound not only most hartely to pray for the prosperous contynewance of his lyege souuereigne lord and thencrease of the comonwelth of his native countrie, but also to the vtttermost of his power to do all tinges that might furder or sounde to thencrease and helpe of the same.”

Natural law required men to “do comyn prouffit one to an other.” No man should harm or grieve another but rather seek the common good. If men pursued the common profit they would notice problems among themselves while those problems were small and eradicate them quickly. Otherwise such problems could become “a grete blasyng fyre.”

Stories of great heroes and moral advice treatises commended those who served the common good. Their often didactic nature was meant to encourage readers to live moral lives in support of the greater good. Hercules, the son of a god, was praised in fifteenth-century English texts for having “labourd for the comyn wele of many royames.” Wherever he found monster or tyrant or any man threatening the common weal, he set out to destroy them. To this end, he killed the evil king Diomedes and set the city of Thrace “in good nature of polycye. He delyueryd hyt from the euyll theuys. He maad Iuges by eleccion at the playsir of the peule.”

Lycurgus, prince of Sparta, was similarly commended in Caxton’s translation of Jacobus de Cessolis. Lycurgus had established good laws, which the Spartans failed to observe. In order to convince them to uphold the law, he offered to request a dispensation to break them in person from the god Apollo. The people swore to maintain the laws while Lycurgus was gone. He never returned from his self-imposed exile, thus ensuring that the Spartans were bound to their

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oath in perpetuity. Of the laws he ordained, the fifth was the proper ordering of all social positions “for the comyn wele.” Princes were to make battle, masters and counselors were to commission judgments and the annual rents, senators were given “to the kepynge of the lawe,” and the common people were to choose judges. Perhaps the most important factor in Lycurgus’s example was that he made no laws without being the first to keep them himself. Both Hercules and Lycurgus sought the common good before their own personal good and established others to help protect the community.

All men were to ensure the liberties and prosperity of the common weal. If these were protected, justice assured, the law upheld, and the peace and order of the realm kept, the common weal would flourish. If not, avarice and tyranny would spread. Community members were expected to understand the consequences of their behavior. If one’s behavior was honest, it was beneficial; if not, then one lived a life contrary to the “comon welfare” and to one’s neighbors. Justice, the “perpetuell, ferme and constaunt will to yive unto every persoone his owne right and that he ought of dutie for to have,” according to the “Lawe Civile” and Aristotle’s *Nichomachean Ethics*, and economic prosperity were integral to the common weal. Honest behavior meant honest work, and those who pursued an occupation and accumulated riches and goods were presumed to live under fear of the law, provided justice was properly enforced and the laws duly executed. Such people respected the common good, whereas those with nothing feared neither

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260 Dudley, *The Tree of Commonwealth*, 33-34. The frequent political upheavals during this period were blamed on men without conscience and on the abundance of parliamentary laws that were not kept “wyth tru entent.” “On the Times,” in *Political Poems and Songs Relating to English History*, ed. Thomas Wright (London: Longman, et al., 1861), II, 252. See also the petition of the Commons against William de la Pole, duke of Suffolk, in 1449. *PROME*, XII, 104.

261 Bernardino da Siena, *The Chirche of the Euyll Men and Women*.

262 “The III Consideracions Right Necesserye to the Good Governaunce of a Prince,” 196.
the law nor punishment for their actions and were a danger to the community. In order to encourage productive behavior, those in authority were to limit the amount of taxes they requested and use those taxes only for the good of the community, not for personal gain. Also, they were to pursue peace within their community because civic upheaval diverted men’s attention from the free pursuit of wealth. Whether they should pursue peace abroad was debateable. Englishmen were advised to “put” just and virtuous men to govern “right and Justyce.” Where wise men dominated, equal justice for the rich and the poor ensued. More than anything, the governance of the common weal was a rule of moderation. To ensure the common weal, the king had to redress all wrongs, “with lauful and dewe moderacion,” suppress all rebellion, “after just and dewe informacion,” and do all things “with consideracion, as the case requireth, in his due wise.”

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265 Referring to Edward IV’s planned invasion of France, either in 1468 or 1472, one author wrote, “[T]hat Edward of Rouen may be victorieux and fortunat, withe alle the trew lordes of hys region, that they may se a good way and directioun to make peas in Engeland, that riche and pover may joyfully syng at the conclusyon, welcome everlasting joye, and fairewal langoure.” “A Political Retrospect,” in Political Poems and Songs Relating to English History, II, 270. Edward IV argued that a foreign war would be beneficial in many ways to the common weal of England: “Also, by the meane and discorde and inwarde werre how greate a numbre and multitu of our liege people and how many of the noble blod of our lande have bene undone and perished, which can nat so worshipfully beschewed as bi the meane of making of werre outwarde, by the meane of the whiche many of thonger bretherne have wonne grete riches and grown to grete worship and lefte their issue in grete honour aftir theime.  And bi the same meane grete parte of thidell people of this owr lande shalbe sette in occupacion.  And themen the tilthman tentende better to his tylthe, the laborer to his labour, thartificer to his crafte, and the merchant to his merchandise, whereby shall growe abundance of richesse with reste and peax in this our reaulme.” Margaret Lucille Kekewich, et al., eds. The Politics of Fifteenth-Century England: John Vale’s Book (Stroud: Alan Sutton, 1995), 146. This is a letter from Edward IV concerning benevolences, date unknown. Edmund Dudley, however, argued in The Tree of Commonwealth (48-49) that external peace was necessary to England’s common weal because of the importance of trade to the kingdom. “Though ther be neuer so good concord and vyntie amongst them selves, if thei be sore vexid and troblyd by barres with outward parties yet yt wold be a greate impedyment to this tree of comenwealth, and specially in this realme of England, consideryng...that the commodities of this noble realme are...so plentuous that thei can not be spent or all imploied within the same, But necessarily ther must be entercourse bytwene this realme and outward parties for the vterrance therof, and speciallie for the wull, cloth, tyne, leade, fell and hide, besides other diuerse commodities that do greate ease to the subjectes.”
prosperity of the realm, in the absence of injustice and burdensome taxes, and ably defended in war and rebellion.

The body politic was a communal one, not intended to serve the interests of one person, be he king or peasant, or a limited group of people. One could not ask for obedience or cooperation from others if one pursued selfish ends instead of prudently guarding the interests of the community.\textsuperscript{268} People’s obedience rested in part on the assumption that the king would employ his power in pursuit of the common weal.\textsuperscript{269} A popular method for explaining the community was to compare it to the human body. As with the common weal itself, this analogy derived from Aristotle. Others who used it included Biblical authors, the Romans, the Church fathers, and, in the twelfth century, John of Salisbury.\textsuperscript{270} According to Paul, the most commonly cited Biblical author, all members of a body “felen and drawe to theym that whyche is doon to eueryche be it good, be it euy, be it Ioye, be it anguysshe; whan one smyteth the fote, the mouth sayth ye gryeue and hurte me.”\textsuperscript{271} If a member of the body became rotten, it befouled the others. To heal the communal body it was necessary to reprove and punish. The principal moral of this

\begin{thebibliography}{99}
\bibitem{268} Ashby, “Dicta et Opiniones Diversorum Philosophorum,” 97.
\bibitem{270} In a letter from Thomas Chaundler, warden of New College and chancellor of Oxford, to Thomas Bekynton, bishop of Bath and Wells, Chaundler stated that his bodily metaphor for the \textit{res publica} came from Plutarch. The letter was dated January 6, 1452. \textit{Memorials of the Reign of King Henry VI: Official Correspondence of Thomas Bekynton}, ed. George Williams (London: Longman and Co., 1872) I, 267. Fortescue cited Aristotle and Cicero, via Augustine, as his sources. \textit{De Laudibus Legum Angliae}, 235. See also I Corinthians 12:12, 27; Ephesians 4:4, 16; Colossians 1:18, 2:19; John of Salisbury, \textit{Policraticus} (Cambridge: University Press, 1990); Thomas Aquinas, \textit{Summa Theologiae}; Alan J. Fletcher, \textit{Preaching, Politics and Poetry in Late-Medieval England} (Cornwall: Four Courts Press, 1998), 148, 162. For a brief survey of the persistence of this metaphor to the end of the sixteenth century, see Kantorowicz, \textit{The King’s Two Bodies}, 228-231. Henry VIII used it in a speech regarding the parliamentary case of George Ferrers in 1542-1543. The king declared, “And further we be informe by our Iudges, that we at no time stand so highly in our estate royall, as in the time of Parliament, wherein we as heade, and you as members, are conioyned and knit togither into one bodie politike.” Raphael Holinshed, \textit{The Chronicles of England, Scotland, and Ireland} (London: John Hunne, 1577), 1585.
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metaphor was that the body could not function without all of its parts, and these had to be healthy.\textsuperscript{272}

Men were born for specific roles. They fulfilled these roles by seeking “the comyn prouffyte.”\textsuperscript{273} Those who formed the body politic were the “kynge our sayd saueryn lord, his nobles lorde and [the] comyn peple of his noble royame of Englund.”\textsuperscript{274} The king usually was the head. The \textit{Modus Tenendi Parliaments}, the anonymous parliamentary text of the early fourteenth century, made the king “caput, principium, et finis Parliamenti.”\textsuperscript{275} Fortescue argued that a group of people united as a community cannot be called a body while it is acephalous, that is, without a head; otherwise it would be a trunk, as a decapitated body in nature is called.\textsuperscript{276} The higher one’s social status and influence over others, the greater the responsibility to the common weal, but all inhabitants had to help sustain it. The dichotomy between the corporate concept of the common weal and the exhortation to individuals to maintain and bear responsibility for it is frequent, but the description was suitable if the common weal truly was common.\textsuperscript{277}

Other parts of the body varied by author.\textsuperscript{278} Those who used this analogy often equated a political or parliamentary body with one of the central organs of the torso. According to Fortescue, the heart was the first living part of the body, containing the blood to sustain all other

\textsuperscript{272} On the necessity of a healthy public body, see, for example, \textit{Tractatus de Regimine Principum}, 60. This treatise was written, probably by a cleric, between 1435 and 1449.
\textsuperscript{273} Laurent, \textit{The Boke Named the Royall}.
\textsuperscript{274} William Caxton, “Prologue,” in Jacobus de Cessolis, \textit{The Game and Playe of the Cheeze}. The language Caxton used here reflects Aristotle’s theory of a mixed constitution.
\textsuperscript{275} Clarke, \textit{Medieval Representation and Consent}, 384.
\textsuperscript{277} For women, however, see the introduction to Shulamith Shahar, \textit{The Fourth Estate: A History of Women in the Middle Ages}, trans. Chaya Galai (New York: Routledge, 2003), 1-5. Christine de Pizan, an early-fifteenth century author, constructed an entire “City of Ladies” whose female inhabitants were to defend the city and follow three virtues, the third of which was justice. See Pizan, \textit{Le livre de la Cité des dames}, eds. Eric Hicks and Thérèse Moreau (Paris: Stock, 1986).
\textsuperscript{278} The king could be the arm and the church the head, though this formulation was less common in lay references to the organization of society.
members. In the body politic the intention of the people is the first living thing, containing their political provision. A fully-formed body politic “acts (as does the physical body) through its will.” The goal of its actions is the intention of the people that the king protect their lives and goods. Fortescue’s analogy was apt, but an abstract concept such as the intention of the people is impossible to implement in practice unless it can be channeled through some form of political expression. In late Plantagenet England a representative political body communicated the intentions of the people to the king. Thomas Chaundler, warden of New College and chancellor of Oxford, referring to the institutional body as the senatus, placed it in the cordis, the heart. It was in this senatus that political provision manifested itself as statutory law to ensure that the lives and goods of the community were protected. The king relied on the law to fulfill his duty to the common weal. The law made a group of men into a people and held the corpus mysticum together, just as the sinews join the individual parts of the human body. The law allowed the people to preserve their rights. Just as the head cannot modify sinew, the king cannot to change the laws or deprive the people of their “substance” – their bodies and goods – against their wills. Statutory law could only be changed by the will of the prince with the assent of the whole realm (totius regni assensu), so that it would not be injurious to the people. This assent was given by “more than three hundred chosen men” (plusquam trecentorum electorum hominum), commons and nobles, the same “number as once the Senate of the

281 Official Correspondence of Thomas Bekynton, I, 267.
282 This parallels Cicero’s definition of a res publica as an association of a multitude.
283 Fortescue, On the Laws and Governance of England, 21; De Laudibus Legum Angliae, 235-236. Fortescue uses the term “corpus mysticum” in this section and in an earlier section of the same chapter. Whether he is suggesting a metaphysical condition for the state is unclear. For more on the corpus mysticum, see chapter three of this dissertation.

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Romans” had, in Parliament (*qui parliament Anglie formam*). Fortescue made this explicitly clear, referring his readers to those “who know the form of the summons, the order, and the procedure of parliament” should they want more detail about the structure of the institution. If the laws of England needed improvement, the rules of Parliament permitted them to be changed within the institution.

Bishop Russell, in his sermon for the parliament of 1483, emphasized the role of the king’s “courte” and “counselle,” which he associated with the lords and commons assembled in Parliament, placing them in the stomach and bowels rather than in the heart, as Chaundler had done. If the other bodily members denied food to the stomach, then “the guttes and intestines compressed and shut by drynesse, alle the other membres sholld nedes peryshe togedyr.” If the intestines failed, the whole community collectively died because it was in the king’s court and council that “alle maner metes” were digested “alle maters of weight, peax and were [war] with outwarde londes, confederacions, ligues and alliances, receivynge and sendynge of embassades and messages, brekynge of treux, perises in the see, Routes and riotts, and unlawfulle assemplees, oppressions, extorsions, contempts and abusions of the lawe, and many more.” By stressing the role of the court and council, Russell defined the body politic as a composite body, and therefore a composite authority not restricted to the monarch. The bishop was careful to draw a distinction between the members congregated as a body in Parliament and

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284 Fortescue, *De Laudibus Legum Angliae*, 240-241; Fortescue, *On the Laws and Governance of England*, 27-28. Lockwood observes in fn. 98 that H. L. Gray showed that “most of the statutes between 1399 and 1450 derived from Commons bills as opposed to official bills and that, from 1429, the style ‘cest bille les communes sont assentuz’ was used.”
285 Ibid., 293; Ibid., 78.
286 One reason for his locating them in the bowels was his Biblical text for the sermon: “Dominus ab utero vocavit me.” (Isaiah 49:1)
287 Grants, etc. from the Crown during the Reign of Edward the Fifth, xlv-xlvi.
288 Kantorowicz, *The King’s Two Bodies*, 225.
those same men as individuals once they left the institution. Once they dispersed to their homes, they became the limbs of the body. Only while assembled together did they form the stomach and bowels.\footnote{Grants, etc. from the Crown during the Reign of Edward the Fifth, xl ix.}

The community assembled in a physical form, in the king’s court of Parliament, had a legitimacy to address problems of the realm that no individual alone possessed. It was in this “congregacion of the peuple” that every estate was ordained for the purpose of averting schism and division within the larger community.\footnote{Ibid., 1-li. Russell used 1 Corinthians 12:25 as his text. In it the apostle Paul warned against divisions in the body of Christ.} In his sermon to Parliament in 1510, Archbishop William Warham was more direct than his predecessor, referring to Parliament as the politicum regni Stomachum in which good laws were to be made. But it was not enough for Parliament to make good laws. These laws had to be executed justly by all officials in the kingdom, beginning with the king.\footnote{Journal of the House of Lords, 1509-1577, I, 3. Warham used as his text 1 Peter 2:17 – “Fear God, honor the King.” In the second chapter of 1 Peter there is no corporeal analogy. Thus, Warham’s use of the metaphor and Parliament’s role is more notable than Russell’s use of it, for Warham had no textual basis for mentioning it.} To “sette a lawe and kepe it nought, there is no comune proffyt sought.”\footnote{Gower, Confessio Amantis, clxxi.} For this reason, Edward IV instructed the mayor and inhabitants of Coventry in January 3, 1472 to correct those who disobeyed his “Officers and Gouernours ordeigned for Comen Wele and good Rule.”\footnote{The Coventry Leet Book, 383.}

The king was the primary defender of the common weal.\footnote{Dudley, The Tree of Commonwealth, 31.} God had ordained him to rule for the purpose of supporting the community, to the glory of God and for the good of all.\footnote{Ashby, “Active Policy of a Prince,” 20.} He was to rule in emulation of the divine majesty through justice, the proper reward or
punishment due to each person according to his actions. By ruling justly, he would unite all of his subjects “for the good of the community and interest of the realm.” Because of his unique status, his commands took precedence over those of anyone else in the kingdom. Men subject to barons and lesser lords had to come to the aid of the king if he called them, particularly in time of war. There were three reasons for this: first, the king held general jurisdiction; second, as soon as the authority of the sovereign lord became manifest, that of the lesser lord was subsumed into it; third, the wars of the king pertained to the common weal of the whole land, as opposed to the particularity of a single barony.

The king’s obligations to the common weal were numerous and fairly straight-forward: to “do right to grete and smalle and kepe your lawe,” as Hoccleve wrote. Ashby, in his version of the *Dicta et Opiniones Diversorum Philosophorum*, advised the king to ensure that the law was sustained, never subverted. The king should be the first to keep the law and live in “rightfulness.” This idea was so fundamental to contemporary Englishmen that if the king subverted the law his actions were *ipso facto* illegitimate and invalid, and Englishmen could “hold [them] for nought.” The monarch, often in conjunction with his council, was to determine what was to be done for the reformation “of thoos misbehavings as shalbe thought for the wele of the Royaulme and [his] soubgieties.” For this reason, Edmund Dudley appealed to Henry VIII to “revive the comon wealth within this his realme (the which long tyme hath ben in

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296 *PROME*, XII, 278.
297 *Tractatus de Regimine Principum*, 75.
299 Hoccleve, *De regimine principum*, 92.
sore decay),” although it is notable that Dudley himself, not the king, had concluded that the common weal was in decay and needed restoration. The formal expression of the king’s obligations could be found in his coronation oath. Because of his oath, it was essential that the king uphold the law and maintain peace and justice, or he might perjure himself. A king ought to be exemplary and true, never breaking his “boundes ne his feythe.” Those who broke their oaths could expect a “wikked ende and cursed aventure” rather than the grace necessary for a king.

The king, though anointed and consecrated at his coronation, was nonetheless fallible because of his humanity. He could sin and permit evil to triumph over good government. However, if he repented he could restore virtuous rule. A king such as Henry VI should not be afraid to admit his mistakes; God could not bless him and, through him, the kingdom until he did. If he failed to repent he undercut his own legitimacy, allowing other men to assume responsibility for the common weal. Such a scenario could lead to armed insurrection, as people of various social stations tried to restore good government through their own initiative, or it could ensure the participation of Parliament in the pursuit of justice and peace.

303 Dudley, The Tree of Commonwealth, 22.
304 For a discussion of the details of the oath, see chapter one of this dissertation. Henry VI swore to the oath when he was eight years of age. The disadvantages of having a young child fully comprehend the principles he swore to uphold is something historians have yet to analyze in detail. John Hardyng wrote in his mid-century chronicle, “Consider also most souereyn lorde and prync; these cronycles that hath bene redde or seyne, was neuer no prync of bretayns hole provynce so yonge as ye wer whan ye gan to reyne, and thonkes hym that was so your wardeyne, boue al thynges that is omnipotent that kepes yowe whils ye were innocent, consider also he that the dyadem of remes two of Englond and of Fraunce upon your hede bene sette as dyd wele seme in tendre age suffred with oute distaunce. Thurgh pese and lawe and all gode gouernaunce, whiche if ye kepe ye shall haue victory, shall none gayn stonde your noble monarchy.” BL MS Lansdowne 204, f. 222v.
305 Hoccleve, De regimine principum, 79. Hoccleve refers to Aristotle’s advice to Alexander of Macedonia in this passage.
Many people identified the death of the duke of Gloucester in 1447 as the beginning of the disintegration of the common good under Henry VI. Jehan de Waurin observed that most Englishmen, but especially the commons, were greatly troubled by Gloucester’s death. The commons blamed it, the accretion of wealth among the king’s closest advisors, and the losses in France on William de la Pole, duke of Suffolk and his allies because they were the principal counselors of Henry VI. Their response was to seek the restoration of the common weal through Parliament, declaring that they were as “sette to the good welfare and prosperite of [the king’s] persone and of his roialme, as ever were eny comens sette to the welfare of her soveraigne lord.” For this reason the “comynalte” of England impeached “the ffalse traytour Pole” in Parliament. Yet the king carelessly disregarded the judgment of the Commons in Parliament. Instead of sentencing Suffolk to the legal punishment of execution reserved for traitors, he was exiled, for “these sayde traytours of Poles assent was alse ffalse...[and] wolde that the Kynge wolde batayle inn his owne realme to the destructione of all his pepulle and of hymself therto.” Suffolk’s exile was insufficient. When the king released him from the Tower of London shortly before his exile, people assembled together and picked captains to contest his release. One of the captains, Thomas Cheyne, from Kent, brought together many men to rise up against the “traitors,” not against the king.

Several months later more people assembled to contest the policies of the government. These dissenters from Kent, Essex, and other counties, made it clear that the poor governance of

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307 Bod. Lib. MS Rawl Poet 32, f. 158.
308 PROME, XII, 93.
310 Jehan de Waurin, Recueil des Croniques et Anchiennes Istories de la Grant Bretaigne, V, 4.
311 The Chronicles of London, 158.
312 John Benet’s Chronicle, 197.
the kingdom stimulated their insurrection. The uprisings were unsuccessful, but the anger that initiated them went unabated. Before the death of Bishop Adam Moleyns, counselor and keeper of the privy seal, people accused him of being a traitor to the Crown. The commons tried to warn the king of the dangers these men posed to the kingdom, declaring that if Suffolk persisted in his fraudulent and iniquitous counsel, he would destroy all of England. But their words were of no avail. One poet swore “by hym that hairwede helle, They shalle no lenger in eresy dwelle, Ne in ther fals beleve. So pore a kyng was never seene, Nor richere lorde alle bydene; The communes may no more.”

Henry’s inability to choose good counsel and to protect the common weal were the primary reasons the commons turned against his kingship. They believed that if they could have another king, he would “get alle ageyne and amende all manere of thynges that was amysse, and brynge the reame of Englond in grete prosperite and reste.”

Jack Cade’s insurrection began in May 1450, the same year Suffolk was murdered. At its inception, Cade and his men issued a proclamation outlining their reasons for arming and gathering. The reasons were fairly straightforward:

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313 Ibid., 202.
314 Ibid., 196-197. Some of Suffolk’s supporters suffered at the hands of communal violence. In June 1450 a mob lynched Bishop Ayscough of Salisbury while he celebrated mass at Edington in Wiltshire. At the same time, a large riot in Salisbury sacked his palace and destroyed his archives. A month later there were riots and risings in Wiltshire, Hampshire, Gloucester and Essex, mostly directed against known adherents of the Suffolk faction. Loades, Politics and the Nation, 39.
316 Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, 12.
317 Cade’s men eventually were convicted of treason although they had displayed no banner, which, according to the law of arms, meant that they had not levied war (against the king). Loades, Politics and the Nation, 50. The language used against Cade in the parliamentary attainer of 1453 was wildly exaggerated. He was accused of “falsly and traytoursly purposyng and ymagynyng the uttermest destruction of youre most royal persone, and finall subversion of this youre noble realm, takyng upon him power royal, and gaderyng to him youre people in grete nombre, by fals, sotel, ymaginatif langage, and sedicsously made commotion, rebellion and insurrection, under colour of justice and reformation of youre lawes, robbyng, sleyng and dispoillyng grete parte of youre true people, purposyng also by diverse sotell, fals and untrue ymaginations, to make variences and commotion betwene yououre soveraigne lord and youre true people, and to remeve diverse and mony of youre full true lorde, and other
[W]e sey that our Soveraygne lorde may wele undurstand that he hath hadde ffalse counsayle, ffor his lordez ern lost, his marchundize is lost, his comyns destroyed, the see is lost, ffraunse his lost, hymself so pore that he may not [pay?; omitted in original] for his mete nor drynk; he oweth more than evur dyd kyng in Inglond, and zit dayly his traytours that beene abowte hymetethe whereeuvr thynge schudde coome to hym by his law, and they aske hit from hym.  

The common people suffered under heavy taxes and other oppressions and were unable to live from the honest work of their own hands. Another of Cade’s charges against the king’s counselors was that they called him and his allies traitors and the king’s enemies while pursuing their lands and goods. Yet the commons were the king’s true liegemen, standing up to the predators encircling Henry to restore the weal of the land. Initially this message was consistent. Even the servants of lords supporting Henry VI refused to follow their superiors to confront the Kentishmen because they would not fight against those who labored to amend and reform the “comune profit.” So the lords, at Henry’s command, left to confront Cade on their

318 Eighth Report of the Royal Commission on Historical Manuscripts Report, Appendix I, 267. This “claim, that it was treason to advise the king to abuse his lawful powers, would not have stood in any court, but it was a natural corollary to the universally accepted principle that the royal authority was limited.” Loades, Politics and the Nation, 50.
319 An English Chronicle, 1377-1461, 68.
321 Marx, in his introduction to An English Chronicle, 1377-1461 (xcix), writes, “He [the compiler] shows that Jack Cade’s rebellion is based on sound political principles and sound political analysis, and that it reflects the will of the commons as well as some of the lords [e.g., the duke of York, et al.]’’
Such support, along with the pleadings and murder of Suffolk, the murder of Moleyns, accusations against Somerset, and other events indicate that discontent was widespread, at least in the south. Many feared that the rot at court was pervasive and intended to do something to eradicate it from the kingdom. Once in London, however, they became anarchic – murdering, stealing, and wreaking havoc throughout the city. In doing so they discredited themselves. One chronicler implied that they were lying the whole time and that their only intention was to rob. Another claimed that there was no way for him or anyone else to know whether they were originally honest; only God knew. What neither chronicler questioned was the concept of the common weal as justification for an armed insurrection by the English public. They only questioned the Kentishmen’s sincerity towards it.

Though monarchs clung tenaciously to the idea that only they had authority to determine the health of the common weal, the task did not belong to them alone. Richard of York and the earls of March, Salisbury, and Warwick, in their complaint to the archbishop of Canterbury and the commons against the government of Henry VI in 1460, expressed concern, they claimed, with the “vyolencys doon to goddys churche...ayens goddys and mannes law” and that the king’s

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322 Ibid., 68. While Cade and his followers defeated and killed Humphrey Stafford, whom the king had sent to confront them, a confrontation broke out between Henry’s lords and their own men. The men threatened to go over to Cade and help him unless the “traitors” about the king were executed. Henry refused. Bod. Lib. MS Rawl Poet 32, f. 159v-160.
323 It is possible that discontent was prevalent in areas throughout England. In their parliamentary petition against Suffolk, the Commons asserted that “for asmuch as daily sith, from every partie of Englond there is come amonge hem a grete rumour and fame, howe that this roialme of Englond shuld be sold to the kynges adversarie of Fraunce, and his uncle and he, as it is seid, maketh hym redy to come and entre this lande with all the power he may make, to putte the kynges persone in jupardie and distresse, and to doo with hym and his reame as hem liketh.” PROME, XII, 94. However, most of the unrest occurred in the south.
324 In their original petition they stated: “[W]e wulle that alle men know that we wulle neythur robb nor stele, but these fawtes amendid we schall go hoom, wherfore we exorte all the Kynges trew lege mene to helpe vs.” Eighth Report of the Royal Commission on Historical Manuscripts Report, Appendix I, 267.
325 The Chronicles of London, 159.
326 The Historical Collections of a Citizen of London, 190.
laws were “parcially and vnryghtfully guyded...and generally that all ryghtwysnesse and Justice ys exyled of the sayde lond and that no man dredeth to offende ayenst the sayde lawes."

Their complaints were echoed in John Warkworth’s chronicle, written about 1473, after Edward IV’s restoration to power. Seditious people were not permitting the execution of the laws of the kingdom, so that murders, robberies, rapes, oppressions, and extortions were widespread. Petitions from the Commons complained that certain people encouraged Edward IV to break his laws and statutes, a direct violation of his coronation oath and the common weal.

The common weal required the monarch to protect the goods of the inhabitants of the kingdom and to defend the realm against all enemies. Richard III recognized his duty to the prosperity of his subjects, declaring himself “a Christian prince above all things earthly intending the common weal of this his realm, the increase [of] wealth and prosperity of his subject.”

One of the central complaints of the Yorkist lords in 1460 concerned Henry VI’s finances. The poverty and “mysery” of Henry VI derived from the alienation of his property, often in gifts of patronage, and from excessive spending, and reflected poorly on the common weal of the realm. Edward IV faced similar charges. The Commons urged him, for the “gret wele of hymself, his heires, and the common-wele of us his true subjettes,” to permanently establish such

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327 An English Chronicle, 1377-1461, 82-85. For similar language, see The Coventry Leet Book, 1420-1555, 373-374, in which Edward IV communicated these principles to the citizens of Coventry through a proclamation under the privy seal, February 1472.

328 Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, 47-49.

329 Ibid., 51. Oaths were of great importance and allowed the community to hold the king to his laws and obligations. The Commons noted in their petition that Edward IV should not impose unduly harsh taxes on them, “according to the promyse that he made in his last parliament, openly wyth his owen mouthe unto us.” Kings also demanded on occasion that their subjects swear an oath of allegiance to them. For example, Edward IV wrote an oath in 1471 asking his subjects to swear that, among other things, if they knew of anything “owning to the hurt of prejudice of his most noble personne or astate Royall, or contrary to the grete wele of hys Royaume, or eny other anhabitantes [they should] put [themselves] in deuoir to let it.” The Coventry Leet Book, 1420-1555, 367.

330 NA C81/1531.

331 An English Chronicle, 1377-1461, 82-85. See also Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, 47-49 for complaints about burdensome impositions placed on the commons.
a sufficient livelihood that he and his heirs would be able to maintain their estate without recourse to oppressive levies.332 Royal poverty often led to exorbitant demands for taxation, a direct violation of the trust the community placed in the monarch. Government was for the good of the whole society so that all could prosper as they wished under the law.

The concern with foreign invasion was a frequent trope of fifteenth-century discourse, but it was also perceived as a real possibility following the English losses in France.333 The French raided towns along the English coast, particularly Sandwich and the other Cinque Ports, and offered material support for those opposed to Edward IV’s government.334 If the monarch was to maintain the common weal he had to protect the realm from enemies who, in the excited language of the time, were prepared to enact such “cruell, horrible and mortall werre, depopulacion, robberye and manslaughter” as had never occurred among Christian peoples.335

The king’s duty to the common weal demanded his constant attention and required great strength of personality and wisdom. While conquering a region was difficult and costly, preserving a realm was significantly “more laborous…and more tedious” and required “more wisdame and wytt and gretter prouision.”336 To fulfill his role the king had to have sound political judgment that was perceived as fair and that balanced the conflicting interests of rival

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332 Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, 51.
333 Ross, “Rumour, Propaganda and Popular Opinion During the Wars of the Roses,” 23. Ross cites the rumor of an invasion led by the French in support of Henry VI and Margaret of Anjou in 1461 as evidence of the “credulity, sometimes gullibility, of medieval people, especially perhaps the common people, and the difficulty which a medieval government, without the resources of modern mass media, had in correcting the spread of wild rumors.” His dismissal of concerns about the French is condescending. An invasion was a real possibility, even if not on the scale that the author he quotes believed. Besides, even in the present age of mass media, rumors, propaganda, and gullibility are still with us, often rapidly outrunning facts.
334 For an example of a French raid against Sandwich, see John Benet’s Chronicle, 218.
335 The Politics of Fifteenth-Century England: John Vale’s Book, 135-136. This is from Edward IV’s letter to Thomas Cook, alderman of London, for a benevolence, March 13, 1462.
magnates. Not only did he have to have good judgment, he had to be constantly alert for problems and correct them before they grew to endanger the “vniuersal and the comyn wele of this region.” Any problem, no matter how small it began, could develop into a crisis that might destroy the realm. Such a concern was not merely theoretical in the 1450s and 1460s when Ashby wrote of it. By the time he offered his advice, many had lost their lives in the violence between the king’s advisors and York’s adherents. Contemporaries publicly and frequently criticized Henry VI for his inability to halt the gradual descent into near anarchy. Ignorance was an inadequate excuse for a king’s failure to maintain the common weal. The duties of his office obliged him to inquire of and redress all wrongs and forbid royal servants from oppressing the people. If he did not maintain order and right the wrongs in the kingdom, he was not fit to be called a governor but was instead a willful destroyer of his people.

Whether those responsible for overseeing the common weal extended to most men living in the community or simply those engaged in governance or wealth-creating activities was a matter of debate. Caxton limited responsibility to those “noble, wyse, and grete lordes,

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337 Lander, Government and Community, 63. Contemporaries recognized this cooperative style of government. Ashby wrote in “Active Policy of a Prince” (29): “Therfor vnder rule and drede of the lawe, Kepe youre Comyns bi helpe of your lordeship, That they may growe to richesse and worship, And than at tyne of nede thei may you aide.” Numerous treatises throughout the period spoke of the king’s advisors and his council as active participants in the governance of the realm.


339 Precisely how this conflict began is unknown to historians, primarily because the motivations and intentions of men such as York at each stage of the conflict are shrouded in uncertainty. Its escalation, however, is quite perceptible from the untimely death (and possible murder) of Humphrey, duke of Gloucester in 1447, to the financial corruption of ministers such as William de la Pole, duke of Suffolk, to York’s increasing ambition for political dominance in the government, to the targeted killings of prominent members of the nobility at the first battle of St. Albans in 1455. Among those killed were Edmund Beaufort, duke of Somerset; Henry Percy, earl of Northumberland; and Lord Clifford. All three were Lancastrian partisans.

340 Hoccleve, De regimine principum, 92.

341 Merchants, whose role was to increase the prosperity of the realm, were to regulate their behavior in accordance with the common welfare. They were not to transact business principally for “avaryce,” nor to unduly increase their cattle and goods, but to live honestly, to aid the poor, and to augment the wealth of the “comunalte.”
gentlemen and marchauntes that haue seen and dayly ben occupyed in maters towchyng the publyque weal” who could read and understand the writings of Cicero (rendered in the vernacular). Fortescue countered that where political government was concerned the wisdom and counsel of many were essential in its administration because “Policia is so called from poles, that is many, and ycos, that is, wisdom.” Others argued that where the defense of the realm was concerned, the virtue of self-sacrifice was required of all who lived in the community. In 1462 Edward IV acknowledged that while he, as king, was the primary defender of England, many others had a duty to protect the common weal. Conjuring up every conceivable crime and terror the deposed Henry VI and his wife Queen Margaret might perpetrate during their planned invasion, he sent a letter to Thomas Cooke, alderman of London, requesting that Cooke assemble all householders and inhabitants within his ward, to prove the good will and affection that they bore for the king, for the common weal of the land, and for their own prosperity. The king specifically stated that all inhabitants, “as well citizens as foreigners,” within the ward were to

circumstances required, they were to willingly defer repayment of loans they had made to others if immediate repayment would be “to the grete preiudyce of the comen wele.” For example, if a man who owed a merchant money ought to be in the service of the king fighting a war and could only settle his debt by selling his horse and harness, then he was to postpone the payment because it would be unprofitable for the weal of the common people and could possibly be the occasion of great ill throughout the realm if the king lost his battles on account of not having enough soldiers. The recovery of the particular wealth of one individual was in no way to diminish the greater good of society. Judges who oversaw the implementation of the law were to rule with justice. Justice obliged judges to punish malefactors according to right and as each case required by law. They only had the power to judge after the laws and customs of the realm, not through any special dispensation from the prince to aid certain people. They were to employ all their intent to “save the comyn wele.” If needed, this meant that they were to put their life on the line and willingly lose it if doing so would rescue the common good from those who would destroy it. That such a request would be made of judges, in addition to the more obvious knights and noblemen, is unsurprising, for self-sacrifice was the ultimate and final virtue required in the service of the common weal.

Chertsey, The Ordynarye of Cristyanyte; Jacobus de Cessolis, The Game and Playe of the Chesse. See also Cicero, De Senectute, in which he offers multiple examples of self-sacrifice for the common profit.


343 The origin of this phrase is unknown, as Shelley Lockwood observes. However, Tolomeo of Lucca, Thomas Aquinas’s continuator, also had derived “politicium” from “plurium.” Fortescue, On the Laws and Governance of England, 86, fn. 20.

344 Letters of the Kings of England, I, 128-129.
help defray the costs of the king’s army. Edward might have cynically deployed this language in order to secure his position after the loss of several towns in the north to Henry VI. But he could not have referenced local obligations to the common weal if such obligations were not understood to exist. Edmund Dudley likewise argued that all men were accountable for it, because the common weal “tochith people of every degre,” not simply those in power.345 Every person, “in his degre,” would receive earthly and heavenly rewards “for doing ther dewties to kepe vp this tree of komenwealth within this realme of England.”346 The borders of responsibility, then, were ill-defined and flexible.

On account of their high status in society the princes and lords closest to the king by blood and title had the “fyrst and principalle undrestondynge and knowlege of every gret thynge necessarye to be redressed.”347 As Bishop Russell argued, history made clear that the political rule of every well-ordained region stood in the nobles.348 The duties of the nobility were to God, to the king and the prosperity of his estate, and to the common weal of the land.349 Knights were the hands of the communal body, according to one preacher. They were to ensure the prosperity of the land in spite of any perils they may face.  As the hands defend the body, knights “in there Repuplica scholde fgyhte for the feythe of Criste and ever defende the comen prosperite.”350 The

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346 Ibid., 107.
347 Grants, etc. from the Crown during the Reign of Edward the Fifth, xlv. Russell made this statement in the context of a speech prepared for Edward V’s first parliament in 1483. In it he spoke of the commons and the lords working together, probably in Parliament.
348 Ibid., xlii-xlili. Regarding the terms “nobles” and “knights,” these word often, though not always, were used interchangeably to signify those born of a higher station in life than those who labored with their hands or practiced law. See, for example, *The Boke of Noblesse*, 77.
349 An English Chronicle, 1377-1461, 82. See also EHD, IV, 489. From Early Chancery Proceedings, Bundle 27, No. 408. The plea is from John Fetiplace to the bishop of Exeter, chancellor of England, 1462.
350 Fletcher, *Preaching and Politics*, 162-163. The sermon is attributed to John Jeffys, a local incumbent in the village of Sandford St. Martin, between 1485 and 1491 (ibid., 145). The substance of the argument about the knights is taken from the *De regimine vite humane* of John of Wales (ibid., 166-167).
nobility and knights could only work for the good of the community if they acted in harmony.  

This is not to suggest that they had to agree at all times on specific advice for the king. Rather, they had to put aside personal quarrels and self-interest in order to fulfill their role as protectors of the greater good.

In the fall of 1453, after Henry VI became mentally ill, the lords worked to maintain the common weal and the governance of the kingdom without allowing personal concerns to interfere. Improvising under the novel condition of an incapacitated adult monarch and after proroguing Parliament to February 1454, the nobility convoked a great council on November 30, swearing to act together to uphold the law and the king’s authority against any person who would try to breach them. Several days later a smaller group held another council in which they assumed responsibility for the “pollytyque rule and gouvernance of this land in all suche things as must of nessesseyte be enteynd unto.” At this second council, the lords expressly stated that they met “only for the weale of the kynge and of his lands and subiets.” Ultimately, however, many of them failed to appear in the following session of Parliament because power had shifted from Somerset to York. An act to repeal a purported resumption from 1453 threatened that in the resumption “hange greet doubte and ambiguitee, of the feith, trouth and ligeance of many youre true liegemen; the whiche doubte and ambiguitee unremoved, is not unlike to set greet and perilouse division amonge many Lordes.” If the lords “were to act as the repository of that residual authority in the state, which they had claimed for themselves,” then the parliament of

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351 One of the principal roots of Dudley’s “tree of comon wealthe” (40-48) was the root of concord. Though it was incumbent on the entire community to maintain unity, Dudley was particularly concerned that the nobility do so because of their powerful role within society.


1453-1454 was when they ought to have been in full attendance in the upper house. Their 
abdication of responsibility in this most critical of periods gave the Yorkists cover in the ensuing 
violent conflict.  

The fifteenth century is full of examples of lords putting personal interest above the 
communal good. Among the prominent feuds were those between the earls of Devonshire and 
Lord Bonville; York and his Neville in-laws and the Beauforts, Percies, and Cliffords; and 
George, duke of Clarence, and his younger brother Richard, duke of Gloucester. Henry VI’s 
inability to resolve the first two, Edward IV’s inept solution to the third, and Richard III’s 
ambitions contributed to much of the instability of the period. Many of Henry VI’s troubles in 
the 1450s escalated because he allowed himself to be dragged into the partisan quarreling 
between York and Somerset and did not have the personal capacity to halt the bickering. Several 
years later Henry VI, in a summons of 1458 to the earl of Arundel to attend a council to resolve 
the feuds of the great northern lords, stated that, as a “great lord,” Arundel’s presence at the 
council was necessary “for the welfare of this land” and no excuses for his absence would be 
tolerated.

All lords were expected to serve in Parliament, but the princes of the blood were also to 
advise the monarch in person and, in exceptional circumstances, oversee the kingdom. One of 
the complaints against Queen Margaret and her advisors was that they excluded some of the

355 An English Chronicle, 1377-1461, 84-85.
356 EHD, IV, 436. From Nicolas, Council Proceedings, VI, 293, from BL MS Add. 4612. The letter, dated 
February 14, 1458, from Henry VI to the earl of Arundel commands the latter to attend a great council to solve the 
Neville-Percy and the Yorkist/Neville-Beaufort feuds.
great princes of the realm, especially York, from their proper role in government. In doing so, they corrupted and diminished the administration of the kingdom. Edward IV also was warned not to alienate the princes of the blood. Kings like Edward II, Richard II, and Henry VI who had alienated the princes were destroyed by the greed and poor guidance of their counselors, and the realm of England hurt and impoverished as a result. Henry V recognized the unique position of the royal blood when he provided for Humphrey of Gloucester to have tutela of the realm of England and John of Bedford to be regent of France in the event that he died while the future Henry VI was still a child. Until the young child could rule on his own, his uncles were to provide “bettur gouernaunce and to moste profite to the kynge and of the rewme.” William of Worcester wrote in his introduction to Respecting the Wars of the English in France and Normandy, dedicated to Edward IV and thus written long after Bedford’s actual service, that when Henry V perished Bedford took upon himself the government of the “comyne publique” for the infant Henry VI.

When a king’s authority failed because of ineptitude or mental incapacity, as happened with Henry VI in the 1450s, there had to be recourse to an alternative leader or an alternative governing institution. England had both. The most prominent noble to wear the mantle of defender of the common weal was Richard, duke of York. After the demise of Humphrey of

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358 Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, 47. The warning comes in a letter of July 1469 from the duke of Clarence, the earl of Warwick, and the archbishop of York (George Neville, younger brother to the earl of Warwick). In it the lords complain of the role the Woodville family and others have in advising the king. The letter is full of references to the common weal.
359 BL Cotton MS Galba E VIII, f. 145v. Henry V died campaigning in France in 1422. His heir was nine months old. Humphrey tried to secure confirmation of the tutela given him in the late king’s will, but he was unsuccessful.
360 William of Worcester, “Respecting the Wars of the English in France During the Reign of Henry the Sixth,” in Letters and Papers Illustrative of the Wars of the English in France During the Reign of Henry the Sixth, II, ii, 524.
Gloucester, in 1447, York gradually emerged as the best alternative to the government’s policies. His exclusion from the inner circle of the king’s advisors proved to be a serious mistake for the royal government. Though the pursuit of his own dynastic claim to the throne increasingly consumed his attention in the late 1450s, he initially claimed that he was motivated by concern for the common good and represented the only viable candidate capable of restoring the peace and common weal. Because he was the only individual with the status and means to effectively challenge Henry VI’s advisors, many transferred their loyalty to him, for “the comones of this lande hated this duk Edmond and loved the duk of York, because he loved the communes and preserved the commune profyte of the londe.” Many believed York could counter the perceived selfish ambitions of men such as Suffolk, who became wealthy from his proximity to the king, and Edmund Beaufort, duke of Somerset, who became powerful through a similar relationship.

That York encouraged the association of himself with the common weal is beyond doubt. In the fall of 1450, shortly before Parliament began, York expressed concern about the execution of justice in the kingdom and recommended the immediate arrest of those who were to blame for ineffectual government. He offered to seize them himself “for…redresse of the seid mysrewlers.” By 1452 his association with the common weal was clear. That year York

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361 An English Chronicle, 1377–1461, 72.
362 An undated petition from the inhabitants of the Isle of Wight complained of the “oppressive behavior” of their previous steward, whom the duke of York removed from office “because of misgovernment.” The petition is listed in the appendix to the parliament of November 1449 in PROME, XII, 157. If it was from 1449, it provides evidence that good governance was an important issue for York years prior to his protectorate and offers one of many plausible reasons why the commons increasingly regarded him as the defender of the common weal in the 1450s. See also John Watts, Henry VI and the Politics of Kingship, 260–282.
marched out of Wales with the earl of Devonshire and Lord Cobham to demand justice of the king’s councilors, who had committed numerous wrongs. His particular target was the duke of Somerset, by whose rule the land “was likely to be destroyed.” If Somerset could be removed, peace and tranquility would return to the kingdom. For those who went with York to overthrow Somerset, there was to be no miscarriage of justice, no robbery, and no offense given to the populace along the way. Otherwise, they would lose their own integrity and injure their cause. Henry responded by sending several representatives to York, demanding that he lay down arms. York replied the insurrection was against the “traitors of the king and kingdom of England and for the good of England.” In a letter to Shrewsbury he indicated that it was well-known how he, as the king’s true liegeman, had advised Henry VI “of certain articles concerning the weal and safeguard, as well of his most royal person, as the tranquillity and conservation of all this his realm.” His advice had gone unheeded because of Somerset’s malice. The king promised York he would remove Somerset from the government, but nothing came of it.

367 John Benet’s Chronicle, 206.
368 Original Letters Illustrative of English History, I, 12. A. J. Pollard claimed that York’s resentment of Somerset derived not from “thwarted ambition, let alone concern for the common good, but from personal animosity generated in their rivalry for command in France.” This is a specious argument, one that is impossible to verify. York claimed he was acting in opposition to Somerset for the greater good of the kingdom. Either the common weal was one (though likely not the only) of his motivations, or he was lying. See Pollard, The Wars of the Roses (New York: St. Martin’s Press, 1988), 42.
Consequently, York’s association with good government continued throughout the decade. The commons in many parts of the south eagerly supported him after he sent them letters in 1460 declaring his intention to reform the “hurtys and myschevys and grevys that raynyd in thys londe.” In response to his letters the commons of Kent sent word that they would receive and assist him. That York had been declared a traitor in the parliament at Coventry in 1459 only strengthened his cause because many saw it as an unjust attainder.369

York and his leading supporters, the earls of March, Salisbury, and Warwick, provided sufficient example as defenders of the common weal to inspire disaffected partisans, poets, and chroniclers in their struggle against Queen Margaret and her council, who supposedly sought to exalt themselves at the expense of the kingdom.370 One poet wrote of York as “Raynyng with Rewles resenable and Rightfull, The whiche for oure sake hathe sufferde grete vexacion. [Warwick] Who is calle...For the righte of Englonde he dothe his deligence. Their [York, March, Salisbury, and Warwick] entent and purpos groundeth all in oon, That is, for to distroy tresson, and to mak a treue triall Of theym that be-fawte and hurte vs all full sore.”371 York was the Roman consul Stilico that England longed for, a man of high birth who could fill the void of leadership in the kingdom without overthrowing the established order.372 England, substituting for Rome, urged him to take control

369 The Historical Collections of a Citizen of London, 206.
370 The earls of Salisbury and Warwick did not explicitly ally themselves with York until 1453.
371 “The Twelve Letters That Shall Save Merry England,” in Political, Religious and Love Poems, ed. by Frederick J. Furnivall (London: K. Paul, 1866), 2-3. The poem was written circa 1465, roughly five years after the deaths of York and Salisbury at Wakefield, and well into the former earl of March’s kingship as Edward IV.
372 He was advised to “Marke stilicoes life, whom peoplis preysed...the consulat he vpreised Ffor now the parlement pierys, wher thei goo or ryde Seyen the duke of yorke, hath god vpon his side Amen amen blissed Ihu make this rumour trewe.” BL MS Add. 11814, 4r. The book is based on a poem by the Roman poet Claudianus (c. 400 AD). John Watts, “De Consulatu Stiliconis: Texts and Politics in the Reign of Henry VI,” Journal of Medieval History, 16
of the realm, “Ffor I had loste my loondis longe, and also ruler lackyd...Now thou my ruler thou Stilico, graunte oo thyng that yit waitith, To that citee give thy presence, thi commyng which desireth, Whom thou hast made to reigne ageyn.” In the absence of a competent ruler to govern the common weal, the author urged York to intervene and temporarily govern for the benefit of the kingdom.

While Henry VI was mentally incapacitated in 1453-1454, York was commissioned king’s lieutenant in order to hold Parliament. In the early months of 1454 the lords and Commons made him protector and defender of the realm. Both York and the members of Parliament were cautious and thorough in explaining their reasons for such a protectorate and the powers it involved. York specifically demanded that Parliament delineate his authority and power in regards to the office. The lords urged that Parliament make an act for them “accordyng to an acte made in the tendre age of the kyng our soveraine lord, that they in semblable case of necessite, be compelled and coarted so to chose and name a protectour and defendour.” Circumstances demanded as much, particularly for York, whose elevation brought him close to the seat of power and whose formidable enemy Somerset still lived. York took his duties as protector seriously, departing London in 1454 to move against the duke of Exeter and Lord Egremont who “rebelled against the peace of the kingdom.” The following year he moved

373 BL MS Add. 11814, 23v-24r.
374 John Benet’s Chronicle, 211. Benet uses the phrase “a toto parliamento.”
375 PROME, XII, 260.
376 York was no longer the potential heir to the throne. Henry VI’s son Edward had been born in October 1453, thus securing the succession for the Lancastrian dynasty.
377 John Benet’s Chronicle, 212.
towards the West Country to end the violent quarrel between the earl of Devonshire and Lord Bonville that had greatly disturbed the peace of the region.\textsuperscript{378}

York’s enemies responded that his claim to defend the common weal was nonsense. A letter written in Prince Edward’s name to the City of London in 1460 suggested that York had blinded the king’s subjects in order to obtain “his subtilly contrived treasons by untrew meanes,” often provoking them to “commocions, sturinges and unlawfull assembles.” York declared that he did not intend to hurt or dishonor the king’s person, insisting that his purpose was grounded in the weal of the realm and the welfare of its subjects.\textsuperscript{379} York’s use of such language, according to the letter, was simply a deceit contrived to instigate people to rebel against the king and his family in order to gain power for himself. The author of the \textit{Somnium Vigilantis} offered a similar argument.\textsuperscript{380} The entire tract is a refutation of the Yorkist claim to defend the common weal. “Thoghe thay [the Yorkists] dyd many glorius and bostynge dedes with a colorable semblant and pretens of the commen welth and sayd that they entended but goode,” the author writes, “that evermore thaire conclusioun was infecte wi\textsuperscript{th} reprefe, how so be it that the peple in many places was desayved and blyndede by the subtile and coverte malice and colorable frauds that they used in all things.”\textsuperscript{381} The counter-claims of the royal family and others had little effect in many quarters. After York’s death at Wakefield in 1460 his reputation as a defender of

\textsuperscript{378} \textit{The Chronicles of London}, 165-166. See also \textit{PROME}, XII, 420. York sought to stifle the quarrel between these two factions four years earlier. In 1451 he “misit illuc duo milia hominum et sedavit eos [the earl of Devon, Lord Cobham, and Lord Moleyns on one hand, and the Lord Wiltshire and Lord Bonville on the other].” \textit{John Benet’s Chronicle}, 205. It seems he had a genuine interest in peace, at least among his subordinates.

\textsuperscript{379} \textit{The Politics of Fifteenth-Century England: John Vale’s Book}, 143. Prince Edward’s response to York’s claims to defend the common weal was not new in 1460. Five years earlier, shortly before the first battle of St. Albans, Somerset claimed that York intended to destroy the king. \textit{John Benet’s Chronicle}, 213.

\textsuperscript{380} \textit{The Somnium Vigilantis} is a political pamphlet from 1459 or 1460. J. P. Gilson suggests that John Fortescue may have been the author. “A Defence of the Proscription of the Yorkists in 1459,” \textit{The English Historical Review}, 26:103 (1911), 512-513.

\textsuperscript{381} Ibid., 520.
the common weal and the common people continued, with one poet writing, “Of England he was long-time protector, the people loved him, and he was their defender.”

The success of his son in defeating the Lancastrians shortly after his death undoubtedly strengthened his reputation. His brief service as protector had not provided sufficient time to govern in such a way that he lost the esteem of the people. The devotion of the commons to him rested on the perception that he “was set the comon wele to auayle, by his laboure and his hole counsayle” and that he and some of his allies had given their lives for the public weal of every Englishman.

York was not the only noble with claims to be custodian of the common weal. In the dedication of his translation of Jacobus de Cessolis, Caxton praised York’s son, George, duke of Clarence, as “enclined vnto the comyn wele of the kynge, his nobles lordes and comyn peple of his noble royame of Englond.” To this end, Clarence sought to instruct the inhabitants of the kingdom in good, virtuous, profitable, and honest manners. At times Clarence’s role as a defender of the common good went beyond public morality. In his challenge to his elder brother’s kingship in 1470, Clarence asserted that he and his allies had to deliver the captive Henry VI from his imprisonment in the Tower of London and amend all of the oppressions and abuses in the kingdom.

That Henry VI was entirely dependent on others for his freedom and

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383 The Chronicle of John Hardyng, with the Continuation by Richard Grafton, ed. Henry Ellis (London: F. C. and J. Rivington, 1812), 401-402. Hardyng’s Chronicle, originally written for Henry VI, was rededicated by the author to the duke and duchess of York shortly before, or in, 1460. A few years later he rededicated it again, this time to Edward IV. See Sutton and Visser-Fuchs, Richard III’s Books, 22-23.
384 Caxton, “Prologue,” in Jacobus de Cessolis, The Game and Playe of the Chesse. The treatise was on the morality of games, specifically chess, not cards and dice, as in Bernardino da Siena’s text. The dedication to Clarence was perhaps a rote formula acknowledging a member of the royal family, but Clarence did live a more virtuous life than his brothers Edward IV and Richard of Gloucester, at least from what we know of their marriages. His brothers took mistresses; he did not. He may, therefore, have had an interest in moral education.
385 Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, 60-61.
could not uphold the common good while in such a state only heightened the duties of the
nobility towards the common weal.

Scholars vigorously contest Richard of Gloucester’s actions in the summer of 1483, and
what his precise motivations were will never be known with certainty.\(^{386}\) However, his language
provides a subtle clue to his emphasis, as it shifted from arguing for the need to protect the
common weal to the need to protect himself.\(^{387}\) The day after summarily executing William
Lord Hastings, Gloucester sent a letter to the city of York in response to their request for reduced
fiscal burdens.\(^{388}\) He claimed that he could not attend to their request at the time because of
“such gret materez and bysynesses as we now have to do for the wele and usefullnes of the
realme.”\(^{389}\) Precisely what Gloucester meant by this phrase is uncertain, and his aggressively
hostile actions seem to belie his stated intentions. The next day, June 15, 1483, he sent another
letter, which began, “[A]s ye love the wele of us, and the wele and surtie of your oun selff, we
hertely pray you to come unto us in London in all the diligence ye can possible...their to eide and
assiste us ayanst the Quiene, hir blode adherentts and affinitie, which have entended and daly
doith intend, to murder and utterly distroy us and our cousyn, the duc of Bukkyngham.”\(^{390}\) If
the subtle shift in language from the “wele...of the realme” to the “wele of us” reveals a change
in Gloucester’s intent, then at this precise point he de-legitimized himself by subverting the
common weal to his own interests.

\(^{386}\) Rosemary Horrox provided invaluable analysis of the politics of 1483 in *Richard III: A Study of Service*.
\(^{388}\) The execution of Hastings, who had allied himself to Gloucester against the Woodville family, occurred abruptly
and without any trial. Consequently, it shocked many.
\(^{389}\) *York Civic Records*, I, 73. The letter is dated June 14, 1483. Gloucester, as King Richard III, relieved some of
York’s financial burdens on September 17, 1483 (ibid., 82).
\(^{390}\) Ibid., 73-74.
Ironically, though, he did not attack his late brother’s government through an appeal to the common weal. Rather, he “represented himself as the only hope for the continuance of the good government of Edward IV.” He may have persuaded himself that in preemptively striking against the Woodvilles he was acting for the good of the realm. It was not until after the duke of Buckingham’s rebellion in the fall of 1483 that it became politically expedient for him to criticize Edward IV’s reign, and in the parliament of 1484 he attacked his brother’s government relentlessly.  

During Buckingham’s uprising pleas for the common weal all but disappeared, and the revolt became a direct attack on the person of the king. The leaders of the rebellion in the southwest urged their followers to “murder, slay and utterly overthrow the king himself, and...to set up another king in his place.” Richard III responded in kind, emphasizing that this was a personal attack, though he observed that the uprising had disturbed the concord of the realm. In a letter of October 13 asking for help from the city of York, the king made no mention of the common weal. Rather, he claimed that Buckingham “entendeth the utter distrucccion of us, you all, and all other oure true subgiets that have taken our part.” In effect, this language divides the king and his subjects into factions without anyone serving as protector of the common good.

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391 The rebellion against Richard III, occurring soon after his coronation, came in response to growing accusations that he had murdered his two nephews in order to seize the throne, an unconscionable crime, and to the preponderance of northerners in his retinue. The rebels were overwhelmingly from the south of England. Their goal was to restore Edward's line to the throne. Buckingham’s participation originated in his frustration over Richard’s distribution of disputed land, although he was related to many of the leading conspirators, including Margaret, countess of Richmond. The subsequent parliamentary attainder placed Buckingham at the center of events, although he did not initiate them.


393 Louise Gill, Richard III and Buckingham’s Rebellion (Stroud: Sutton Publishing, 1999), 75.

394 Richard’s interpretation adhered to the definition of treason in England. Treason was encompassing or imagining the death of the king, or levying war against him within his realm, or providing aid and comfort to those who did.
The royal proclamation against Buckingham, dated October 16, 1483, mentioned the peace of the realm, but implied that peace was of secondary concern to the king’s own weal and security. The king understood, it said, that Buckingham “traitoursly is turned upon hym, contrarie the dutie of hys liegeaunce, and entendeth the utter distruccion of our said soverayn lord, the subversion of hys royme, and thutter disheriting of all hys true liege peple.” Consequently, Richard, considering the weal of his person and the peace of his realm and subjects, declared the duke “hys rebell and traitor.” After Buckingham’s rebellion the king seems to have personalized confrontation as an attack on himself. He was unable to rise above factional struggles as his father Richard of York had tried to do through his appeal to the common weal, although ironically, the Parliament of 1484 declared the king the “undoubted sonne and heire” of York and, therefore, rightful king and the man “naturally enclyned to the prosperite and comen wele of the same.”

In his attempt to delegitimize the government of his elder brother and secure his own, Richard III offered a novel treatment of the common weal – that one inherits it, almost as a birthright, and thus it proves one’s legitimacy.

During the crisis of 1485 the nobility again played a role in guarding the common weal. The death of Richard III at Bosworth Field sent the civic leaders of York into a panic because they had supported him, first as duke of Gloucester, and later as king. In their confusion over how to respond to the victory of Henry Tudor, they sent a letter to Henry Percy, earl of Northumberland, requesting advice “to…the well and prouffit of this Citie.”

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396 *RP*, VI, 241.

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Northumberland’s vacillation between Richard III and Henry VII, and his subsequent enforcement of the latter’s policies in the north led northerners to conclude that he had betrayed their interests, and he was ignominiously murdered by a mob protesting taxes in 1489.\footnote{EHD, V, 114.}

Northumberland failed to heed the advice Bishop Russell prepared for his sermon for Edward V’s first Parliament – that nobles should listen to the common opinion about the weal of the kingdom or they would ensure their own downfall – and suffered the consequences.\footnote{Grants, etc. from the Crown during the Reign of Edward the Fifth, xlii-xliii. Not everyone agreed with Russell’s advice. John Skelton, the renowned poet who served under Henry VII and Henry VIII, castigated the commons in an elegiac poem about the death of the earl of Northumberland. He asked why they were “so stark mad, what frantyk frensy fyll in youre brayne?” All wit and reason had left them when they foolishly seized the earl, their natural lord. Skelton was at a loss to understand why they had armed themselves. John Skelton: The Complete English Poems, ed. John Scattergood (New Haven: Yale University Press, 1983), 30. Another poet, in an advice treatise popular in sixteenth-century England, observed that the nature of the commons was “roted in unkyndnesse,” and it is difficult to please any multitude of people. Dominicus Mancinus, The Myrrour of Good Maners (London: Rychard Pynson, 1518). In 1491 a man named John Paynter was brought before the mayor and council of York on the accusation that he had said the earl of Northumberland was a traitor to Richard III. See Jo Ann Hoeppner Moran, The Growth of English Schooling, 1340-1548: Learning, Literacy, and Laicization in Pre-Reformation York Diocese (Princeton: University Press, 1985), 75.}

That Russell sought to communicate his warning to the lords in a parliamentary sermon is significant – it indicated that Parliament was the institution for engagement between the king, the spiritual and temporal lords, and the commons on issues affecting the good of the whole realm.\footnote{Grants, etc. from the Crown during the Reign of Edward the Fifth, xxxix.} Since it was neither customary nor expedient for the king to make decisions by the advice and counsel of one person, all councils, from the greatest to the least, in the liberty, virtue, and effect of their “voices” were important.\footnote{Historical Manuscripts Commission: Report on the Manuscripts of the Corporation of Beverley (London: H. M. S. O., 1900), 35. This was in response to two bills York presented to Henry VI in 1450 asking that the king restore justice and the common weal and offering to help him do so. It is unclear whether Henry’s reference to a planned council was a reference to Parliament. There was a parliament in November 1450, but the date of Henry’s response to York is not given.}

In the wake of Henry VI’s incapacity and the ensuing lack of clarity as to who should govern England, Parliament’s legitimacy grew. It was increasingly associated with the common
weal and good government. Parliament was ordained for the good of the realm and the increase of the “chose publique.” Repre- sentatives of the commons who came to Parliament viewed it as the institution through which they could express concerns about the common weal and make demands for its redress. Few parliaments represent this function as well as those of 1449-1450. These years were a time of growing unrest in England as territorial losses in France occurred rapidly, royal counselors became exceedingly wealthy, and the Crown’s finances disintegrated. Henry VI’s government could not protect its own leaders, men such as the duke of Suffolk and Moleyns, both of whom the commons blamed for the ills of the kingdom and who were murdered in 1450. The government at mid-century was “financially shaky, administratively unstable, and politically moribund.” The impeachment of Suffolk and the enactment of a resumption to support the Crown’s finances were the two most prominent issues in the parliament of 1449. When Suffolk was examined for his alleged treason, the whole community did it in Parliament. The Commons in Parliament submitted articles accusing Suffolk of high treason because the entire civitas and kingdom murmured against him, and the

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402 Jehan de Waurin, Recueil des Croniques et Anchiennes Istories de la Grant Breaigne, a Present Nomme Engleterre, ed. Edward Hardy (London: Eyre and Spottiswoode for H. M. S. O., 1891), V, 348. The reference is to Edward IV’s first parliament in 1461.

403 Roskell, Parliament and Politics, III, 176.

404 According to H. G. Richardson in “The Commons and Medieval Politics” (29-30), with regard to the impeachment of the king’s counselors, “there was probably little spontaneity in the proceedings brought by the commons; they had to play an allotted role, because the trial took place in parliament and the judges were the lords.” There are several problems with this reasoning. By singling out the Commons in the process of impeachment Richardson loses the proper understanding of how the organization functioned as a cohesive whole during a trial. Each chamber had a role to play. Those roles were not the same, nor necessarily equal. But in a dominium politicum et regale both were essential to the proper functioning of government. Nor was it necessary for the work of the Commons to be spontaneous for it to be legitimate, and involvement in “high politics” did not require an agency directed towards revolution, as he claims. Rather, contemporaries viewed the Commons as part of the whole Parliament, which itself was a defender of the common weal of the kingdom. Because of this, it had the legitimate responsibility to participate in high politics, particularly in extenuating circumstances.

high court of parliament was the institution that should try and punish him. The king and the lords had Suffolk committed to the Tower, after the commons had presented their bill in Parliament requesting that he be punished and attainted as a traitor. Suffolk had gravely diminished the common weal of the realm by selling Normandy, calculating the death of Humphrey of Gloucester, and participating in many other treasons, according to the Commons.

The following year a similar situation arose. In November, some well-armed men came with their lords to Parliament to correct the king and his lords who had scandalized all of England through the treason of Somerset and others, particularly in Normandy. They went into the royal court in Westminster and gave three great exclamations demanding that justice be had on these traitors. Though the behavior of these men bordered on mob action, they brought their concerns to the royal court and Parliament and sought to legally repair the damage they believed Somerset had caused. During the parliament the Commons again asked the king to remove certain persons, beginning with Somerset, from the court because their “undue means” had diminished his possessions and subverted the laws and peace of the realm. Nothing came of their request.

406 PROME, XII, 98, 104.
408 The Historical Collections of a Citizen of London, 189-190. According to the petition offered by the Commons in 1449, Suffolk had offered “the pryvytees of [Henry’s] counseill, aswell of this your reame for the comon wele of the same, as of the governaunce and purveaunce for the conquest, conservation, saufgarde and tuition of your seid reame of Fraunce and duchie of Normandie” to Charles VII of France. PROME, XII, 97.
409 William of Worcester, “Annales Rerum Anglicarum,” II, ii, 771. See also John Benet’s Chronicle, 203. For an analysis of the complexities in interpreting this event, see PROME, XII, 166.
410 PROME, XII, 184.
411 Ibid., 185; William of Worcester, “Annales Rerum Anglicarum,” II, ii, 770. A petition was put forward in 1453 to clear Somerset and others in the wake of Cade’s revolt. The language used was an attempt to modify the historical account, declaring that Cade sought to take “upon him power royal.” Yet the petition acknowledged that a significant part of Cade’s demand was that the king remove his bad councilors: Cade, “purposyng also by diverse
Unable to enact taxes or levy troops on his own, Henry VI summoned the parliament of 1453 for the good rule of the kingdom and the defense of its people against enemies.\textsuperscript{412} When Parliament was prorogued in November, all members were instructed to be present at the next session, without excuse, in order to discuss matters “for the good of peace and the profit of the king and realm.”\textsuperscript{413} When Parliament re-convened in February 1454, it did so in order to protect the common weal of the realm from animosity between individuals and factions that could disintegrate into an uncontrollable power struggle, as occurred later.\textsuperscript{414} The king’s letters patent, through the advice and assent of his council, had given York permission with full power to hold Parliament. The lords in Parliament daily attended to those things they thought would benefit the king, his lands, and his subjects; sought to ensure that the laws were observed and justice administered to everyone, “for rebukyng of mysgovernaunce”; and hoped that their diligence would advance the king’s welfare and royal estate and the “comune welle.” Parliament appointed York protector and defender of the realm, but withheld from him the titles of “tutour, lieutenaunt, governour, [and] regent,” which “emporte auctorite of governaunce of the lande.”\textsuperscript{415} York acknowledged that Parliament was the source of his legitimacy as protector, requesting that “s suche auctorite and power, as it shall lyke you that y shall have for the execution of the charge, and also the fredome and libertee that shall therunto belong, be to [him] declared...and that the

\textsuperscript{412} John Whethamstede, \textit{Registra Quorundam Abbatum Monasterii S. Albani} (London: Longman & Co., 1872), I, 92. See also \textit{PROME}, XII, 211-212.

\textsuperscript{413} \textit{PROME}, XII, 253.

\textsuperscript{414} Ibid., 253, 260.

\textsuperscript{415} Ibid., 257.
same auctorite, power, fredame and libertee, be also in the seid parlement, and by thauctorite therof enacted, ratified and confermed.”

His power was to last as long as it pleased the king.

When York was appointed protector and defender for a second time, the aforementioned language was altered. This time York would serve until discharged “by us in parliament, by the advice and assent of the lords spiritual and temporal being in parliament.” The modification of the language is significant because it qualified the king’s authority to restore his own governance of the kingdom. This time he could do so only with the consent of the lords in Parliament, because when Henry had ended York’s first protectorate the year before, he had simultaneously restored his previous councilors, notably the dukes of Somerset and Exeter, to positions of prominence. Henry’s inability to defuse personal factions and resolve politically sensitive issues in a balanced manner without reversion to the status quo ante had led to armed confrontation at St. Albans. Consequently, Parliament sought to ensure that when the second protectorate ended, it was done through Parliament, with the advice and assent of the lords congregated in the body. In order to secure the “bonum publicum” and the peaceful governance of the kingdom and to prevent further violence, Parliament asserted its legitimacy to oversee the end of the protectorate it had begun in the absence of effective kingship. Henry VI complied and dissolved York’s protectorate in February 1456 by means of the same parliament that had created it.

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416 Ibid., 260.
417 Ibid., 354. “Quousque idem consanguineus noster, de occupacione sive onere et nomine hujusmodi, per nos in parliamento, de avisamento et assensu dominorum spiritualium et temporalium in parliamento existencium, exoneretur.”
418 Ibid., 355; 431.
Thus, as noted in chapter one, Parliament’s duty to the common weal was two-fold: to provide good governance at home and to aid in the defense of the kingdom. The disruption caused by the “ciuile battaill” of the 1450s resulted in the neglect of the common weal of the kingdom. According to a sixteenth-century chronicler, it was not until the first parliament of Edward IV met in 1461 that “the realme was sette in good ordre, and all thynges wholy redressed, whiche was very good and expedient for the commen weale.” Edward used similar language in his writs to the sheriffs ordering parliamentary elections in 1478, declaring that he had called Parliament solely “for the welfare of his realm of England,” in this case, to condemn his brother, the duke of Clarence, for treason.

York’s appeal to the body to recognize and confirm his title to the throne in 1460 implicitly acknowledged Parliament’s legitimacy to treat matters affecting the good of the whole kingdom. Under the circumstances, in which Henry VI was a crowned, anointed, and long-serving monarch but York arguably had a better hereditary claim to the throne as heir general of Edward III and clearly was more competent, Parliament sought to maintain the peace between the two men and pursued a compromise that Henry VI would remain king for his natural life and that York and his heirs would inherit the throne upon Henry’s death. Both sides agreed to it, again reinforcing the authority of the body to do so. Thomas More would later write that York began “not by war but by law to challenge the crown, putting his claim into the Parliament.” Parliament rejected the hereditary claims of Henry VI’s son, and “the crown was by authority of

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420 EHD, IV, 479. From the National Archives, Writs and Returns, C219/17/3.
421 An English Chronicle, 1377-1461, 94; John Benet’s Chronicle, 228.
422 In a sense, this is technically true. When York did decide to claim the crown publicly he did so in Parliament in 1460. Whether he had designs on it in the preceding years when he was fighting Somerset and others is unknown but not implausible.
Parliament entailed unto the duke of York and his issue male in remainder.” More does not say whether he thought Parliament had such authority, but his language implies that in this particular case, Parliament was the legitimate institution to enact a change in the descent of the Crown. This is not to suggest that Parliament had superseded the monarch in authority, but that in the case of a contested kingship, and faced with a king who arguably had delegitimized his rule, Englishmen associated the authority for legally rectifying the dispute with Parliament.

York’s behavior in 1460 disrupted the plans of his allies, the earls of March and Warwick. When those lords had defeated their Lancastrian enemies and seized control of the king late in the summer of 1460, they had had Henry call a parliament for the “good provision” of government because “the realm was badly governed,” and there was a need to address the great losses in France and “other imperfections.” They desired to remedy these problems in Parliament because the problems affected the whole realm, and neither the king nor his council was sufficient to address them. York’s action turned Parliament’s attention away from the general problems of governance to his dynastic claims to the throne, but the events of 1460 reinforced how crucial Parliament’s role in protecting the common weal was. Parliamentary authority to resolve problems of governance and kingship remains consistent from York’s presentation of his claim in Parliament to More’s representation of the event more than fifty years later.

423 More, The History of King Richard the Third, 7, 75.
424 Jehan de Waurin, Recueil des Croniques et Anchiennes Istories de la Grant Breaigne, V, 301-302, 313.
Henry VIII assembled his first parliament in 1510 to ordain, make, and enact statutes and ordinaunces for “the common weale and profyte of this his realme.” Good laws were necessary for good government because “laws are truly established norms of the republic, and by the just observance of them the republic is kept safe.” Without good laws the government could either be ruled by the arbitrary decisions of the monarch or become a radically decentralized society, with local communities following their own laws and customs. The members of Parliament were to fix their thoughts on a singular point – their duty to advance the common weal – because Parliament was the institution to treat it. In 1496 Richard Pynson published a collection of parliamentary statutes enacted under Henry VII. The laws ranged from punishing vagabonds to regulating the men going to battle with the prince, ensuring that sheriffs conducted themselves properly, horses were not taken from the kingdom, and taxes were required of denizens. Pynson titled the book *The statutes concernynge the comon wele made in the parliament*, thus explicitly linking the common weal with Parliament and the law.

Other Englishmen petitioned; addressed issues of policy and governance; questioned the king’s council; sought to remove troublesome advisors, malefactors, or political enemies; and encouraged the restoration of the common good, even at a local level, in or through Parliament.

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425 Anno primo Henrici octaui The kyng our souerayn lorde Henry the. viii after the conquest, by the grace of god kyng of Englande and of Frounce, and lorde of Irelande, at his parlyament holden at westmynster the. xxi. day of January, in the fyrste yere of his moost noble reigne to the honour of god and hollye churche, and for the common weale and profyte of this his realme, by the assente of the lordes spyrtyuall and temporall and the commons in this present parlyament assembled, and by auctoritie of the same: hath do to be ordayned, made and enacted certayne statutes and ordinaunces in maner and fourme folowyng (London: Thomas Berthelet, 1543). Similar, usually exact, language was used in other printings of the proceedings of Parliament during the reign of Henry VIII.

426 Translated in *EHD*, V, 588. “[N]ecessarie...pro cu jusque Regni recta gubernatione, quia...Leges sunt norma Reipublice bene institutende, et earum equa observatione Respublica conservatur prospera.” *Journal of the House of Lords*, I, 3. This is from Warham’s speech at the opening of Henry VIII’s first parliament in 1510.

427 *Grants, etc. from the Crown during the Reign of Edward the Fifth*, lvi.

428 *The statutes concernynge the comon wele made in the parliament* (London: Richard Pynson, 1496). Pynson was not acting in an official position as king’s printer. He did not hold that position until about 1506. For more on the standardization of printing parliamentary statutes, see Cavill, *The English Parliaments of Henry VII*, 175-186.
The city of York paid its two representatives in the parliament of 1478 for the expenses they had incurred “for the utility of the community and this civitas.”

Problems, grievances, and ideas that could not be raised in other forums, either for lack of access, stature, or authority, were permissible in Parliament. As the manifestation of the political body of the kingdom, it was the forum to express concerns about domestic and foreign problems for those who did not want to take up arms against the king or royal councilors. Even those like Jack Cade who did arms themselves appealed to Parliament to restore the common weal. Cade sent a copy of his petition “concernyng and touchyng the myschiefs and mysgouernaunces of the reme, wherynne was nothyng conteyned but that that was rightful and resonable” to Parliament. He wanted these grievances amended and reformed in Parliament. The petition carefully attacked not the king but his advisors in pursuit of “Reffourm [of] the comon weale of thys land, The which by a ffewe personys abowth the kyng hath been long mysorderid...to the uttyr enpoverysshyng and undoing of alle the kyngys trewe comonys.”

There is a strong possibility that Henry’s advisors believed the Commons would proceed favorably with Cade’s complaint against the royal government. They quickly dissolved Parliament before his document could reach it, a move that threw the Kentishmen into confusion. They did not know where to appeal in Parliament’s

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429 Extracts from the Municipal Records of the City of York, 66. The text is translated on p. 67: “...Besides £10 to the same Miles and Robert, paid upon their riding, together with the expenses by the said Miles and Robert incurred, as well for writing petitions as for a privy seal and bill of array, and other expenses by them necessarily incurred for the common weal of this city.” The account is from the Compotus Roll of 1478-1479. One of the concerns of the city in these years was the riverine fisheries.

430 An English Chronicle, 1377-1461, 68.

absence. Because of the dissolution, no one received an answer to the petition from Parliament.\(^{432}\)

If one takes contemporary writers at their word, disagreement over the health of the public welfare was a principal cause for much of the unrest of the fifteenth and early sixteenth centuries.\(^{433}\) Though the nobility had a significant obligation to defend the common weal, the role they played in restoring a violated communal good was not as pronounced as that of the king or Parliament. The probable reason for this was the danger of single individuals assuming power rather than working with and through the community.\(^ {434}\) That did not prevent many from trying. On multiple occasions York and the earls of Salisbury and Warwick insisted that their reason for confronting the king and his advisors, at times with arms, was to restore the common weal.\(^ {435}\) In 1459 the three lords even had a sermon preached to the people declaring that their actions had been for the good of the country and the “chose publique” of the realm of England.\(^ {436}\) A year later Warwick, captain of Calais, Salisbury, Edward, earl of March, and William Neville, Lord Fauconberg, wrote to the bishop of Teramo, the papal Legate, prior to their expedition that dethroned Henry VI in 1461. They had seen great ruin and cruelties befall England, perpetrated

\(^{432}\) Loades, *Politics and the Nation*, 40.

\(^{433}\) Taking them at their word means acknowledging that the concept of the common weal was an inherently important idea for determining beneficial social and political conduct. It does not mean a failure to recognize that at times the term was deployed as part of propaganda campaigns or that it could be used to cloak an individual’s personal ambition in positive terms.

\(^{434}\) This was the charge the duke of Norfolk laid against the duke of Somerset in his petition to the council in 1453: “[T]he over greete dishonneurs and losses that ben come to thys full noble royaume of England by the fals menes of som persones that have take on theym over greete autoritee in thys royaume shulde be knowen.” *The Paston Letters*, II, 290. Similarly, when the duke of York urged Henry VI to arrest those who had offended justice and the laws, and offered to make the arrests himself in 1450, the king responded that he would set up a “sad and substantial consaile,” to include York, but that York was not to make arrests on his own. *The Politics of Fifteenth-Century England: John Vale’s Book*, 186-187, 190.

\(^{435}\) *An English Chronicle, 1377-1461*, 80. The reference is from the letter of York, Salisbury, and Warwick to Henry VI in 1459.

by the king against the “republic.” It is possible that they used the common weal as cover for their actions, which their enemies deemed treasonous, but until York openly proclaimed his desire to be king, there is no reason to doubt that the public good was a genuine part, though probably not the entirety of their concern.

When the nobility decided that the common weal needed restoration, they often explained themselves to the commons because support from non-noble sources was essential to mounting a successful challenge to royal authority, particularly for those shut out of court circles, as York and Warwick were. But there was another, less cynical reason for doing so. If the foundation of one’s cause was the common weal and the restoration of good government, then the broader community of the realm should be involved. As Nicholas Oresme explained in his commentary on Aristotle, “Although the common people have no idea how to maintain order or establish laws, they are well able to see inadequacies and to take note of any opportunities for improvement and advise the legislators accordingly, so that they do not make mistakes, and for this reason the people should be given a voice.” Dudley echoed Oresme when he encouraged the king to “let every person charitably help to reform whereas need doth require: for he yet doth is a counsellor and a friend of all worldly friends.” One Englishman went so far as to claim that the voice of the people was the vox Dei. It would be illogical to claim that one was acting for the public welfare if the perceived motivation was narrow self-interest. This is

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438 Guenée, States and Rulers, 83.
439 Dudley, The Tree of Commonwealth, 23.
perhaps one reason why York dropped all reference to the common weal once he openly declared for the throne, instead emphasizing his dynastic and hereditary claims.\footnote{Watts, “Polemic and Politics in the 1450s,” 3-42.}

Noble appeals to the commons were not simple patronization, either. Englishmen from many social strata engaged in political discourse and took an active role in the political struggles of the period, as can be seen in the various uprisings demanding reform. In 1458 William Ive preached before Henry VI, complaining that before anyone could speak in the king’s presence, his sermon had to be cleared by the dean of the chapel, who would assign what he should say “as for any thynge that longyd unto the comyn wele.”\footnote{The Historical Collections of a Citizen of London, 203.} Ive protested such censorship. Royal officials gave no reason for their censorship, but if they wanted to regulate what pertained to the common good by excluding potentially opposing opinions, then they were in direct violation of the concept. The obligation of individuals within the political community was to truthfully advise the king on matters pertaining to the welfare of the realm.\footnote{The perceived lies of Henry VI’s counselors were cited frequently by contemporaries as dangers to the kingdom. It would not have been beyond the station of a clergyman to condemn such lies.}

From the highest gentry to the yeoman farmer, commoners were not particularly enthralled by their.\footnote{“On the Corruptions of the Times,” in Political Poems and Songs Relating to English History, II, 237. See also McFarlane, England in the Fifteenth Century, 18-20.} Leaders who did not acknowledge the role of the commons in political society or ignored their demands for reform faced danger.\footnote{“On the Arrest of the Duke of Suffolk,” in Political Poems and Songs Relating to English History, II, 225.} One poet wrote, “For feer or for favour of ony fals mane, Loose not the love of alle the commynalte; Be ware and sey...Duke, jwge, baroun, archebisshope and he be, He wolle repent it within this monthes thre.”\footnote{“Verses Against the Duke of Suffolk,” in Political Poems and Songs Relating to English History, II, 231.} Even Suffolk, the immediate cause of such warnings, was aware of the role of ordinary Englishmen in

\begin{itemize}
\item Watts, “Polemic and Politics in the 1450s,” 3-42.
\item The Historical Collections of a Citizen of London, 203.
\item The perceived lies of Henry VI’s counselors were cited frequently by contemporaries as dangers to the kingdom. It would not have been beyond the station of a clergyman to condemn such lies.
\item “Verses Against the Duke of Suffolk,” in Political Poems and Songs Relating to English History, II, 231.
\end{itemize}
shaping responses to the governance of the common welfare. He began his self-defense in Parliament with the statement that the king certainly had heard of “the odious and horrible langage that renneth thorough your lande, almoost in every commons mouth, sowning to my highest charge and moost hevyest disclaundre...which noise and langage is to me the hevyest charge and birthen, that I coude in any wise receyve or bere as reason is...wot that I am full ungilty of.”  

Some Englishmen went so far as to complain about Henry VI, rather than his counselors. One man in Sussex declared that the king was “a natural fool…and no person able to rule the land.” William Dalton of Ipswich was accused of saying “he would that our sovereign lord…were as cold at his heart root as the stone under his foot, so we had another king that could better rule this land.”

The reign of Henry VI was not the only one in which the commons decided that the common weal needed restoration. In 1469, during the reign of Edward IV, in whom the commons had placed great hope, Warwick and Clarence argued that the king’s “trew subgettis” had called on them and other lords to reform the king. The implication was that the nobility and the commons together had decided that the king was in urgent need of correction, and it was their duty, for the common weal of the land, to rectify problems in the government. But their use of the common weal as justification for their actions was much weaker than Warwick’s earlier use of it against Henry VI. In his previous use of the common weal, Warwick had always declared that he simply wanted to rid Henry of his malicious advisors and restore proper counsel to the king. Throughout the decade between 1450 and 1460 he never argued for the removal of the

447 PROME, XII, 92.
448 Loades, Politics and the Nation, 36.
king and the substitution of someone else (such as Richard of York) in his place. In fact, as noted above, York’s declaration for the throne caught Warwick off-guard.

In 1469-1470, however, Warwick and Clarence actively urged the rebellion of the commons against the king in order to place Clarence on the throne. To encourage insurrection they warned people that Edward was coming with great power to judge and execute them, so that many would die. Therefore, they were to rise up and destroy the king before he could destroy them and the realm.\(^{449}\) Such cynical manipulation on the part of the earls was irresponsible. As great nobles their duty was to protect the common weal, not recklessly incite others against the king.\(^{450}\) Edward responded with the language of the common weal. In a letter to Coventry he wrote, “For-asmuche as it ys come to our knowlache that dyvers malicious and ille dispoysd persones, contrari vnto God and theire dueties, have cast and sowe…vnfittyng and sedicious tales and langage amongus oure lege people to thentent to store and incens theym to rumour and commocion…contrary to our lawes and pece and the comyn wele and pollicie of thys our lande…yffe any suche sedicious folke come or may be fonde within your jurisdiccion, ye put theym vndyr arrest…so to remaigne vnto the tyme we be sertefyed theroff by yowe…not faylyng as ye love vs, and tendre the comune welfare off all this our reamne and subgettis of the same.”\(^{451}\) By maintaining the use of the common weal, Edward IV ensured that it remained associated with him and his government. Perhaps he had learned well from his father.


\(^{450}\) Clarence had not been shut out of the king’s court as his father had been from Henry VI’s. His complaints were of a more personal nature than York’s overarching concern about government policy and his inability to influence it.

\(^{451}\) *The Coventry Leet Book, 1420-1555*, 340-341. The letter was given under the privy seal at “our castell of Foderinghey the fyrst day of Juyll [1469].”
There were three generally cited provisions for restoring the common weal when the king, nobility, Parliament, or commoners had concluded that it was in danger. The first and most frequently named was the reformation of the king’s council through the dismissal, imprisonment, or execution of self-serving counselors. Any time a king sought counsel on a matter touching his person, the kingdom, or the common profit, he was to choose counselors who would not flatter but “sey pure verite and trouthe.” There was no greater nuisance nor mischief to a prince than to listen to the counsel of flatterers and liars because when he adhered to their advice he put himself in great jeopardy and peril. He would never understand the true state of affairs in his realm while surrounded by such deception. These were men who “loueth better to enryche themselfe than the good publyke, wherby they are comen vnto grete ruyne.” Contemporary “consules and senatours” did not have the fame that the ancient Romans had because “they loue better theyr owne prouffyte than the comyn prouffyte and corrumpe the ryght for to do pleasure vnto theyr frendes.” The reason for their corruption was the absence of virtue among them.

The possibility of removing counselors through armed confrontation, as Cade tried to do, Suffolk’s executioners did, and York partially succeeded in doing at the first battle of St. Albans always existed, but this was not the desired approach. “The most grettest rectificacion Ys, from

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452 D. M. Brodie, in his introduction to Edmund Dudley’s Tree of Commonwealth (15), observed that Dudley’s was the “first English book to point out that the growing power of counselors and officials was likely to become as great a danger to the pure administration of justice as had been the territorial influence of great noblemen.” Yet the problem powerful counselors posed to the administration of justice was one that caused consternation much earlier, in Henry VI’s reign. See, for example, Tractatus de Regimine Principum, 139-146. On the shift in emphasis from the counsel of the great lords to the counsel of educated men, see Watts, Henry VI and the Politics of Kingship, 47-49.


454 Brant, The Shyppe of Fooles.
evel thinges to directe a king, Leest unto hym fal Reprobacion By his evil doyng or mysguidyng,” wrote Ashby.455

In theory, the monarch was responsible for removing bad counselors. Henry VI was urged not to support his “treasonous” counselors, or even let them “go loos,” but rather to take from them their wages and remove them from the court. If they were not cut out of the king’s inner circle, the land would be lost.456 But Henry VI, like most monarchs, resisted pressure to remove favorite and trusted (if erroneously) advisors. Thus, Parliament often had to, presuming the removal was done legally. Suffolk’s impeachment, brought at the request of the Commons, was tried and decided in Parliament. His murder was not. He was accused, both in Parliament and in the court of public opinion, of many evils, some criminal, others moral. One witty contemporary accused him of even more deaths than Gloucester’s: “Save [the king] fro Southefolkes, and frome his foois alle; The Pole is so parlyus men for to passe, That fewe can ascape hit…Witnes of Humfrey, Henry, and Johan,457 Whiche late were one lyve, and now be they goon. And mony other that nedith not to telle…Hit is a shrewde pole, pounde, or a welle that drownythe the dowghty.”458 It was clear to the commons and some noblemen that Suffolk could not remain if the common weal were to flourish. He had brought too much destruction on it already.

455 Ashby, “Dicts and Opiniones Diversorum Philosophorum,” 64.
457 Humphrey Plantagenet, duke of Gloucester; Henry Beaufort, cardinal of Winchester; and John, duke of Bedford.
Parliament appointed York protector for a second time so that all those who had ruled about the king could be “set apare” and no longer rule as they had.\textsuperscript{459} This was done so to restore many things for the good and utility of the king and the “chose publique” of the country.\textsuperscript{460} York’s success was ephemeral, as it had been the first time, and the quest to remove bad counsel from the king and institute good counsel continued as violence escalated. At one point Henry made an attempt to bridge the partisan divide. In 1459 he tried to reconcile York, Somerset, and other the great men of his council for the good and “utility” of the “chose publique” of the realm. York’s absence in Ireland only underscored the king’s ineptitude. That same year the Yorkist lords again resolved to fight against those who “governed” the king for the good of the king and the “chose publicque” of England.\textsuperscript{461}

The second provision was to restore good, virtuous government. The removal of wicked counselors was related to this, but the restoration of virtuous government was broader than the punishment of individual men. The main components of good government were justice, peace, reasonable taxes, and a Crown that wisely earned and spent its own money.\textsuperscript{462} A king who failed to ensure justice in his kingdom would “soone be with oute lordshippe.” In order to fulfill his obligation to justice, a monarch must principally love the common profit. He could not lend any special attention to his private or “particuler profyte.”\textsuperscript{463} Princes were instructed to prudently

\textsuperscript{459} Bod. Lib. MS Rawl Poet 32, f. 162.
\textsuperscript{460} Jehan de Waurin, \textit{Recueil des Croniques et Anchiennes Istories de la Grant Bretaigne}, V, 268-269.
\textsuperscript{461} Ibid., V, 270-271, 273.
\textsuperscript{462} There is extant from the Parliament of 1454 an un-enrolled petition from the Commons that condemns those around the king for misspending the money granted by the Commons for the defense of the kingdom: “The money, be sinistre suggestion made to you oure Soveraine Lord, have be emplioed to the contrarie use, which hath be a grete discurragyng of your Commons to make any suche grauntees.” \textit{RP}, V, 272.
\textsuperscript{463} “The III Consideracions Right Necesserye to the Good Governaunce of a Prince,” 197-198.
oversee the private good of single men, but also the common good of the many. The Commons in Parliament recognized this pressing necessity, complaining to the king in 1459 that his subjects suffered wrong without remedy, to the derogation of Henry’s authority and in violation of the law. Since the king had not rectified these wrongs, the duty to enforce the law fell to them. They gave the king the names of those known to be “abhomynable” offenders throughout the realm. Through “thavys and assent of the lordes spirituelx and temporelx...and by auctorite of [this youre present parlement],” writs were to be sent to the sheriffs requiring that those listed appear before the chancellor for an inquiry into their criminality. The following year, after the agreement that the duke of York would be Henry VI’s heir, the king, with the advice of the lords and commons in Parliament and through their authority ordained that York repress and subdue all riots, rebellions, and violence throughout the realm because these oppressions were committed against “the good publique and common wele” of the realm. If these disturbances remained unchecked they would subvert “good and restfull governaunce.”

The least desired provision for the restoration of the common weal was the removal of one king for a new one, or the restoration of an old king. This was the most difficult to enact and justify, but it was a possibility. The king’s duty was to rule. If he failed to rule well he could delegitimize his individual authority. “O king, if you are king, rule. Otherwise you are a king.

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464 Tractatus de Reginime Principum, 119.
465 PROME, XII, 500. Complaints in the Commons against rampant criminality were frequent in the fifteenth century.
466 Ibid., 531.
467 Horrox observes that one of the central problems for Richard III was that his deposition of Edward V was the first pre-emptive removal of a king in English history. Richard based his justification not on the fact that Edward had failed as king, but that he might fail, a crucial and unacceptable distinction. For “how could one sanction [the] use [of deposition] as a first resort, to remove a king who had not only not done anything wrong but had not yet done anything at all?” Horrox, Richard III: A Study of Service, 327-328. See also John Watts, “Usurpation in England: A Paradox of State Growth,” in Coups d’État à la fin du Moyen Age?, 115-130.
without anything. You have the name without the kingdom, unless you rule rightly,” wrote one poet.\textsuperscript{468} Anyone who held a public office, including the king, and did not fulfill the duties of the office should not have its “benefice” nor receive its profits.\textsuperscript{469} Kings who kept neither law nor peace “went sone away in many dyvers wyse withouten thanke of god at thayr decese.” No one feared or respected such men, a dangerous situation for those charged with governing others.\textsuperscript{470}

Richard II (r. 1377-1399) was the prime example of such a king. When his realm was in distress, Henry of Bolingbroke imprisoned him, and he subsequently resigned his office, allowing Parliament to choose Bolingbroke as his successor.\textsuperscript{471} Whether Richard II resigned of his own volition is a matter of conjecture, although it is unlikely. He was imprisoned in the Tower of London at the time of his resignation. Not everyone agreed that Richard’s deposition had been right. The Yorkists argued that the Lancastrian dynasty was illegitimate. Though Henry V had reigned well and was a great knight, he reigned “unrightfully.” His son had none of the virtues of the father and was a disaster as king, upholding “falshode, myschyef, [and] secret synne” caused endless troubles in England.\textsuperscript{472} Once Henry VI began to lose France and rule poorly at home, he lost whatever legitimacy he had. When he refused to listen to complaints against his governance, he had little possibility of regaining his legitimacy. In 1461, just prior to Edward IV’s coronation, George Neville, bishop of Exeter, recited the enormous extortions and sins committed by Henry VI’s government. The bishop of Salisbury then explained that the

\textsuperscript{468} “A Warning to King Henry,” in \textit{Political Poems and Songs Relating to English History}, 231.
\textsuperscript{469} “The III Consideraciones Right Necesserye to the Good Governaunce of a Prince,” 189.
\textsuperscript{470} BL MS Lansdowne 204, f. 222.
\textsuperscript{471} \textit{The Chronicle of John Hardying}, 351.
\textsuperscript{472} “A Political Retrospect,” in \textit{Political Poems and Songs Relating to English History}, 267.
prelates, barons, nobles, and commons of England ordained and concluded that Edward should be king in Henry’s place. They expected the new king to remedy the defaults of government that they complained about so frequently. For some, Edward failed to fulfill this expectation. Instead, he governed through great “myschevus [and] oppressions, and alle odyr inordinate abusions, nowe raynynge in the seyde reme.” The only solution was to restore Henry to the throne. Doing so would establish “perpetualle pese, [and] prosperity, to the comene welfare of thyse reme.” This was a noble goal, but perpetual peace proved elusive.

The language of the common weal had wide resonance and tremendous influence on political behavior. Rather than a trite phrase, it served to define, explain, and justify reform or removal in the name of good governance. The king, as head of the body politic, had the primary duty to uphold the common weal. Yet as a communal attribute, the nobility, the commons, and Parliament, the physical manifestation of the political community, were called upon to assist the king and bear their own responsibilities for it. Because men had a role in protecting the public good, they also had a voice in declaring when it was in danger and in need of restoration. At this point the precise limits on engagement with the common good were unclear. This vagueness gave it flexibility as political circumstances changed. As with any other political concept it could be manipulated. But motivations are impossible to prove. As Edward Powell observed, an advantage of Quentin Skinner’s argument that a political figure adopts one set of principles in preference to another to legitimize his actions and to gain acceptance and support for them among the political community is that the question of that political figure’s sincerity in embracing certain principles becomes irrelevant. Consequently, “it does not really matter

473 Warkworth, A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth, 61.
whether York was a passionate believer in his manifestos for governmental reform, or Richard III had as profound a commitment to justice as he claimed. What is important is that they operated within a specific political culture and had to reconcile their actions to its values.\textsuperscript{474}

The frequent invocation of the common weal by a diverse group of Englishmen indicates its widespread acceptance as a political concept. Parliament’s role as a legitimate defender of the common weal developed significantly in the dysfunctional later years of Henry VI’s reign, when good leadership was sorely lacking. The political appeal of Richard, duke of York, and his family is not possible to understand without investigating his recourse to the language of the common weal. When the Yorkist kings failed to live up to their mantra of the common weal, the result was to further enhance Parliament’s claim to legitimacy.

\textsuperscript{474} Edward Powell, “‘After ‘After McFarlane’: The Poverty of Patronage and the Case for Constitutional History,” in \textit{Trade, Devotion and Governance}, 10-11.
CHAPTER 3: PARLIAMENT AND THE CHURCH

While the political kingdom and the common weal had respectably established histories in England, the Ecclesia Anglicana, with its myriad provincial councils, synods, elections, constitutions, and institutions, offered a unique example of a corporate body for temporal politics, one with an undisputed pedigree in ancient English customs and history. An ecclesiastical precedent for Parliament existed in England prior to the Norman Conquest. This was the Convocation of the Clergy, “to which bishops were cited and others their subjects could be invited, not compelled, to attend, when matters affecting their interests were concerned.”

Until the Conquest ecclesiastical councils in England were national, not provincial. In the fifteenth century there were two convocations – the southern convocation for the province of Canterbury and the northern convocation for the province of York. In 1462 the Convocation of York decided to permit all the provincial constitutions of Canterbury that were not repugnant or prejudicial to those of York to have effect in the Northern Province. According to fifteenth-century legists, Convocation was an assembly in which the clergy made statutes that concerned the state of the province, either Canterbury or York. Convocation assembled to tax the ecclesiastical community or to consider matters the king put to the archbishops of Canterbury and York. The head of the province summoned the assembly by his authority at the king’s

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request. Convocation was similar to a consultative council presided over by the archbishop and attended by the diocesan bishops of the province, the heads of some of the monastic and other ecclesiastical institutions, and proctors who represented the lesser clergy.

Under Archbishop Henry Chichele (1414-1443) the lesser prelates were formalized as a regular part of Convocation. Convocation also merged with the provincial council under Chichele. As a result of these changes and the formalization of membership in Convocation, the clergy’s right of consent to taxation increasingly influenced the counsel they gave to their bishops. In the proceedings of Convocation in the fifteenth century, when the lower clergy wished to communicate with the archbishop and bishops, they selected a spokesman known as the prelocutor to convey their message to the upper clergy. Thus, in its form and organization, “Convocation might arbitrarily be called an ecclesiastical parliament.” The analogy is fair, in that both Convocation and Parliament were general meetings of those who represented their communities, and in these general meetings they attended to business that would affect their communities, but it is not sufficient. Parliament came to represent the full political community, whereas Convocation represented a subset of that community.

By the fifteenth century time the clergy met in both Convocation and Parliament. Clerics did not sit in Parliament as ecclesiastical lords per se, but on account of their ownership

477 Kemp, Counsel and Consent, 86; Churchill, Canterbury Administration, 361.
478 Kemp, Counsel and Consent, 110.
480 Their attendance at both bodies had historical precedent, according to contemporary chronicles. Higden’s Polychronicon (cccxxxviii) states, “In lanfrancus tyme was made a counseyll at london in saynt paules chirche / that doyng had be long tyme lefte of in Englonde / Fyrste there was ordeyned how bisshops shold sytte in counseyll and in Synode.” For their participation in Parliament under Henry IV, see A. K. McHardy, “Henry IV: The Clergy in Parliament,” in The Reign of Henry IV, eds. Dodd and Biggs, 136-161.
of property. They came to Parliament by royal command, not through a summons of the archbishop. Clerics who held the most prestigious bishoprics usually held office in lay government, particularly the office of the Chancellor, and many were related to the royal family or were members of prominent noble families. By the mid-fifteenth century, the Commons in Parliament wanted to tax the clergy through Parliament rather than through Convocation. Henry VI demurred, but from 1435 to the Reformation, the two assemblies almost always met at roughly the same time because they were both held at the request of the monarch to consider the needs, usually financial, of the Crown. Because of the intimate involvement of the clergy in lay and ecclesiastical governance, the two spheres shared terms and ideas of communal organization and legitimacy. These ideas, strengthened with the growth of conciliarist thought, influenced parliamentary legitimacy during and after Chichele’s tenure.

Modern historians have rarely sought to analyze the influence of ecclesiastical concepts and structures on the political culture of England in the fifteenth and early sixteenth centuries. Much of the existing scholarly literature ceases to evaluate interaction between lay and ecclesiastical political cultures after the early fifteenth century, picking up again only during the English Reformation. Existing studies that address the chronological void primarily analyze the

481 There has been no shortage of analysis of the uses of conciliarist ideas in late sixteenth and seventeenth-century political thought. See, for example, J. N. Figgis, Studies of Political Thought from Gerson to Grotius, 1414-1625 (Cambridge: University Press, 1916); Skinner, The Foundations of Modern Political Thought; Francis Oakley, “Constance, Basel, and the Two Pisas: The Conciliar Legacy in Sixteenth and Seventeenth-Century England,” Annuarium Historiae Conciliorum, 26 (1994), 1-32; Tierney, Religion, Law, and the Growth of Constitutional Thought; Paul Avis, Beyond the Reformation?: Authority, Primacy, and Unity in the Conciliar Tradition (New York: T&T Clark, 2006); Oakley, “Anxieties of Influence,” 60-110. For the earlier period, however, the amount of scholarly literature pertaining to the church and lay government is small, especially with regard to England. Raymond Albright’s article on the use of conciliarism within the Anglican tradition, begins by summarizing developments from the twelfth century to 1430, then moves directly to Henry VIII and the English Reformation. “Conciliarism in Anglicanism,” Church History, 33:1 (1964), 3-22. Over the centuries the reasons for lay appeals to the conciliarist tradition changed. In the fifteenth century the emphasis was on conciliarism as a justification for mixed government, an idea similar to Fortescue’s dominium politicum et regale. In the seventeenth century it was used primarily as a justification for resistance to the theory of divine-right monarchy.
religious symbolism of kingship or pursue a pan-European approach to the study of the Catholic Church and lay politics, with particular emphasis on France (through the University of Paris) and the Italian states. Francis Oakley, writing of the influence of lay political cultures on the Church throughout Europe, observed that “arguments based on secular political analogies, or arguments simply assuming something of a constitutional overlap between political and ecclesiastical modes of governance, served as a mainstay of ecclesiastical discourse, whether high-papalist or constitutionalist.” Yet political discourse did not run solely from lay to ecclesiastical politics. Though the Catholic Church incorporated “secular political analogies,” it also contributed to lay politics. Ernst Kantorowicz acknowledged that extensive borrowing of insignia, political symbols, prerogatives, and rights of honor was common between the two, resulting in hybrids in church and lay governance. The crux of his argument was that monarchs and popes appropriated the ideas and physical representations of the other in order to extend and solidify their own legitimacy, although this began to change in the late Middle Ages, “when the center of gravity shifted from the ruling personages to the ruled collectives, the new national monarchies, and the other political aggregates of human society.”

This chapter will consider the circumstances surrounding the rise to prominence of conciliarist theory in the late fourteenth and early fifteenth centuries and examine the definitions of various ideas commonly grouped under the term “conciliarism” in order to discern which of those ideas appeared in England and the means of their transmission in the aftermath of the three

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483 Kantorowicz, *The King’s Two Bodies*, 227.
prominent church councils of the fifteenth century. Once ecclesiastical ideas reached England, they did not remain stagnant and cloistered. Rather, they spread through literate society to historical chronicles, official documents, and, most importantly, political language. As they did, they provided another means of legitimizing Parliament – through the language of ecclesiastical government.

Among the most prominent contributions of the Catholic clergy to lay political theory and culture in the fifteenth century was conciliarism. Conciliarism was a theory of ecclesiastical government declaring that papal authority over the universal church was not absolute and that a council should assist regularly in the governance of the faithful. The figures of Pierre d’Ailly, Jean Gerson, and Francesco Zabarella dominate the historiography of conciliarism. As the most outspoken and productive apologists of conciliarism, they have become emblematic of the Councils of Pisa (1409) and Constance (1414-1418). Their conciliarism was scholarly, moderate, and fairly comprehensive. The more radical conciliarism emanating from the Council of Basel in the 1430s and 1440s was the subject of two important works by Antony Black in the 1970s. Black has argued that papalist opponents of the conciliarist ideology of the Spanish intellectual Juan de Segovia portrayed it as a subversive, even revolutionary challenge to the

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principle of monarchical authority in the temporal and spiritual realms. The papal counter-offensive against Segovia and his fellow conciliarists included diplomatic efforts to establish an alliance with temporal monarchs in order to suppress the implementation of their ideas in either sphere. Contemporaries recognized the potential influence this ecclesiastical idea could have on political thought.

Conciliarism originated in the *Decretals* and canon law of the medieval Catholic Church, the writings of William of Ockham and Marsilius of Padua, and discussions on natural law. It began nearly simultaneous to the creation of parliamentary bodies throughout Europe and developed parallel to them. In England both had their initial formation in the thirteenth

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486 Burns, *Lordship, Kingship, and Empire*, 9. For more on Juan de Segovia’s conciliarism and contemporary and modern interpretations of it, see chapter five of this dissertation.


Conciliarism was never a monolithic theory. It contained a vast and varied body of ideas used by clerics and lay leaders to counteract the centralizing claims of the papacy in the Middle Ages and to promote ecclesiastical reform by insisting that a general council of the church, whatever its composition, had responsibility for the unity of the faithful and superiority over the pope in certain matters pertaining to the faith. One of the fundamental assumptions about the position of the pope in what Francis Oakley refers to as “strict conciliarism” was the belief that he “was not an absolute monarch but rather in some sense a constitutional ruler, that he possessed a merely ministerial authority conferred upon him for the good of the church, that the final authority in the church (at least in certain cases) lay not with him but with the whole body of the faithful or with their representatives gathered in a general council.”

Oakley has identified three predominant strands of thought that can be classified as “conciliarist” in the fifteenth century. The first and “most prominent” is the demand for the reform of the church in its head and members and “the belief that this reform could best be achieved and consolidated through the periodic assembly of general councils.” This language was explicit in both *Haec Sancta* and *Frequens*, the two most important decrees issued by the Council of Constance. Also at Constance the Council decreed that the soon-to-be-elected pope, with the aid of the Council before it adjourned, should make eighteen reforms of the Church in its head (e.g., the papacy) and in the Roman curia. Point thirteen stated: “It shall be determined

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489 For a brief analysis of this development see Kemp, *Counsel and Consent*, 65-86.
490 For example, no supporter of papal pre-eminence or superiority ever argued that a heretical pope could remain pope, or that the church could not protect itself from its own destruction.
491 Oakley, “‘Anxieties of Influence,’” 72; Oakley, “Nederman, Gerson, Conciliar Theory and Constitutionalism,” 3.
492 Oakley, *Council Over Pope?*, 62-63. The idea of reform through an assembly, synod, or general council was not new to medieval Europe; it had existed in Christianity from the earliest days of the church. What medieval Europeans contested was whether a council or the papacy was the best or most authoritative way to achieve reform. For more on early Christian synods, see Kemp, *Counsel and Consent*, 1-19.
for what causes and how a pope may be disciplined and deposed.⁴⁹³ Precisely who could
discipline and remove future popes is not stated, but it is clear that the Council intended to
conduct the reformation of the universal church and its individual members through a type of
mixed government in which the head participated with representatives of the other members.
Jurisdiction for addressing specific problems and providing the procedures to correct them
belonged to this mixed government, even if the bishop of Rome were to retain or be granted
jurisdiction to guarantee that the faithful observed the decrees of this mixed government while
the councils were not in session. This first type of conciliarism did not necessarily demand the
superiority of a general council to the pope, but it did require that the pope work in conjunction
with a council to reform the church and maintained that the pope was neither absolute nor
infallible – he could be disciplined and deposed.

This type of conciliarism was what Henry Chichele, archbishop of Canterbury,
understood to be the responsibility of the Council of Constance. Chichele wrote to Richard de
Clifford, bishop of London, on October 25, 1414 that he had called Convocation for the purpose
of raising funds to support the journey of several prelates from the province to the general
council for the purpose of reforming the universal church.⁴⁹⁴ Chichele never was a “strict
conciliarist” – he steadfastly supported the superior authority of the papacy to a general council.
However, such support did not preclude him from acknowledging that a general council had a
role in church government. Its task was to ensure the reformation of the universal church. By

   “…ad concilium generale in civitate Constantiae ad reformationem status universalis ecclesiae.” A similar formula
   was used in 1416.
1422 Chichele was even more explicit about the purpose of the Council of Constance. Among the considerations of the clergy at Constance was the decay of the church: “Sane putandum ut dies nostri quanto a nascentis ecclesiae primordiis longaevitate discedunt tanto duriori cervice in profundiora malorum contemptu damnabiliore descendunt.” Their responsibility had been to reform not only the universal church as a generalized concept, but to pursue the reformation “universalis ecclesiae...tam in capite quam in membris.” The additional phrase is significant. Chichele now conceded to a general council the ability to correct the papacy (capite) when circumstances called for it (although what those circumstances were, Chichele does not say).\footnote{495} It had the authority to reform the head as much as the members, even if that authority was limited to times in which great evil was present in the church. As with the idea of the common weal, when the community had decayed from its original state and needed restoration, a body representing the specific community could act on its behalf to eliminate problems and restore good governance.

The second strand of conciliarism was the least prominent because it imagined the government of the church in oligarchic terms. This was government by the cardinals and the curia rather than a broad general council.\footnote{496} As with the other strands of conciliarism, there is a parallel here to lay government. It was the cardinals who convoked the Council of Pisa in order to end the fracture in the Church. Whatever theorists alleged about authority in the Church, in practice the cardinalate probably was the only organized group within the institutional Church upon which authority could devolve to convocate such a council because of the collective stature

\footnote{495} Ibid., V, 130. Chichele proceeds to remark that the Council had not finished its proposed reform of the church. \footnote{496} Oakley, Council Over Pope?, 63-67.
of its members. In the corporational concept of bodies politic, the nobility assumed a place of
importance as natural leaders. As many cardinals belonged to the highest social strata of
medieval society, in addition to holding one of the most senior offices in the Church, they were
the “natural” leaders of the Church.

The third strand of conciliarism is what Oakley refers to as “the strict Conciliar theory,”
but he observes that it had no monolithic unity. The common belief among men who held this
position was that “the pope, however divinely instituted his office, was not an absolute monarch
but in some sense a constitutional ruler; that he possessed a merely ministerial authority
delegated to him by the community of the faithful for the good of the whole Church; that that
community had not exhausted its inherent authority in the mere act of electing its ruler but had
retained whatever residual power was necessary to prevent its own subversion or destruction;
that it could exercise that power via its representatives assembled in a general council, could do

497 The possibility existed for lay leaders, most prominently the Holy Roman Emperor and the king of France, who
were outside of the Church to insist on a council or some other structure to end the schism. Emperor Sigismund was
highly influential in ensuring that the Council of Constance met in 1414 to end the Schism. Contemporary
Englishmen were aware of such a possibility. King Charles of France, when “he returned to Rome, And wyth the
pope Adryan he assembled many bysshoppes and abbottes the nombre of an hondred and liij, and where they
ordeyned many constytucyons vpon the fayt of the vnyuersal chyrche. And in that synode for the grete holynes of
Charles, the pope and al thassystentes gaf hym power for to ordeyne bisschoppes and archbisschoppes in al his contrees
and prouynces.” William Caxton, *Thystorye and lyf of the noble and crysten prynce Charles the grete kynge of
Fraunce* (Westminster: William Caxton, 1485). Interestingly, another of Caxton’s publications two years before
stated that the pope alone had called the synod, but that he gave the king power to choose the pope: “And thenne
wente charles to Rome / and the pope assemblyd a synode of an hondre / and the pope assembled a synode of an honnderd and thre and fyfty bysshoppes / In whiche
synode the pope gafe to charles power to chese the pope and to ordeyne the see of rome / And also he graunted to
hym the Inuestyture to gyue to orchebysshoppes and bisschoppes tofore their consecracion.” Jacobus de Voragine,
cccxii. Even more explicit than Caxton’s *Life of Charles of France* was Higden’s *Polychronicon*: “Therfor whan
the bisschoppes were assembled in the Synode of nycaena by commandement of constantyn and by cowncyselle of
siluestre for to declare the fayth of holy chyrche, Many of hem playned eche vpon other and put vp bylles to
themperour for he shold do hem right Themperour sawe that holy chyrche for the whiche the bisschoppes were comen
myght lyghtly be lette by suche playntes and strif. Therfore he sette hem a certayne day after the sinode and
counsel for to make an ende of al thylke causes and playntes.” Ranulf Higden, *Prolicionyceon* [sic] (Westminster:
William Caxton, after July 2, 1482), cxxiii. Constantine, the lay leader, commanded the Church to hold a council
and ordered the bishops to attend. The pope merely gave counsel.
so in certain critical cases even against the wishes of the pope, and, in such cases, could proceed if needed to judge, chastise and even depose the pope.”498 This offered a more precise definition of mixed government, with a council retaining authority derived from the universal church for broad participation in ecclesiastical governance, than the first strand of conciliarism. In this theory, ultimate authority for ecclesiastical affairs rested in the *ecclesia universalis*, not the papacy.

As tends to occur in unusual or extreme circumstances, fifteenth-century conciliarists were unable to overcome their own factional divisions, reach any permanent agreement on the structure of conciliar government, or enact lasting reforms in the face of a papal campaign to undo the successes they had achieved. Yet the very existence of the councils, the belief in their legitimacy in the early stages of their existence, the failure of the pope or future councils to officially condemn and overturn *Haec Sancta*, and the questionable legitimacy of individual popes set precedents for legitimizing mixed authority and potentially removing the head of the body politic. In political culture, a precedent and the language that accompanies it often is sufficient for legitimizing contemporary circumstances, even if the original failed to succeed as intended or to continue in existence.

The debate in government in the fifteenth century was not primarily over its fundamental structure (that is, few, if any, advocated eliminating the role of the monarch or the pope entirely), but over the nature of good governance of the corporate body and the authority to ensure a healthy society. The principal question for both clerical and lay government was: who had such authority? If it was the earthly head of the body, then the pope and the monarch were the

498 Oakley, *Council Over Pope?*, 68.
foundations of government, and any form of representative council or institution was superfluous, except in the most extenuating circumstances. If, however, authority resided in the entire body itself, then some broader governing assembly was necessary to represent and address the interests, claims, and concerns of the full community. Conciliarists asserted that the pope possessed “only a derivative and limited right of government conferred on him by the universal church (congregatio fidelium). If his rule tended to the destruction of the Church, he could be corrected and even deposed by a General Council exercising the superior authority inherent in the Church as a whole. He was supposed to be a servant of the Church, not its master.”499 In certain circumstances “the general council representing the Church—acting even apart from or in opposition to the pope—could exercise a governmental authority superior to his. A general council could impose constitutional limits on the exercise of the pope’s prerogatives, stand in judgment over his actions, and, at last resort, even move to depose him.”500

The same was true for lay government, in part because it shared a similar language regarding the structural organization of society and the organic development of administrative governance.

Late medieval kingship...had become polity-centered after the crisis of the thirteenth century. The continuity, first guaranteed by Christ, then by the Law, was now guaranteed by the corpus mysticum of the realm which, so to speak, never died, but was ‘eternal’ like the corpus mysticum of the Church. Once the idea of a political community endowed with a ‘mystical’ character had been articulated by the Church, the secular state was almost forced to follow the lead—to respond by establishing an antitype. This view does not detract from the complexity of other stimuli which were also effective: Aristotelian doctrines, Roman and Canon law theories, the political, social, and economic development at large during the later Middle Ages. But those stimuli seem to have worked in the same direction: towards making the polity co-eternal with the Church and

499 Tierney, Foundations of the Conciliar Theory, 5-6.
Europeans transferred and applied to political entities the idea of the *corpus mysticum*. This was true whether they used the ecclesiological designation itself or whether preferred more specific equivalents, such as the Aristotelian *corpus morale et politicum*. The English were no exception, frequently employing the discourse of the *corpus mysticum* to temporal politics in the wake of the Church councils.

With the advent of the Western Schism of 1378, in which two men simultaneously claimed to be pope, conciliarism became an attractive practical ideal for church unity and governance for some clerics. No temporal realm in medieval Europe remained internally divided over a disputed succession for as long as the forty years of the Schism in the Church. None perhaps had faced such a resolute and explicit attack on its principles and practice as characterized the conciliarist literature of the late fourteenth and fifteenth centuries. The papal monarchy of the early fifteenth century disintegrated nearly to the point of collapse. For forty years there was no agreement as to who had the right to exercise the monarchical powers of the papacy. The world into which the papacy eventually reemerged was one in which temporal

502 The *corpus mysticum* was a common term in ecclesiastical language in the Middle Ages. Pope Boniface VIII opened the bull *Unam Sanctam* in 1302 with the following sentence: “Unam sanctam ecclesiam catholicam et ipsam apostolicam urgente fide credere cogimur et tenere. Quae unum corpus mysticum repraesentat, cujus caput Christus, Christi vero Deus.” In English: “Urged by faith we are bound to believe in one holy Church, Catholic and also Apostolic...which represents one mystical body, the head of which is Christ, and the head of Christ is God.”
505 Burns, *Lordship, Kingship, and Empire*, 4-5.
506 Ibid., 32.
rulers as well as popes had learned hard lessons about disputed legitimacy, and many were prepared to assert and defend their claims in common terms because both believed there was a “democratic” challenge to be resisted. 507 Ironically, though, as the papacy was regaining some of its former power and legitimacy, the kingship of Henry VI began to disintegrate, and he was unable to assert his claims as successfully as one might expect.

In 1409 cardinals of differing loyalties convoked the Council of Pisa in an attempt to depose the two rival popes and elect a new one. 508 Prior to its assembly, the cardinals sent Cardinal Francesco Uguccione to England to persuade the English to attend the council. In October 1408 Uguccione gave a lengthy speech to “the three estates of England,” explaining the rationale and the responsibility of the College of Cardinals for convoking a general council. 509 According to medieval Catholic theology, the pope was the Vicar of Christ on earth. 510 As such, he was divinely ordained to govern the Church, but he was not so free that only he could judge himself. If he were he would be a monarch, according to Uguccione, and could become a tyrant. The Schism of the fourteenth and fifteenth centuries “had no parallel in the law nor in chronicles,” nor was it possible to determine a way out of the division without using human ingenuity and reason. Because the fragmentation in the leadership of the institutional Church concerned the whole of Christendom, a general council representing the church universal was to

507 Ibid., 4-5.
508 For more on the Council of Pisa, see C. M. D. Crowder, Unity, Heresy and Reform, 1378-1460: The Conciliar Response to the Great Schism (New York: St. Martin’s Press, 1977), 3-7, 47-64. For the text of the Council’s sentence against the two popes, see p. 60-61.
judge the pope. While it was certain that canon law gave the pope the authority to call a general council, Uguccione argued that not only should the words of the written law be considered – so should “the reasonable foundation and intention of the law.” If law lacked a reasonable foundation, it should be abolished, and if there was no stipulation in the law authorizing the College of Cardinals to convene a council, then reason itself was to have the force of law, for the two (reason and law) were interchangeable. The goal of both canon law and natural reason was the unity of the church.

Uguccione took his argument a step further than the cause of unity. There was, he argued, no higher rank than the College of Cardinals in the Church. The cardinalate was a necessary part of church governance at all times, and the pope was to oversee the body of the faithful in conjunction with the cardinals. Even an undisputed pope ought to seek the advice of the cardinals on all difficult business. This statement was unnecessary to justify the Council of Pisa’s attempt to end the Schism. Instead it was a declaration in support of oligarchic church governance. Uguccione’s understanding of the authority of a monarch to judge himself and his advocacy of an oligarchic government (essentially the head with a council) would have clashed with the English idea of the dominium politicum et regale, not yet articulated by Fortescue but familiar enough in practice to Uguccione’s audience in 1408. Nonetheless, here was a

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511 Crowder, Unity, Heresy and Reform, 48.
512 Ibid., 47-50.
513 The College of Cardinals was not representative in the sense that it brought together members of different social orders and ranks, as occurred in Parliament and occasionally in general councils of the Church. It was an aristocratic body that excluded most from membership. The only conjunction between Uguccione, who advocated an oligarchic political structure in this speech, and English arguments for representation of the political community in government is that both claimed that the head of the body could not govern by himself; he had to have the advice or consent of another group within the community.
cardinal of the church offering his English audience a philosophical justification for a form of conciliar ecclesiastical government.

Despite the desire of men like Uguccione to bring unity to the church, the Council of Pisa elected a third pope, Alexander V (Pietro Philarges), succeeded soon after by John XXIII (Baldassarre Cossa). With three men now claiming to be the legitimate leader of the Catholic Church, the crisis deepened. Resolution to the conflict would require the efforts of another church council five years later. Although the outcome of Pisa was a failure, the methods of the cardinals were not improper. Their action followed accepted contemporary canonistic teaching that a pope “who deviated from the true faith or who was guilty of notorious crimes which scandalized the Church” and thus was heretical was liable to judgment and even deposition by the universal church or its representatives. Commonly established canonistic opinion held that the body competent to proceed to judgment was the general council.\(^{514}\)

The Council of Constance (1414-1418) finally resolved the Schism. Gregory XII (Angelo Corraro) resigned his papacy, and the council deposed Benedict XIII (Pedro Martínez de Luna) and John XXIII and elected Martin V (Odo Colonna) in place of all three.\(^ {515}\) Pierre d’Ailly, the renowned Parisian theologian and conciliarist, argued that because canon law was positive law (\textit{ius commune}), it could be transcended for the good of the church “by the application of the Aristotelian principle of equity.”\(^ {516}\) Therefore, if necessary, a general council could assemble without authorization from the pope, as the Council of Constance did. Jean

\(^{514}\) Oakley, \textit{Council Over Pope?}, 48.

\(^{515}\) For the deposition of Benedict XIII, see Crowder, \textit{Unity, Heresy and Reform}, 126-127.

\(^{516}\) By \textit{ius commune} the canonist meant “the law that is common to the universal church, as opposed to the constitutions or special customs or privileges of any provincial church. He did not mean to exclude from his ‘common law’ all rules imposed by a legislator. Far from it. Before the middle of the thirteenth century the most practically important part of his ‘common law’ was statute law, law published by a legislator in a comprehensive statute book.” F. W. Maitland, “Canon Law in England,” \textit{The English Historical Review}, 11:43 (1896), 448.
Gerson, d’Ailly’s pupil, argued that conciliar authority was based on divine and natural law (ius divinum et naturale), not canon law, which makes sense if, as d’Ailly claimed, canon law was ius commune. Divine and natural laws always supersede positive law and justified whatever abrogation of positive law the Council might have committed. The success of Constance stimulated aspirations for conciliar supremacy over the papacy in matters of regular church governance rather than limiting conciliar authority to times when the Church was under duress. The Council issued the decrees Haec Sancta (1415) and Frequens (1417) to codify the authority, frequency, and responsibility of church councils in the future. Haec Sancta declared that the Council’s power (potestas) came immediately from Christ, not from the pope, and that everyone, including the pope, was bound to obey it in matters pertaining to the faith, the eradication of schism, and the reformation of the Church in head and members. Anyone who ignored or refused to obey the commands of the council was to be subject to penance and duly punished. Frequens stipulated that councils should meet at regular, specified intervals in the future, in effect permanently changing the Church’s constitution. In addition to the two decrees, Constance was significant because the Council deposed two popes and arranged for the election

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517 Canning, A History of Medieval Political Thought, 177. Gerson represents not only a shift in the conception of ecclesiastical authority; he also is emblematic of a change in the means of communicating ideas. At a time “when the commentary seemed downright backward-looking, he represents the coming of a new type, made possible by the shift to the tract: the theologian as controversialist, concerned with issues of public morality, always ready to give his opinion on current popular topics, and eager to reach a large audience.” By the end of his life, “certain of Gerson’s French works were achieving the status of devotional classics.” His Latin works also had wide circulation. His tract on Joan of Arc, written in 1429, appeared that same year in pro-English territory at Paris, where a canon lawyer attacked it. Hobbins, “The Schoolman as Public Intellectual,” 1323-1324, 1328-1329.
518 The Latin text of the decree reads: “Haec sancta Synodus Constantiensis...declarat...quod ipsa synodus in spiritu sancto legitime congregata, legitime generale concilium faciens, ecclesiam catholicam militantem representaens, potestatem a Christo immediate habet.”
519 For English translations of these two decrees, see Crowder, Unity, Heresy and Reform, 82-83, 128-129; A Source Book for Medieval History, 328-329, 331-332. See also Canning, A History of Medieval Political Thought, 176-177.
of a new one. These two facts “were of decisive importance, psychologically and as precedents.”

In 1431 Pope Martin V called the Council of Basel in accordance with Frequens. It was a complex undertaking from the beginning because of difficult relations between pope and council, national clerical agendas, the threat from organized and armed Hussites, and general discontent with Rome. Martin V died soon after summoning the council. Eugenius IV (Gabriel Condulmer), who resisted the authority claimed by the general council, succeeded him. Initially Eugenius tried to dissolve the Council, but he was unsuccessful. Two years after the council began, “secular pressure, the drift of high-level ecclesiastical opinion, even among the cardinals and the curia, combined with unrest in the papal states, forced Eugenius to recognize the legitimacy of the council since its inception, in terms free of any implication that such legitimacy derived from papal favor.” The pope issued a bull, Dudum sacrum, in December 1433 that invalidated his earlier dissolution of the council. The Council accepted his reconciliation in February 1434. His initial intransigence towards the Council of Basel was blamed on “malicious persons,” who had encouraged him to dissolve it, rather than on his own hostility to conciliar government, much as Henry VI’s ineptitude as king two decades later would be blamed on his “evil councillors,” whose removal was necessary for the restoration of good government. In spite of the pope’s belated recognition of the legitimacy of the Council, Eugenius continued to defend the power and authority of the Roman See. In 1437 he issued a

520 Black, Council and Commune, 17.
521 For the Council of Basel’s rejection of papal efforts to dissolve it in 1431-1432, see Crowder, Unity, Heresy and Reform, 147-150.
522 Black, Council and Commune, 27-28. Oakley asserts that the capitulation of Eugenius IV to Haec Sancta was a result of the Council’s successful conclusion of an agreement with the Hussites. See Council Over Pope?, 54.
bull, *Doctoris gencium*, dissolving the Council of Basel and transferring it to Ferrara in order to meet with the Greeks over a possible reunion. His successors likewise defended the authority of Rome. In the bull *Execrabilis* of early 1460 Pope Pius II (Aeneas Silvio Piccolomini) prohibited appeals to a general council, as against his own authority, declaring such appeals to be the work of those with a spirit of rebellion (*spiritu rebellionis imbuti…ad futurum Concilium provocare praesumant*).\(^{524}\)

English clergy were active in the debate over conciliarism from the beginning of the century. Robert Hallam, bishop of Salisbury, was prominent in the debates at the Council of Pisa and led the English delegation to Constance.\(^{525}\) Henry V authorized many important clerics and laymen, including the bishops of Salisbury, Bath, Winchester, London, Coventry, and Hereford, the abbots of York and Westminster, the priors of St. John Clerkenwell and Worcester, the earl of Warwick, Sir Walter Hungerford and Sir Ralph Rocheford, Henry, Lord Fitz Hugh, and Philip Morgan to attend the Council of Constance.\(^{526}\) Richard Fleming, bishop of Lincoln and founder of Lincoln College at Oxford, preached at Constance in 1417 and at Siena in 1423. At Constance clerical delegations were divided into nations. This gave the English parity with nations that sent more representatives. The English presence at Basel, however, was significantly smaller and more contentious than the delegations from France, Germany, and the Low Countries.\(^{527}\) In part this was because Basel was not divided into “nations” as Constance

\(^{524}\) For English translations of *Execrabilis*, see Crowder, *Unity, Heresy and Reform*, 179-181; *A Source Book for Medieval History*, 332.

\(^{525}\) Crowder, *Unity, Heresy and Reform*, 58. Hallam died unexpectedly in September 1417 in the midst of the proceedings at Constance.


\(^{527}\) Black, *Council and Commune*, 34.
had been, thus limiting English influence. The English delegation also objected to the administration of an oath required of attendees. In spite of their objections to the oath, they took it. 528 Henry VI’s government initially was ambivalent about the Council as well. It decided to send representatives only after Humphrey, duke of Gloucester, intervened in support of those at Basel. 529 The English did not arrive at the Council until 1433, two years after it began. 530 Those in attendance at Basel included the bishops of London and Rochester, the abbots of Glastonbury and St. Mary’s York, the prior of Norwich, the dean of Salisbury, and the chancellor of Lincoln.

A. N. E. D. Schofield asserted that “there is no evidence of English sympathy with conciliarism” in the mid-1430s, although he does not define what he means by the term. 531 That there may have been little sympathy with conciliarism as practiced by the Council of Basel is

529 A. N. E. D. Schofield, “England, the Pope, and the Council of Basel, 1435-1449,” Church History, 33:3 (1964), 248. In 1432 the government decided to send representatives to both Eugenius IV and the Council of Basel. A year later the English clergy complained about their diminished stature in relation to the other nations at Basel. See Records of Convocation, V, 306-307; 326. Gloucester had had contentious dealings with papal representatives prior to Basel, which perhaps contributed to his amenability to a council. Likewise, Gloucester’s antagonism to Henry Beaufort, bishop of Winchester and Cardinal of the Church, whom Pope Martin V favored, might have contributed to it. At the time the government reached its decision, Henry VI was still a minor. He did not attain power on his own until 1437, at which point Anglo-papal relations improved. See E. F. Jacob, Henry Chichele and the Ecclesiastical Politics of His Age (London: The Athlone Press, 1952), 15, 18; Saygin, Humphrey, Duke of Gloucester, 30-47, 82-83, 182-183. The king sent letters to Basel in February 1434 in which he vowed to send ambassadors to the Council. See Concilium Basiliense: Die Protokolle des Concils von 1434 und 1435, ed. Johannes Haller (Nendeln: Kraus Reprint, 1971), 21. Originally, Piero da Monte, the papal nuncio in England, favored Beaufort and portrayed him as the primary ally of the papacy. By 1438 he had changed his perception of Beaufort and Gloucester, subsequently portraying the latter as the defender of papal supremacy. In 1438 Eugenius wrote to Gloucester asking for assistance against his opponents at Basel. Schofield claims in “England, the Pope, and the Council of Basel” (262) that perhaps the pope “had, or thought he had, reason to consider Gloucester’s friendship only lukewarm.” Gloucester’s specific opinion of conciliarism is unknown.
530 Crowder, Unity, Heresy and Reform, 150; Schofield, “An English Version of Some Events in Bohemia during 1434,” 321-322. Schofield claims that the English delegation was sent primarily to be present for the Council’s debate with the Hussite representatives on their Four Articles. The teachings of John Wyclif were frequently cited and “the extent of his influence on the Hussites [as] repeatedly indicated” at the Council. The English delegation no doubt sought to prove their orthodoxy contra Wyclif.
531 Schofield, “England, the Pope, and the Council of Basel,” 252. Schofield’s conclusion is based almost exclusively on the writings and official policy of the king and, to a limited extent, clerical discussions in the Convocations of Canterbury.
unsurprising given the lack of enthusiasm among the English for that Council’s structure and its general uselessness to the *Ecclesia Anglicana* and the foreign policy of Henry VI. The English had little need to be involved extensively in the conciliarist debates of the 1430s because they already limited the power of the pope through the parliamentary Statutes of Provisors and Praemunire. Because of these two statutes, no Englishman, not even the king, could petition the pope for benefices or receive papal letters of provision without the sanction of Parliament. The Statute of Provisors, initially passed in 1350-1351 under Edward III, was reaffirmed multiple times in the reign of Richard II. It protected benefices in England from being given to alien clerics and ensured ecclesiastical elections without interference from Rome. In response Pope Boniface IX (Piero Tomacelli, the Roman, not Avignon pope, r. 1389-1404) issued a bull annulling all offensive acts of Parliament. According to the bull, the acts were to be erased from the records and the faithful forbidden under censure to obey them. Parliament refused to obey the bull and continued to reaffirm the Statute of Provisors. Henry IV’s first parliament, in 1399, gave the king the power to modify the statute without further parliamentary consent, provided he did so for the good of the realm. This was reaffirmed in Parliament in 1401.

The Statute of Praemunire (1393) was the official English response to the bull of Boniface IX. It originated in the Commons’ desire to limit the burdens the papacy placed on England and ensured the sovereignty of the English Crown over the pope in matters relating to the *Ecclesia Anglicana*. It prohibited suits to the Court of Rome and papal interference in the translation of bishops. Praemunire initially protected English clergy in England from papal censures when they used English courts to claim benefices and English bishops from translation

from one diocese to another without their consent or the king’s. Ironically, the statute, F. R. H. DuBoulay observes, “seems soon to have been forgotten” because of the ensuing weakness of the papacy during the Schism. Until the early 1430s there is no evidence that the Statute of Praemunire was enforced, or even mentioned in any official document. Beginning in 1431-1432 people expressed concern that Cardinal Henry Beaufort violated Praemunire when he gained exemption from the authority of Canterbury to retain the bishopric of Winchester after Martin V appointed him a cardinal and legate a latere. Later in the decade the Convocation of Canterbury, under Chichele, condemned the bull of Eugenius IV that commended the archbishop of Rouen to the diocese of Ely and appointed him papal administrator in England. Such a unilateral decision by the pope, according to Chichele, worked only to the detriment of the

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534 Jacob, *Henry Chichele and the Ecclesiastical Politics of His Age*, 8. Jacob observes that “the rolls of graduates eligible for promotion had ceased to be sent to Rome: only papal provision to sees and papal translation...could be accepted and were in consequence registered by the archbishop, the former as a more or less agreed act between the Pope and the king.” Brian E. Ferme observed that antagonism between common and canon law over jurisdictional boundaries in England became serious in the 1480s. Though “the reasons for the change remain unclear,” he wrote, “litigants began using the fourteenth-century statutes of Praemunire” to secure the common law courts. Ferme, *Canon Law in Late Medieval England: A Study of William Lyndwood’s Provinciale with Particular Reference to Testamentary Law* (Rome: LAS, 1996), 9.
535 Henry V had expressed concern about Beaufort’s positions and forbade him to accept them or to publish papal bulls. During Henry VI’s minority the duke of Gloucester became Beaufort’s most formidable opponent and aggressively pursued praemunire charges against the cardinal.
536 *The Register of Henry Chichele, Archbishop of Canterbury 1414-1443*, eds. E. F. Jacob and H. C. Johnson (Oxford: Clarendon Press, 1937), II, f. 104b. Chichele said, “Secundo intimavit eisdem quod dictus dominus noster papa per litteras suas prouidit et commisit ecclesiam Cathedralem Eлиенсем per modum commende pro perpetuo domino Lodewico archiepiscopo Rothomagensi ac ipsum administratorem perpetuum dicte ecclesie et diocesis Eлиенсium deputatuit et ordinavit ut in bulla super hoc confecta...liquet manifeste; que quia erat res ante hec inuis et mali exempli ac ut per magnas raciones ostendit et luculenter declaravit Reuerendissimus Pater antedictus posset cedere in ecclesie Anglicane magnum detrimentum et iacturam dicebat quod super huius modi facto vellet ipsos consulere et super eisdem deliberare.” The pope’s timing was poor. The English controlled Rouen, but three years prior to the bull Philip III of Burgundy, England’s most important ally in the long war against France, signed the Treaty of Arras with Charles VII of France. In the treaty Philip recognized Charles as king of France and agreed to return Paris to Charles. In 1438 Charles issued the Pragmatic Sanction of Bourges, which required a general council of the Church, with authority superior to that of the pope, to be held every ten years, in accordance with *Frequens*; required election rather than appointment to ecclesiastical offices; prohibited the pope from bestowing, and profiting from, benefices; and limited appeals to Rome. In such a charged atmosphere, in which the English had lost territory to France and the king of France claimed more jurisdiction for himself, it was highly unlikely that the Convocation of Canterbury would have supported Eugenius’s bull.
English church. Had he consulted and deliberated with the clergy, he could have avoided unnecessary hostility between Rome and England.

While the English government may have been ambivalent about participation in the Council of Basel and generally supportive of the authority of the papacy, it was simultaneously unwilling to cede power to the pope and began invoking the parliamentary statute in order to nullify papal claims to jurisdiction in England.\textsuperscript{537} An indigenous institution, composed of the head and representatives of the members of the body, thus had authority to limit the power of the Vicar of Christ in ecclesiastical affairs.\textsuperscript{538} Eugenius IV aggressively sought to have the Statute of Praemunire overturned, as Boniface IX had previously attempted with Provisors. Piero da Monte, the papal collector in England, unsuccessfully expended much effort to have Praemunire overturned in 1439. The argument of English clerics on behalf of the papal see was that “la Grande Charte d’Angleterre et...notre seigneur le roi et plusieurs ses progeniteurs devant les divers parlements” had granted and confirmed “l’estat et libertes de sainte esglise.” When the clerics asked Chichele to have the statute overturned, they asked that it be done “par autorite d’icelle parlement,” equating Convocation with its temporal counterpart even though Convocation’s jurisdiction was more limited than Parliament’s.\textsuperscript{539} Lay society, they argued, was encroaching on “la jurisdiction spirituelle.”\textsuperscript{540} The statute remained in force, to the dismay of the

\textsuperscript{537} English kings continued to resist and undermine the power of the papacy throughout the century. When the pope requested a subsidy from the English church to fight the Turks in 1464, the king had to approve it but did so grudgingly. \textit{Records of Convocation}, VI, 166-167.

\textsuperscript{538} DuBoulay writes in “The Fifteenth Century” (206), “When the Lancastrian kings in the earlier fifteenth century evaded papal demands for the abolition of anti-papal statutes by referring to parliament’s importance and parliament’s upholding of these statutes, they spoke nothing but the truth. But kings themselves were not so unwswervingly anti-papal, for they had no need to be.”

\textsuperscript{539} \textit{Records of Convocation}, V, 403-407.

\textsuperscript{540} Ibid., V, 404. According to one historian, in the fourteenth century, when these statutes initially were enacted, “the English Parliament was steadily becoming more conscious of its potential power,” although “it had no great
papacy. Although the powers of the pope in England were thus limited by temporal legislation, he continued to correspond regularly with the English clergy, usually about benefices, holy orders, and minor, localized problems.  

Despite their reduced participation and statutory limitations governing the interaction of the *Ecclesia Anglicana* and the papacy, the Council of Basel figured prominently in English ecclesiastical discourse in Convocation throughout the 1430s. Chichele cited the events at Basel as a primary reason for holding Convocation in the 1430s because the proceedings there and in the curia were of concern to English clerics. The Convocation of Canterbury spent nearly a month debating how best to address the growing rift between the pope and the council. One of the main concerns was that the council might proceed against the pope, depose him, and elect a new pontiff in his place. If it did, was the *Ecclesia Anglicana* to obey the current (e.g., the deposed) pope, the council, or neither of them?  

That this question was even considered implies that the English church did not reflexively side with the papacy or adhere unswervingly to papal authority. It was willing to consider that a council might have its own inherent spiritual authority and legitimacy that would allow it to participate in the government of the Church. When Eugenius IV transferred the Council of Basel to Ferrara in 1438 there was strength of itself.” Rather, it was used “by the vigorous and competent English Crown largely as a useful extra weapon in its unending encounters with the papacy.” By using Parliament in such a way, the Crown unwittingly set a precedent for future generations to follow. J. C. Dickinson, *The Later Middle Ages: From the Norman Conquest to the Eve of the Reformation* (London: A. and C. Black, 1979), 314.


543 Ibid., V, 326. This question was posed on November 10, 1433. The lower house of Convocation concluded on December 1 that the decision of Eugenius IV to dissolve the Council of Basel was valid in spite of the decree *Frequens*; that Eugenius was the true and undisputed pope; and that obedience was due him (ibid., 329).

544 DuBoulay asserts in “The Fifteenth Century” (214) that there were few spiritual principles involved in English support for the papacy over the council. What mattered most was contemporary politics, particularly relations with France. I am not sure he is entirely correct. While lay politics dominated English concerns, the clergy in Convocation seriously considered the problem of spiritual authority.
rejoicing in Convocation, not because the act confirmed papal supremacy but because the English clergy assembled there supported the idea of an ecumenical council that would unite the Church and bring peace to the people of Christendom.\textsuperscript{545}

Prior to their journey to the Council of Basel, English prelates received instructions from Henry VI, by the advice of his council, on how to proceed on matters that might arise. On the question of the papacy the envoys were urged to proceed with moderation to ensure peace within the Church. However, should the Council decide to move against the pope for causes that were “just, lawful, and approved by divine law and the church of Canterbury, the ambassadors [were to] do what according to their intelligence and discretions...they think ought to be done.”\textsuperscript{546} Such language gave broad authority to the English representatives at Basel. That the English king authorized his representatives to a church council to potentially proceed against the pope, the earthly head of the \textit{corpus mysticum} of Christ, suggests that he accepted the possibility that a council representing the entire body of the faithful had authority to censure and try the pope.\textsuperscript{547}

Later Englishmen agreed with the king. A continuation of Ranulf Higden’s \textit{Polychronicon}, published by William Caxton in 1482, asserted that the Council of Constance, “laufully gadred and assembled representyng the chirche hath vnyuersal power inmedyatly of Cryst To whome euery astate as wel the papal astate as other is bounden and holde to obeye in tho thynges that toucheth the general reformacion of the chirche that is to wete in feyth and maners al wel in the

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\footnote{545} \textit{Records of Convocation}, V, 373.
\footnote{546} \textit{EHD}, IV, 680-681. The document is from \textit{The Official Correspondence of Thomas Bekynton}, II, 260, from Bodleian MS Ashmole, 789. The abbot of York “labored hard for the dignity of the Apostolic See at Basel,” as did the bishop of Rochester (ibid., 683). This is a letter from a papal diplomat, presumably Piero da Monte, advising Eugenius IV on English episcopal elections in 1436.
\footnote{547} Henry VI was not without reservations as to the work of the Council and over the next decade declared his loyalty to Eugenius IV in more definitive terms as the prelates in Basel became more strident. See \textit{Memorials of the Reign of King Henry VI}, II, 37, 46, 61, 83, and 259-269 (introductory description in i, cxxxii and after); Schofield, “England, the Pope, and the Council of Basel,” 248-278.
\end{footnotes}
This language, drawn from the decree *Haec Santa*, strikingly resembles that used by Archbishop Chichele in his address to Convocation sixty years earlier. That the Council of Constance had a legitimate right to create a new pope in the event of an intractable schism was unquestioned, primarily because it had responsibility for the general reformation and health of the whole church. By the Council’s authority “many notable actes for the wele of the church there were enacted,” including the election of a new, undisputed pope.\(^{549}\)

The Council of Basel’s deposition of Eugenius IV in 1439 after he transferred it to Ferrara-Florence was less straightforward. It was difficult to determine who was in the right in the contentious and increasingly strident debate over the translation of the Council. Nevertheless, chroniclers acknowledged that Eugenius had failed to uphold the decrees and statutes of Constance and did not obey the general council in any manner. For this reason those clerics who remained at Basel deposed him as a heretic.\(^{550}\) Whether Eugenius or the Council was correct, only God knew, according to one chronicler.\(^{551}\) That English authors did not automatically default to a papalist interpretation of the events of the 1430s and of church government itself is striking. It suggests that they retained the belief that conciliar government was legitimate, though it might not be ideal or preferred. Their language is ambiguous enough that the exact nature of a potential conciliar government is difficult to discern. It could be a government in which the pope maintained jurisdiction over the affairs of the Church so long as

\(^{548}\) Higden, *Prolicionycion* [sic], cccxix.

\(^{549}\) Robert Fabyan, *Fabyans cronycle newly prynted, wyth the cronycle, actes, and dedes done in the tyme of the reyng of the moste excellent prynce kyngge Henry the vii. father vnto our most drad souerayne lord kyngge Henry the viii.* (London: Wyllyam Rastell, 1533).


\(^{551}\) Anonymous, *Cronycles of the londe of Englo[n]d*. 166
he exercised that jurisdiction through a general council, or it could be one in which the council held supreme jurisdiction. What is evident is that the language of Constance had sufficiently penetrated literate English society that it endured throughout the century, as did Henry VI’s suggestion that a group representing the entire body politic had authority to censure and try the head of that body politic.552

The language of political organization was changing. As mentioned above, exchanges of language and symbols between the Church and what Kantorowicz referred to as the State initially occurred primarily between individual offices – those of prince and pope. These exchanges continued in the late Middle Ages, but the field of mutual influence expanded from individual dignitaries to compact communities, de-sacralizing kingship in the process, but not de-sanctifying the community.553 Legal and constitutional problems concerning the structure and interpretation of bodies politic gradually became more prominent in the discourse of government and bureaucratic organization and practice. Kantorowicz argues, “We are used to a semi-theological mysticism with regard to the Prince and the interpretation of his functions, but are perplexed to find in England similar features with regard to Parliament.”554 There should be no confusion, for, as he himself observes, “late medieval and modern commonwealths were

552 A central question of any discussion of the use of conciliarism in lay political discourse in England is how such ideas, debated at an ecclesiastical council at a geographically removed distance, entered the kingdom. Schofield contends that the vigorous defense of the pope mounted by Piero da Monte, the papal nunius in England, provided a primary means for the transmission of news about the Council of Basel to the island, even if his presentations had little effect on contemporary English policy. Schofield, “England, the Pope, and the Council of Basel,” 257; Records of Convocation, V, 403. For more on Piero da Monte, see Saygin, Humphrey, Duke of Gloucester, 172-193. The records of Convocation (V, 306) confirm that the papal nuncio had a significant role in transmitting news of the Council of Basel to the English clergy, although they also reveal that news came from the council itself. For Piero da Monte’s specific letters, see Johannes Haller, Piero da Monte: Ein Gelehrter und Päpstlicher Beamter des 15 Jahrhunderts (Rome: W. Regenberg, 1941), 53-56, 70-72, 75-76, 104-109, 112-115, 127-129, 133-138, 146-147 553 Tierney, Religion, Law, and the Growth of Constitutional Thought, 107.
554 Kantorowicz, The King’s Two Bodies, 227.
influenced by the ecclesiastical model, especially by the all-encompassing spiritual proto-type of corporational concepts, the *corpus mysticum* of the church.\(^{555}\)

As noted earlier, the idea of the *corpus Christi mysticum* had lost much of the “rich sacramental associations present in the earlier patristic usage.” In their place it now had corporative and political connotations. Its closest analogy had become the natural human body. The expression was understood “to denote a ‘moral and political [as opposed to a real or physical] body.’”\(^{556}\) Pierre d’Ailly referred to the whole Christian church as a mystical body.\(^{557}\) Jean Gerson, in his speech to the Council of Constance in 1415, declared, “This comparison of the real body to the mystical body brings much light to those enquiring for the truth, not only in the writings of philosophers like Aristotle and Plutarch, but also in the theologians, especially Paul.”\(^{558}\) Gerson argued that the church, as a *corpus mysticum*, “always maintained its intrinsic unity even in the absence of an earthly head through adhesion to its true head, Christ.”\(^{559}\) The pope, as the purported heir to Peter, is head of the faithful as Christ’s earthly representative. He himself is not the true head. Because of Christ’s headship, the *congregatio fidelum* could never

\(^{555}\) Ibid., 193-194.
\(^{556}\) Oakley, “‘Anxieties of Influence,’” 104-105. For more on the Christian origins of the idea of the *corpus mysticum*, see Cardinal de Lubac, *Corpus Mysticum: The Eucharist and the Church in the Middle Ages*, 6. Lubac writes, “There is no writer of Christian antiquity or of the high Middle Ages in whose work the word [*corpus mysticum*] itself appears as a description of the Church.” For the early transition of the word from a sacramental context to a natural, and eventually political one, see *Corpus Mysticum*, 112-119; Tierney, *Foundations of Conciliar Theory*, 121-129.
\(^{557}\) Oakley, “The Propositiones utiles of Pierre d’Ailly,” 399-400. D’Ailly’s propositions present a cogent analysis of Christ as the head of the church, the perfector of its unity, and the original and immediate source of its power and authority. The pope, in d’Ailly’s estimation, could claim none of these functions. In addition to his reliance on Biblical passages for support, d’Ailly also appealed to “common natural law” – to the idea that a physical body naturally resists its own division and partition. Whereas a year earlier Francesco Uguccione had affirmed to the English the right of the College of Cardinals to call a general council of the church, d’Ailly declared that that right belonged not only to the cardinals, but, on occasion, to any Christians who sought to further the greater good of the body of Christ (ibid., 402).
\(^{558}\) Crowder, *Unity, Heresy and Reform*, 81.
truly be acephalous, whereas a civil body could lose its head, even though Fortescue stated that a community is not a body while it is acephalous; it is simply a trunk. In *De Laudibus Legum Angliae* Fortescue uses the term “corpus misticum” repeatedly when he describes the different parts of the communal body. Whether he is suggesting a metaphysical condition for civil society is unclear. William Lyndwood, in his important ecclesiastical text *Provinciale, seu constitutiones Angliae*, associates the corpus mysticum first with the church: “Corpus Christi mysticum est Ecclesia, de treuga et pace. c. unico. ver. unum corpus.” He then equates it numerous times with the Eucharist, giving it a specifically liturgical dimension that is absent in d’Ailly and Gerson’s formulations. By the time Fortescue wrote, the analogy appears to have migrated successfully to the language of civil society.

The nature of contemporary political discourse in England portrays Parliament as the logical physical manifestation of the corpus mysticum of the body politic. The use of ecclesiastical language for temporal politics preceded the reign of Henry VI. In 1401, Sir Arnold Savage, speaker of the Commons, compared the body politic of the realm with the Trinity: “The king, the lords spiritual and temporal, and the Commons jointly formed a trinity in unity and a unity in trinity.” Savage used the comparison to refute Henry IV’s demands for taxation from the Commons, although they eventually granted a tenth and fifteenth, in addition to the continuation of tunnage and poundage. Several days after his speech on the Trinity, Savage compared the procedures of Parliament with the celebration of a Mass: “The reading of the

560 Fortescue, *De Laudibus Legum Angliae*, 235-236.
562 The original reads: “Item...les communes viendrent devaunt le roi et les seignurs en parlement, et la monstrerent coment les estates du roialme purroient bien estre resemblez a une Trinite, cestassavoir, la persone du roy, les seignurs espirituelx et temporelx, et les communes. Et en cas q’ascune divisioun y feusse entre celles estatz y serroit grand desolatioun de tout le roialme, qe Dieux defende.” *PROME*, VIII, 459.
Epistle and the expounding of the Bible at the opening Parliament resembled the initial prayers and ceremonies preceding the holy action; the king’s promise [in his coronation oath] to protect the Church and observe the laws compared with the sacrifice of the mass; finally, the adjournment of Parliament had its analogy in the *Ite, missa est*, the dismissal, and the *Deo gratias*, which concluded the holy action.”563 These speeches, by themselves, do not signify the totality of the use of ecclesiastical concepts in political dialogue. Yet when they are combined with the extensive use of corporate concepts throughout the century, they reveal a gradually increasing inclination among laymen and clerics alike to legitimize Parliament through the language of the Church. By this period in England there was a “relatively clear idea about the ‘composite’ nature of authority.”564 Authority did not belong to the king alone, but to him jointly with the lords and commons who together formed the mystical body of the realm. Central to the relevance of the spiritual, corporational analogy to lay government was “the assumption that the

563 Kantorowicz, *The King’s Two Bodies*, 227. The original on the Mass stated: “Item...les dites communes monstrerent au roy coment leur sembloit qe le fait de parlement purroit estre bien resemblez a une messe dont a comencement de mesme cest parlement l’ercevesqe de Canterbirs comencea l’office, et list la epistle, et exposa l’evaungile. Et a la mesne de la messe, qe feust la sacrifice d’estre offertz a Dieux pur toutz cristiens, le roi mesmes a cest parlement, pur acomplir celle mesne, pleasurez foitz avoit declarez pleinement as toutz ses lieges, coment sa volunte feust qe la foie de seinte esglise serroitz sustenuz et governez en manere come il ad este en temps de ses nobles progenitours, et come il est afferme par seinte esglise et par les seintz doctours et par seinte escripture, et qe ses loies serroient tenuz et gardez des toutz partz, siben as povres come as riches, quelle chose feust grand pleasir a Dieu et comfort et consolacioun de ses lieges. Et auxint au fyne de chescun messe y covient de dire, ‘Ite missa est,’ et ‘Deo gratias.’ Semblablement, y feust monstre par mesmes les communes coment ils feurent venuz al fyn del messe pur dire, ‘Ite missa est.’ Et q’ils, et tout le roialme feurent especialment tenuz de dire cel parol, ‘Deo gratias’ et ceo par trois causes; l’une, de ceo qe Dieux de sa benigne grace leur avoit obtroiez un roi gracius, qi vorroit faire justice des toutz partz, et auxint de seen graciousement endowez, et de humanite, en sa propre persone, come notoirement est conu al greindre partie du mond, pur resistance de ses enemies, honorabument adressez. Paront ils sont bien tenuz de dire cel parol, ‘Deo gratias.’ La seconde cause, pur ceo qe la ou la foie [de seinte] esglise par malvoise doctrine feust en point d’avoir est anientz, en grand subversion du roi et du roialme, mesme nostre seignur le roy ent ad fait et ordeignz bon et joust remede, en destruccioun de tiele doctrine et de la secte d’icelle, paront ils sont ensement bien tenuz de dire cel parol, ‘Deo gratias.’ La tierce cause, pur ceo qe les seignurs et communes du roialme, considerantz le bon et entier coer de nostre dit seignur le roi envers les ditz seignurs et communes, et auxi les bones coers des ditz seignurs et communes envers nostre dit seignur le roi, et coment q’ils sont par la grace de Dieux tout en une fiablement connexez, ils puissent entierment dire cel parol, ‘Deo gratias.”

564 Kantorowicz, *The King’s Two Bodies*, 228.
church was a political society, and that as a political community it possessed by natural law the ultimate right (as...did any natural body) to gather up its resources and exert its inherent power to prevent its own ruin.” Fortescue used the term *corpus mysticum* as the synonym for the body politic of England in his treatise *De Laudibus Legum Angliae*. The appropriation of the concept of the *corpus mysticum* of the church and other ecclesiastical analogies to the lay body politic facilitated the transmission of conciliarist ideas of government into lay political discourse. It allowed Englishmen to use the term “corpus mysticum” interchangeably for the temporal and ecclesiastical spheres, and subsequently use the term “parliament” to stand for political bodies representing the *corpus mysticum*, regardless of whether they bore any significant resemblance to the contemporary Parliament. In doing so they further legitimized the role of Parliament within the structure of temporal governance.

Arguably the most important contemporary ecclesiastical text by an English cleric was William Lyndwood’s *Provinciale, seu constitutiones Angliae*. Lyndwood had an impressive career. He served as chancellor and auditor of causes for Archbishop Chichele from 1414 to 1443, keeper of the Privy Seal from 1432 to 1443, prelocutor for Convocation, and was involved in Parliament. The *Provinciale*, which Lyndwood dedicated to Chichele, was a collection of the provincial constitutions of the archbishops of Canterbury from Stephen Langton (1207-1228) to Chichele, arranged and selected by Lyndwood according to the decretals of Gregory IX and completed with a detailed gloss and index in 1433. It contained five books — *iudex, iudicium, clericus, sponsalia*, and *crimen*. Lyndwood categorized English synodal legislation according to

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565 Oakley, “‘Anxieties of Influence,’” 103. Oakley is referencing the work of John Figgis in this quotation.
567 Churchill, *Canterbury Administration*, 1. The gloss consumes most of the text on each page.
each of the five topics, then wrote extensive glosses on the legislation. The compilation itself is important, but the glosses are crucial because they interpret how English ecclesiastical law relates to that of the papacy. The Provinciale was a popular work. It circulated widely and went through at least eleven successive printed editions from 1483 to 1517.

Lyndwood concedes that a church council has some authority with regard to the papal office. A council may try a pope for heresy or other crimes so flagrant they border on heresy if those crimes scandalize the “universalis Ecclesia.” In this he followed accepted canon law closely. There also may be times when specific papal commands ought to be disobeyed. However, Lyndwood accepts that the pope is above a general council and that the authority of the papal office is necessary to summon a church council. Ironically, at the time he wrote the text, Chichele was giving his speech to Convocation conceding that a general council had authority to reform the universal church in head and members. Yet here was one of his closest advisors stating that the archbishop could not appeal to a general council “quia papa est supra concilium generale.” The most glaring omission in the Provinciale, written between the Councils of Constance and Basel, is the absence of any reference to those Councils or to the one at Pisa in 1409. Nor does Lyndwood mention Pierre d’Ailly, Jean Gerson, or Robert Hallam, the bishop of Salisbury, who was prominent at Pisa and Constance. Maitland offered a possible explanation: Lyndwood addressed his work to people who were “simpliciter literati et pauc

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568 Lyndwood, Provinciale, Liber II, 95, gl. ad. v. se defendant. The phrase Lyndwood uses is “enormia…quia tunc etiam posset puniri, cum haec sapere videantur haeresim.”
569 Ibid., 91, gl. ad. v. teneantur. Part of the gloss reads: “Sic etiam ubi Mandatum Superioris est expresse contra legem, et de hoc fatis constat, subditus non tenetur tali mandato obedire.”
570 Ibid., 104, gl. ad. v. fratrum nostrorum consilio.
571 Ferme, Canon Law in Late Medieval England, 32.
intelligentes.”

In other words, the Provinciale was for the general literate public and for beginners in the study of the law. Lyndwood had no desire to draw their attention to the struggle for authority in the institutional Church. Yet the absence of such prominent contemporaries in the text also reflects Lyndwood’s “stark papalism, which leaves little room for local custom, and absolutely no room for any liberties of the [English] church which can be upheld against the law-giving power of the pope.”

He did, however, mention Parliament once, in a gloss on a section about monks. The monks of each monastery were to meet twice a year, first at Advent, then in the Lenten season, to read through the constitutions of the Ecclesia Anglicana. Lyndwood remarks, “Locus est Parliamenti.” The phrase seems misplaced, and it is unclear why he chose “Parliamentum” as the name of the location for the biannual monastic meeting. The gathering was not to be a political one, in the sense that there would be no vote on legislation. It would be political, though, in a sense akin to Fortescue’s definition of independent statutory law as the political part of government: it set aside time to remember and reflect upon the ecclesiastical laws governing the faithful. Following this meaning, it could correspond to Parliament, the primary institution where the law was read to and reviewed by the assembled members in more than a strictly judicial manner. Further complicating the inclusion of the term is the fact that according to the specific constitution Lyndwood cited, it was not the head of the house who called the monastic

\[572\] Lyndwood, Provinciale, 95, gl. ad. v. commenta; Maitland, “Canon Law in England,” 455.

\[573\] Maitland, “Canon Law in England,” 477. Maitland qualifies his conclusion about Lyndwood’s papalism: “In the fifteenth century a lawyer might prostrate himself before the papal omnipotence and yet mean little by the more extravagant of his phrases. The less the popes could do in the world of fact, the larger were the powers that might safely be attributed to them by theorists who were in search of that juristic desideratum, an all-competent sovereign. Our canonists obtain an intellectual luxury at a cheap rate when they place the plenitudo potestatis in a pope whose bulls, if likely to be troublesome, will never reach their hands, but will be impounded by a secular power for whose doings they are not responsible.”

\[574\] Lyndwood, Provinciale, 145, gl. ad. v. In Capitulo.
gathering; it would be “omnibus convactis.” This is radically different from the temporal Parliament, which came into being through writs of summons from the king. It suggests an equality absent from the temporal institution, and from Convocation as well. This is an equality not of participating in the legislative process but one of knowing the law in order to obey it, something one would expect of laymen as well. As Maitland observed about the totality of the Provinciale, the inclusion of the term “Parliamenti” does not position Lyndwood on either side of the specific contemporary conciliarist debate. But it does lend credence to the idea that Parliament was the corporational body explicitly engaged with legislation and use of the term as a catch-all for meetings addressing legislation became standard because that was how Englishmen understood the institution.

The increasing association of the corpus mysticum with the civic political body, the restoration of the head of the body by a general council of the church, and the dual role of the clergy in ecclesiastical and temporal political institutions in England had political implications for the role of Parliament within royal government. The conjunction of ecclesiastical theory and practice offered a precedent of the community removing the head of the body in the case of disputed and failing leadership. The principles of conciliarist thought, which post-dated the establishment of Convocation and Parliament, became a source of parliamentary legitimacy, but they did so in conjunction with a broader melding of ecclesiastical concepts and institutions with lay political ones. In England the gradual and moderate adoption of these concepts and principles ensure their success. It also helped that no cleric who participated in the councils led the revolts against Henry VI or was intimately involved in them, as occurred in Castile. These
concepts may not have been as widely invoked as the common weal, but they offered one more pillar of intellectual support for a representative institution.

Two conclusions are most apparent from the sources: first, monarchs relied on Parliament to dilute papal power specifically and ecclesiastical power in general, thus legitimizing a secular as opposed to an ecclesiastical institution as the source of statutory authority for the kingdom. This is most evident in the appeals to Praemunire, a statute that remained conceptually relevant well in to the seventeenth century.\(^{575}\) Interestingly, as the legitimacy of Parliament increased, Convocation diminished in significance. This is acutely apparent in its records. In the first half of the century, the records of Convocation reveal vibrant discussion on a wide range of topics, but as the century progressed Convocation was increasingly limited to granting the king taxation. Very few other concerns were brought before Convocation, even in the midst of significant upheaval in the body politic. Second, the adoption of conciliarist ideas from \textit{Haec Sancta}, canon law, and the events of Constance, and ecclesiastical concepts such as the \textit{corpus mysticum} also legitimized a secular legislative body. Concepts and terms were shared indiscriminately between lay and ecclesiastical politics, as Lyndwood’s use of the term “parliament” reveals and as Fortescue’s use of “corpus mysticum” indicates. In the absence of any extensive contemporary English analysis on the two types of political society, the cross-pollination of language suggests that these were the terms with which Englishmen could explain their own contemporary politics.\(^{576}\) Having adopted the \textit{corpus mysticum}, they accepted that in certain circumstances the

\(^{575}\) Edward IV referred to Praemunire in a letter to Convocation in 1463, granting through his grace that he would not punish the clergy through the statute. \textit{Records of Convocation}, VI, 155.

\(^{576}\) Something English clerics and laymen did not address was the question of whether the king was a hereditary or elected ruler. If he was hereditary, what effect would conciliarism have on his position and on contemporary conceptions of government, since the pope was an elected ruler? Howard Nenner, in \textit{The Right to Be King}, argues
community may need to remove the head of the body, not in an institutional sense, but by replacing one individual with another in order to heal the disease of a corrupt of illegitimate government.

The successful end to the Schism enacted at Constance set a precedent for lay government that continued to be used throughout the century. The use of conciliarist ideas by sixteenth-century monarchomachs and seventeenth-century parliamentarians has been well-documented by historians. But the idea of conciliarism, of government aided by or through the jurisdiction of a representative body, however that representation was defined, emerges earlier, in the fourteenth and fifteenth centuries. Through the output of clerics such as Chichele and Lyndwood, the desire of monarchs to maintain jurisdiction in the face of aggressive papal encroachments, the example set by the church councils, synods, and convocations, and the crucial work of William Caxton, ecclesiastical concepts of government gradually became part of English political culture, so that use of a phrase such as “dicunt et probant auctoritate concili,” the near-equivalent of the common phrase “by authority of Parliament,” was unsurprising. Nor is it surprising that Thomas Cranmer prayed daily for the overthrow of a papacy that had nullified the jurisdiction of a general council of the church. Thomas Starkey, his contemporary, argued against papal supremacy on the basis that no such provision was “euer gyuen and translatyd to the pope by any law wryten in general couseyl, wych were necessary to

that England was not a hereditary monarchy until the seventeenth century. If it was an elected monarchy (with the monarch chosen from within a specific family), as the coronation ritual and the ascension of Henry VII suggests, equating it with the elected papal monarchy and, consequently, conciliarism, would seem more likely. For more, see Oakley, “‘Anxieties of Influence,’” 90, 102.  
fynd yf we schold attrybute such authoryte.”579 By the time of the debate over primacy in the church during Henry VIII’s divorce proceedings in the 1520s and 30s, Thomas More could declare, “Counsayles do represent the whole church...as a parliament representeth ye hole realme.”580 By More’s time, the ecclesiastical history of the preceding century validated Parliament, an institution of temporal government, but Church precedent was not the only history to which Englishmen appealed in their desire to legitimize a *dominium politicum et regale*. More traditional histories served the same end, as we will see in the next chapter.


CHAPTER 4: HISTORICAL PRECEDENT

Englishmen appealed frequently to numerous different histories and precedents as sources of authority. Biblical histories, often drawn from the stories of the Old Testament; classical histories, primarily Roman, but also Trojan; national histories, including nationalized myths such as those of the Brut tradition; or personal histories, such as the family genealogies deployed by Richard of York and his son, Edward IV, to prove their title to the throne served causes and ideas to which they often bore little more than a superficial relationship. This was neither new nor unique. Much of the allure of history lies in the ability to interpret its meaning in the context of contemporary circumstances. Those who can interpret the historical narrative of a political community or individual to fit the parameters of their own cause confer upon themselves a legitimacy that is difficult to challenge and impossible to ignore. This historical legitimacy helps determine the heirs to the cultural and political values of a society and defines the lives of successful individuals within these cultural parameters. Those who disapprove of contemporary policies, values, or modes of governance also frequently cite historical examples

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581 On the popularity of historical chronicles, see Moran, *The Growth of English Schooling*, 202. Moran writes of the diocese of York, “Between thirty-five and forty bequests [between the clergy and the laity] are noted of chronicles (or histories).” These included “four copies of the *Brut* [and] eleven of Ranulf Higden’s *Polychronicon*.” Karin Friedrich writes of the “revival of interest in national origins during the Renaissance.” During this period “the questioning of philosophical and theological certainties and authorities…engendered an identity crisis, when late medieval Christian societies were confronted with the un-Christian heritage of classical antiquity.” Friedrich, “History, Myth, and Historical Identity,” in *Early Modern Europe: Issues and Interpretations*, eds. James B. Collins and Karen L. Taylor (Oxford: Blackwell, 2006), 41. Friedrich’s statements are difficult to support generally, no matter the temporal boundaries one places on “the Renaissance.” As I show in this chapter and chapter five, both Englishmen and Castilians had long had an interest in their own history and national origins. The “un-Christian heritage of classical antiquity” does not appear to have caused an identity crisis in these two kingdoms. Rather, it was a frequently cited source of instruction, authority, and entertainment. When needed, it could be modified to fit contemporary events and opinions. Friedrich seems to acknowledge this when she writes, several lines later, “For politically active citizens, the past provided a valuable set of examples and models for future action and political legitimacy, boosting their self-confidence.”

582 For a thorough study of Edward IV and the use of history and myth as sources of legitimacy for his kingship, see Jonathan Hughes, *Arthurian Myths and Alchemy: The Kingship of Edward IV* (Stroud: Sutton, 2002).
to warn of impending disaster if nothing is done to ameliorate existing problems. For these reasons, those within and outside of government have long contested the interpretation of the historical record. This chapter explores not only which histories the English accepted and how they interpreted them, but also how those sources conferred legitimacy on Parliament in a shifting political and cultural context. History was an integral source of political legitimacy in Plantagenet and early Tudor England.

In the fifteenth and sixteenth centuries, as in so many others, history was used to make history, often through the creation of stylized but functional new narratives. Communities incorporated historical interpretations into their requirements for good government and strong leadership. Englishmen also sought to locate the origins of the kingdom and its institutions in a particular time, and with a particular king or line. Within the British Isles and throughout continental Europe “heated print battles were fought over the relative chronological priority of this or that town or institution, and of monarchies,” as evidenced by the persistent quarrel between the English and their Castilian counterparts over national preeminence. The Tudors are often credited with using history in inventive new ways, but there was much continuity between late Plantagenet and Tudor historical writing. For example, the annalistically arranged chronicle, the dominant standard form for recording stories about the past, continued well into the sixteenth century. The only significant change was the influence of continental humanism on style. The substance remained more or less the same.

583 See chapter five of this dissertation.
Rome was central to English legitimacy in the fifteenth and sixteenth centuries. The history of the city, its republic, and its empire provided numerous examples to emulate and occasionally some to avoid. Rome was believed to have been the largest and most powerful political community on earth, one endowed with a distinct, sometimes divinely inspired purpose by many later European writers.\(^5^8^5\) In late medieval and Renaissance Europe, the pagan political society of ancient Rome served as the model of a rational, well-ordered state. In his translation of Christine de Pizan’s *Livre du Corps de Policie*, Anthony Woodville, Earl Rivers and brother to Edward IV’s wife Elizabeth, claimed that the “glorious time of the Romans” had produced an advanced civilization, arguably better and more worthy than others. Woodville wrote, “The noble Romayns whiche wer paynemys [pagans], and mysbeleuers, yet they gouerned theim so well that it ought to be example to us.” The dicts and sayings of this ancient civilization, which Woodville translated into English, were “a glorious fair mirror to all good Christian people.”\(^5^8^6\) William Caxton agreed with Woodville that Rome, especially under Caesar Augustus, achieved what should be the end of every state: peace for the community. Caxton wrote in his translation of the *Legenda aurea*, “There was so greete peas in the erthe that alle the world was obeyssant to hym [Augustus], and therefore our lorde wold be born in that tyme.”\(^5^8^7\) The peace of Rome

\(^5^8^5\) Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France, 1500-1800* (New Haven: Yale University Press, 1995), 11-12. Pagden also observes (14,18) that the term *imperium* originally meant to order or command. “In the first instance, therefore, an emperor, *imperator*, had been merely one, and generally one among many, who possessed the right to exercise *imperium*. Under the Republic the exercise of *imperium* had been restricted to the Senate, which operated in the name of the Roman people.” In the writings of Cicero, Sallust, Tacitus, Polybius, and other Roman authors frequently cited in Christendom the Roman *imperium* “constituted…a distinctive kind of society, whose identity was determined by what came to be broadly described as the *civitas*.”


\(^5^8^7\) Jacobus de Voragine, *Legenda aurea sanctorum* (1483). The Golden Legend, a collection of lives of the saints, was a popular text in the Middle Ages. It was written in about 1260. Caxton printed several editions of it, as did Wynkyn de Word.
offered a notable contrast to the numerous civic upheavals and persistent violence in England in the latter half of the fifteenth century, and therefore provided a standard on which to base good government.

The nationalization of Rome’s history was common throughout Europe during this period, although in England it began several centuries earlier in the Brut tradition.\(^{588}\) In England, as in Castile and other kingdoms, multiple reconstructions of Roman history validated those in authority and those pursuing power. Rome’s perceived greatness and the accessibility of its history could be used to validate ideas and institutions in a way few other histories could.\(^{589}\) To this end, the English infused both their history and contemporary events with supposed Roman characteristics, from the victories of King Arthur, to the association of Richard, duke of York, with the Roman consul Stilico, to warning of the fall of Rome and, by association, that of England if good governance was not maintained and the common good of society protected. Rome also inspired the formulation of political theory in England, including that of Sir John Fortescue in the second half of the fifteenth century.

Fortescue’s familiar description of England as a *dominium politicum et regale*, in contrast to a *dominium regale*, was not original to the English jurist. He borrowed it from Tolomeo of

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\(^{588}\) For the period after 1450 this was due in part to the humanist insistence on the study of classical texts and the veneration of certain Romans, but it was not limited to humanist circles. For an analysis of “vernacular humanism,” particularly that of John Lydgate, and the recovery of “ancient, often historically mechanistic or materialist texts for the purposes of guiding political culture toward worldly prosperity yet Stoic ethics,” see Andrew Galloway, “John Lydgate and the Origins of Vernacular Humanism,” *The Journal of English and Germanic Philology*, 107:4 (2008), 445-471. For a good, if brief, summation of early and mid-Tudor humanism, and its relationship to the English commonwealth, see John F. McDiarmid, ed., *The Monarchical Republic of Early Modern England: Essays in Response to Patrick Collinson* (Burlington, VT: Ashgate, 2007), especially chapters one and three.

\(^{589}\) The study of Roman history was not limited to transposing it onto contemporary situations. There was a scholarly aspect to the analysis of Roman culture among clerics who trained in the *studia humanitas* in Italy. Even those who had no such training but adapted and translated classical history, however, cannot simply be dismissed as “crude popularizers.” The desire to emulate good and effective governance and civic society was ever-present. Hughes, *Arthurian Myths and Alchemy*, 238.
Lucca’s continuation of Thomas Aquinas’s unfinished tract *De regimine principum*. Tolomeo of Lucca located the prototypes of such a government in imperial Rome, which, he wrote, “holds the center between a political and regal government,” and in the government of Israel’s judges, whose rule God himself supported through his divine kingship. In his earliest writings Fortescue sought to prove that the third time this ideal form of government had been actualized in human history was in England.

Rome’s imperial splendor originated in the wisdom of the city’s senators. Through their “wisdom and manhood” the Romans “gote the lordship and monarchie of the worlde.” After the civil wars in the waning days of the Republic, Julius Caesar and Octavian Augustus became emperors, but the senators still directed Rome to greatness: “While lordship and monarchie themperor kepte all the while they wre reuled bi the counsele of the senate.” In Fortescue’s estimation, Rome did not begin to decline until the emperors Nero and Domitian executed many of their senatorial opponents and tried to rule as autocrats. Like Rome, England experienced protracted civil wars. These civil wars occurred because “our realm [England] is fallen into decay and poverty as was the empire when the emperor left the counsell of the Senate.” However, if England’s king would return to the advice of wise, established counselors, “and do as did the first emperor who obtained the monarchy of the world,” there would be unity and peace, riches and prosperity throughout the land, and England would be the mightiest and

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590 Tolomeo of Lucca wrote the continuation sometime between Aquinas’s death in 1274 and his own death around 1327. Aquinas’s *Summa Theologiae* made the first medieval association between the government of the Israelites under Moses was associated with the mixed constitution of Aristotle. Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 88-90.

591 Kantorowicz, *The King’s Two Bodies*, 226-227.

wealthiest realm in the world. Fortescue’s argument is ironic. Here was a man who faithfully served Henry VI making a similar argument to the Yorkist charge against Henry VI that he had abandoned wise counsel and the advice of Parliament.

Like Tolomeo of Lucca and Fortescue, Bishop John Russell, chancellor of England, and the English poet John Gower, found in Roman and Jewish history the origins of a parliamentary system of government that the English subsequently adopted. In the draft of his opening speech for the anticipated first parliament of Edward V’s reign, Russell declared that the “polityk rule of every region were ordeigned stondithe in the nobles.” To support his assertion, Russell referred his listeners to the origins of Rome. Originally the law in Rome was made “by the assente of alle the peuple togedyr.” This was primarily because there were so few people they could all assemble together to give their assent. However, after Romulus founded the city, the “fyrst institucion of the thynge public” established was “in centum senatoribus.” Romulus, according to Russell, established a manner of governing that would correspond with a growing population who could not all meet together to create positive law. Thus, the authority to legislate was given “to the senate to the nombre of a C noble and wyse men.” The non-noble people of Rome subsequently sought to participate in “gret causes.” They obtained their own magistrate, the tribunus plebis, to represent them. In a manner similar to that of Romulus at the founding of Rome, Moses, the leader of the Israelites, “by th’advise and counselle of Jetro his cosen, chose oute of the whole multitude a certennombre of wyse and nobille men to have power undre hym in alle causes reserved the grettest; lyke as in theys dayes in every region where is a monarchie and one prince [the semblable] policie is observyd.” In fifteenth-century England the people

were so “gret and confuse numbre and multitude nature” that they could not assemble in one
place to make law. Therefore, Russell understood English policy “in the tyme of holdynge of
parliaments” to correspond to the same manner of the Romans. The lords, he said, were
equivalent to the Roman Senate. The Commons were part of Parliament, too, and just as the
tribune of the plebs had directed the people of Rome, so the speaker of the Commons presided
over the lower house. Together, the two houses made “oo thynge,” and both were necessary for
the “passynge of every act made in Parliament.” The Romans, and, to a lesser extent, the
Israelites, had set the historical precedent for what fifteenth-century Englishmen did in the king’s
“most hyghe and soverayne courte.” Russell’s narrative of the development of political
governance is remarkably similar to Fortescue’s formulation of a *dominium politicum et regale.*
In both conceptions, politic rule is defined as mixed, with men representing the nobility and the
communs having authority to make law in conjunction with the monarch. The king could not do
so by himself, or the kingdom would not be a politic one.

For Gower, as for Russell, Rome’s “parliament” was an assembly representing the
political body of the community, though Gower, whose work preceded Russell’s by nearly a
hundred years, was not as analytical as Russell. His *Confessio Amantis,* a poetic collection of

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594 Grants, etc. from the Crown during the Reign of Edward the Fifth, xliii-xliv. Russell cites the *Factorum et
Dictorum Memorabilium* of Valerius Maximus (Book II, 2.7) as the basis for his final comparison of England and
Rome. But while Valerius uses words such as “tribunis” and “senatus,” he never uses the word “parliament.”
595 Gower’s *Confessio Amantis* is directly relevant to the later fifteenth-century. It has survived to the present in 64
manuscripts and was printed by William Caxton in 1483, both facts indicating that it was popular and had a wide
circulation throughout the fifteenth century. It was printed again in 1533 and 1554 by Thomas Berthelet, printer to
Henry VIII. It may be the first English piece of any length “to be recognized abroad by translation. John Paym, or
Payn, an English resident of Lisbon, made a Portuguese version, now lost; and from his work Juan de Cuenca made
the Spanish translation which still exists in an early fifteenth-century manuscript preserved in the Library of the
collection of 181 stories set in imperial Rome, was also popular in the fifteenth and sixteenth centuries. Wynkyn de
Word published it in 1510. In the text there are numerous references to emperors who must obey the law, but it is
unclear who makes the law. Some of the stories contain glosses that “Christianize” them for the contemporary
tales rather than a parliamentary sermon, did not make a comparison of the constituent parts of Roman government with those of the English parliament, but it did reflect common understandings of Roman rule. In the tale of Constance, the heroine, a Christian princess loved by the king of Northumberland, was exiled to sea and found by a Roman senator. The senator subsequently brought her through the gates of Rome with great joy. After a feast in their honor, “a parlement, er that thei wente, Thei setten unto this entente, To puten Rome in full espoir That Moris [son of Constance] was apparent heir And scholde abide with hem stille, For such was al the londes wille.” The parliament, representing and ensuring the will of the land, was called to participate in and confirm the succession, though precisely how remains unclear. The lack of clarity in no way diminishes the force of the association of a Roman “parlement” with the political legitimacy of the ruler. In this story the “parlement” is the instrument through which the community’s will becomes a viable political reality. In the tale of the False Bachelor, which warns against pride and envy, the lords, “whiche as wolden save The Regne which was desolat, To bringe it into good astat A parlement thei sette anon.” This language strongly resembles the discourse of the common weal and the responsibility of the lords to uphold it, particularly during the later reign of Henry VI. What is notable in Gower’s poem is that a parliament was called not by a king or head of state but by the lords, for the explicit purpose of saving the realm.

The Greek lords did the same in the tale of Orestes. Orestes was the son of Agamemnon of Greece and Clytemnestra. In most versions of the story, Clytemnestra and her lover murdered reader. For example, in one the glossator writes, “Dere frendes this Emperoure is oure lorde god and in the eest is the cyte of heuen wherin is tresoure infynyte.” The ruler, whether emperor, king, or knight, is the most constant symbol in the tales. See Shirley Marchalonis, “Medieval Symbols and the ‘Gesta Romanorum,’” *The Chaucer Review*, 8:4 (1974), 311-319.


Agamemnon. Orestes and his sister, Electra, later avenged their father’s death by killing their mother. In the English version, the Greek kings and great lords threatened to remove Orestes from his realm because he murdered his mother. The child that slew his mother was not worthy to reign, they said. Consequently, “the lorde of comun assent A time sette of parlement, And to Athenes king and lord Togedre come of on acord, To knowe hou that the sothe was.” They sent for Orestes, and he came. King Menelaus, brother of Agamemnon and ruler of Sparta, asked Orestes about the matter. Orestes answered for all to hear that the gods had commanded him to execute justice on his mother with his own hand. After Orestes offered his defense, a “duke,” a “worthy knight” named Menesteus arose. He told the assembled lords that Orestes had acted at the bidding of the gods, not out of cruelty. He challenged that if any knight in the “parlement” said Orestes was not right, Menesteus would prove it “with [his] body,” at which point he cast down his glove. Clytemnestra had deserved her fate, said Menesteus, “Feirst for the cause of spouse breche And after wroghte in such a wise That al the world it ought agrise When that she for so foul a viuce Was of hire oghne lord Mordryce.” When he concluded his remarks, no man responded. They all sat still. Finally, “When thei vpon the reson musen Horestes alle thei excusen So that with gret solemnnete He was vnto his dignete Receiued and coroned kyng.”

The story is notable because the lords summoned a parliament that had authority to judge a prince’s actions and decide whether to accept him as king. There is no mention of any “commons” present, but it is clear that Menelaus, a king, does not call the parliament into being. The story presents the meeting as a gathering nobles and knights who have the freedom to speak

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as they please about Orestes’s actions, to judge him accordingly, and to grant or withhold the throne from him.

Claimants to the English throne during the contentious fifteenth century sought to strengthen their cause by creating historical narratives that justified their aims, even if the factual content of their stories was slim. Ironically, many of them turned to parliamentary history to validate their rule in a way that had not occurred in earlier periods. The weakness of kings provided an opportunity to rewrite the historical record and bestow greater legitimacy on Parliament.

In support of Henry VI’s title to the throne during the early reign of Edward IV, one Lancastrian partisan conceived a multitude of historical slanders against the Yorkist monarch. Among these was that the crown of England could not be inherited through a woman, a claim similar to the fictitiously historical Salic law in France. The chronicler further asserted that Lionel of Antwerp’s daughter Philippa, through whom the Yorkists claimed their primacy of descent from Edward III, had been conceived in adultery by Sir James Audley and Lionel’s wife, as was plainly to be found in chronicles in France and Ireland (but not in England). She therefore was illegitimate and had no right to the crown, nor did her descendants. Edward III, father of Lionel of Antwerp, supposedly recognized that Lionel had no legitimate heirs when he, Lionel, died in 1368. For this reason, the king took all of Lionel’s lands into his own hands “and at a Parlement Not long after declared this...vnto all his people. In the which Parliament by the aide of all the Lords and Commons of England hee entailes the Crowne to his heires males. And for a perpetuall witnesse that his daughters weare agreed vnto the same they came all into the open Parliament in their mantles of estate ymbroidred with the armes of England and their
openly disclaymed and renounced from them and their heires all the right and tytle that they had or might of possibillity haue to the Crowne of England and of Fraunce.” To prove their statement, they let their mantles fall to the ground and departed out of the parliament. According to the chronicler, this was a sufficient declaration that Edward IV had no right to occupy the Crown.599 This fanciful and dramatic scenario was entirely fictitious – Edward III never entailed the Crown to his heirs male, nor did his daughters create such a scene renouncing their right to the throne.600 In fact, only one daughter, Isabella, outlived her brother Lionel and therefore would have been alive at the time of this parliament, although the chronicler uses a plural noun for the royal women.

Aside from the invented rendering of the historical account, what is important is where the author set the scene for such a momentous occasion – in Parliament. The author alleged that this most powerful of fourteenth-century monarchs used Parliament as the forum to communicate to his subjects that his son’s lands had reverted to the Crown. When he allegedly sought to entail the Crown to his heirs male, however, he had to do so in Parliament, with the advice of the lords and Commons. The author does not state why, though one can assume that because the Crown belonged, in a sense, to the entire kingdom and was not the personal property of a single individual, Edward III had to have the consent of the political community to designate its descent. For the same reason his daughters would have dropped their royal robes and renounced

600 For more on these events and their bearing on the claimants of 1460, see Michael Bennett, “Edward III’s Entail and the Succession to the Crown, 1376-1471,” English Historical Review, 113:452 (1998), 580-609. Bennett argues that Edward III entailed the Crown to his heirs male in a declaration in 1376, although he observes that much of the text cannot be discerned, that for forty years Edward had pursued his claim to the Crown of France through his mother, and that the king’s inner circle attempted to overturn much of the work of the Good Parliament through this letter patent.
their right to the throne in Parliament, so that their actions would be public for the representatives of the political community to see. The fifteenth-century chronicler thus gives Parliament a position of prominence in his account, rendering the king’s and the royal family’s decisions public in what was, in the fourteenth century, an emergent institution and requiring the cooperation of that institution to ensure the “proper” succession of the monarchy.

Often the histories cited were those of failure – the disobedience of the Israelites and their subsequent punishment by God, or the collapse of the reigns of Edward II, Richard II, Henry VI, or Richard III. Archbishop William Warham appealed to historical failure when he opened Henry VIII’s first parliament in 1510. For his text he used 1 Peter 2:17: “Fear God, honor the king.” The second chapter of 1 Peter admonishes Christians to submit to earthly authority. It refers to followers of Christ as “a chosen generation, a royal priesthood, a holy nation.” By following the command to fear God and honor the king, members of Parliament would silence the talk of foolish men and ensure the successful transition of the monarchy. The sermon topic was appropriate for the early months of Henry VIII’s reign because royal transitions had been fraught with discord and violence for the preceding fifty years. Thus, Archbishop Warham observed “how all men everywhere and especially kings and rulers ought to fear God. And by neglect or lack of this not only kings and people, but cities, communities and kingdoms were afflicted, punished, destroyed and wholly overthrown because the fear of God was not before their eyes, and he gave faithful examples culled from this kingdom in recent times (which was to be lamented) for this cause alone that the fear of God was not before men’s eyes.”\textsuperscript{601} Warham used the events of recent English history to confirm the words of Scripture that those who did not

\textsuperscript{601} Journal of the House of Lords, 1509-1577, I, 3. Translated in EHD, V, 588.
fear God would bring disaster to the kingdom because of their willful disobedience. It was the duty of the members of Parliament in 1510 to ensure that the infighting and instability that had occurred during the reigns of the last Plantagenets did not reappear during the reign of Henry VIII. There was to be no subversion of the peace and harmony of the kingdom, but rather obedience to Biblical texts by those men in Parliament who were the natural and chosen leaders in the kingdom.

During the reign of Edward IV an attempt was made to explain the failure of three relatively recent monarchs – Edward II, Richard II, and Henry VI – in order to enhance Edward’s kingship. These three kings were often regarded as exemplars of poor kingship, men whose rules had caused “grete inconveniencis and mischeves” in England, “to the distruccion of them, and to the gret hurt and empoverysshyg of this lond.” Edward II, whose reign from 1307 to 1327 was more distant than that of Richard II (r. 1377-1399), was not cited as often as the latter. Nonetheless his deposition by his wife Isabella of France and Roger Mortimer concluded a troubled reign that served as a warning to the men of the fifteenth century. Poet John Lydgate took this ignoble history and rewrote it as a cautionary tale of bad governance in *The Fall of Princes* (c. 1438). “Be holde thys greate prynce edward the seconde,” Lydgate wrote, “Which of diuers landes lord was an and kynge But so gouerned was he, now vnderstoonde, By suche as caused foule hys vndoynge For trewly to tell you without lesinge He was deposed by all the

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602 Warkworth, *A Chronicle of the First Thirteen Years of the Reign of Edward the Fourth*, 47. It is rather ironic that Richard II and Henry VI were compared in such a manner, when one of the central claims of Yorkist propaganda was that the entire Lancastrian dynasty was illegitimate because Henry IV was a usurper who had illegally removed Richard II from the throne and disinherited the heirs of Lionel, duke of Clarence.
Lydgate’s description of the event is subtle but compelling. The king had been destroyed by those who governed his weak will, a reversal of roles that was unacceptable for a monarch, whose duty was to govern others. This lack of leadership led to the king’s demise. Lydgate does not use the word “parliament,” but he does state that the deposition was carried out not by Isabella and Mortimer but by the assent of the realm. In reality this assent was given to six charges against the king in the parliament of 1327, called by Prince Edward (later Edward III). It was Parliament’s involvement that forced Edward II, then a prisoner in Kenilworth Castle, to resign the throne in favor of his son. Although Lydgate’s poetic rendering of the events did not explicitly mentioning Parliament, it framed the deposition to reflect what occurred, with communal assent given to the king’s removal from the throne.

John Hardyng, who also wrote of the events that ended Edward II’s reign, was more explicit than Lydgate about the role of Parliament. According to Hardyng, Queen Isabella, Prince Edward, and others “set a parlyament all newe” in London after putting the king in ward until the “tyme they se howe lordes wolde awarde.” During this parliament “iii bishoppes and erles thre, Thre barons also, and thre banarettes electe, To Kyllyngworth to ryde [with the cominalte,] All homage leege, by parliamen
t hole directe to surrender vp, without any reiecte; the which they dyd for his mysgouernaunce.” The king supposedly declared that he knew he had not kept the common weal, and therefore meekly prayed the lordes in “parlyament” to admit his son to the Crown. When the parliamentary ambassadors returned to the assembly from their

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603 BL MS Add. 29729, f. 169. John Stowe copied this manuscript book in 1543, so technically it is after the period. For the fifteenth and early sixteenth-century circulation of Lydgate’s Fall of Princes, see Alexandra Gillespie, Print Culture and the Medieval Author: Chaucer, Lydgate, and Their Books, 1473-1557 (Oxford: University Press, 2006); Alexandra Gillespie, “‘These proverbes yet do last’: Lydgate, the Fifth Earl of Northumberland, and Tudor Miscellanies from Print to Manuscript,” The Yearbook of English Studies, 33 (2003), 215-232.
meeting with Edward II, they reported the king’s “repentance” and his desire for his son to take
his place, “of whiche the lorde in that same parlyament, Reioysed were of his noble
agrement.”

Hardyng’s account follows the actual events more closely than Lydgate’s, which is
unsurprising given that it is a chronicle, written in verse, while Lydgate’s work belonged more to
the mirror-for-princes genre. According to Hardyng’s account, those who deposed the king were
aware that they needed Parliament to pass legal judgment on him. They could do little more than
capture and detain him. If the authority for legal deposition existed, it belonged to Parliament.
Similarly, representatives of Parliament, not Prince Edward or the queen, presented the
imprisoned monarch with the articles against him and renounced their allegiance to him after
Parliament directed them to do so. The emphasis of this narrative is thus on Edward II and
members of Parliament as the primary active agents driving the events of 1327, and it was
Parliament that was to “admit” Prince Edward to the Crown of England.

Another fifteenth-century chronicler likewise ascribed to the lords in Parliament an active
role in determining the fate of the king and driving the events that led to his deposition.
Caxton’s Chronicles of England, printed in 1480, claimed that the queen and Prince Edward
gave their assent to the initial delegation of lords sent to Edward II in his captivity at Kenilworth
Castle, demanding that he ordain “his parlement” for the redress and amending of the “state of
the realm.” He gave these lords his seal and summoned a parliament. Yet the king chose not to

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604 The Chronicle of John Hardyn, 314. John Hardyn (1378-1465), a contemporary of John Capgrave’s, served in
the household of Henry Percy, known as Hotspur, in his youth and had served at Agincourt with Henry V. His first
version of the Chronicle, dedicated to Henry VI, ended in 1437. He later rewrote it for the York family and was
working on it as late as 1464. By the time he wrote his chronicle, he was “a heroic relic of the glory days of Henry
V, and was far too old to have financial motives in mind. He was rather a self-appointed prophet with a vision of
restoring England to the glory it held under King Arthur.” Hughes, Arthurian Myths and Alchemy, 69. Mid-century
England, with its national humiliations and civil unrest, was a propitious time for prophets.
attend. As a consequence, “it was ordeyned by all the grete lordes of Englond that he shold no longer bene kyng but bene deposed. [They] said that they wold croune kyng Edward his sone the elder that was duke of Guyhenne and sent so tydyng vn to the kyng ther that he was in ward.” Sir William Trussell declared that because the king would not come to the parliament that he himself had ordained “to trete with your liege men as a kyng sholde…thurgh all the commune assent of all the lordes of Englond I telle vn to yowe these wordes ye shull vnderstond sir that the Barons of Englond at one assent wyll that ye be no more kyng of Englond but vtterlie haue put yowe oute of your Realte for euermore.” The chronicler is unambiguous that it was the duty of a king to commune with the lords of his kingdom, and that Parliament was the forum in which he should do it. Because Edward II failed to fulfill this obligation, the lords gave their common assent in Parliament that he no longer be king. Trussell’s statement, as rendered in Caxton’s Chronicles, bore little resemblance to the original, as recorded in the rolls of Parliament, which did not use the word “parliament” nor describe it as the forum in which the king was to “treat” with his liegemen. The public proclamation of Edward II’s abdication did not use the term, either, although it announced that the decision had been made by the king’s own will and

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605 Caxton, The Chronicles of Englond. This is a version of the prose Brut chronicle. Among secular works, the Brut was “unsurpassed in popularity in England.” According to Lister M. Matheson, 181 manuscript versions of it survive in English, 50 in Anglo-Norman, and 15 in Latin. Between 1480 and 1528 thirteen print editions of it appeared under the title “The Chronicles of England” or some variant thereof. Matheson, “Printer and Scribe: Caxton, the Polychronicon, and the Brut,” Speculum, 60:3 (1985), 593-614; Matheson, The Prose Brut: The Development of a Middle English Chronicle (Tempe: Medieval and Renaissance Texts & Studies, 1998), 6, 9, 339; Andrew Breeze, “Caxton’s Prologue to Malory and the Welsh ‘Brut,’” Arthuriana, 9:3 (1999), 49-51. A similar text printed by Caxton recorded the event as follows: “One of hem syre william trussel, knyght and procuratour of alle the parlemente spake to the kyng in name of all th e other and sayde these wordes: I william trussel in name of all men of the lond of englond and of alle the parlement procuratour, I resygne to the edwarde the homag e that wa made to the somtyme And from this tyme forthward I dyffye the and pruye the of all Ryall power and I shal neuer be tendaunt to the as for kynge after this tyme. Also this was openly cryed at london.” Higden, Polychronicon, 386. John Trevisa translated Higden’s Polychronicon, written in Latin, into English in 1387.
through the “common counsel and assent of the prelates, counts, and barons, and other nobles, and all the commonalty of the realm.”

After Edward II’s removal from the throne, it was ordained “by assent of the commalte in pleyne parlement” that Henry, earl of Lancaster, should keep him in ward. Instead, the queen and Roger Mortimer removed him from Kenilworth “withoute consente of any parlement.”

Because Edward III was only fourteen years old at the time, the members of Parliament agreed in 1327 that a council of twelve should assist him in the governance of the kingdom. Even this royal council was not sufficient, in Caxton’s version, to grant permission for the removal of the former king from ward. Because Isabella and Mortimer removed Edward II from ward without parliamentary consent, their actions were illegal. Only Parliament had the legitimate authority to do so, a reading consistent with the role of Parliament by 1480. The late-fifteenth-century version of the Brut thus imposed on the historical record an interpretation of events that conformed to a contemporary understanding of Parliament as a formal institution of government that the king and others in positions of power had a responsibility to consult on issues pertaining to the governance of the commonalty. The historical rewriting of the end of Edward II’s

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606 For both Trussell’s renunciation of his homage to the king and the public proclamation of Edward’s abdication, see Select Documents of English Constitutional History, 38. Trussell’s renunciation was recorded in medieval French.


608 In the intervening 150 years, Parliament had overseen or played an influential role in the minority of Richard II; the deposition of Richard II by Henry, earl of Derby; the extended minority of Henry VI; the power struggle between Henry VI and Richard, duke of York; and the seizure of the throne by Edward IV. It did not play a significant role in the events of 1470-1471. The cumulative effect of such instability in the monarchy was to enhance the position of Parliament within royal government.

609 Matheson writes in The Prose Brut (21-22, 24-25), “It is clear that [the Brut] occupied a central position in fifteenth- and sixteenth-century historical writing and was a major influence in shaping national consciousness in medieval and post-medieval England.” He also asserts that John Hardyng probably used a “Peculiar Version” of the Brut ending in 1437 for his own chronicle, and that it might have influenced the works of John Benet, the Crowland chronicler, Jean de Waurin, the Davies chronicle, Robert Fabyan, and Edward Hall.
kingship served to validate the contemporary political structure of government and Parliament’s role in it.

George, duke of Clarence, George Neville, archbishop of York, and Richard Neville, earl of Warwick, employed the histories of Edward II, Richard II, and Henry VI in their manifesto against Edward IV in 1469. All three kings had failed in the same way, according to these noblemen, who compiled a list of hurts done to the kingdom by the aforementioned monarchs. The crux of their argument was that these kings had estranged the great lords of the blood from their counsel and refused to let them advise the Crown. Instead, lesser men who sought only selfish gain advised these kings. From this arose all the evils, especially financial, into which the kingdom had fallen. The lords enumerated possible solutions to the kingdom’s ills and petitioned Edward IV to go to Parliament and use its authority to enact their proposed solutions. He never did.

The problems were not rectified to the satisfaction of Clarence, Warwick, and Neville, who proceeded to dethrone Edward in favor of Henry VI the following year. Their manifesto was part of a public campaign against the king, one intended to win support for themselves at his expense. No doubt they would have appeared self-serving if they had demanded simply that Edward remove his advisors and institute them in their place. Thus, they appealed to the historical narrative and the failure of recent monarchs in order to influence contemporary events. The institution to which they turned for rectification was not the king’s council, King’s Bench, or other bodies, but Parliament. They understood that its authority was the one that could resolve

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611 As with the Yorkists’ comparison of Richard II and Henry VI, mentioned above, it is ironic that these three lords cited the kingship of Henry VI as a failure when the following year they would return him to the throne in Edward IV’s place.
problems pertaining to the common weal of the whole kingdom, particularly when the monarch was not fulfilling his duty, much as they claimed had happened in the earlier reigns they referenced.

Their reference to Richard II was not uncommon in the fifteenth century. His was the preeminent example of inadequate rule, and many used his reign as a mirror for their own times. The reiteration of his downfall began soon after it occurred and proved to be a consummate example for reinforcing parliamentary legitimacy. His reign had begun with great expectation and promise, as would those of so many others. In his time Richard “rytche and glorius was, Sacred with abyt with corone and with ringe.” His demise began because “euell counsayle rewled him so elas, For mystretinge lordes of his monarchye,”612 or, as John Capgrave wrote, “King Richard promoted wicked and unworthy men” at the expense of the kingdom. He preferred the counsel of flatterers to wise men, which led many to resist him.613 Not only did he alienate powerful lords but also many of the free men, lay and clerical, of England. These men turned against him in part because of the high sums of money he requested of them. Hardyng, writing in the reign of Henry VI, observed that “of the chirche the dymes full ofte he toke, And grete taxes ofte of the comonte, For whiche thair hertes eche day hym so forsoke And hated hym full sor in pryuyte And with thayr mouthes in all symyhte. Thay prayed faste for hym in procession, Bot with thair hertes hym warried for oppression.”614 Finally, he stood accused of the unjustifiable murder of his uncle, Thomas Woodstock, and of the abuse of the instruments of

612 BL MS Add 29729, f. 169.
613 Capgrave, Liber de Illustribus Henricis, 98.
614 BL MS Lansdowne 204, f. 201. This manuscript is the earliest version of Hardyng’s Chronicle and differs from that published by Grafton. Other manuscript copies of Hardyng’s work can be found in BL Harley 661, and the Bodleian and Ashmolean collections at Oxford.
royal government. The people hated Richard “for his mysrule and wrong gouernyng, For taxes and for blanke charter sealyng, For murder of duke Thomas Woodstoke, That loued was well more then all the floke.”

The ties of loyalty that bound men to the king attenuated as his transgressions accumulated. Although a chronicler writing in the 1420s suggested that Parliament chose Henry IV in place of Richard II because of the former’s “great manhood,” Hardyng, writing under Edward IV, argued that Henry “was admitted” to the Crown of England not of his own merit but “onely for the castigacion Of kyng Richardes wicked peruersacion...For hatred more of kyng Richardes defection Then for the loue of kyng Henry.”

Dethroning, then, was a legitimate punishment for wicked monarchs.

In August 1399 Henry, earl of Derby, who had ostensibly returned to England from France to claim the duchy of Lancaster, his patrimony, captured Richard II. Once Henry seized the king he led him to London, where he was set in the Tower “in stronge and myghty warde, And watched ay at borde and eke at bedde…for his [Richard II’s] rewarde, Thar to abyde the parlmentes awarde, What it wolde say of hym or yit ordayne, Hym to depose or haue hym kynge agayne.”

It was not Henry who would decide the fate of the king but Parliament. The language of the text is remarkable for the degree of authority it confers on Parliament. Parliament was to decide whether Richard deserved deposition or restoration. It was, in essence,
the adjudicator of kingship, the same role Caxton claimed for it in his recitation of the history of Edward II. Henry called Parliament in the name of King Richard in 1399.\footnote{William of Worcester, “Annales Rerum Anglicarum,” II, ii, 756.}

Like Edward II before him, Richard II was deposed of his kingdom while a prisoner. The lords and commons assembled in Parliament prepared a list of wrongs the king had committed. After Parliament compiled Richard’s offenses, they sent a delegation to him to present the charges against him. In the presence of this delegation the king renounced his right to the Crown: “The Kyng in the Toure, with good wil, as it semed...red the Act of his Cessacion before these lordis and other men present...and assoyled alle his ligemen fro the treuth of the oth wech thei had mad to him. And this renunciacion was openly red in Westminster Halle; and every state singulerly inqwyred who thei likid this. And thei saide alle thei consented thertoo.”\footnote{John Capgrave, The Chronicle of England, ed. Francis C. Hingeston (London: Longman, Green, and Co., 1858), 272-273. Capgrave (1393-1464), an Augustinian friar and prolific author, dedicated many of his works to Humphrey, duke of Gloucester, his patron and friend. However, he dedicated the Chronicle to Edward IV and the Liber de Illustribus Henricis to Henry VI.}

In the twenty-third year of his reign, and with “his Reme stondynge in that distresse, [Richard II] Resigned hole with all the myght affere.”\footnote{BL MS Lansdowne 204, f. 222v.}

Subsequently, John Hardyng noted, Parliament “for his misgouernaunce, Deposed hym so then by greate ordinaunce.”\footnote{The Chronicle of John Hardyng, 351.} William of Worcester recorded the event in similar terms, nothing that the king renounced his right to the throne, after which the lords and commons deposed him through a parliamentary act.\footnote{William of Worcester, “Annales Rerum Anglicarum,” II, ii, 756.} According to John Capgrave, the members of Parliament acted in unison to denounce Richard, who, according to the vote of the people, the sentence of the lords, and his own confession, was deposed.\footnote{Capgrave, Liber de Illustribus Henricis, 107.}
deposition was enacted “throug ye Comon assent of all ye lordes temporall and spirituell and ye comons of ye Realme.”

After the king’s renunciation of his title and Parliament’s confirmation of his act, the king’s seat in Parliament was empty. The body had no head. At this point Henry arose and said, “I, Herry Lancastir, challenge the Crown...as for descensus of the real blod of Kyng Herry....’ And whan alle the states of the Parlement had consented to his chaleng, the archbishop of Cauntirbiry took him be the rite hand, and sette him in the Kyngis se.” A new parliament was set to begin the next Monday.624 Henry IV became king through the election of the lords and people. They all consented to his kingship with a great shout, according to Capgrave.625 Parliament went “to a free election” to chose the next king and settled, unsurprisingly, on Henry. The lords and commons chose “Sir henry the duc of hereford” as king on account of his “might” and “the grete manhode with him,” in contrast to the weakness exhibited by Richard and the youth of Edmund Mortimer, earl of March and heir presumptive of England, who was only seven at the time.626 Lancastrian writers referred to the aforementioned parliament that began the Monday after Henry IV’s election as the “great” parliament. The lords of the realm came to the great parliament to discuss the coronation of the new king.627 Not only did Parliament depose

625 Capgrave, Liber de Illustribus Henricis, 107-108.
626 The Chronicle of John Hardyng, 351; HL MS 131 (Brut Chronicle, c. 1420); HL MS 136 (Brut Chronicle, c. 1422). Caxton’s Chronicles of England (1480) also ascribes Henry IV’s successful bid for the kingship to his “great manhoo.” He does not use the word “parliament” in passages relating Richard II’s deposition and Henry IV’s accession. However, he does state that Henry was chosen king by “all the lordes of the Royame with the communes assent and by accord,” a vernacular phrase similar to Capgrave’s Latin one in Liber de Illustribus Henricis. Caxton’s edition of 1480 was based on a manuscript text similar to that of HL MS 136, with the addition of a short prologue, a table of contents, and a continuation from 1419 to 1461 that probably was compiled by Caxton himself. Matheson, The Prose Brut, 339.
627 Capgrave, Liber de Illustribus Henricis, 107-108.
one king and create another in this instance; it also deliberated on the coronation of the new monarch.

All of the accounts that relate the events of that tumultuous year are clear that Henry was not king when the first Parliament was summoned but became king through parliamentary election and a coronation after Richard’s deposition. According to Ranulf Higden’s *Polychronicon*, “Kynge Rychard was broughte to the tour of London, and thenne was ther a parlement In whiche kynge Rychard was deposed of his Crowne And kynge Henry chosen and taken for the kynge, to whome kynge Rychard resygned the Crowne and the Royamme of Englond.”

Although the language in this text is not as emphatic in the authority it bestows upon Parliament as that of the Lansdowne manuscript, it is nonetheless apparent that the king’s deposition occurred in Parliament, and that Henry was chosen as king by the same body. The emphasis in John Benet’s chronicle is on Henry’s ducal title when he convened Parliament in the name of the king: “Duke Henry held a parliament in London, and Henry was crowned.”

In the fifteenth-century texts that relate the transition from Richard II to Henry IV, Parliament is the central composite actor in the story. The deposition and selection of one for another occurs in and through the authority of the institution representing the fullness of the body politic. Henry IV was a man who owed his elevation to the throne first to the unpopularity of the reigning monarch, then to his own force of will in seizing and imprisoning the king, and finally to the legitimate authority of the legal procedure in the high court of Parliament. Richard II was deposed and Henry IV made king by the assent of the realm given through the lords and commons congregated in Parliament. Parliament, in this case at least, was the final arbiter of

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629 *John Benet’s Chronicle*, 175.
kingship. Whether these narratives were faithful to the actual events is of secondary concern; their descriptions gave Parliament a legitimacy possessed by no other composite institution in the realm – to oversee the good governance of the kingdom and, in extreme cases, to depose those who violated it.

Ironically, some later interpretations of the historical record disputed the legality of Henry IV’s kingship without questioning parliamentary legitimacy. Henry IV had appealed to Parliament to establish his claim, yet when Richard of York repudiated that claim in favor of his own hereditary right, he appealed to Parliament in a similar manner, thus legitimating Parliament’s role as mediator between princes. York asserted his status as the rightful heir of Edward III and Richard II in Parliament sixty years after Henry IV made his bid for the throne, and shortly before Capgrave’s chronicle was written. Unlike his Lancastrian predecessor, York was unable to convince Parliament that Henry VI should resign his kingship. York settled instead for a compromise, a fact that may partially explain his ultimate failure. As the partisan divide between those who supported York and those who supported the king deepened, Yorkists reinterpreted the events of 1399 to cast aspersions on the founder of the Lancastrian dynasty. Yet the attack on Henry IV was personal. It was not used to diminish Parliament. One poet

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630 In addition to Capgrave’s account, see HL MS 136. Another chronicler recorded: “Heropon [the duke of York] sent to the lorde and comones of the parlement in wrytyng, hys sayde clayme, tytle, and pedegre, and nat wold come into the parlement tyll he had aunswere therof. The whych tytle, clayme, and pedegre, after diligent inspeccion and wyse delyberacione of thaym had, dyscussed and approued, by all the seyd parlement, peese, vnyte and concorde betwene the kyng and the sayde Duk Richard, the Fryday in the vygyll of Alhalow [1460] was maad, stabylysshed and concluded, as yt appereith plenely.” An English Chronicle, 1377-1461, 92-93.

631 Not only was the attack on Henry IV personal; it was also inconsistent. For example, chroniclers depicted the 1403 rebellion of Henry Percy, known as Hotspur, and his uncle, Thomas Percy, earl of Worcester, as treason against Henry IV. The Percies issued a manifesto in support of their uprising, accusing Henry IV of tyrannical government and declaring their allegiance to the deceased Richard II. How the Percies committed treason against a king who himself had committed treason against Richard II and who was not king de jure is not explained. In Caxton’s 1480 and 1482 printings of the Chronicles of England, the rebellion is described as follows: “And thidder [to Shrewsbury] come Sir Henry Percy the Erles sone of Northumberland with a grete multitude of men of armes
reminded his readers to call to mind “gret wrongys doon of oold antiquite, unrightful heyres by wrong alyaunce usurpyng this royaume caused gret adversite; Kyng Richard the secounde…whiche of Ingeland was rightful enheritoure, in whos tyme ther was habundaunce with plente, of welthe and erthely joye, without langoure. Than cam Henry of Derby, by force and myght, and undir the colour of fals perjury, he toke this rightwys kyng, Goddes trew kynght, and hym in prison put perpetuelly, pyned to dethe, alas!”⁶³² Although the condition of the kingdom during the reign of Richard II is artfully recast as one of prosperity and Henry IV is denigrated as a traitor to his lord, there is no mention of the role Parliament played in adjudicating the issue. A chronicler followed a similar line of reasoning when recounting Edward IV’s landing in 1471 at Ravenspur, the same place where “somtime the Usurpowr Henry of Derby, aftar called Kynge Henry the IV landed, aftar his exile, contrary and to the disobeyansce of his sovereigne lord, Kynge Richard the II, whome, aftar that, he wrongfully distressed, and put from his reigne and regalie, and usurped it falsely to hymselfe and to his issue.”⁶³³ Culpability belonged not to Parliament but to the man who had raised arms against God’s anointed.

and archiers and yafe a bataille to kyng Henry the iiiij thurgh the fals counceill and wykked rede of Sir Thomas Percy his vnce Erle of wurcestre and there was Sir Henry Percy slayne and the moste partie of his myne in the feld And Sir Thomas Percy take and kept fast in holde two daies till the kyng had sette reste amonge his peple on bothe sides And than Sir Thomas Percy anone was jugged to be dede drawe honged and his hede smyten of for his fals treson at shrowesbury and his hede brought to london and sette on london brugge.” Higden’s Polychronicon of 1482 does not mention Hotspur’s uprising. The Chronicle of the Grey Friars of London mentions the battle of Shrewsbury and the fate of the two Percies, but its account is fairly straightforward. There is no mention of “fals counceill” or “fals treson,” as the Chronicles of London relates. For a modern assessment of the Percy uprising, see Liz Schevtchuk Armstrong, “Rebel or Fugitive?: A Different Perspective on Hotspur’s Conflict with Henry IV in 1403,” Shropshire History and Archaeology, 76 (2001), 11-29.

Yorkist monarchs also upheld the legitimacy of early Lancastrian parliaments while disputing the legal status of the kings who summoned them. In a letter to Thomas Bourchier, Edward IV wrote of a statute in the Parliament of King Henry IV, “lately of the deede and not of the lawe.” In spite of the alleged absence of a *de jure* status for Henry IV, Edward maintained the legitimacy of the statutes Parliament passed in the reign of his predecessor. The legitimacy or illegitimacy of individual monarchs did not affect the legitimacy of Parliament, primarily because neither the king nor the institution of the monarchy was the source of parliamentary legitimacy. Rather, monarchs honored most statutes enacted by their predecessors. If they wanted to change or condemn previous statutes, they generally went back to Parliament. Their respect for existing statute and the established process for modifying it is indicative of their recognition of the distinction between Crown and Parliament, and that the latter’s legitimacy was not inherently bound to the fate of particular kings.

In addition to forthright references to the role of Parliament in English history, subtle linguistic stylizations that influenced the vocabulary of readers often permeated historical texts. Perhaps no single individual did more than William Caxton to incorporate the word “parliament” into common usage as a synonym for political assemblies that anachronistically bore some resemblance to the contemporary English Parliament. He gave possible reasons for doing so

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634 BL MS Add 48064, f. 215.
635 Hughes observes in *Arthurian Myths and Alchemy* (238, 244) that Caxton’s printing enterprises, along with the literary activities of some courtiers of Edward IV, “encouraged the development of an informed and broadly based educational system modeled on that of the Romans.” Caxton, an English merchant in Bruges and servant of Margaret of York who began printing in the second half of Edward IV’s reign, focused on the publication of ancient history and didactic teaching. In 1484 Caxton sued for a pardon from Richard III, following the uprising of the previous year. His success as a publisher owed much to his connections with Earl Rivers, who became his patron in 1477, and the household of Edward IV. Therefore, he was liable to suspicion by Richard III. He secured royal and aristocratic patronage again in the reign of Henry VII. Louise Gill, “William Caxton and the Rebellion of 1483,” *The English Historical Review*, 112:445 (1997), 105-118. See also Robert L. Montgomery, “William Caxton and
in his prologue to the 1482 edition of Higden’s *Polychronicon*. “Grete thankynges lawde and honoure,” he wrote, “we merytoryously ben bounde to yelde and offre vnto wryters of hystoryes...that shewe vnto the reders and herers by the ensamples of thynges passyed what thynge is to be desyred and what is to be eschewed. For those thynges whiche oure progenytours by the taste of bytternes and experyment of grete Leopardyes haue enseeyngned admonested and enformed vs excluded fro suche peryllys to knowe what is prouffytable to oure lyf and acceptable and what is vnprouffytable and to be refused.” Not only was the reading of historical works benefical to young and old on account of their wisdom and insight, it also would ensoure that private men were worthy “to haue the gouernaunce of Empires and noble Royammes...[and] moeue and withdrawe Emperours and kynges fro vycious tyrannye.” Likewise, history “affrayeth cruel tyraunty for drede of Infamye and shame Infynyte by cause of the detestable actes of suche cruel personnes ben of tymes plantyd and registred in Cronykes vnto theyr perpetuel obprobrye and dyuulgacion of theyr Infamye.”

Because he viewed historical texts as an essential means of teaching people the best way to live a profitable life and to check tyrannical government, it is possible that he deployed the word “parliament” for two reasons. First, it was a common term with which his readers (and perhaps those listening to his books read aloud) would have been familiar. They would have

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associated it with the institution as it existed in the fifteenth century, its function within the royal
government, and the issues it addressed. Second, because his readers had some knowledge of
what Parliament was, he could, in essence, manipulate the term in a historical context in order to
instruct them in the development of consensual government, the better for them to oppose
tyranny, particularly tyrannical kingship, if needed.

In his first printed book, a translation into English of Raoul Le Fèvre’s *Le Recueil des
Histoires de Troye*, Caxton used the word “parlament” numerous times to denote an assembly of
the king, his nobles and knights, and, occasionally, the burgesses or common people. Even the
gods held a “parlament” in Caxton’s *Troy*. The assembly could be formal or informal, but it
usually was convened to address military strategy or civic policy, and to offer counsel to kings.
Debate and candid discussion therefore were expected and portrayed. In Caxton’s
presentation of the Trojan War, those who participated in non-divine assemblies, though
“vassal[s] and subgette[s],” owed it to their lord to counsel him and were expected to do so. At
one parliament, Pantheus, a Trojan knight, reminded King Priam that Pantheus’s father, a noted
philosopher, had predicted the destruction of Troy if Paris went into Greece and violently seized
any noble lady. Pantheus then urged the king not to allow Paris to go armed into Greece, a
warning which caused “grete murmures” among those who heard it. Most who heard it “helde
hit for mocquerye and fable, in so moche that by the consente of the more parte Parys was
comysed for to go in to grece wyth men of Armes. And the parlament fynyshid eche man went

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637 LeFèvre, *The recuyell of the historyes of Troye*. At this particular parliament the gods ordained the destruction of Troy.
638 At one point in the text there is debate in a parliament between “Andrometha and Helenus” on the one hand, and
Pyrrhus on the other over whether to kill or spare two sons of Hector. The parliament chooses to let them live.
hym home in to his hous.” Paris was commissioned to go to Greece by the consent of the majority of the Trojan “parlament,” in spite of the warning, or good counsel, offered by Pantheus. In this case, the parliament heeded the wrong advice and the Trojans suffered the consequences as a result. Nonetheless, it is notable that Caxton places the legitimacy for authorizing hostilities with the Trojan “parlament.”

Later in the story, after the third battle between the Greeks and the Trojans, the Greek kings, princes, and “barons” assembled at King Agamemnon’s tent. There they held their “parlament how they myghte slee hector...They requyred Achilles that he wold take hit vpon hym as well for his strenght as for his wisedom. And achylles enterprysed gladly as he that wite that hector desired more his deth than the deth of ony other.” There are overtones in this narration to the conflict in the 1450s between Richard, duke of York, and Edmund, duke of Somerset, though whether Caxton intended any resemblance is unclear. This Greek “parlament,” informally assembled at the king’s tent, authorized Achilles to slay their great enemy Hector.

Likewise, when King Agamemnon decided to resign his position as commander of the Greek forces in the war, he declared that every man in the host should be at his tent “at the parlament” in the morning. When morning came he announced his desire that those gathered choose another man to lead the army “dyscretely.” After he finished speaking “his sayng plesid to every man and they chese palamydes to be their duc and gouernour.” Again, one could

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639 Lefeuvre, *The recuyell of the historyes of Troye*. Caxton’s translation was reprinted with the same wording, though occasionally different spelling, in 1502 and 1503 by Wynkyn de Word. Caxton’s version is different from the French version of 1494, which uses neither “estates general” or “parlement” or any other similar phrase. Raoul Le Fèvre, *Le Recueil des hystoires troynennes, contenant trois livres* (Lyon: J. Maillet, 1494). See, for example, image 258 and compare it with image 264 in the Caxton translation. There is a 1477 printed French version extant, but I have been unable to see it.

640 Lefeuvre, *The recuyell of the historyes of Troye*.

641 Ibid.
draw parallels with York and contemporary English history. Palamedes was a prince, and, as someone of royal blood, a natural leader according to fifteenth-century hierarchies. But he did not automatically assume command when Agamemnon resigned. He was chosen by the “parlament” the king called. One must be careful not to carry the interpretation too far, because Agamemnon did not resign his kingship, only his role as commander of the Greek forces. Yet the reader is left with a scenario in which a king resigned his military responsibilities, and rather than appointing a new leader himself he called a “parlament” to choose one.

Caxton’s translation of Cicero’s De Senectute in 1481 likewise imposed the word “parliament” on the text and thus on his readers. In the text, Cicero, the famed Roman orator and statesman, gives a speech in the Roman Senate, labeled “the parlement of the senatours.” He declares that he is fully capable of serving, though old, because the parliament did not require physical strength “but for to counseill the thyngys and the causes publikes, for ye comon profite which concernyth the comon welfare of the cyte to be wele guyded…it suffiseth that I be prudent and temperate, iuste and strong in courage.” Roman sergeants had summoned and called “auncien [e.g., old and experienced] men to the senat for to be counseillours for the comon prouffite.” Young men, on the other hand, are given over to the “coueitous playsirs of delectacyon,” which “steeren men ouer boldly and withoute bridell of reason or shame or any restraynt to execute and make an ende of their foule lustys.” Such delectation was the cause of treason, division, and dissension in countries and the reason for the destruction of the common profit. It also was to blame for the betrayal of “the secretes of parlementys...to our ennemyes

\footnote{642 Cicero, De Senectute.}
and aduersary partye.” The close equation of the devastation of countries and the common profit with the disclosure of parliamentary secrets to a country’s enemies again reinforces the importance of a parliament to the good governance of a kingdom and its position at the center of government.

The text also strengthened the association with the government of Rome. The warning against betrayal is given in an oration by a philosopher named Archites and recorded by “the noble senatour” Quintus Fabius Maximus, who gave the speech to the young Cicero while the latter was with him at the reconquest of Tarentum. The Romans had heavily garrisoned the city during the Second Punic War, fearing that it might side with Hannibal, which is exactly what happened. Two members of the pro-Carthage faction in the city allowed Hannibal to enter in 212 BC, although he was unable to capture the citadel of the city, which was defended by Roman troops. The city supported his war against Rome until its betrayal by a commander of a Bruttian force and recapture by Fabius Maximus in 209 BC. Indiscriminate slaughter ensued, and the Bruttians who had betrayed the city to the Romans were among the victims. The frequent betrayals of the city from within and the resulting destruction presumably are the basis for Cicero’s moral. Accusations of internal betrayal to a hated enemy were familiar to Caxton’s contemporaries. Both Suffolk and Somerset were accused of betraying England and its interests to the French in the 1440s and 1450s. Their loss of the last major English territories across the Channel provided ample foder for their critics to hurl numerous charges against them and contributed to the protracted and destructive domestic unrest in England.

643 Ibid.
644 Valerius Maximus, whom Bishop John Russell quoted in his prepared speech for Parliament in 1483, also related the story of Fabius Maximus and Tarentum in Factorum et Dictorum Memorabilium (Book II, 2.1, 2.2, 2.5).
With little irony, Caxton later has Cicero state that he, Cicero, has gathered in his book every “noble cause” he had proposed and studied in order to “please by aduocacye before the senatours and othir Iuges of rome that is to witt like a seraunt of the lawe or the kyngys promoter or speker of his parlement or his attourney generalle or apprentice of court declarith and pledith his maters that ben comytted to hym of thies causes.” In doing so he explicitly equated Cicero’s orations in the Roman Senate with the work of the speaker of Parliament in England. Through his translations of Latin works into the vernacular, Caxton consistently reinforced the linguistic association of Roman government, especially the Senate, with parliamentary government in general, and the English Parliament in particular. Whatever his motivation, it has the cumulative effect of conferring on Parliament a legitimacy that few other offices or institutions of government could claim for themselves.

Yet Caxton’s employment of the word “parliament” in historical texts was not confined to Roman history. He also used it in his histories of England. Often he used it to describe a meeting or assembly, however informal. He thus imposed on earlier centuries a fifteenth-century understanding of the institutions and functions of government. For example, in several chronicle publications Caxton described the fate of Godwin, earl of Wessex, under King Edward the Confessor (r. 1042-1066), as being decided in or by “parlement.” In a dispute over the throne of England, Godwin reportedly pretended to be the ally of Alfred Ætheling, son of Æthelred the Unready and brother of Edward the Confessor, then surrendered him to the forces of Harold Harefoot, illegitimate son of Cnut of Denmark. Alfred died soon after his capture. Edward

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645 Cicero, De Senectute.  
646 Others who printed texts from the Brut tradition also used the word “parlament” in many of the instances listed above. See, for example, Cronycles of the londe of Englo[n]d (1493); Ranulf Higden, Tabula (London: Wynkyn de Worde, 1502).
subsequently ordered Godwin’s exile “in playn parlemente.” The earl, however, desired to return to England from exile in Denmark. Upon hearing of the goodness of King Edward the year after his exile, he put to sea to sail for London, where the king and all the lords were at the time “and helde a parlement.” When he arrived, he traded accusations with the king and attempted to clarify what had transpired in the death of Alfred Ætheling. Eventually Edward declared, “Nowe fair lordes... ye that bien my lieges Erles and barons of the land that here ben all assembled Full well ye haue herd myne Appele and the ansuere also of Godwyne And therfor I wyll that ye award and doth right.” The earls and barons then drew together “for to done this award by [t]hem selfe and so they spoken diuersely amonges [t]hem. For somme said ther was neu[er] alliaunce by homage serment seruice ne by lordshipp bitwene Godewyne and Alured for which thyng they myyt hym drawe. And at the last they devised and demed that he shold put hym in the kynges mercy all to gedres.” One earl at the “parlement” even recommended that the king forgive his (Edward’s) own “euell wyll” towards Earl Godwin and receive his homage. Edward accepted the advice of the “parlement” and granted and confirmed what they ordained. So Earl Godwin “was accorded with the kyng and had ayene all his lande.”

As with Caxton’s edition of Raoul Le Fèvre’s Le Recueil des Histoires de Troye, there are overtones of recent events in this description of the reconciliation between Edward the Confessor and Earl Godwin. It bears a striking resemblance to the conflict between Henry VI and Richard of York in the 1450s, down to the king’s “evil will” towards his powerful subject, a

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647 Higden, Polychronicon, 315.
648 Caxton, The Chronicles of England. The language is the same in the 1515 edition of the text, although the spelling is slightly different. Whether Caxton wrote the continuation covering the years 1419-1461 is not known for certain, but Lister Matheson argues that he did. If true, it explains why he did not extensively revise subsequent printed editions of the text. Matheson, “Printer and Scribe,” 593-614.
standard description of Henry’s treatment of Richard in Yorkist propaganda, and the mediation of “parlement” between the king and his powerful subject that occurred with Henry and Richard in 1460 after the Coventry Parliament of 1459 had declared Richard a traitor to his sovereign lord. It also bears similarities to Edward IV’s conflict with his brother, George, duke of Clarence, in the late 1460s and again in the mid-1470s, although Parliament condemned Clarence at the behest of the king in 1478.

Even more notable than such allusions, though, is the direct use of the word “parlement” for the assembly of earls and barons that the king asks to mediate the conflict between himself and Earl Godwin. As the text makes clear, this is strictly an assembly of lords; there is no equivalent of a fifteenth-century Commons involved. Yet these lords assembled in “parlement” debate freely amongst themselves and decide the resolution to the conflict. Their recommendations are “granted and confirmed” by the king, thus preserving for the monarch the final authority to accept or deny their provision. The entire process, as Caxton describes it, functions in a manner strikingly similar to a fifteenth-century parliament, with the obvious exclusion of the Commons.

The reign of Edward the Confessor was not the first in English history in which Caxton used the word “parliament.” It first appeared in his *Chronicles of England* to describe how King Edgar (r. 957-975) “ordeyne[d] a parlement at salysbury of al his barons counceylle to haue” to determine how best to protect Northumberland from the Danes. Æthelwold “come also vnto the kynges parlement, and the kyng sent hym to yorke for to be kepar of that countre.”⁶⁴⁹ As with the references to “parlement” in the story of Edward the Confessor and Earl Godwin, this

⁶⁴⁹ Caxton, *The Chronicles of England*. On his way to York Æthelwold was killed. According to the *Brut* tradition, as soon as Edgar heard of his death the king married his widow Ælfhryth.
assembly resembles a baronial council more than it does a fifteenth-century parliament, but the linguistic association between the two parliaments remains.

Perhaps the most remarkable story involving a parliament concerns Edgar’s grandson, the Confessor. When King Æthelred “was falle in age / he made a parlement / whiche of his two sones shold be kynge after hym.” This “parlement” concluded that Edward, who “was not thenne borne and in his moders bely,” should be king “and excluded Edmond yrensyde and Alfrede.” The king gave his consent to the “parlement’s” decision, and those present swore a general oath to support the unborn Edward as the king’s heir. Years later, after the death of King Cnut (r. 1016-1035) and his sons, “the lordes and the comyns of Englond remembrid the othe that they maade in the parlement whiche sware that Edward whiche was thenne in his moders wombe shold be their kyng, and anone sente in to Normandye for this hooly child Edward, and the lordes and the comyns receyued hym with grete gladnes.” This is a striking image of the lords and commons swearing an oath in a parliament to an unborn child. The inclusion of the commons in this parliament is a significant departure from other texts, in which the reputed parliaments more accurately resemble an assembly of the temporal and, in some cases, spiritual lords. Here is an Anglo-Saxon “parlement” whose fundamental composition is exactly the same as a fifteenth-century parliament.

Caxton’s use of the term in both instances establishes Edgar’s “parlement” as a prototype of the later institution and Æthelred’s as a near equivalent of it. By specifically denoting these

650 This account is historically confused. Alfred was Edward’s younger brother, and therefore not alive when Edward was still unborn and in his “moders bely.” Edmund Ironside was the elder half-brother of Edward and Alfred. He fought against Cnut of Denmark and, after Edgar’s death, divided England with Cnut. Edmund was to govern Wessex, while Cnut took the rest of the country. However, Edmund’s death soon after the division allowed Cnut to seize control of the whole kingdom. Alfred was betrayed and killed by Earl Godwin of Wessex around 1035 when he tried to assert his family’s title to the kingdom of Wessex.

assemblies as “parlements,” Caxton implies that some form of Parliament had existed for at least 500 years by the late fifteenth century, thus strengthening the historical legitimacy of the institution. Caxton was not the first, however, to argue that the English Parliament began in the eleventh century. The anonymous author of the *Modus Tenendi Parliamentum* introduced his text with the following: “Here is described the means of holding Parliament by the kings of England and the English from the time of King Edward, son of King Æthelred. This means was recited by judges of the royal court of William, duke of Normandy, conqueror and king of England.”652 The *Modus* was written shortly after a famous tract on the office of the steward (c. 1321).653 Among the duties of the steward was to adjudicate cases in his court, but in trials of peers, over which he could preside, he was to submit his judgment for the consideration “of all the kingdom in Parliament, as befell Earl Godwin of Kent in the time of King Edward, nearest predecessor to William, duke of Normandy and conqueror of England.”654 The authors of both the tract on the steward and the *Modus* claimed that Parliament originated in the reign of Edward the Confessor, shortly before the Norman conquest. Consequently, it was an indigenous institution, not one imported to the British Isles by foreign invaders. The Normans, wisely, left it in place and incorporated it into their rule of England.

A monarch contemporary to Caxton might have difficulty insisting that he did not need to consult with the body on matters pertaining to the whole kingdom, for here were historical precedents reaching deep into the Anglo-Saxon past in which kings sought advice on how best to

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653 The text is printed in Leveson Vernon-Harcourt, *His Grace the Steward and Trial of Peers* (New York: Longmans, Green, and Co., 1907), 164-167. M. V. Clarke observes that in seven cases the manuscript of the *Modus* is followed by the tract on the steward (seneschal). She also notes that the office of steward “lost all permanent importance with the death of Thomas, duke of Clarence, in 1421, and from that time on the tract was of little but antiquarian interest.” Clarke, *Medieval Representation and Consent*, 358-359.
protect the kingdom from foreign invasion and on who should inherit the throne. To do otherwise might have been perceived as subverting an indigenous institution in favor of a foreign style of government, a particularly unpopular position in the wake of the protracted war with France and the fear, especially in southern England, of a possible invasion from across the Channel. For literate Englishmen and women the example of Anglo-Saxon kings consulting with Parliament would have buttressed the legitimacy of parliamentary participation in royal government.

Ironically, in Caxton’s publication of Ranulf Higden’s *Polychronicon*, Cnut, king of Denmark and England, who became king of England by invasion and conquest in 1016, held a “parlement at oxenforde [where] Englyssmen and danes were acorded for to holde kyng edgars lawes.” In Caxton’s linguistic formulation of the event the Dane, whose predecessors Edgar’s “parlement” had been called to resist, thus adapted to an Anglo-Saxon institution within two years of his conquest. Such an action, in which a group identified as aliens participated as equals in the central political institution of the kingdom, would not have been consistent with a fifteenth-century parliament. Nonetheless, the purpose of the meeting was to establish the law of the realm, which would have been an appropriate and essential parliamentary responsibility in Caxton’s time.

Further examples from Caxton’s *Chronicles* had palpable overtones of recent English history. King John (r. 1199-1216) lost much of his continental inheritance, including the duchy

of Normandy and the county of Anjou, to Philip II of France in the early years of the thirteenth century. In order to reconquer these territories the king needed large sums of money. For this reason he held “a grete parlement” in London and “axed ther of the clergye the x of euerych chirch of englond…and they wolde not graunte the king wherfor he was wonder wroth.”

What strikes the reader in the example from King John’s reign is that its members refused to give the king the monies he requested of them. The king allegedly became angry at such presumption, but no recourse to an alternate means of enacting the taxes or surmounting the decision of the “grete parlement” is given for the king in the text. The resolution to the quarrel over taxation is left unexplained, but one can read into it that the king was unable to secure the taxes he wanted. In this particular instance, then, the reader is left with the impression that a parliament could refuse the king his request for taxation and by doing so earn the esteem of Englishmen present and future.

John’s successor fared little better in the historical record. Within the first five years of the reign of the young Henry III (r. 1216-1272), “the kyng and the Archebisshop and erles and barons assembled [t]hem at london…and helde ther a parlement and ther were tho renewed all the franchises that kyng Iohn graunted had at Romnemede [in the Magna Carta], and kyng henry tho confermed by his chartre, the whiche yet ben holden thurgh oute al englond.”

These successive baronial councils culminated in the the Provisions of Oxford (1258), which stipulated that the kingdom was to be ruled by a council overseen by Parliament. Henry III refused to

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657 Ibid.
permanently accept such a situation, and “fylle stryf [arose] bytwene the kynge and the lorde of Englond for the kynge wolde not holde the ordenaunces that were ordeyned at parleament at Oxenford.”

Discontent with the king remained throughout his life, but he was able to overturn the Provisions. Higden and Caxton insinuated that Henry III was the party incapable of upholding parliamentary provisions, subverting the ordinances he had agreed to, and therefore bringing further discord to the realm.

As with the example of Edgar, none of the aforementioned “parlements” were precisely the equivalent of a parliament contemporary to Caxton. With the exception of King Æthelred’s parliament, none of these examples included members of what later would be known as the Commons.660 These were gatherings of the clergy and the lay nobility. Though the membership was not the same as in the fifteenth century, the issues these “parlements” were called to address were similar. In Edgar’s time it was the defense of the realm; in John’s, the need for taxes and revenue to support the king’s expedition in defense of his patrimony; in Henry III’s, the confirmation of franchises and liberties guaranteed by a predecessor and the desire for consensual government. Each of these themes was prominent in the fifteenth century, and Caxton’s use of the term draws close parallels to his own time, particularly to the reign of Henry VI, but also to that of Edward IV, in which taxation for the purposes of regaining the king’s French territories and the defense of the realm from French and Scottish incursions became controversial because so much was requested of the king’s subjects. Members of these

659 Higden, Polychronicon, 377.
660 Knights of the shire and burgesses, serving in what became known in the following century as the Commons, were summoned to the parliament of 1265 under the direction of Simon de Montfort.
“parlements” spoke candidly about the issues at hand and appeared unafraid to question or criticize a monarch’s behavior.

Caxton’s stylistic additions to the historical record chronicle a subtle but steady progression in the development of Parliament, from an Anglo-Saxon baronial council to the contemporary institution with an upper and lower house, including representatives of towns and shires, with the king as its head. The famed translator and printer frames the reader’s understanding and interpretation of parliamentary evolution by repeating the same word in each of the aforementioned cases, even those for which it was ill-suited or entirely inappropriate from a modern historiographical perspective. Always, though, Caxton’s parliaments actively participated in the government of the kingdom and, in exceptional circumstances, served to check the authority of the king when his decisions would harm the welfare of the realm.

The presentation of history was integral to validating and affirming the legitimacy of people, dynasties, institutions, and causes in fifteenth- and sixteenth-century England. Parliament benefitted greatly from the direct historical association of English government with Rome and Israel. Contemporary authors claimed the inheritance of these two ancient polities as their own in numerous chronicles, poems, and treatises. By linguistically tying Parliament to the Senate of the Roman Republic and the concept of a political kingdom, Earl Rivers, Bishop John Russell, Sir John Fortescue, and many others, asserted that its legitimacy derived from the historical precedent of the most successful and influential government Europeans admired and sought to emulate. The language used by William Caxton, John Gower, and other chroniclers and poets to

661 Reading this as a progressive development towards the fifteenth century is done solely in the context of Caxton’s language and examples in the texts. It is not done as a form of neo-Whiggish history. For an overview of historical writing in the late Tudor and Stuart periods, see Paulina Kewes, ed., *The Uses of History in Early Modern England* (San Marino: Huntington Library, 2006).
describe the reigns of previous English kings, and the creation of narratives dating the origin of Parliament to the eleventh century or before likewise allowed readers to trace Parliament’s involvement in native royal government from the Anglo-Saxon kings to Edward IV and beyond. Because Parliament had represented the kingdom within royal government for centuries, and because it was a successor to the Roman Senate, it was unquestionably a legitimate part of English government, one that all good kings must consult whenever a matter of policy affecting the realm was under consideration. In the case of a failed or contested kingship, Parliament was to restore good government and wise counsel or arbitrate between contenders for the throne. Whatever the outcome of its arbitration, Parliament’s legitimacy was not in doubt because it was not tied to the fortunes and legitimacy of individual monarchs such as Henry IV. English history, whether factual or fictionalized, bestowed on Parliament an unimpeachable source of legitimacy.
CHAPTER 5: CASTILE

The oldest parliamentary body in Western Europe belonged to the kingdom of Castile-León in the Iberian Peninsula. As early as 1188 Alfonso IX summoned urban representatives, known as procuredores, to the royal council of León. By the end of the thirteenth century townsmen were regular participants in the Cortes of Castile-León. Unlike the bicameral fifteenth-century English Parliament, the Cortes of Castile-León initially had three distinct groups – prelates, nobility, and townsmen – commonly known as the three estates (tres estados) of the realm. The Cortes was the political assembly in which the king collaborated with the representatives of “los brazos o estamentos” (arms or estates) of the political kingdom. As befit contemporary practice, these men were legally and socially privileged. Townsmen fell into one of two categories of procuredores: noble ones (hidalgos) who did not pay the direct taxes voted by the Cortes, and non-noble ones (pecheros) who did. After 1432 the Crown required that all procuredores should be noble hidalgos rather than common pecheros, a move intended to keep laborers and people of similar standing from serving and threatening the power of urban oligarchies. All three groups attended the Cortes in their capacity as lords of vassals or lords of “tierras.”

The representatives of the estates acted in the name of the groups for whom they came. Together, in the name of “la Tierra,” they had two basic functions: “To ask for respect for the privileges and maintenance of the fundamental rights of the land and to offer the prince the

664 Cortes de los antiguos reinos de León y de Castilla (Madrid: Real Academia de la Historia, 1866), III, 135. 665 “Señores de tierra” were those who had direct overlordship and jurisdiction of a particular land.
means of governing.” According to the medieval concept of representation, then, everyone was represented in these assemblies: those who depended upon a lord, whether noble or ecclesiastic, were represented by him, and those who had the king as their lord were represented by the townsmen. 666 For contemporaries this meant that the Cortes could not exist without someone speaking for each estate. In the Cortes of Ávila in 1420 the procuradores from Burgos made it clear that the Cortes of Tordesillas in the reign of Enrique III (r. 1390-1406) amounted to nothing because one could not call a Cortes “where the principal members who are necessary have died, as had the Infante Don Juan, Señor de Lara,” whose station made him the “leading voice for the estate of the hijos de algo,” and Don Sancho de Rojas, archbishop of Toledo, who had the highest dignity for the “ecclesiastical estate” in the Cortes. 667

666 Martín, Las Cortes Medievales, 15-16. I. A. A. Thompson observes in “Cortes, Cities, and Procuradores in Castile,” (2, 4), that in the sixteenth and seventeenth centuries, the basis of representation in the Cortes was “narrow and uneven,” and it cannot be described as a popular institution. The franchise was so limited by the end of the sixteenth century that outside of those cities represented in the Cortes, “and indeed, outside the ruling bodies of those cities, there is no evidence of any popular support for the Cortes as an institution. On the contrary, every available contemporary comment is uniformly critical of the Cortes as defenders of the public good, and unanimous in castigating the self-interest and venality of the procuradores.” Juan Manuel Carretero Zamora agrees with Thompson’s conclusion, writing in Corpus Documental de las Cortes de Castilla, 1475-1517 (Madrid: Cortes de Castilla-La Mancha, 1993), 24, “In everyone’s eyes it was reduced to privileges for oligarchs, which corrupted it, and it represented the kingdom barely or not at all.” Along these same lines, Recio writes in Las Ciudades Castellanas en tiempos de Enrique IV (43), “The procuradores defended in the Cortes the interests of the two social groups of greatest relief: the caballeros and the hombres buenos.” Many of the proctors’ documents in the royal collection of the Archivo de Simancas confirm this conclusion. There are numerous petitions seeking jobs or property from the Crown in recognition of service in the Cortes or on account of the purported status of the proctors. 667 Cosas Sacadas de la Historia del Rey Don Juan el Segundo (BL MS Egerton 1875), eds. Angus MacKay and Dorothy Sherman Severin (Exeter: University of Exeter, 1981), 12. Thompson and Croft argue that the procuradores claimed to speak for the kingdom, but the lords who attended did not represent the aristocracy as an estate. Their votes could not bind absentees. It was not necessary for the nobility to be present for the Cortes to transact business. Nor was the Cortes essential to their standing as nobles, as was the case in England, where a writ of summons to Parliament was a manifestation of noble status. As a vehicle for promoting the interests of the nobility, then, the Cortes “was singularly deficient.” While this is partially true, particularly in regards to the writ of summons, the evidence offered in this paragraph contradicts their claim that lords who attended did not represent the aristocracy. Their idea of representation may have differed from that of the English and may not have bound everyone to specific decisions, but contemporaries certainly believed they spoke for their social class. “Aristocracy and Representative Government,” 74.
In their capacity as lords or vassals or “tierras,” the members of the Cortes voted servicios (taxes). Although in theory the Cortes controlled taxation, in reality the procuradores generally ceded procedure to the wishes of the monarch, which meant that they voted taxes first, then presented their petitions to the Crown, effectively eliminating the possibility of pressuring the king to accept their petitions.668 From 1400 the alcabala, the most important tax for the Crown, could be collected without the consent of the Cortes.669 In 1445 the procuradores gained control over the nomination of those in charge of the collection of royal revenue (recaudadores mayors), but Enrique IV revoked their control ten years later.

By the mid-fifteenth century the Crown was appointing procuradores and paying their salaries from the royal treasury, which seriously restricted their independence. Enrique IV accepted in 1465 that the procuradores should receive no remuneration, “except the salary reasonable to support their going and coming” to the Cortes.670 Procuradores and urban oligarchs occasionally insisted that the king not interfere with elections but that cities freely choose their own representatives according to traditional custom rather than any grant of the monarch. They reminded the king that “when he ordered the said proctors to come to [his] court

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669 On the alcabala, see Documentos de los Reyes Católicos, 1492-1504, ed. Antonio Gomariz Marín (Murcia: Real Academia Alfonso X El Sabio, 2000), xvii; Miguel Ángel Ladero Quesada, La Hacienda Real de Castilla en el siglo XV (Universidad de La Laguna: Sevilla, 1973), 64-93.
670 The salary was not supposed to be more than 140 maravedis per day, and no one, not even the king, could give them any other remuneration. AHN, Estado, Legajo 773, Tomo XVIII, f. 63. The monarch usually issued a cédula to remit payment to the procuradores for their service. See, for example, those issued by Isabel for the Cortes of Madrid in 1502: AGS, Escribanía Mayor de Rentas (E.M.R.), Nóminas de Corte, Legajo 1, Numbers 14, 15, and 221. See also AGS, Camara de Castilla: Personas, Legajo 8-2, f. 343, in which Pedro de Duero, procurador for Valladolid, declares that he has not received a salary for his fifteen months of service in the Cortes and asks the Crown for reimbursement. The request is dated January 1523. According to Juan Manuel Carretero Zamora, the salaries, benefits, and privileges of proctorship in the Cortes proceeded from the granting of subsidies to the monarchy. Carretero Zamora, Corpus Documental de las Cortes de Castilla, 24. For an example of the Crown arbitrating through cédulas, see AGS, Camara de Castilla: Personas, Legajo 7-1, f. 125.
the cities and towns and places freely elect [them] according to use and custom.”⁶⁷¹ According to Martín, the final moment of splendor for the Cortes came in 1469, when the meeting at Ocaña agreed to recognize Isabel, rather than Enrique IV’s daughter Juana, as heir to the throne and ended the anarchy in the kingdom.⁶⁷² This Cortes also suggested the creation of a deputation of four *procuradores* from the Cortes permanently stationed with the monarch to oversee petitions and agreements that the Cortes made during its meetings.

Representation shrank from forty-nine towns in 1391 to seventeen in 1480.⁶⁷³ One reason for the decline of urban representation in the Cortes was that many cities were now held in lordship by bishops or magnates who claimed to speak for their townsmen even though these aristocrats did not attend the Cortes. Previously these towns had been directly dependent on the Crown. There appears to have been concern about this development among the *procuradores* themselves. At one point they declared, “Our realengo [royal lands] are depopulated and the lands of nobles are populated instead.”⁶⁷⁴ In addition, many towns viewed attendance as a burden and failed to send representatives or object when the king no longer summoned them.

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⁶⁷¹ *Cortes de los antiguos reinos de León y de Castilla*, III, 729. The statement was made to Enrique IV. They also reminded the king that he was not to interfere with the election of regidores and jurados and escribanos (ibid., 715). There was no standardized system of election for procuradores. Only in Burgos were they freely elected by a secret vote of the regidores. In Seville the veinticuatro elected ten of their own number to ballot as one procurador, and the cabildo de jurados did the same for the other position. In no other city was there any significant element of election. Rather, procuradores were chosen by lot (seven cities), by a mix of lottery and nomination (four cities), or served in turn through a predetermined sequence (three cities). Thompson, “Cortes, Cities, and *Procuradores* in Castile,” VIII, 5-6.

⁶⁷² Martín, *Las Cortes Medievales*, 63.

⁶⁷³ The towns represented were Burgos, Soria, Segovia, Ávila, Valladolid, León, Salamanca, Zamora, Toro, Toledo, Cuenca, Guadalajara, Madrid, Seville, Córdoba, Jaén, and Murcia. Granada was added after 1492. Manuel Colmeiro wrote, “Until the time of the Catholic Kings everything related to the number of *procuradores* is indecisive and variable.” Colmeiro, *Cortes de los Antiguos Reinos de León y de Castilla* (Madrid: Establecimiento Tipográfico de los Sucesores de Rivadeneyra, 1883), 22. Two representatives came for each town.

⁶⁷⁴ *Cortes de los antiguos reinos de León y Castilla*, III, 852. “E aun se despueblan los lugares especialmente de los vuestros e se pueblan los lugares de señorío.” See also Recio, *Las Ciudades Castellanas en tiempos de Enrique IV*, 58.
That they saw it as burdensome is rather ironic since they no longer paid the salaries of the *procuradores* they sent. English towns, by contrast, continued to pay the salaries of their burgesses in Parliament. Some regions, such as Galicia, Asturias, and Extremadura were entirely without representation by the end of the fifteenth century. The nobility and prelates continued to attend the Cortes until 1538-1539, but their attendance in the fifteenth century was inconsistent, and those who did come often were royal officials or those who happened to be at court. The Cortes had effectively become a unicameral institution, with only the town representatives consistently in attendance, and they professed to represent not only their “tierras” of direct overlordship, but also the “provinces” of which they were capitals and which encompassed all the populations of whatever jurisdiction lay within their geographic boundaries, even though their numbers did not increase in proportion to their claims of broader jurisdiction. This was a significant change in the idea of representation.

Structurally, then, the Cortes of Castile-León differed from the contemporary English Parliament. The political languages common to Castilian and English society, however, were remarkably similar. This is due, in part, to their descent from a common tradition – that of classical Greece and Rome – and to the maintenance of that tradition in a Latinate culture and religion for centuries. Discourse of the common weal, the political kingdom, conciliar

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675 Julio Valdeón Baruque, “La política de la segunda mitad del siglo XV desde el punto de vista castellano,” in *Enrique IV de Castilla y su Tiempo*, eds. Fundación Gregorio Marañón, Cortes de Castilla y León, Universidad de Valladolid (Valladolid: Universidad de Valladolid, 2000), 41. The antecedents for these developments, most of which occurred under Isabel I, can be found in the reign of Enrique IV. See also Perez, *La Revolucion de las Comunidades de Castilla*, 67. “[R]epresentatividad era muy limitada, debido fundamentalmente a dos razones: porque solamente una minoría de ciudades enviaban sus diputados a las Cortes y porque estos diputados se designaban de manera que no se interpusieran en los designios de la monarquía.”

government, and historical precedent was flexible enough to serve localized needs and institutions while maintaining their universal authority. That flexibility could strengthen the monarchy at the expense of other groups and institutions, but it could also lead to greater demands for inclusion of the community in government. In the Cortes of 1447 in Valladolid, the procuradores voted to grant the king 20 million maravedis for war against the king of Aragon. They did so to repair the “bien público” of the king’s realms, even though they also insisted that their salaries be paid from the grant. Among the conditions they sought to attach to the grant was that the king not ask his kingdoms or the proctors for any more money until the proctors spoke to him and related the things they thought necessary to repair the royal crown and the “bien e comun de la cosa pública.” So the king listened and spoke of a remedy, giving his order in the Cortes. The king, then, was supposed to consult with the procuradores of the realm about the common good and the remedy for whatever problems existed.  

This chapter will examine the political languages used in Castile in order to answer the following questions: was there a discourse of representation? How did that discourse relate to the Cortes? Were the political languages operative in the kingdom of Castile effective in legitimizing the Cortes in particular and representation in general, as they were in England?  

Throughout the fifteenth century, and again in the second decade of the sixteenth, in situations not too dissimilar to England, Castile experienced numerous upheavals and violent social conflicts. These were due in part to periodical crises of subsistence but also to the weakness of kings and the strength of the nobility. Juan II (r. 1406-1454) became king when

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677 Memorias de Don Enrique IV de Castilla, II, 14-17.
678 Recio, Las Ciudades Castellanas en tiempos de Enrique IV, 54, 62. Recio, referencing Angus MacKay, writes, “MacKay ha establecido una correlación entre la aparición de movimientos populares y la agudización de las crisis
he was less than two years old, and some of the problems of his reign can be blamed on the
king’s personality. As was true of Henry VI of England, Juan II never entirely emerged from
his minority and was willingly led by others throughout his life. Consequently, much of his
personal reign was dominated by the figure of Álvaro de Luna until Luna’s execution at the
behest of the king’s wife, Queen Isabella, in June 1453. After Luna’s fall the queen succeeded
him in dominating her husband, although the king followed his favorite to the grave less than a
year later. The other important factor contributing to Juan II’s problems was the regency of his
uncle, Fernando de Antequera, who made his own sons, the infantes (royal princes) of Aragon,
so powerful in land and offices that they threatened the king’s freedom to act. The subsequent
reign of Enrique IV (r. 1454-1474) also lacked consistent leadership from the king, particularly
during the 1460s, although the propaganda campaign waged against him by Isabel, his half-sister
and successor, and her husband Ferdinand of Aragon mythologizes the depravity of his reign in
order to exalt their own, much as happened with Richard III and the Tudors in England.

After 1469 the Cortes entered a period of decline, although the Cortes of Madrigal in
1476 and Toledo in 1480 laid the primary legal basis for the regime of Isabel and her husband,
Ferdinand of Aragon, in Castile. The Cortes of Madrigal, at the request of the two representatives from Burgos, created the Santa Hermandad, an organization of armed individuals and towns established to keep the peace, ensure justice, and collect taxes. Enrique IV had provided the initiative for establishing a hermandad under royal authority to keep the peace in Castile while he campaigned against Granada in 1456. The hermandades offered their services to the king to end the revolts of the nobility in 1464 and 1467. The Cortes of Toledo in 1480 established the consejo real in its definitive form by distinguishing between prelates, masters of military orders, and titled nobles, all of whom had the right to take part in all business of the court, and letrados and knights (caballeros), who could attend meetings only when business with which they had been entrusted was transacted. After the Cortes of Toledo Isabel “legislated” through ordinances such as the pragmáticas and cédulas that had the authority of law passed by the Cortes even though they were not referred to the body.

The Cortes did not meet between 1483 and 1497, mainly because the Crown, through the more efficient collection of taxes by the Santa Hermandad, was not financially dependent on

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683 The reign of Isabel (r. 1474-1504) and her husband brought stability to Castile and saw the conclusion of the war with Granada, the commission of the voyage of Christopher Columbus, the expulsion of the Jews, and the reform of royal government. Their marriage did not, however, unite the Cortes of Castile with that of Aragon.  
684 Martín, Las Cortes Medievales, 64; Edwards, The Spain of the Catholic Monarchs, 42-43, 49-50. The two offers to help Enrique IV came in 1464 at Fuensalida and 1467 at Medina del Campo. When Isabel created the Santa Hermandad, the partisan author of the Crónica incomplete de los Reyes Católicos entirely ignored the previous manifestations of the organization and declared that the queen had established a new, successful institution. Julio Valdeón Baruque makes a similar argument to Edwards in “La política de la segunda mitad del siglo XV desde el punto de vista castellano,” in Enrique IV de Castilla y su Tiempo. For more on the Hermandad, see Documentos de los Reyes Católicos, xvi, fn. 7; Ladero Quesada, La Hacienda Real de Castilla en el siglo XV, 214; Colmeiro, Cortes de los Antiguos Reinos de León y de Castilla, 40; Enrique de Tapia Ozcariz, Las Cortes de Castilla, 1188-1833 (Madrid: Editorial Revista de Derecho Privado, 1964), 72; Luis Suárez Fernández, Evolución histórica de las hermandades Castellanas (Madrid: Instituto de Investigaciones historicas Seccion española, 1951).


686 Ibid., 49-50. Cédulas functioned as law or as something similar to the letters patent of English monarchs. Don Martín del Castrejón y Medrano, procurador for Soria in the Cortes, sought one from the Crown to protect himself from lawsuits and claims while he was serving in the Cortes. AGS, Camara de Castilla: Personas, Legajo 6-2, f. 369.
subsidies voted by the assembly. When Isabel called it after 1498, the royal government was in need of money to pay for the conquest of Granada and the Italian Wars. At the beginning of the sixteenth century the Cortes met more frequently – in 1502, 1505, 1506, 1512, and 1515. Frequency itself, however, is not necessarily indicative of relevance. If it was, Parliament under the Tudors would have been redundant, especially when compared to the fifteenth century. Few scholars would make such an argument, though. Nor would they argue that royal government would have been acceptable to the king’s subjects if the Cortes were abolished and no other central institution created in its place to assist with the governance of the kingdom. It would not have been acceptable, as the revolt of the comuneros in 1520-1521 proved.

Although the number of towns sending proctors to the Cortes shrank throughout the fifteenth century, the most important towns continued to be represented, and, theoretically, their decisions in the Cortes were binding on all towns within the realm. John Watts makes an important observation that although representation in the Cortes shrank, this was due in part to the existence of other forms of representation, including “the juntas of the Hermandad, the magnates, and even royal officers like corregidores and gubernadores, who held their posts for long periods of time.” These other offices “may even have enhanced the representation of local interests.” Corregidores were royal representatives with judicial and administrative authority sent by the Crown to end the factionalism among the urban centers, but they cost the towns much

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687 O’Callaghan, A History of Medieval Spain, 663.
688 Where political institutions are concerned, J. H. Burns observes in Lordship, Kingship, and Empire (148) that threats to European monarchs in the fifteenth and early sixteenth centuries did not occur as revolutionary alternatives to monarchical government per se. Though sometimes represented by those who opposed them as “democratic,” they were not republican. Likewise, although they often were oligarchic or aristocratic, they did not pursue such a form of government to replace the monarchy.
689 O’Callaghan, A History of Medieval Spain, 585-586.
of their former autonomy. Even with these royal officials, however, the Cortes had some jurisdiction. The Cortes of Zamora in 1433 prescribed that a corregidor’s appointment should last no more than two years. In practice there were exceptions to this statute, but for the most part “this [two-year appointment] continued to be the case in Isabel’s reign.” Also, the Cortes of Toledo in 1436 sought to guarantee that legal checks would prevent abuses of power. The procuradores were able to secure the king’s agreement that corregidores would provide financial guarantees before taking appointment, to ensure that they could compensate people whom they treated unjustly.

Watts’s argument is significant for the study of Castile. There appears to have been more fluidity with regard to the meaning and means of representation in this largest of Iberian kingdoms, especially when compared with England. Similar forms of representation existed in both kingdoms – parliamentary assemblies, convocations of the clergy, town councils and other local offices – but whereas in England the basic structures of interaction between king and community were set by the end of the fifteenth century, in Castile monarchs and community used whichever form of representation seemed most convenient to their location and needs, practical or theoretical. This included the hermandades mentioned by Watts, as well as the ayuntamiento, or council. In the crucial year of 1465, Enrique IV held an ayuntamiento near Cigales, north of Valladolid. Those present at the council included the prelates, ricos hombres, and caballeros. They consented to certain “clauses…for peace, and the steady and good administration and

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691 Edwards, The Spain of the Catholic Monarchs, 49, 57.
governance of the [king’s] realms.” In this accord the king agreed to determine certain things that were asked of him, and all present gave power to specific members of the royal council to ensure the monarch’s compliance.\textsuperscript{692} The accord offered another form of representation besides the ayunatmiento. It proposed that when the king dealt with the punishment of nobles through their persons or goods, he do so not unilaterally but with the guidance of a special council. This special council was to be composed of the bishops who were without taint of rebellion, “and a proctor from the city of Burgos and another from the city of Toledo, and another from the city of Seville selected according to the custom of each city,” and three caballeros and three prelates. Only with the advice of this council, and not in any other manner, could the monarch pass judgment on and punish the nobility.\textsuperscript{693} A council of this nature would prevent the king from succumbing to jealousy or the desire for revenge, qualities unbecoming his royal estate and justice. Therefore, this council, representing the principal “estates” of the realm, was to help him pursue justice against those who challenged his governance.

The alleged triumph of the monarchy under Isabel and Ferdinand did not achieve the “end of medieval Spain” and the establishment of a “modern state free of all trace of immemorial obstacles to royal absolutism,” as has been argued.\textsuperscript{694} In part this was because some of the

\textsuperscript{692} AHN, Estado, Legajo 773, Tomo XVIII, f. 3-4. “Ciertos capitulos...para pas, y sosiego y buena administracion, y gobernacion de los dichos mis Regnos, y sennorios...fue concordado que para ver y declarar y determinar ciertas cosas que ansi fueron pedidas, y suplicadas y ansi mismo sobre ciertos capitulos y cosas que yo entendi a pedir todos diesemos poder cumplido a don Albaro Destunniga Conde de Plasencia e su Justicia Mayor e don Juan Pacheco Marques de Villena mi Mayordomo Mayor e don Pedro de Velasco...e don Gonsalo de Saabedra comendador de Montalban todos del mi Consejo...el qual poder ansi por mi como por los dichos Perlados, y Ricos Omes, e Caballeros fue dado, y otorgado a los sobre dichos los quales estando en la villa de Medina del Campo.”

\textsuperscript{693} Ibid., f. 121. “E un Procurador de la Ciudat de Burgos e otro de la Ciudat de Toledo, e otro de la Ciudat de Seuilla elegidos por los regimientos delas dichas Ciudades, e de cada una e de todos ellos si fuesen concordes e si non se concordaren que sean en voto e una concordia los tres Caualleros e los prelados e los dos [sic] Procuradores de las dichas Ciudades e de consejo e con consejo de los sobre dichos e non en otra manera faga el dicho proceso, e prision, e juizque e sentencia a las dichas Personas.”

\textsuperscript{694} Burns, \textit{Lordship, Kingship, and Empire}, 149.
languages that served as the philosophical foundation for government legitimized representation or communal participation. These languages continued to operate well into the sixteenth century, even if the need for them in confrontational public discourse was not as pressing as it had been at mid-century. Edwards’ contention that after 1480 the royal court was explicitly “the main, if not the only source of political legitimacy” is incorrect and simplistic. In the first place, the consejo real had been established by the Cortes, and therefore derived at least part of its legitimacy from the body. Second, alternative discourses of legitimacy persisted, even if their vitality diminished.

Sir John Fortescue’s dominium politicum et regale existed in Castile, too. The political community had its own juridical personality, distinct from that of the ruler. Monarchs recognized this in their language, distinguishing between “the estate of the realm” and “the royal estate,” with the former superseding the latter in importance.695 In Castile there were four essential parts of a well-ordered polity: the royal and ruling (real y principante) part; the counseling part (parte consiliatoria); the judiciary (parte judicatoria); and the populace (la cuarta, que es popular). The law governed the entire structure, including the royal and ruling part.696 The king must respect established law and “refrain from the over-hasty introduction of new legislation.” Every good prince must realize that his power is limited in some things: he cannot judge those who are not within his jurisdiction, for example, “priests and ministers of the law”; he cannot judge where there is no formal accusation; he cannot decide arbitrarily; his will must be guided by the law, unless urgency or equity demands deviation from legality; and he

695 O’Callaghan, A History of Medieval Spain, 278.
696 This reflects Fortescue’s thesis that it is the law, distinct from the monarch, which makes a dominium political rather than strictly royal.
cannot relax the punishment accorded to a crime because to do so would harm both the accuser and the común y república, and would offend God, “for whom he holds his land.”

The language used to describe the political community in Castile is strongly reminiscent of that used in England. In part this was because the extant texts in both kingdoms were similar. These included Cicero, Seneca, and the Secreto de los secretos, the pseudo-Aristotelian book of political advice regarding the governance of diverse realms supposedly written for Alexander of Macedon. Terms such as cosa pública (res publica), cuerpo místico (mystical body), and cuerpo político (body politic) all found common currency in the fifteenth century, although they circulated throughout Iberia long before. Francesc Eiximenis, a late fourteenth-century Catalan jurist, in his treatise Regiment de la cosa pública, a work dedicated to the city of Valencia, argued that the basis of the civic community was mutual aid: “The community of the city is firm and strong when one aids another, just as a good brother readily aids his brother. The basis of the common wealth (la cosa pública) is union, charity, and the sincere attachment of men’s hearts.”

The Castilian or Catalan vernacular terms were more precise than their equivalents in

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697 Rodrigo Sánchez de Arévalo, Suma de la política, ed. Juan Beneyto Pérez (Madrid: Consejo Superior de Investigaciones Científicas, 1944), II, 7, 10-11; Burns, Lordship, Kingship, and Empire, 84. “[E]n cuyo lugar tiene la tierra.” Arévalo, royal secretary and envoy to the Council of Basel, wrote Suma de la política in 1455, the year after Juan II’s death.

698 Secreto de los Secretos: A Castilian Version, ed. Philip B. Jones (Potomac, MD: Scripta Humanistica, 1995), 2. The Castilian version, dating from the thirteenth century, is the earliest translation into a modern language. Also, Spain is the only country in which both the eastern and western versions of the Secretum survived. Jones maintains that the book was popular among those ruled because it enabled them to judge their rulers and to counsel them without fear (ibid., 6-7).

699 Francesc Eiximenis, Regiment de la Cosa Pública, ed. P. Daniel de Molins de Rei (Barcelona: Editorial Barcino, 1980), 8, 40, 58. The original reads: “Per tal havem (Prouerbiorum, decimo octavo): Frater qui adiuuatur a frater ciuitas firma; e vol dir que llavós és ferma e fort la comunitat de la ciutat quan la un ajuda a l’altre, així com bon frare ajuda coralment a son frare” (40). “Com lo fonament de la cosa pública sia unió, caritat e cordial ajustament de coratges” (58). For the translation, see Black, Guilds and Civil Society, 78. See also J. A. Maravall, Estudios de Historia del Pensamiento español, Edad media (Madrid: Ediciones Cultura Hispánica, 1966), 165. The treatise circulated in manuscript for many years and was printed in Barcelona in 1494 and Valencia in 1499. Eiximenis’s tracts were translated into Castilian in the fifteenth century. Because of this, Castilians who could not read Catalan,
England, where “common weal” could refer to the public thing (res publica), the community, or the public good. Perhaps with Eiximenis this is because he still refers to the civitas, the city.

As in England, the human body was the natural form analogous to the political community. In Castile this metaphor was used to support both a strong monarchy and a dispersion of authority. The king was usually the head, although he could be other organs at the same time. Pedro González de Mendoza, bishop of Calahorra and later archbishop of Toledo (1482-1495), wrote, “Every kingdom is like a body, of which we hold the king to be the head; but if it is infirm due to any illness, it would seem the better wisdom to provide the medicines that reason dictates than to cut off the head, which nature forbids.”

Nature would defend the head because its removal was destructive to nature itself. A body cannot be acephalous and live. Mendonza followed his statement about giving the head the medicine it needed by observing, “We should specially consider that reason and justice do not allow us to take away the title which we did not bestow, nor to remove the dignity from him who reigns by direct succession; because if kings are anointed by God in their lands [and the Castilians could claim as much because their was no coronation ceremony in which a prelate anointed them], it should not be believed that those who are appointed by the divine will are subject to human judgment.”

It may not be possible for the community to remove the head, but apparently it could diagnose

including the anonymous author of the Tratado de la Comunidad, were familiar with his works. Tratado de la comunidad (Biblioteca de El Escorial MS. &-II-8), ed. Frank Anthony Ramírez (London: Tamesis Books, 1988), 46. For more on Eiximenis, including a comparison of his thought with Pedro López de Ayala, his contemporary who wrote a chronicle of the kings of Castile, see Hillgarth, The Spanish Kingdoms, II, 209-212.

Memorias de Don Enrique IV de Castilla, II. 489-490. “Todo el regno es avido por cuerpo, del qual tenemos el Rey ser cabeza; la qual si por alguna inhabilidad es enfermo, pareceria mejor consejo poner las melecinas [sic], que la razon que cree que quitar la cabeza que la natura defiende.” Translated in O’Callaghan, A History of Medieval Spain, 581; Angus MacKay, “Ritual and Propaganda in Fifteenth-century Castile,” Past and Present, 107 (1985), 40.

sickness and offer remedies, which inherently gave the community a right to participate in the oversight of the kingdom.

For some, the monarch was the head of the *corpus mysticum* and the heart of the body, communicating “*movimiento e influencia*” to all other members. He was the *primum mobile* of the political community. For some, the monarch was the head of the *corpus mysticum* and the heart of the body, communicating “*movimiento e influencia*” to all other members. He was the *primum mobile* of the political community. 702 He/she was not only the head, but also the heart and the soul of the community. Everyone else was the limbs, and they naturally should be loyal, faithful, subservient, obedient, and reverent to the king. 703 These positions notably deviate from English explanations of the body politic. In England the king was the head but not the heart. The heart contained the intention of the people, the first living thing, according to Fortescue, or the *senatus*, according to Thomas Chaundler. 704 In this crucial contemporary metaphor for the political community, Castilians found no corporeal organ, whether heart, stomach, or bowels, to equate with an institution representing the body politic.

Not everyone agreed that the head was the only essential part of the body. Chronicler Diego de Valera stated in a letter to Juan II, “The princes joined together with their subjects and natural born citizens are like a human body; just as one cannot cut off any member without great pain and injury to the body, so no subject can be destroyed without great loss and damage to the prince. If matters continue as they have, how many members will be cut off, and if they are, tell me, my lord, what will become of the head?” 705 The head needed the members, just as the members needed the head. The body ought to be complete, healthy, and unified for it to function

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703 Cortes de los antiguos reinos de León y Castilla, III, 483. The language comes from the Cortes of Olmedo in 1445.
704 See chapter two of this dissertation.
properly. In his self-appointed capacity as advisor to the royal government Valera wrote letters to both Juan II and Enrique IV reminding them of Old Testament kings who were anointed but deposed nonetheless, and of thirteen Gothic kings who died at the hands of their vassals on account of their wicked government. Although Valera did not necessarily condone the deposition of a monarch, he suggested that such was the fate of kings who failed to ensure the good governance of the kingdom. The health of the body politic depended on the unity and health of the head and members, but not every Castilian agreed with Valera that all members were essential for the body politic to function.

Just as Castilians debated whether every member was necessary for the body, they could not agree on the origin of the royal office and, consequently, the implications for communal participation in royal government, even though the monarch’s headship was undisputed. Some, especially monarchs themselves, argued that their power was of divine or natural origin. Therefore, they were above positive law and could enact it by themselves. Nor did they need the consent of the body politic to collect taxes. Others countered that the authority of the monarch derived from the political community and that he was beneath the law and beholden to obey and uphold it. In Iberia the legacy of Roman law was significant. The Siete Partidas, the famous legal code issued by Alfonso X during his campaign to be Holy Roman Emperor in the thirteenth century, was significant. The health of the body politic depended on the unity and health of the head and members, but not every Castilian agreed with Valera that all members were essential for the body politic to function.

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706 Crónicas de los Reyes de Castilla (Madrid: M. Rivadeneyra, 1875-78), II, 581.
707 Helen Nader observes that these divergent views stem from two conflicting groups through whom kings had to work: the caballeros and the letrados. Nader, The Mendoza Family and the Spanish Renaissance, 1350-1550 (New Brunswick, NJ: Rutgers University Press, 1979), 19-20.
708 O’Callaghan refers to this as “popular sovereignty” in A History of Medieval Spain, 582. I am unconvinced that sovereignty is the correct word. None of the sources I have seen use the term. Rather, they refer to the political community as a cohesive unit dependent upon its parts, including the king. The king’s authority, in this instance, derived from the body politic, which retained the right to participate in the cosa pública. But the king and the body politic were not entirely separate entities. The term popular sovereignty implies that they were. For more on the relationship between the king and the law, see Juan Beneyto Pérez, “The Science of Law in the Spain of the Catholic Kings,” in Spain in the Fifteenth Century, ed. Roger Highfield (New York: Macmillan Press, 1972), 276-295.
century and enacted by the Cortes of Alcalá in 1348, was “a summary of Roman and canon law.”

Alfonso X claimed *plena potestas*, the fullness of power, within his kingdom. This included the power to issue laws and establish taxes. Subsequent Castilian monarchs sought to follow this imperial legacy. Throughout the fifteenth century Castilian monarchs claimed absolute power, and thus the right to issue law without the participation of the Cortes. In a sanction issued in 1427, Juan II declared that “by his own initiative and absolute royal power,” his charter had the force of law, as if it had been enacted in the Cortes. The *infantes* of Aragon wrote to Juan II that his royal power was “así absoluto como ordinario.” The most famous expression of royal absolutism came from the Cortes of Olmedo in 1445, the same Cortes which secured control over the nomination of royal tax collectors but declared the king head, heart, and soul of the body politic. Coming soon after Juan II’s victory over the sons of Fernando de Antequera, the Cortes declared that divine law “expressly commands and forbids anyone to dare to touch the king and prince as one who is anointed by God, nor even to comment or to say anything evil about him nor even to think it in spirit; rather, he should be held as God’s vicar…no one should dare to oppose him, because those who resist the king evidently wish to resist the ordinance of God.” The language used here is explicitly religious and assumes for

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710 Burns, *Lordship, Kingship, and Empire*, 73.
711 Miguel Ángel Pérez de la Canal, “La Pragmática de Juan II, de 8 de febrero de 1427,” *Anuario de historia del derecho español*, 26 (1956), 659-668. “De mi propio motu…e poderio real absolute.” The phrase retained its importance for the monarchy throughout the century. Isabel I used it in her last will and testament.
712 The letter is from 1440. *Crónicas de los Reyes de Castilla*, II, 560.
713 R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West, 1300-1600* (London: William Blackwood and Sons, 1936), VI, 186. “Su rrey e principe, como a quel que es ungido de Dios, nin aun de retraer nin dezir del ningunt mal nin aun lo pensar en su espirit, mas que aquel sea tenido commo vicario de Dios…e que ningunt non sea osado dele resistir, por quelos que al rrey resisiten son vistos querer. Oluidada la ley natural, por resister ala ordenanca de Dios…e el mal e pena que dello los asi mismo pospuesta la ley devinal, puede venir, mas aun por la guarda de lo qual esesperamente manda e dofienda sus conscienias que ninguno non sea osado do tocar.” Translated in O’Callaghan, *A History of Medieval Spain*, 580.
the king the role traditionally reserved for the pope – Vicar of God. Not only was rebellion impermissible against the king, so was any type of judgment of him or his rule in thought or in speech. Human law was beneath him and could not be used in any manner to hold him accountable. This statement moves beyond the power (poderio) of 1427 to articulate an authority divinely ordained, and therefore not subject to human judgment. Enrique IV reaffirmed his father’s principles about the divine origin of his authority.

Mendoza, the bishop of Calahorra, reinforced the king’s pretensions as well, dissuading uprisings on the basis that

We should specially consider that reason and justice do not allow us to take away the title which we did not bestow, nor to remove the dignity from he who reigns by direct succession; because if kings are anointed by God in their lands, it should not be believed that those who are appointed by the divine will are subject to human judgment. But since we see that in order to remedy the bad government of King Enrique, which they proclaim, they want to depict that of Prince Alfonso as good, being only eleven years old, it is obvious that, since that is not an age suitable for governing, they are not doing this for the general good, but that for their own particular interests.

The bishop proceeded to invoke religious language in relation to temporal governance, comparing those who revolt against their sovereign lord to schismatics who impede reason, something his English contemporaries did not do.714 His condemnation of the age of Prince Alfonso, and thus Alfonso’s ability to govern well, is ironic, however, when one considers that Juan II was less than two years old when he succeeded his father. Mendoza recognized Enrique’s deficiencies as a political leader but insisted that the nobility’s responsibility was to

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714 Memorias de Don Enrique IV de Castilla, II, 489-490. “Especialmente debemos considerar que por razón ni por justicia no podemos quitar el título que no dimos, ni privar de su dignidad al que regna por derecha sucesion, porque si los Reyes son ungidos por Dios en la tierra, no se debe creer que son sujetos al juicio humano los que son puestos por la voluntad divina. Vemos que para proveer a la mala gobernación del Rey don Enrique, quieren [los caballeros y prelados] hacer buena la del Príncipe don Alonso, seyendo mozo de once años…no seyendo aquella edad capaz para gobernar, que no por el bien general que publican, mas por su intincion e interese particular que desean.” Translated in O’Callaghan, A History of Medieval Spain, 581; MacKay, “Ritual and Propaganda,” 40.
preserve the unity of the realm, not to enthrone a new, potentially better king. Castilians could not remove a title they did not give. Enrique was king by rightful succession and by God’s will. Therefore, he was not subject to any human judgment.

Another author acknowledged the king’s poor conduct and governance, but blamed the community for the problem. In the popular *Coplas de Mingo Revulgo* (c. 1465), Mingo, a shepherd speaking on behalf of the commonwealth of Castile, accuses Candaulo, representing Enrique IV, of negligence and incompetence in government. Because of the king’s penchant for favorites, Mingo also accuses him of homosexuality.\(^{715}\) The four cardinal virtues – justice, prudence, temperance, and fortitude – represented in the *Coplas* as ineffective sheepdogs, are in sorry shape because of Candaulo’s misgovernance. In his analysis of the *Coplas*, Angus MacKay stresses the fact that none of the major characters rejects the specific accusations leveled against the king, who is *mal pastor*; however, the king is not to blame for the destruction of the *respublica*. The base character of the community itself is responsible. The commonwealth has the king it deserves.\(^{716}\) Where responsibility lies is crucial to the argument. If the king is at fault, then the community could possibly remove him to restore order and peace. If, however, the community is to blame, then it needs to heal itself before God does anything with regard to the king. The *Coplas* suggest that the latter scenario is the case in Castile. The community could not stand in judgment on the monarch when it was corrupted and failed to

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\(^{715}\) MacKay, “Ritual and Propaganda,” 5-6. The author of the *Coplas* is presumed to be the Franciscan Íñigo de Mendoza. MacKay notes (26-27, 31) that four fifteenth-century manuscripts of the *Coplas* survive, two of which contain detailed glosses, one anonymous, the other by Fernando de Pulgar. Pulgar’s gloss is highly partisan and self-censored. It has a different sequence and omits three of the *coplas*. Between 1485 and 1632 there were at least twenty-five printed editions, most based on Pulgar’s work. For more on Pulgar and contemporary chronicles in the politics of the period, see Nieto Soria and López-Cordón, eds., *Gobernar en Tiempos de Crisis*, 269-306. On the origin and symbolism of the name Candaulo, see ibid., fn. 6.

\(^{716}\) Ibid., 7.
uphold the four virtues.

Rodrigo Sánchez de Arévalo, an ecclesiastic and Juan II’s representative to the papal court, offered a more nuanced and comprehensive theory of kingship in his treatise *De origine ac differentia principatus imperialis ac regalis* (1467). Either kingdoms are given to the king, or the king is given to the realm. Those of the first order could originate in several ways: through the choice made by subjects or because the leaders of the eventual royal house were the first occupants and successful defenders of the land. In the case of original leadership, the monarchs were *naturales domini*, who were kings *de iure naturali*. Under such an understanding of the origin and meaning of kingship, “the realm is in some sense the property of its king.” The Castilian realms were of this type. They were conferred upon the king (*regna conferuntur regibus*), and authority was conferred upon members of a certain house and lineage (*de certo genere personarum et de certa stirpe*). Kings of this type had no superior in temporal matters. The only person with authority to depose them was the pope. If a king *de jure naturali* was in violation of his responsibilities and failed to uphold the common weal, his subjects had to take their complaints to the pope rather than attempt to rectify such wrongs themselves.717

Specifically writing against those who deposed Enrique IV at Ávila in 1465, Arévalo argued, “The barons and people of the realm cannot depose and punish such a king because they lack power, jurisdiction, and coercive authority over their prince.”718

Arévalo did not entirely ignore the Cortes, though. For him it was the legitimate

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717 Burns, *Lordship, Kingship, and Empire*, 86-87, 89. Monarchs of this kind differed from elected rulers, such as the Holy Roman Emperor, who were given to their realms as *administratores ac rectores*, and therefore were not true lords. The primary reason for removing a king from office is heresy, which is why jurisdiction belongs to the pope.

718 Ibid., 88. “Barones vero et populus regni talem regem deponere et punire non possunt ex defectu potestatis jurisdictionis et auctoritatis coactiue in suum principem.” Burns observes that the argument is predominantly “procedural and jurisdictional,” as if the author were stating his case in a court of law.
institution in which the political community was represented (*per singulos in unum congregatos*). For an individual session to be legitimate, it must be legally convened, and its proceedings must follow certain basic rules of equity. Thus, the meeting at Ávila was invalid because its members had not been summoned to depose the king, supposing, of course, that they had such authority in the first place. If the Cortes deposed a king, it had to proceed “with scrupulous deliberation” (*morose et cum magna deliberatione*). “If a private individual was to be deprived of his rights, due judicial order was required: the person in question must be properly summoned and fully heard.” How much more, then, must a monarch be given notice of and summoned to the proceedings against him. Neither had been done for Enrique IV at Ávila.

Nor had the proceedings been fair. Those who accused and testified to the king’s misdeeds were also his judges. No one defended him before sentence was pronounced. The whole process was a miscarriage of justice and lawful procedure. To conclude his argument, Arévalo wrote, “There was deficiency in the judge, in the summons, in the defence (all these being matters of natural right); there was likewise deficiency in proof, in trial, in examination – in fine, there was deficiency in all that pertains to the order and substance of any judicial act.”

Arévalo’s thought is not consistent. At times he seems to argue that a legally constituted Cortes that adheres to judicial procedure could depose a king, although the king would have to inaugurate the meeting and participate in the proceedings against his own person. Yet Arévalo’s general proposition is that subjects cannot stand in judgment of a king who reigns by natural right. Even a king who is scandalous or tyrannical must be tolerated. To subvert natural, established order is

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719 Ibid., 89-90. “Itaque vt paucis agamus, fuit defectus in iudice in vocatione in accusatione in defensione: quod est de iure naturali. Item in probacione in cognitione in examinatione et in omnibus que sunt de ordine et substantia cuiuslibet actus iudicialis.”
harmful to the res publica.

In 1440 Juan II of Navarre, his brother, Enrique, count of Albuquerque,⁷²⁰ and their partisans asserted that there were two types of lordship: one was “jurídica, virtuosa é buena”; the other was “tiránica, iniqua é mala.” Good and virtuous natural princes ought to keep the following principles: they should be faithful Catholics who fear and love God; “laws and constitutions should be commonly profitable to all subjects, and after their enactment and publication should be held inviolable”; royal “autos é obras” must apply equally to all towns; rents should be distributed among honest things, to the service of God and the good of their subjects; “it appeals to every good prince to love and maintain the three estates of the realm,” seeking to be loved rather than feared, because love produces greater loyalty; and they should be careful not to injure their subjects, especially the nobles of the kingdom, “nor take their goods without just and reasonable cause, rather than for greed.” The tyrannical lord acted in opposition to each of these recommendations.⁷²¹ These men claimed that Álvaro de Luna, the king’s favorite, had created a tyrannical government in Castile by usurping the king’s power and violating many of these requirements for good governance.⁷²² His abuses involved financial and monetary matters, ecclesiastical offices and laws, the distribution of royal offices, and the unjust death or imprisonment of several nobles. Those who saw that the king’s “señoría” gave way to “grave, intolerable, and detestable things,” yet knew of his virtue and discretion recognized that

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⁷²⁰ These two men were sons of Fernando de Antequera.
⁷²¹ Crónicas de los Reyes de Castilla, II, 560. “Las leyes é constituciones sean comunmente provechosas a todos sus súbditos y naturales, é despues de hechas é publicadas las mande inviolablemente guardar…conviene a todo buen príncipe amar é guardar los tres estados de su señoría…ni por codicia tomarles sus bienes sin muy justas é razonables causas.”
⁷²² There were complaints about Luna’s dominance of Juan II as early as 1425, when Alfonso V of Aragon, cousin to the king, sent a letter to Pedro Núñez de Herrera, lord of Pedraza, offering to bring an armed contingent into Castile to overthrow the powerful minister. Memorias de Don Enrique IV de Castilla, II, 1-5.
Luna had bound the king’s “physical and intellectual powers” through magic and diabolical incantations. The king could not do anything that Luna did not want, including remembering, speaking, or exercising his own will. The grandes urged the king, with the loyal intention of faithful subjects and vassals, to restore his liberty and royal power.\textsuperscript{723}

In a subsequent letter, they again complained of the “tiránica é dura” governance of Luna. This time, in the name of the queen and the prince, the lords sought to challenge Luna as a “capital enemigo, disipador, y destruidor del Reyno.” It was scandalous, they argued, that the king’s will was subject to Luna and that Luna’s counsel guided and governed him. The king had dismissed the nobility from court and surrounded himself with Luna’s servants and family. Such a situation was contrary to natural government and needed to be rectified. This time the king responded by accusing his opponents of disrupting the “bien comun é tranquilidad” of his realms. He offered to resolve the conflict by appointing two judges to mediate between the contending factions. If that was not satisfactory, and the \textit{infantes} “wanted to meet in the Cortes, where the three estates of the realm gathered, so that they could see and discuss who was the cause of the great scandals and evils in the kingdom,” then he was willing to summon the Cortes, “and the three estates would come to it.”\textsuperscript{724} In this instance, those opposed to the government’s policies articulated a position slightly at variance with Mendoza’s. According to these lords, the king himself had not become a tyrant, but his principal advisor was. Clearly the royal government was fraught with problems. These nobles had observed and diagnosed them, but

\textsuperscript{723} Ibid., II, 561-562. “Cosas tan graves é intolerables y enormes é detestables…potencias corporales é intelectuales…le plega dar órden a la restitucion de su libertad é real poder.” When shown the letter these lords wrote, Juan II of Castile had no desire to respond.

\textsuperscript{724} \textit{Crónicas de los Reyes de Castilla}, II, 570-571, 573. “Quisieren que se junten en Cortes donde se ayunten los tres estados del Reyno, para que allí se vean é platiquen quien es causa de tan grandes escándalos é males como en el Reyno están aparejados…é vengan allí los tres estados.”
rather than blame the king and remove him, they blamed his counselors and sought to punish Luna. They never mentioned the Cortes as a possible solution to the problem, but the king did, specifically indicating that it was the body in which the three estates could gather and mediate the conflict. It was there that everyone could discern who was the cause of the great evils in the realm.

Castilian kings did not have a formal coronation and anointing as the English did, but the idea of election was nonetheless present and deemed to be of great antiquity. Enrique II (r. 1369-1379) was the most recent Castilian monarch to be elected. At his election he observed that royal election was an inheritance from the Goths, who had chosen their kings. The historic election of kings implied that if specific individuals failed to uphold the office to which they were elected, the nobility, who elected them, could depose them. Such was the case, many argued, with Enrique IV. On September 28, 1464, Pacheco, marquis of Villena; Alfonso Carillo de Acuña, archbishop of Toledo (1446-1482); Alonso Enríquez, Admiral of Castile; and others

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725 The last crowned king was Juan I (r. 1379-1390), who placed the crown on his own head. Aragonese kings did have a coronation. For Fernando de Antequera’s coronation as king of Aragon in 1414, see La Parte Inedita della “Crónica de Juan II” di Álvar Garcia de Santa María, ed. Donatella Ferro (Venice: Consiglio Nazionale delle Ricerche, 1972), 97-130. In “Ritual and Propaganda” (19), Angus MacKay argues that because of the virtual non-existence of a coronation ritual in Castile, any constitutional dilemma would be different in nature from French or English examples. This is true. However, Thomas More presented the beginning of Richard III’s kingship in a manner similar to the attempted kingship of the infante Alfonso and the successful one of Isabel. The initial idea for Richard’s kingship comes from the duke of Buckingham, and Richard immediately declines such an idea. When Gloucester answers that he would not take the throne for himself, out of love for his brother, “the duke, with the protector’s license,” whispered “with other noble men about him, as with the mayor and recorder of London. And after that, upon like pardon desired and obtained, he showed aloud unto the protector that for a final conclusion that the realm was appointed King Edward’s line should not any longer reign upon them, both for that they had so far gone that it was now no surety to retreat, as for that they thought it for the weal universal to take that way, although they had not yet begun it. If he would give them a resolute answer to the contrary, which they would be loath to hear, then must they needs seek and should not fail to find some other noble man that would.” His hereditary right joined with “your election, the nobles and commons of this realm,” to make him the lawful king. After this, he was acclaimed by all those present, in the same manner that Alfonso and Isabel were. Such theatrically was a part of the game of kingship, played upon scaffolds. More, The History of King Richard III and Selections from the English and Latin Poems, 81-82.

726 O’Callaghan, A History of Medieval Spain, 581.
revolted against the government of Enrique IV. The nobility desired “a constitutional reform of the monarchy.” In support of their uprising these lords issued a manifesto, known as the Sentencia de Medina del Campo, explaining their grievances to the king and the community. They claimed to speak “with the voice and in the name of the three estates.” Their concern was for the “cosa pública” of the king’s realms. Rather than governing according to law and custom, as he was obliged to do, Enrique had adhered to the advice of enemies of the Catholic faith and men of questionable faith to whom he had given great rewards. Their specific target was Beltrán de la Cueva, count of Ledesma, and his followers. As a result of the king’s support of Ledesma, the people were burdened with extortionate taxes, papal crusade taxation was misused, and the coinage had been devalued. Pacheco and his allies resorted to arms because the king no longer ensured justice or received petitions from his subjects with goodwill. Instead, he responded violently to any dissent, as if the people were his enemies. The goal of the uprising was not to remove the king, to whom these lords declared their loyalty, but to remove Ledesma from power. Following Ledesma’s imprisonment, they suggested the king call a Cortes to ensure

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728 Luis Suárez Fernández describes this conflict not as one between good and evil, as nineteenth-century historiography would have it, but one between two different conceptions of power. Suárez Fernández, “Enrique IV y los matices de su política,” 27. Recio argues that there were two conflicts: one between the nobility and the king, the other between two groups of nobles. The first noble group included Pacheco, the Manrique de Lara family, especially Rodrigo Manrique de Lara, and the Pimentel family (Rodrigo Alonso Pimentel, duke of Benavente, subsequently married Pacheco’s daughter). The royal cause, on the other hand, was supported by Cardinal Pedro González de Mendoza; Diego Hurtado de Mendoza y Figueroa, marquis of Santillana; Pedro Fernández de Velasco, count of Haro; and Pedro González de Mendoza, bishop of Calahorra and brother of the marquis of Santillana. Recio, Las Ciudades Castellanas en tiempos de Enrique IV, 56; MacKay, “Ritual and Propaganda,” 39-40.

729 Watts, The Making of Polities, 4-5; Suárez Fernández, “Enrique IV y los matices de su política,” 27.

730 The “enemies of the faith” implicitly condemned royal counselors who were conversos, that is, ethnic Jews who had converted to Christianity. Among those of Jewish descent were the Arias Dávila de Segovia.
the good government of the realm.\textsuperscript{731}

When Enrique failed to heed the advice of the manifesto, his opponents deposed him in effigy.\textsuperscript{732} A contingent of nobles and clerics elected the \textit{infante} Alfonso king on April 30, 1465 at Plasencia. The people did not acclaim him until June 5, immediately after Enrique IV’s public deposition, in accordance with long-standing custom.\textsuperscript{733} When Enrique IV was deposed in effigy at Ávila, those who enacted the public ritual argued that “ancient memories sufficiently demonstrated how the kings of León and Castile first were elected by the nobility, then acclaimed by the people.”\textsuperscript{734} These events, known collectively as the Farce\textsuperscript{735} of Ávila, incited the towns of the kingdom to new disturbances.\textsuperscript{736} For some these men had overreached. The

\textsuperscript{731} Memorias de Don Enrique IV de Castilla, II, 328. The text reads: “E después porque así non se complia lo susodicho como vuestra señoría lo había prometido, se juntaron los mas de los Grandes de vuestros regnos otra vez, e tornaron a faser la mesma suplicacion que primero, e mas allende que a vuestra altesa ploguiese convocar cortes con todos los tres estados e con los Procuradores de las cibdades e villas, e los diese abdiencia para que se diese orden en las cosas sobredichas e en otras que a vuestra señoría entendian notificar.” See also Watts, The Making of Polities, 4.

\textsuperscript{732} The effigy was a wooden statue, seated on a throne, on a raised platform. It had a crown, a scepter in its right hand, and a sword of state in front. A month later the king wrote about the event, and described the statue, in a letter to Pope Paul II. Memorias de Don Enrique IV de Castilla, II, 498. The deposition occurred on June 5, 1465. In “Ritual and Propaganda” (3), MacKay calls it “an extraordinary constitutional and ritual ceremony.”

\textsuperscript{733} MacKay, “Ritual and Propaganda,” 22.

\textsuperscript{734} Alonso Fernández de Palencia, Crónica de Enrique IV, ed. A. Paz y Melía (Madrid: Ediciones Atlas, 1973-75), I, 456. “Las memorias antiguas demostraban suficientemente cómo primero fueron elegidos por la nobleza y por aclamación del pueblo los reyes de León y Castilla.” Palencia was in Seville when the deposition occurred. He sided with Alfonso and defended him in the meeting of regidores of Seville, presided over by the duke of Medina Sidonia. Apparently Palencia successfully convinced the powerful magnate of the justice of Alfonso’s cause, and the latter was acclaimed as king in the city (ibid., xii).

\textsuperscript{735} The contemporary word was \textit{auto}, not farce, as in the inquisitorial ritual of an \textit{auto-de-fe}. On the contemporary origin and meaning of the word \textit{farsa}, see MacKay, “Ritual and Propaganda,” fn. 66.

\textsuperscript{736} Palencia writes that those who saw him thrown down groaned and cried. Crónica de Enrique IV, I, 461. MacKay argues that this was “ritual crying,” which was common when a monarch died, and therefore not indicative of any immediate condemnation of the events at Ávila. “Ritual and Propaganda,” 19. Palencia was royal chronicler from 1456 to 1475 and secretary of Latin to Enrique IV. His chronicle, with that of Diego Enríquez del Castillo, formed part of a propaganda-counterpropaganda discourse. Andrea Mariana Navarro, “Crisis política y formas de conflictividad en Andalucía durante el reinado de Enrique IV,” Temas medievales, 13:1 (2005), fn. 16; Palencia, Crónica de Enrique IV, x, xlii-xliv. MacKay writes that of the two chroniclers, Palencia was “the subtler and more venomous,” and his vision of Enrique IV’s reign tends to dominate modern accounts. Castillo, who was chaplain to the king and supported him against his half-brother, had to rewrite much of his chronicle after a group of men he described as “traitors” broke into his house in Segovia, mistreated him, and robbed him “of everything,” including
municipal leaders of Valladolid were fatigued by their poor treatment from the partisans of Alfonso “and tyrannized by the admiral [Alonso Enríquez], to whom they had subjected themselves against King Enrique” when the city had placed itself under his care. They believed they would have peace by returning to the king. With peace as their ultimate goal, “all the inhabitants rose and took up arms, calling on the name of Enrique.”

Enrique’s adherents enacted a similar ritual in Simancas a month after that at Ávila. They made a statue representing Carillo and called it Don Opas. Opas was a historical figure, the brother of Count Julian, who brought the Moors into Castile against King Roderick, Visigothic ruler of Hispania in the eighth century. When Enrique’s supporters made the statue and put it in prison, one of them sat as judge and pronounced sentence: “Inasmuch as Don Alfonso Carillo…following in the footsteps of Bishop Don Opas, the traitor and destroyer of Spain, had been a traitor to his king and natural lord, rebelling against him with the very places, fortresses and money which the king had given him so he should serve him.” During the mock trial, Carillo’s insults and crimes were publicized, and he was ordered to be burned in effigy after a public procession and humiliation through the streets of Simancas. Afterwards, about three hundred knights accompanied his statue outside of the city walls, where they built a bonfire within sight of the rebel camp, and burned Carillo’s likeness, singing, “This is Simancas, Don

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"Y tiraniçados por el almirante [Alonso Enríquez] que contra el rey don Enrique los avia [había] subjetado…se levantaron todos los moradores y se pusieron en armas apellidando favorablemente el nombre de Enrique.” Other cities, such as Seville, supported Alfonso.

Geographically, Roderick’s Hispania was not all of modern-day Spain. His territory included southern Portugal, Extremadura, part of Old Castile, Castilla-La Mancha, Valencia, Murcia, and Toledo, the capital.
Opas, traitor." These contesting rituals reflect the theoretical argument in Castile over the nature of kingship.

Isabel I, known to history as the leader of a strong, centralized royal government in Castile, was herself elected queen by the urban leaders of Ávila after the death of Enrique IV on December 11, 1474. Six days after the king’s death, the civic leaders of Ávila met “to consider a letter from Isabel, who was at Segovia, ordering them to carry out the rituals for the king’s death and her accession.” In contrast to the earlier acclamation of her brother Alfonso there, there were no nobles, those traditionally responsible for electing the monarch, present. In terms of accession rituals, however, the meeting of the urban oligarchs was the “equivalent of ‘election,’” according to MacKay. The city leaders chose Isabel rather than Juana, daughter of Enrique IV and commonly known as “la Beltraneja” because of her purported illegitimacy. As with the election at Plasencia before the Farce of Ávila, “this ‘election’ was held behind closed doors and received no mention in the public rituals which followed.” The following day the dead Enrique IV again appeared in Ávila on a platform, this time in a coffin in the cathedral. At the end of the day, the people of Ávila acclaimed Isabel queen multiple times.

It is erroneous, as Francis Oakley observed, to assume “that the conceptual relationship between forms of kingship rooted in the divine and those rooted in popular will must necessarily be one of opposition and contradiction.” The Cortes of 1469 seems to have proposed a contractual form of kingship. The duty of the king was to rule well. If he did not, he destroyed

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739 Castillo, Crónica de Enrique IV, 147. For the translation, see MacKay, “Ritual and Propaganda,” 43.
740 MacKay is clear that rituals varied from city to city, offering Murcia as an example in contrast to Ávila. The public ritual in Segovia, where Isabel was at the time of Enrique’s death, was similar to that of Ávila.
his kingdom. He was to guard his subjects, who paid him his wages, the fruits and profits of their industry. The relationship ought to be a mutual one in which the people of the community served the monarch faithfully and he in turn relieved their wants. He was, therefore, obliged by a tacit contract (contrato callado) to keep and maintain them in justice. Contractualism along these lines could accommodate a kingship originating in the divine. Although God may have instituted monarchical government, the king had responsibilities to the community. The kings of Castile-León were to govern their realms judiciously, without unduly burdening their subjects or seizing their goods. In truth, when a king gave inordinant amounts of the kingdom’s goods to unworthy men, he contributed to the depopulation of the “republic” and the destruction of the rightful meritocracy of the realm. The community was not without recourse in the event their king became a tyrant. His subjects could call on God to redress their injuries. God would send a hot wind to afflict tyrants, and the people would rise against them and destroy their names from the earth. This explicitly gave the people the right, divinely approved, to revolt against a tyrant and remove his name from earth.

The Cortes of 1518 offered a similar assessment of the relationship between king and community. The king was at the service of the nation (nuestro mercenario es). He could not do as he pleased. First and foremost, he should and was obliged to help and provide for things that

743 Cortes de los antiguos reinos de León y de Castilla, III, 767. In the preceding reign, Juan II had acknowledged that the duty of the king was to ensure justice in pursuit of the common good. For this reason, he imprisoned Alvaro de Luna and Luna’s family and allies. In a letter patent issued in April 1453 the king wrote, “[E] queriendo perturbar el bien público e pacífico estado e tranquedad dellos [Juan’s kingdoms]; e porque a mí como a Rey e soberano Señor pertenesce proveer sobre las tales cosas, e las deraigar e pugnir e castigar bien.” Memorias de Don Enrique IV de Castilla, II, 57.

744 Secreto de los Secretos, 72. “Qual se quiera rrey que desgusta desordenadamente los bienes del su reyno dandolos a los indignos hombres tal es el despoblamiento de la republica, destruydor del reyno el digno regimiento de donde por meresamiento el desgastadas.”

745 Ibid., 74. “Por las enjuras…el qual les enbio biento caliente et afligo aquellos tirones apreisa. Et leuantose el pueblo contra ellos et destruyo los nombres dellos de la tierra.”

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properly belong to his towns, universities, subjects, and natural vassals. They wanted to remind him that he was chosen and called as king, and he was to rule well. One could not be called a king if he did not execute justice, which meant to give to each his due. Nothing belonged exclusively to the king except justice. For this reason the king’s subjects gave him part of their “frutos e ganancias” and served him with their whole persons every time they were called to do so. They then recited the same phrase the Cortes of 1469 used with Enrique IV: the king is contractually obliged to ensure justice. The king was superior neither to the law nor to the political community as a whole.  

Enrique IV, like many fifteenth-century European monarchs, including his father, made the critical mistake of allowing a favorite to dominate the government, to the detriment of the common weal and the exclusion of those who should naturally advise the king. Diego Enríquez del Castillo, one of the royal councilors and a contemporary chronicler, blamed the king’s reliance on Juan López Pacheco, marquis of Villena, for widespread dissatisfaction with the royal government. Enrique IV was so subjugated to the will of Pacheco that “he could not remember how to be king,” nor as lord did he have the power to command, or as a man the freedom to live, as he should. Not only did he bestow the extensive marquisate upon his favorite, he gave him additional lands and rents, to the detriment of the Crown and other lords of the realm. For these reasons, “los grandes del Reyno” chose to stay in their houses rather than

746 Perez, La Revolucion de las Comunidades de Castilla, 119-120. The words are taken from the Actas of the Cortes. “Proveer en las cosas tocantes a sus pueblos, universidades e súbditos e naturales vasallos que a las cosas suyas propias…que fue escojido e llamado por rey; cuia interpretación es regir bien, y porque de otra manera non sería regir bien mas desypar e ansy non se podría decir nin llamar rey e el buen regir es facer justicia, que es dar a cada uno lo que es suyo…es obligado por contrato callado a los tener e guardar justicia.”
come to court. Procuradores in the Cortes complained that many lesser men were made great and many great men were made even greater, while “justice was daily perverted,” license to live wickedly, boldness in criminality, and negligence of proper punishment for malefactors spread. The Cortes urged the king to reassert his authority, to little avail. At the Cortes of Toledo in 1462, the members petitioned the king, in the name of his “Regnos,” with “certain things meant for the service of God and the good, and for the common and utility of the republic of the realms.” Unfortunately, the king did not perceive the same threat to the common good, nor did he view the advice of the Cortes as integral to his kingship. Thus, he made few changes to his government. He considered the Cortes little more than an adequate institution for securing subsidies. He convoked the institution on diverse occasions, “but the attitude of the king towards the Cortes brought to mind a more or less authoritarian monarchy. The Castilian king was cautious about strengthening central institutions of government, whether in the royal household or in the administration of justice.”

At Enrique’s ayuntamiento near Cigales in 1465, various prelates, nobles, and knights presented the king with “Capitulos e Peticiones” for his own good and for the “public good of his

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747 Diego Enríquez del Castillo, Crónica de Enrique IV, ed. Aureliano Sánchez Martín (Valladolid: Universidad de Valldolid, 1994), 204-206. “No se acordaba de ser Rey.”
748 Cortes de los antiguos reinos de León y Castilla, III, 775. “Sienpre la justicia de dia en dia se pervertió.”
749 AHN, Estado, Legajo 773, Tomo XIX, f. 14-15. “Algunas cosas que son complideras al seruicio de Dios e al bien, e pro comun, e utilidat de la republica de los dichos buestros Regnos.” Although the surviving petitions “reflejasen genéricamente” the spirit of municipal wants, “nunca fueron proyección de las instrucciones personales de los procuradores castellanos.” Likewise, there is an absence of conflict in most surviving petitions. One can conclude from this that the petitions of the kingdom reflect “una realidad alejada de las preocupaciones generales.” In part this is because the royal bureaucracy, with or without the agreement of the procuradores, filtered “los deseos ciudadanos.” Carretero Zamora, Corpus Documental de las Cortes de Castilla, 17-18. Nonetheless, language of the common good filtered through bureaucratic oversight, as can be seen in this example.
750 Enrique IV de Castilla y su Tiempo, 40. “Para la obtención de subsidios…pero la actitud regia hacia la misma hace pensar, sin la menor duda, en un monarca de corte más o menos autoritario…En lo que sí tuvo mucho cuidado el rey de Castilla fue en robustecer las instituciones centrales de gobierno, aspecto palpable tanto en el ámbito hacendístico como en el de la administración de justicia”
lands, and the good reformation and governance of the same.” They urged him to accept their recommendations for ending the problems in the realm, for the service of God, the king, and the “bien comú.”

According to these men, God had established the king’s power (poderio) to remedy social evils and wrongs and to improve (merjorar) the “bien público.” The king’s personal governance of the kingdom was their specific concern, and they strongly recommended that he allow other persons and groups to assist him. The highest clerics should be free to reform the church as needed. The three estates should oversee the reform of the Crown’s finances. On account of the great necessity in the kingdom and the war with the Moors, Enrique had no money in the treasury. This sad state of affairs meant that the king had to ask money from his regnos. Rather than enacting taxes unilaterally, he should ask for money “with the advice and assent of the three estates of the realm,” including the proctors, elected according to local use and mandates, of cities and towns accustomed to sending representatives. After the procuradores came to the Cortes, they were secure and free to vote because the King gave ensured this liberty.

Those present agreed that the “Capítulo” was just and reasonable for the good of all cities, towns, and places within the kingdom. They then proceeded to discuss at length the manner and

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751 “Bien publico de sus Regnos e Sennorios, e para buena reformacion, e gobernacion dellos.” Their propositions dealt with the king’s family, the Moors, conversos, the reformation of the church, and other issues of broad concern.

752 AHN, Estado, Legajo 773, Tomo XVIII, f. 5-7, 12, 16-19. The phrase about doing things for the service of God, the king, and the “buen común” is repeated many times throughout the text. They told Enrique that they brought their petitions out of loyalty to and good faith towards him, the royal crown, his “Regnos, e al bien regimiento, e gobernacion e bien publico dellos” in order to bring “pas, e sonego, e tranquilidat en estos dichos Regnos, e por remediar, e proveer en algunas cosas que vimos, e conocimos por notoriedat, e experiencia que debían ser remediadas ansí en los fechos parados como en los presentes, e por venir acatando que por la Justicia los leis regnan, e los Pueblos son gobernados en pas, e aviendo pas e concordía en la tierra todos los logares se pueblan, e los omes viben alegres, e ricos, e contentos, e por los ruidos, e escandalos, e discordias e defeto de Justicia los logares se despueblan…e los omes viben en trabajos, e pobresa, e conociendo quel dicho Rey nuestro Sennor es mui placentero…e que los dichos sus regidores seran bien regidos e gobernados, e administrados, e la Justicia en ellos sea guardada e executada” (ibid., f. 24-25).

753 AHN, Estado, Legajo 773, Tomo XVIII, f. 56-57. “Con consejo, e acuerdo de los tres estados de su Regno seyendo llamados para ello primeramente los Procuradores de las Ciudades, e Villas…e acostumbran embiar
means of election for the procuradores. The king was not to interfere with the elections of the city representatives, for to do so would be a violation of custom and the law.

According to the royal chronicler and secretary Alfonso de Palencia, it was not Juan II who allowed tyranny to infiltrate the realm; Enrique IV was responsible. The king himself, not his advisors, was to blame for tyranny, “because the example of the prince” propagating “the pestilence of tyranny had not only introduced the disease among the Spanish” but had opened a wide river of evil everywhere. Palencia became an ardent and outspoken supporter of Alfonso and, later, Isabel.

The uprising of 1464-1465 in Castile was not unique in fifteenth-century Europe. England experienced numerous major upheavals – Richard of York in the 1450s, the earl of Warwick in the 1460s, the duke of Buckingham in the 1480s, Lambert Simnel with the earl of Lincoln in the 1480s, and Perkin Warbeck in the 1490s. John Watts observed that the Castilian revolt of the mid-sixties and the earl of Warwick’s in England in 1469 were “strikingly similar.” York’s rising after Jack Cade’s revolt in the 1450s was, too. In each case the leaders claimed to act for the people, the “commons” or “three estates,” as a political community. They also produced vernacular manifestos outlining their complaints against the royal government, particularly the king’s advisers. Hillgarth says their language “was perhaps sincere. But, for

Procuradores, e seyendo en ellas elegidos en sus Concejos segunt que lo tienen por ordenanza, uso, e costumbre e que non sea fecha…e que despues que los dichos Procuradores vinieren a la Corte del dicho senor Rey en que sean seguros e libres en su voto, e para ello de dicho senor Rey les da las Seguridades…entendemos que lo contenido en este Capitulo es mui justo, e razonable, e mui complidero…al bien publico de todas las Ciudades e Villas e Logares de los sus Regnos.”

Palencia, Crónica de Enrique IV, I, 5. “Porque el ejemplo del Príncipe…la peste de la tiranía, no solo ha introducido el contagion entre los españoles.”

Watts, The Making of Polities, 5. Although the language was similar, it was not identical. In England, writes Watts, there was no hint of an accusation of religious deviation against the dukes of Suffolk and Somerset in the 1450s, or Edward IV in the 1460s.

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the nobles, ‘the good of the kingdom’ meant complete oligarchical control of government.”756

The Castilian nobility certainly wanted the ability to influence the king, but there is no suggestion that they wanted to do so without a freely elected Cortes, which was to control taxation under the new program. Recio disregards the sincerity of their argument and instead observes that although the rebels of 1464-1465 presented themselves as the saviors of the realm against the poor governance of Enrique IV, they quickly devolved into tyranny. Because they betrayed the ideas they initially espoused, many cities returned “hacia su rey legítimo.”757 The rebellions of 1465 and 1469 ultimately failed, arguably because the leaders in each instance abandoned the principles of the common weal, or buen público, the crucial link between the two events. In both kingdoms some believed that the common good legitimated communal participation in the governance of the realm, which, in the last resort, could include forcibly removing the king’s advisers but ideally would find expression in the Cortes or Parliament and in good counsel. Those who invoked it in opposition to a specific monarch, though, had to adhere to its values in order to maintain the allegiance of those disaffected by corrupt or inefficient government.

MacKay observes in passing that the deposition of Enrique IV bore “curious echoes” to the controversy surrounding the Council of Basel because of Carillo’s involvement in both. MacKay implies that only Carillo and the men of letters advising the rebels would have been aware of the arguments advanced by church conciliarists and the counter-arguments of the papalists that what happened to the pope correlated to the temporal political sphere. As a result, Carillo was instrumental in deciding the charges announced against the king and what form the

756 Hillgarth, The Spanish Kingdoms, II, 325.
757 Recio, Las Ciudades Castellanas en tiempos de Enrique IV, 57.
deposition ritual should take. Pacheco and Giron, according to Palencia, wanted to accuse the king of heresy and of secretly trying to induce men to embrace Islam. The king, they asserted, was thoroughly unchristian: “one could not find in him any vestige of the Catholic faith.” By bringing such charges, however, they would have placed themselves under the jurisdiction of the pope, who had *plena potestas* in matters of religion, or, as Palencia wrote disparagingly, “they remembered how much the grandeur of power affected his soul.” Considering the experience of Basel, where a council had deposed Pope Eugenius IV on the charge of heresy, it was probable that the papacy would favor the cause of the king rather than that of his opponents. A better solution would be to combine accusations of tyranny and uselessness, “that is, to allege ‘the speedy and sudden oppression of a tyrant (*un tirano*)’ who possessed no energy, talent, capacity, astuteness, ‘or any other gift of ability,’ and was king in name only.” In this rather novel formulation, Enrique was both *rex tyrannus* and *rex inutilis*.\(^\text{758}\)

The accusation of tyranny was emphatic. Other kings had been deposed for less serious crimes, including apathy or “the appearance of tyranny.” In this case, the problem was not simply the appearance of such behavior, but rather its reality. In addition to the charge of tyranny instead of heresy, Carillo and company claimed, as Valera did, that historically the kings of Castile-Leon were elected and acclaimed, “an act that was definitively sanctioned by ancient authorities.” Thus, their power originated in the community, not from religious sanction. Because of this, the Crown of both realms “is exempt from the temporal jurisdiction of

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During the deposition of the king at Ávila, Carillo himself removed the crown from the king’s effigy. The move was significant, since usually the highest prelate in a kingdom in medieval Europe placed the crown on a king’s head during a coronation. Carillo was using the authority of his office as archbishop of Toledo to ritually de-sacralize the particular person of Enrique IV but not the monarchy itself, much as the conciliarists sought to reduce the role of the pope without removing the office completely. The involvement of Carillo in the rebellion led to the fusion of common weal rhetoric with conciliarism, something that was not as obvious in England.

When the Council of Constance met in 1414, Juan II had little influence over the Castilian reaction to it. He was nine years old. Ferdinand of Antequera, Juan’s uncle and regent who had become king of Aragon in 1412, dominated the royal response to the Council. One of the main Castilian representatives at the council was Juan Gonzalez de Acevedo, a royal counselor and notary for Ferdinand de Antequera. According to Acevedo, the election of the new pope ought to be simple and freely conducted by the general council of the Church. It also should be done in accordance with God and “good conscience” (buena conciencia). Acevedo

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759 Palencia, Crónica de Enrique IV, I, 456. “La apariencia de tirania...lo cual estaba canónicamente sancionado por antiquas autoridades...estar exenta...en lo temporal de la jurisdicción de Roma.”
760 Ibid., I, 458.
761 English clerics were involved in the political quarrels of the fifteenth century because of their role as chancellors of England. For example, Thomas Bourchier, archbishop of Canterbury (1454-1486) and chancellor (1455-1456), eventually supported the Yorkists against Henry VI and crowned Edward IV in 1461. Some clerics were more intimately involved in uprisings. The most prominent was George Neville, who as archbishop of York arrested Edward IV in 1469. However, he had not participated in either the Council of Constance or of Basel (he was born in 1432) and rebelled in support of his family, not as a proponent of conciliarist philosophy.
762 On the Aragonese response to the Council, see La Parte Inedite della “Crónica de Juan II,” 135-182. Antequera died in 1416, mid-way through the Council of Constance.
763 Ibid., 175-176.
confirmed that in the case of a disputed papacy, a general council of the Church had jurisdiction to elect a new candidate.

The Council of Basel began in 1431 in accordance with the decree *Frequens* issued by the Council of Constance. The main Castilian delegation did not arrive at Basel until 1434, three years after the council began. Alfonso Carillo, cardinal of St. Eustace, Juan de Cervantes, cardinal of St. Peter ad Vincula, and Juan González, bishop of Cádiz, however, were already there, along with their households.764 González, who was actively involved in investigating Eugenius IV’s legitimate claim to the papacy, wrote a tract entitled *Allegationes de potestate concilii factae tempore dissolutionis concilii Baselien* while serving at the council prior to the arrival of the official contingent. In it he listed reasons for the legitimacy of the council and its work:

First, the fullness of power is most complete in the universal church, just as it was in the beginning of the church. Second, the power of the council is from God. Third, the fullness of power is in the pope who is not in error; but if he errs, the general council can correct his faults. Finally, a general council is not subject to positive law.765

The fullness of power belonged not to the pope but to the universal church, and this power was best expressed through a general council whose power came directly from God. When the

764 González was assigned to the *deputacione pro reformatorio*. He was among the first to swear an oath of incorporation to the council. The Alfonso Carillo who was at the council in the early 1430s is not the same cleric who participated in the Farce of Ávila. They were uncle and nephew. The elder Carillo died at Basel in 1434. Among those with him in 1433 were: Álvaro de Jarana, scholastic of Cuenca; Juan Carillo, his relative and the archdeacon of Cuenca; Pedro de Cordoba; Miguel Rodríguez; Rodrigo de Varges, canon of Toledo; Gonzalo Núñez and Martín Sánchez. See Denise Hackett Kawasaki, *The Castilian Fathers at the Council of Basel* (Thesis Ph.D.: University of Wisconsin-Madison, 2008), 62, 65; *Cronica Halconero de Juan II*, ed. Juan de Mata Carriazo (Madrid: Espasa-Calpe, 1946), 152.

765 Vicente Beltrán de Heredia, *Cartulario de la Universidad de Salamanca* (Salamanca: Secretariado de Publicaciones de la Universidad, 1973), I, 295. “Prima est quod plenitude potestatis plenitude est in ipsa ecclesia seu universitate ecclesiae tamquam in fundamento. Secunda est quod potestas concilii est a deo. Tertia quod potestatis plenitude est in ipso papa ita quod non erret; si tamen errat, hujusmodi errores corrigert concilium generale. Quinta conclusion quod generale concilium non subjicitur juri positive ut dictum est.”
official delegation arrived, there were more than 120 Castilians in it. Among its more prominent members were Álvaro de Isoma, bishop of Cuenca; Juan de Silva, lord of Cifuentes and alférez mayor of the king; Lope de Galdo, provincial of the Dominicans; and Juan de Caravajal, another Dominican.

The Castilian delegation was divided over conciliarism, the government of the Church, and the Council of Basel. Some supported conciliarism in one of its many forms. Andreas Escobar, bishop of Ciudad Rodrigo (province of Valladolid), declared, “The Christian people made these sacred general councils.” Alfonso Garcia, bishop of Burgos and ambassador for Juan II to Basel, gave a lengthy speech in which he moved from “divine and human law” to Aristotelian political theory to the theological exegesis of the Petrine texts of Scripture in order to prove the case for the superiority of the council to pope. According to Aristotelian political philosophy, the king is “greater than each but less than all.” No individual could judge the pope, but the universitas of the church could judge him. Citing Aristotle’s Politics, he argued, “a good monarch should be more powerful than any individual in the kingdom, but not more powerful than the kingdom itself. The words of Aristotle are these: ‘the king should hold power, but such a power as to be greater than that of individuals, one or several, but less than that of the people (multitudo).’ It is the same for the pope with respect to the church in the case of legal power.”

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status and jurisdictional power. The pope, Garcia claimed, was beneath a council though greater than all individual Christians. The speaker who followed Garcia concluded that the deposition of a king by the realm, and of a pope by the church was legitimate. The speech was recorded by Aenius Sylvius Piccolomini in his history of the Council of Basel; from there it passed to Protestant works of political theory, including William Prynne’s *Soveraigne Power of Parliaments*, which quoted Garcia directly, and Foxe’s *Actes and Monuments*; in *Vindiciae contra tyrannos* the bishop’s argument was reversed – just as the general council was superior to a pope, so the assembled estates of a realm could depose a king.

As late as 1426 Juan de Segovia, master at the University of Salamanca and later representative for the university at the Council of Basel, was in favor of papal absolutism. By the time of Basel, however, his position shifted. He joined the household of Juan de Cervantes while at the council. He served the Council until its dissolution in 1449 and came to exemplify the conciliarism of the mid-fifteenth century. Segovia produced many speeches and tracts, including his most famous work, *Historia actorum generalis synodi Basiliensis*, between 1449 and 1453. According to Segovia, conciliar supremacy was based upon the Bible, whereas papal sovereignty was based upon human law. Because the church was a large community that recognized no temporal superior, its power rested within itself first and foremost, then in rectors,

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769 Black, *Monarchy and Community*, 15. Black writes (16), “It was in this sense that the council ‘represented’ the church: it simply was the church in its jurisdictional form.” Some conciliarists at Constance had held a slightly different interpretation. They viewed the council as the meeting-place for church authorities – bishops, abbots, and secular rulers – who represented the church ex officio, regardless of how they were chosen. As observed elsewhere in this dissertation, definitions of representation vary. Representation does not necessarily mean that someone from every social group or in office by election serves in the political, general body.

770 Ibid., 12. Black observes, “Aristotle’s statement on military power was thus made to apply to jurisdiction.”


772 Ibid., 65.
magistrates, consulate, or senate, and finally in the executor.\textsuperscript{773} Supreme power belonged to the community of Christians, who delegated their power to a general council. The role of the pope in the \textit{universitas} of the faithful was to execute and enforce conciliar decrees, in the interests of the public good. His power derived not from the divine but from the sovereignty of the \textit{ecclesia universalis}.\textsuperscript{774} The power of the church did not depend “entirely upon one single member. Likewise…the being or essence or unity of the church cannot subsist solely in one [person],” he wrote in \textit{Super materia bullarum de praesidencia}.\textsuperscript{775} A ruler was greater than any individual or particular group in his community since he represented them all as a “public person,” but the whole community assembled together was of greater authority than the ruler.\textsuperscript{776}

One of the arguments he used to support his conception of the church was the corporal analogy (\textit{corpus-caput}; \textit{corpus-membra}) derived from St. Paul. This metaphor explained the fundamental pluralism and unity of the church. Use of the organic, natural body for the body politic led him to believe that “the locus of ecclesiastical power was ‘necessarily collegial.’” Segovia explicitly linked his ecclesiastical philosophy to temporal government: “Considerandum

\textsuperscript{773} Juan de Segovia, \textit{Amplificatio Disputationis} in \textit{Monumenta Conciliorum Generalium Seculi Decimi Quinti}, eds. Ernst Birk and Rudolf Beer (Vienna: Vindobonae Holzhausen, 1897), III, 802. The Latin original reads: “Exemplum accomodum est in aliqua magna communitate, superiorem in temporalibus non recognoscente. Etenim suprema potestas ipsius ad se tuendum regendumque se ipsam sibique subditos, primo consistit in ipsa communitate; abinde in rectoribus et magistratibus sive consulate aut senatu (quocumque nomine appelletur); et consequenter in executore sive potestate, dictatore aut gubernatore.” For an English translation, see Black, \textit{Monarchy and Community}, 11.

\textsuperscript{774} Canning, \textit{A History of Medieval Political Thought}, 177.

\textsuperscript{775} In this particular passage Segovia contested the notion that the faith persevered through the Virgin Mary during Christ’s Passion. Jesse D. Mann, “A Conciliarist’s Opposition to a Popular Marian Devotion,” in \textit{The Church, the Councils, and Reform}, 219. Mann offers the original Latin in fn. 48: “Apparet….quod potestas ecclesie seipsam conservandvi et regendi ac tuendi insi ipsi corpori sive omnibus similiter membris, non autem quod ex unico solo membro dependeat in totum. // Item…entitas sive essencia aut unitas ecclesie non potest solum in uno consistere.” See also Benigno Hernández Montes, “Obras de Juan de Segovia,” in \textit{Repertorio de historia de las ciencias eclesiásticas en España} (Salamanca: Inst. de Historia de la Teologia Española, 1967-1977), VI, 273-274.


\textsuperscript{777} Mann, “A Conciliarist’s Opposition to a Popular Marian Devotion,” 222.
preterea, qualiter quicumque presidens supremus (pote papa, imperator aut rex) sententiam ferre posset contra totam sibi subditam multitudinem, his (videlicet imperatore ac rege) decernentibus subditos eorum omnes esse reos criminis lese maiestatis.” 778 What then was the role of the monarch in government? He was to be a “legal proxy for the whole community by promoting its corporate interests; he ‘represents’ the community in the strict private-law sense of being entrusted with the care of its interests.” Wrote Segovia,

He ceases to be a private and is made a public person; he loses in a sense his isolated unity, and puts on the united people, so that he may be said to bear the person not of one but of many. He acts the part of a good ruler just so long as he intends the public utility of many. 779

His moral title to rule depended upon his representation of the common good, while his legal title depended upon the actual approval of the whole people. 780 Heretics, such as Eugenius IV, always prefer their own judgment to that of the entire community of believers, according to Segovia. 781 The same could be said of tyrants.

His work stimulated a vigorous papal counter-offensive portraying Baselian conciliarist ecclesiology as subversive to the principle of monarchical authority. 782

778 Segovia, Amplificatio Disputationis in Monumenta conciliorum generalium, III, 721. Segovia attempted to combat the accusation that conciliarism was a subversive doctrine by arguing that conciliarism was only applying in the church constitutional principles that were acknowledged in most kingdoms. It was not advocating democratic or even oligarchic elimination of monarchy. Antony Black, “The Political Ideas of Conciliarism and Papalism, 1430-1450,” in Church, State and Community: Historical and Comparative Perspectives (Burlington, VT: Ashgate Variorum, 2003), I, 53. As noted earlier in this chapter, these principles and meaning of the natural body metaphor were contested in Castile.

779 Black, Monarchy and Community, 25, 143. “Ratio autem huius est, quoniam qui praeest multorum regimini, si debite habet praeesse, desinit esse privata, et efficitur persona publica, et perdit quodammodo solitariam unitatem, et induit unitam multitudinem; ut non iam uniun, sed dictatur gestare sive representare personam multorum. Et intantum agit vicem boni rectoris, quamdiu publicam utilitatem multorum intendit.”


782 Oakley, “Anxieties of Influence,” 105; Black, Council and Commune, 118-193; Black, Monarchy and Community, 85-130. Nicholas of Cusa, one of the most prominent conciliarists, eventually changed sides and threw
contemporary defender of the papacy was Juan de Torquemada. A Dominican, he delivered the king’s reply to delegates from the Council of Basel in 1432.\textsuperscript{783} Among his principal works was \textit{Summa de ecclesia} (1449). Much of the discussion of the cardinalate in the text is taken verbatim from Pierre d’Ailly’s \textit{Tractatus de ecclesiastica potestate}, though naturally without acknowledgment. Torquemada admitted that the council was in some cases superior to the pope, namely, in the case of a heretical pope, in which case a council has jurisdictional power to depose him.\textsuperscript{784} Torquemada also claimed that all those who wield particular powers of political administration receive their jurisdictional authority from the supreme power.\textsuperscript{785} When the Council of Basel chose Felix V as pope in 1439, Torquemada censured the council and declared that the Felix was not elected “jurídicamente.” The cardinal went so far as to interpret the conciliar pope’s name in an anagram: “Falsus Heremitus Latens Inimicus Christi.” Ultimately Felix failed to unseat Eugenius IV, “who was elected canonically and truly.”\textsuperscript{786} The advocacy of these views [e.g., the oligarchic view of conciliarism, rather than the strict version] by somebody as influential as Torquemada was itself an event of some importance.\textsuperscript{787} Torquemada’s influence was less than it could have been because so much of his time was consumed in Rome. Segovia’s
role in Castilian politics also was minimal, “and there is no evidence to suggest that his writings may have contributed directly to the development of political ideas in the realm.” However, Segovia was not alone in his support for a conciliarist monarchy. Alfonso de Madrigal, bishop of Ávila from 1449 to 1455 resisted the papalism of Juan de Torquemada. Carillo did as well, as he proved in the events of the ensuing decade.

In response to the papal offensive, Segovia and Andreas Escobar framed their conciliar theories in a way that made them less relevant to political matters. In his tract *Gubernaculum conciliorum*, Escobar defined the church in two ways, scattered or gathered, as in a council. Escobar specifically applied to the church the old Roman law argument: “The power of the people is greater than the power of their rulers...because they could not alienate jurisdiction from themselves.” Segovia made the same argument. He also referred to Aristotle’s *Politics* and compared the government of the church to the government of civic society: “The power of the universal church seems to reside in the whole church itself, just as the philosophers say that the government of a city belongs to the assembly of the citizens, or its weightier part, an opinion gathered from Aristotle, *Politics*, III, c. 8. And in the same way we should say that the government of the world belongs to the assembly of the men of the whole world, or its weightier part.” For Escobar and Segovia, appeals to natural law, though not entirely lacking, are not as important as they were to their predecessors; likewise, the crucial distinction between the powers

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788 Burns, *Lordship, Kingship, and Empire*, 80.
of order and jurisdiction was less insistently and less effectively evoked. In Segovia’s formulation “the church assembled in general council was identified with the corpus mysticum and papal sovereignty seen in contrast as pertaining ‘to a somewhat lower, merely political order of things.’” Escobar offered a similar argument, that the universal church is a mystical body, a res quaedem publica of all Christians, and thus it was the res communis of the Christian people.

The perceived threat of conciliarism to the power of the monarch persisted after the Council of Basel ended because its principles spread throughout Castile through the decrees of the two councils and writings from the University of Paris. Ferdinand of Aragon, serving as regent of Castile for his daughter Juana, gave instructions to his representatives to the Fifth Lateran Council (1512-1514) to advocate for a formal repudiation of Haec sancta. It never occurred. The number of Castilians involved in the councils of the fifteenth century was large, and their prominence and output significant. Although academics and some nobles found conciliar thought worthy of great consideration, others appear to have been uninterested in it. Perhaps Carillo’s involvement in the Farce temporarily frightened some from appealing to conciliar principles. Others may have been deterred because many of these works were written in Latin. Castilians had transitioned to the vernacular in their literature and official documentation much earlier than England.

793 Escobar, Gubernaculum conciliorum, 328; Black, Monarchy and Community, 23. Escobar also argued (265), as did Segovia, that among Christians there must be one will and intention (intention omnium) in the general council. Segovia, Amplificatio Disputationis in Monumenta conciliorum generalium, III, 720, 726. This bears some similarity to John Fortescue’s assertion that the heart of the body, the first living thing, contained the will of the people, and that that will was made manifest in Parliament. See chapter 2 of this dissertation.
795 José M. Doussinague, Fernando el Católico y el cisma de Pisa (Madrid: Espasa-Calpe, 1946), App. 50, 539; Oakley, Council Over Pope?, 91.
It has already been observed in this chapter that men such as Valera and Carillo claimed that historically Castilian monarchs were elected and acclaimed, and therefore they could be removed from office in the most extenuating circumstances of bad governance. Indigenous history, real or falsified, was not the only precedent of importance to contemporaries, though. Castilians and other Europeans used Roman history to legitimize structures of authority and advise those in positions of governance. They applied the historical narrative of Rome to contexts with which it often bore little resemblance, such as the contemporary collection of taxes, the implementation of justice, the maintenance of liberties, the founding of native monarchies and the precedence those monarchies took within an international context, the best means of governance, and the structure and responsibilities of parliaments. Both referred to classical Rome as a means of legitimizing indigenous government and history and expressing concern for the “buen gobierno” of the kingdom. Castilians and their English counterparts gravitated towards different Roman histories, though. The English more often equated Parliament with the Roman Senate, and consequently appealed to the Roman Republic to validate their institutions. For Castilians Imperial Rome served as a model to validate their monarchy.

Among those Juan II sent to the Council of Basel in 1434 were Alonso de Santa María, dean of Compostela and of Segovia, and Alfonso de Cartagena, bishop of Burgos. While at the council there was a great debate over precedence between these ambassadors and those of Henry

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796 John Watts briefly mentions the Roman political inheritance in medieval Europe in his book *The Making of Polities*, 48-49. However, he addresses it only in relation to the papacy, the Holy Roman Empire, and to the Eastern Empire. He does not include the non-imperial kingdoms in his analysis.
VI of England, “como muchos tiempos a que se avía.” Santa María addressed one of the committees, explaining the reasons for Castilian precedence. The delegation from Castile actually represented all of Spain, he argued, because Castile was the heir to the Visigothic kings, whose capital was Toledo. Consequently, Castile was older than England, and its delegation deserved to be recognized before the Anglo delegation. Alfonso de Cartagena also emphatically proclaimed the superiority of the king of Castile to the king of England. To support his assertion, he argued that the kings of Castile, unlike their Anglo counterparts, inherited the Roman Empire when it fell, and thus had held the title “emperador.” Because, in his opinion, the English could make no such claim, they were inferior to the Castilians. His position that the king of Castile was superior to his English counterpart on account of his descent from the Romans continued to be cited favorably throughout the century. In the sixteenth century, Juan de Silva produced a Spanish translation (from the original Latin) of Alfonso’s proposition. He did so essentially for political reasons, as had the original author, although this time the issue was not the order of precedence at a church council but the conflicting international goals of the two

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797 Cosas Sacadas de la Historia del Rey Don Juan el Segundo, 27. The anonymous chronicler omits the names of some ambassadors: Luis Alvarez de Paz, two unnamed Dominicans, and Gonzalo de Cartagena (ibid., 55). Castilians seem to have had a penchant for picking fights with foreigners about history. Antonio de Nebrija, the humanist who wrote Gramática Castellana, presented to Isabel I in 1492, quarreled with the Sicilian scholar Lucio Marineo Sículo, his colleague at the University of Salamanca. In 1493 Sículo wrote a history of Spain, which angered Nebrija. Nebrija believed Spain’s history was too important to be entrusted to foreigners, particularly Italians. “I do not consider it quite safe to rely on foreigners for historical truth,” the humanist observed, “and least of all on Italians who call us barbarians and peasants and insult us with derogatory epithets.” Sículo had “emphasized Spain’s debt to the Romans by Latinizing the place name of the towns that he mentioned,” but other than that it is not clear what specifically upset Nebrija. Kagan, Clio and the Crown, 17. Nebrija’s Gramática Castellana had five books – ortographia, prosodia y sílaba, etimología y dicción, sintaxis y orden de las diez partes de la oración, and introducciones de la lengua castellana. It was not a dictionary.

798 He also stated that Castilian cities were larger and more numerous than their English counterparts; Castile had been evangelized by St. James the Apostle, whose shrine was at Compostela; and their role in the Reconquest was of greater consequence to the Church. See Luciano Serrano, Los conversos, d. Pablo de Santa María y d. Alfonso de Cartagena, obispos de Burgos, gobernantes, diplomáticos y escritores (Madrid: C. Bermejo, 1942), 140-143.

799 Alfonso de Cartagena, Propositio super allercatione praeminentia, ed. María Victoria Echevarría Gaztelumendi (Madrid: Editorial de la Universidad Complutense de Madrid, 1992), xx. The quarrel was never settled, occasionally turned violent, and endured for at least two years.
crowns. Among the arguments made for the superiority of the Castilians to the English in both the original Latin and the vernacular translation was that the former had never paid tribute to the Romans, whereas the latter, on account of their weakness, had been forced to do so. The kings of Spain “were never subjects of the Roman Empire.” For this reason, as well as the fact that the kings of Castile supposedly preceded the Roman emperors by hundreds of years and succeeded to the imperial crown when Rome fell, the Castilian monarchs were held to be more historic and therefore more legitimate than their English counterparts.

Diego Rodriguez de Almela, canon of Cartagena and chaplain to Isabel of Castile, approvingly referenced Alfonso de Cartagena’s work in a letter he wrote in July 1482 in support of the union of the kingdoms of Iberia. Cartagena was correct in his estimation that the Castilians owed their prestige in part to their Roman heritage, according to Almela. However, the Romans made a singular mistake in their governance of the peninsula: they had divided the kingdoms into smaller administrative units, and “the kingdom and monarchy of Spain should not be divided.” Almela’s contemporaries were on the verge of repeating the error by giving the title king of Granada to the son of the Catholic Monarchs rather than bestowing it upon Isabel and her spouse Ferdinand of Aragon. It therefore was essential that Isabel and Ferdinand learn from their Roman predecessors and unite the kingdoms of Spain in themselves, although Castile was to have precedence because “in all the provinces and nations of the world the king of Castile-Leon is entitled and called king of Spain.”

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800 BL MS Egerton 2081, f. 10, 15. “Nunca fueron sujetos al Imperio Romano.”
801 Ibid., f. 12v, 15.
802 BL MS Egerton 1173, f. 38-39. This manuscript has been published as Cartas, ed. David Mackenzie (Exeter: University of Exeter, 1980). “El regno y monarquía de España no sedeue [sic] partyr...por todas las prouincias y naciones del mundo yntitullan y llaman al rey de castilla y de leon rey de España.”
made to the Council of Basel in 1434. Almela specifically compiled his letter, with its numerous examples from Roman history, as a guide to convince his fellow procuradores in the Cortes of Castile of the folly of such a proposal of division in the event that Isabel convoked the Cortes to discuss the question. The Cortes he anticipated was not held and the issue receded from prominence. Nonetheless, it is possible to see in his letter, as in Alfonso de Cartagena’s argument and Juan de Silba’s translation of it, the search for political legitimacy in a source of uncontested historical authority. Likewise, whatever the limitations of the Cortes by the 1480s, Almela clearly believed that it had jurisdiction over the distribution of royal titles of some of the kingdoms of the peninsula. Almela specifically used Roman history as a means of influencing the decision of the Cortes, in much the same manner as Bishop Russell had done in Parliament.

Carlos I (r. 1516-1556), grandson of the Catholic Monarchs, began his reign jointly with his mother Juana but soon superseded her. Carlos was born in Ghent. When he became king of Spain he brought with him a coterie of Flemish advisors whom Castilians were unwilling to accept. The first four years of his reign were fraught with conflict over these foreigners, imperial politics (he was elected Holy Roman Emperor as Charles V in 1519), and the desire for indigenous reform and representation. The first Cortes of his reign met at Valladolid in 1518. It was important for two reasons: first, to remind the new, foreign king of some “fundamental requirements and essential political principles”803; second, at a moment of growing opposition to royal policy in the realm, people realized they could not expect much from the Cortes, primarily because its representation was too constricted. Only eighteen cities had representation, and they were limited to two procuradores each.

803 “[E]xigencias fundamentales y de algunos principios políticos esenciales.”
With regard to the first issue, the Cortes asked the king to prohibit money from leaving the kingdom and to reserve ecclesiastical benefices and public offices for Castilians. The *procuradores* were under no illusions as to the response they would receive, but they felt obligated to act “as spokesmen for the general discontent.” It was their duty to bring to the king’s attention the general discontent of the realm. They tried but failed. Yet they granted the king new taxes. After the Cortes of 1518, a group confronted the two proctors for León when they returned home. They accused them of betraying the community by voting taxes: “Those who granted [the tax] and the regidores who gave them power to do so were traitors.”

In part because of the general perception of the failure of the Cortes, the *comuneros* of Castile revolted against the administration of the new king in 1520. One of the objectives of the *comuneros* was to recover control of the appointment of their *procuradores* in the Cortes. They also wanted free elections with a wider electorate that could limit the powers of the procuradores and make them account for their conduct after the Cortes finished. The power (*poder*) of the *procuradores*, not of the Cortes, was a central concern of the *comuneros* because they wanted to ensure that the Cortes did not approve any *servicio* (tax) until the *procuradores* consulted with their cities. Carlos I defeated the uprising a year later, but it highlighted problems inherent in the kingdom in the early sixteenth century. In vain did the proctor from

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804 Perez, *La Revolucion de las Comunidades de Castilla*, 119-120. “[C]omo portavoces del descontento general.”
805 AGS, Estado, Legajo 5, f. 44. “Los que otorgaron [el servicio] e los regidores que les dieron poder para esto eran traydores.”
806 Carlos I left for the German lands in 1520. The Dutch Cardinal Adrian of Utrecht, a deeply unpopular figure, governed Castile in the king’s absence. Juana, mother of Carlos I, was still alive, and the *comuneros* appealed to her to rule in opposition to her son.
808 Thompson, “Cortes, Cities, and *Procuradores* in Castile,” 19, 21-22.
Granada in the Cortes of 1523 try to introduce “some flexibility in the functioning of the institution.” The Cortes continued to be what it had been before 1520: “Simply a record chamber incapable of expressing serious opposition.”

Joseph Perez writes, “The cities, although individually subordinate to the king because of the institution of the corregidores, could theoretically oppose him when they met in the Cortes. They could have done it if the Cortes had truly been representative, and if they had known how to conserve their independence.”

When, in 1538, Carlos I summoned the aristocracy and the clergy to the Cortes, they attended in unusually high numbers – eighty percent of available peers and prelates responded to the royal summons. These men led the opposition to the king’s new taxes, repeatedly sought to act in concert with the cities, and, through their example, did much to influence the decision of all members of the Cortes to withhold their consent. The king may have dissolved the Cortes the following year to halt any revival of the tri-cameral Cortes, “now threatening to operate, as they had rarely done in earlier times, as a single body uniting the entire political nation, and of preventing a potentially dangerous recrudescence of the power and political influence of the aristocracy through their leadership of the Cortes.”

The nobility and clergy ceased to attend after 1539. Once the Cortes was reduced to a body of procuradores, any conciliar and legislative functions it had, which often were the basis for the intervention of parliaments in political affairs,

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809 Perez, *La Revolucion de las Comunidades de Castilla*, 677. “[C]ierta flexibilidad en el funcionamiento de esta institución…. [U]na mera cámara de registro incapaz de expresar una oposición seria.”

810 Ibid., 67.

811 Of the 126 men who participated in this Cortes, 71 were nobles, 19 were bishops, and 36 were proctors of the cities. Thus, seventy-one percent of the total number of participants belonged to the noble and clerical estates. Thompson and Croft, “Aristocracy and Representative Government,” 81.

812 Ibid., 75-76. The frequent claim that the nobility lost interest in the Cortes because of their exemption from personal taxation is not entirely accurate. The shift in the sixteenth century was from direct personal to universal indirect taxation. After 1539, servicios, the personal taxes from which they were exempt, fell from 50% of the value of indirect taxes, the alcabalas and millones from which they were not exempt, to less than 5% within a hundred years. One could argue, then, that when the nobility ceased to attend the Cortes, they lost their tax exemption.
diminished.\textsuperscript{813} It simply could not represent the fullness of the body politic if its membership consisted only of urban proctors.

As Thompson and Croft observed, the structure of the Cortes affected its position within the royal government. Political languages used to legitimize parliamentary government in England were less effective in Castile in part because of the unicameral, urban-centered nature of the Cortes. Because membership and attendance were limited, the Cortes simply did not represent the fullness of the body politic in the way Parliament did. As a result, Castilians often used other channels often to affect change. A prominent example is the contested descent of the Crown in each kingdom. Whereas in England Parliament mediated between the competing claims of Henry VI and Richard of York in 1460 at York’s request and with the king’s implicit agreement, neither Enrique IV nor his half-siblings sought to resolve their conflict in the Cortes. Rather, Isabel met the king at Toros de Guisando, and the two reached a solution in which Isabel was declared heir to the kingdom and Enrique’s right to the throne was affirmed.\textsuperscript{814} The Cortes subsequently ratified the agreement, but the Enrique and Isabel’s circumvention of it as a center for the resolution of disputed succession is telling.

Ultimately, the problem of the Castilian Cortes is a “problem in the language of political discourse.”\textsuperscript{815} The same languages of legitimacy and representation were used in Castile and England. However, in Castile these languages were contested by a discourse of kingship that permitted no limitation, real or theoretical, on the king’s \textit{auctoritas}. In England, this alternate language was far less developed and successful than in Castile. Castilians, broadly-speaking,

\textsuperscript{813} Ibid., 79.
\textsuperscript{814} Palencia, \textit{Crónica de Enrique IV}, I, xiii.
\textsuperscript{815} Burns, \textit{Lordship, Kingship, and Empire}, 72.
never fully implemented some of the languages – conciliarism, the history of the Roman Republic and Senate – that were easily accessible to them and would have strengthened the legitimacy of the Cortes or another central body acting for the political community. They frequently employed the discourse of the natural body and of royal responsibility to that body, but it faced a counter discourse of greater strength than anything found in England. Castilian coronation rituals, in conjunction with political language, also suggest that Castile was a polity still philosophically oriented around the traditional civitas. Language had not sufficiently migrated to the national community as it had in England. Perhaps the absence of prominent theorists other than Fortescue allowed languages of communal participation and representation to flourish among a broader constituency in England in a way that was not possible in Castile, with its abundance of scholarly minds. The penchant for Castilians to leave some of these languages in the realm of philosophical thought ultimately hindered the development of a comprehensive political discourse that could legitimize the participation of Cortes and community in the life of the kingdom. It also explains why the Cortes found it difficult to assert itself, and the community found it even more difficult to reform royal government, including the Cortes.

Perhaps, as Juan de Segovia observed about the contest between the papacy and conciliarists in the mid-fifteenth century, the victory of monarchs over the languages of communal legitimacy was merely a diplomatic triumph. They achieved no permanent victory over the political ideas that legitimated communal participation in government through representation. These languages continued to dominate political discourse for hundreds of years, building on the fifteenth-century heritage, in spite of monarchical claims to absolute power. They were the patrimony of many European nations, Castile included. The years of civic and
religious upheaval in the fifteenth and sixteenth centuries proved crucial to sharpening ideas, their rationale, and their use by those who believed that government, whatever its origin and structure, bore some responsibility to its subjects and citizens.
CONCLUSION

The trajectory of the Castilian Cortes in this period is one of diminishing returns. The numerous civil conflicts of the preceding decades offered plenty of opportunities to engage extant political ideas that would legitimize the authority of the Cortes in royal government. Many Castilians made a valiant effort to permanently incorporate these ideas into public discourse, but ultimately they did not achieve consistent widespread acceptance. Politically active Castilians gravitated towards the history of the Roman Empire rather than the Republic and left Aristotle’s *polis* centered around traditional urban centers. What was left was not sufficient to fill the gap between the two extremes of imperial authority and the unique power of urban centers. The *cuerpo místico* and the *cuerpo político* existed and potentially could have bridged the divide, but in the Castilian use of the analogy no part of the body equated to an institution representing the full body politic. Nor did the king’s power originate in the body; it originated in divine law. Therefore, subjects could not sit in judgment on their monarch. This was true even when the *res publica* was in duress. Sickness indicated an unhealthy community, not a government gone awry. Because Castilian monarchs had no coronation and swore no single oath to uphold laws to which their subjects consented, it was difficult for Castilians to maintain that a king had broken his promise to the community and therefore lost his legitimacy if he ruled contrary to the common good. Interestingly, fully developed conciliarist ideas gained greater traction in Castile than in England, where their importation was piecemeal but effective.

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816 Black argues that although the *polis* was an important political concept in the Middle Ages, the term *polis* was applied to political society in general, not to Aristotle’s city. Political philosophy about cities was nearly nonexistent outside of Italy, where Marsiglio of Padua, in the *Defensor Pacis*, offered the most prominent sustained analysis of the city its role in a rightly ordered political society. Black’s assessment is not quite accurate. Aristotle’s city was common enough in Castile to make political discourse unclear. Black, *Guilds and Civil Society*, 76, 91-92. See also John Hine Mundy, “In Praise of Italy: The Italian Republics,” *Speculum*, 64:4 (1989), 815-834.
when combined with other ecclesiastical concepts. Their incorporation into political events in Castile occurred primarily because of the participation of the same clerics in church councils and political dissent.

In England, by contrast, the civil wars of the fifteenth century “strengthened the sense of the realm as the primary political forum, and emphasized that its common good was the primary political goal.” The public discussion the wars provoked, and the attempts of regimes and their opponents to legitimize themselves with reference to history and myth, intensified national self-consciousness but also affirmed parliamentary authority. Englishmen identified Parliament as the legitimate forum for channeling communal discontent or desires. “Unauthorized public action was more clearly de-legitimized – it became more difficult to justify assaults on the crown, even in the name of the common or public good – and criticism, even representation, began to acquire the taint of rebellions and conspiracy.”

The right of the people as a corporate whole, who had established the political kingdom and placed a ruler over themselves, was not a simple right to rule. It was a power to establish government – and to re-establish it in case of breakdown – a constitutive power. It was also a power to assent to the laws that governed the kingdom, as the coronation oath explicitly stated. The increasing identification of Parliament with representation of the community in multiple political languages indicates that in England the idea of communal representation became more cohesive as the century progressed, whereas representation in Castile remained fractured. One could argue that in Castile representation was more divisive at the end of the century than at the beginning because of the diminished attendance by nobles, clerics, and procuradores in the Cortes.

As the manifestation of the political body, Parliament had authority to intervene in the *dominium politicum et regale* in order to protect the interests and integrity of the community. Members routinely engaged in the business of taxation and property, royal finances, and crime. At times they found themselves involved in more unusual events: the minority of the king or the absence of an heir, Henry VI’s mental illness, competing claims to the throne, poor counsel, significant domestic unrest, and foreign threats. In these circumstances they often improvised because there was little precedent to guide them. As they did, they established linguistic and practical precedents for future generations to follow.

Legitimacy had limits. It did not confer on Parliament boundless authority to limit the royal prerogative. The ideas that formed the foundation of parliamentary legitimacy did not bestow unlimited authority on the institution. For example, it could not limit the king’s grace in the future. In the parliament of 1455 the Commons petitioned Henry VI to hold Edmund, duke of Somerset, Thomas Thorp, and William Joseph responsible for the battle of St. Albans. Somerset had died in the fighting at St. Albans, but the Commons urged the king to resume all royal grants made to Thorp and Joseph, to disbar them from office within the royal households, to imprison them for twelve years, and to fine them £1,000. The Yorkists blamed these three men for denying them access to Henry VI and for the armed confrontation at St. Albans. The petition ends: “No pardon granted or to be granted to them is to be effective in this respect.” Because the Commons sought to limit the king’s grace, Henry VI reserved judgment on the petition, although he resumed Thorp’s and Joseph’s royal grants. 819 In the same parliament the

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819 *PROME*, XII, 444; *RP*, V, 332-333; NA C49/30/15.
Commons also petitioned to aggressively prosecute clerics for felonies. The king likewise reserved judgment on this petition because it potentially constrained the pursuit of justice.\(^{820}\)

In spite of limitations on parliamentary power and authority, legitimacy, once secured by the institution, was difficult to lose. This was true even when an individual parliament was summoned illegally or with malicious intent, as was the parliament at Coventry in 1459 and Edward IV’s parliament in 1478. It also held even during periods when the monarchy seemed to regain its strength.\(^{821}\) Hence, the legitimacy achieved by Parliament in this period remained with the body. This was due in large part to the strength of the languages used to legitimate Parliament, and their continued presence in English discourse.

Even when later writers chose not to cite fifteenth-century examples or reinterpreted earlier events, the language of their discourse and the thought it conveyed was shaped by previous usage.\(^{822}\) This was true of prominent theorists such as Thomas Starkey, Sir Thomas Elyot, and Richard Hooker, as well as less well-known people. For example, Robert Commaundre, chaplain to Sir Henry Sydney late in Elizabeth I’s reign, recorded a history of England and the Wars of the Roses in his common-place book. Of the fighting between Lancaster and York he wrote:

\[
\text{Abowte this seacon the duke of Yorke pretendinge a right to the Crowne as heire to Lyonell duke of Clarence thirde sone to kinge Edwarde the third came this}
\]

\(^{820}\) PROME, XII, 444; RP, V, 333-334; NA C49/30/16.

\(^{821}\) Traditionally, historians claimed that the monarchy regained its strength under Henry VII, who successfully intimidated Parliament into submission. Paul Cavill’s recent study of Parliament under the first Tudor challenges this assumption. Cavill argues that Henry VII’s grasp on power was tenuous and that Parliament ensured the restoration of royal authority by ensuring the good governance of the realm. Cavill, The English Parliaments of Henry VII.

\(^{822}\) Tierney, Religion, Law, and the Growth of Constitutional Thought, 80-84, 97-102, 104. Tierney relates the persistence of conciliarist thought through the English Civil War. George Lawson, an English clergyman of Presbyterian leanings, wrote Politia sacra et civilis during Oliver Cromwell’s tenure. In it he incorporated the ideas of the fifteenth-century conciliarists while evaluating the constitutions of church and state.
yeere oute of Irelande vnto London in the parlyament tyme there to consulte with his speciall frendes...men of greate accoumpte and auct[y]y in those dayes with other of his freendes and kynsfolk, And aftre longe deliberacyon and advise taken yt was thought expedient to keepe theire cheiff purpose very secret, And that the duke of Yorke should reyse an Armye of men vnder a pretext to Remove dyuers counsellors aboute the kynge, and to revenge the manifest Injuries done to the common wealthe by the same rulers, of the which nombre as principall the duke of Somercete Edomnde was namelye accused, boeth for that hee was greatly hated of the Commons for the losse of Normandye, and that it was well knowen that hee wold bee all togethier against the duke of Yorke in his challenge to bee made (when tyme served) to the crowne.823

In this telling York appears as a deceptive practitioner of realpolitik. But observe that Commandre employs the same language of the destruction of the common weal that York and his adherents actually used 150 years prior. He does not deny that a ruler could violate the common weal. Nor does he deny that a monarch could be held to account for corrupt government. He only questions York’s motives and tactics. Commandre’s narration of events would not have been unfamiliar to Prince Edward, son of Henry VI, who used very similar language to rebuff York’s claim to the common weal.

The process of European state formation in this period was not “simply one of increasing state power and control – the measure most stressed by historians.” In the longer term, the stability of the state depended on the integration of the subject. Integration was perhaps most easily achieved by a ready acceptance of the subject’s right of petition and by a more consensual approach to government. “What distinguished the European experience of state formation from societies elsewhere, and what perhaps explains its comparative success, is this emphasis on the rights of the subject. To that extent, it is tempting to speculate that the real pattern of state formation in Europe was characterized not by the establishment of state absolutism but by the

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823 BL MS Egerton 2642, f. 80.
integration of the subject. If so, the influence of the common man on the development of the state in England, Germany, and Sweden is central to the European experience. Castile, and subsequently Spain, deviated from this pattern of integration and, as a result, required significantly more time to develop a healthy and stable state. Subjects integrated into the development of the state in England because they had recourse to languages of communal representation and civic participation that validated their involvement in the political community. When they looked to their past, they discovered that the tree of commonwealth had deep roots indeed.

824 Blickle, Ellis, and Österberg, “The Commons and the State,” 153.
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