

1. A THEORY OF INSTITUTIONAL EMERGENCE: FUNCTIONAL FUSION AND THE ORIGINS OF PARLIAMENT

How do institutions emerge to become central organs of governance? A precocious literature examines institutional change and institutional effects across domains, from politics to economics.¹ Representative institutions have been studied exhaustively, but their long prehistory has enabled scholars to take their structure for granted and to focus instead on their consolidation, spread, transformation over time, and impact.² So, the question of origins remains relatively neglected, despite calls drawing attention to their importance.³ That matters, because implicit assumptions about the origins of representative institutions invariably affect—and, I argue, distort—the causal arguments applied to other stages of institutional analysis, including in the modern period. This is a different facet of the pathology dissected by the historian Ernst Bloch, as “the idol of origins:” the assumption that an account of origins explains the present.⁴ I argue here that origins are often inversely related to the outcomes of concern in the present.

Most typically, representative institutions are explained as a function of societal strength, as we expect to see in liberal democracies, and, conversely, their absence as a function of an “overstrong” ruler.⁵ Theories draw on the bargaining model with its distinguished lineage: a ruler in need of resources is forced to grant rights to social actors who control them.⁶ The bargaining logic, for instance, underlies such varying perspectives as the refinements of the bellicist logic in Tilly, Downing and Ertman, the rational actor models in Bates, Levi, Kiser et al, and the political economy models of Hoffman, Van Zanden et al.⁷ Some approaches specify the conditions under which such

¹ The literature is too large to be fully represented, but key statements within political science and economics include Steinmo (1989), Knight (1992), Weingast (1995), Hall and Taylor (1996), Thelen (1999), Mahoney (2000), Hall and Soskice (2001), Thelen (2003), Greif and Laitin (2004), Pierson (2004), Mahoney and Thelen (2010a), Williamson (1985), North (1990), North and Weingast (1989), Weingast (1995), Rodrik, et al. (2004).

² In history, the literature is ever greater, but the major recent statements on government and parliament are Bisson (2009) and Maddicott (2010).

³ Knight (1995), Pierson (2000b), Thelen (2003), Waldner (2003), Capoccia and Ziblatt (2010), Knight (1995).

⁴ Bloch (1953).

⁵ De Long (2000).

⁶ Schumpeter ([1918] 1991), Bates and Lien (1985), Levi (1988), Van Zanden, et al. (2012, 6, 13).

⁷ Tilly (1990), Downing (1992), Ertman (1997), Bates and Lien (1985), Barzel and Kiser (2002), Kiser and Barzel (1991), Levi (1988), Hoffman and Rosenthal (1997), Van Zanden, et al. (2012).

bargaining can more optimally occur; Stasavage, for instance, demonstrates the effects of distance.⁸

These assumptions also influence the burgeoning literature on non-democratic regimes, such as on the resource curse.⁹ Often, claims about societal and ruler strength have to be made without independent measures of either variable; the strengths of society or the state are then deduced from the presence or absence of representative institutions.¹⁰ In any case, the bargaining hypothesis underlies most approaches across the social sciences. It is important, therefore, to know if the cases that generated this theory—the European historical precedents—do indeed support its causal logic.

These approaches ultimately stem from the belief that the “third estate” was the main agent of progress. The assumption is the bedrock of most liberal and Marxist historiography, drawing on classic statements by Adam Smith, Augustin Thierry, and others, with different versions emphasizing either the middle or the working classes.¹¹ Increasing prosperity endowed these groups with greater material powers, strengthening their bargaining position and capacity for collective action, and leading them to demand greater political powers, in such accounts. Such developments did take place; the question is how do these explain *representative institutions*? We cannot deduce the emergence and consolidation of regular institutions structuring governance in an inclusive way from material change alone.

Answering this question requires three prior steps. First, I define the dependent variable with some precision. Then I assess the theoretical perspectives that draw on the above assumptions, both functionalist and conjunctural, and evaluate the evidence used to support them, concluding they are insufficient. Finally, I show how my argument addresses the weaknesses of alternatives and move to demonstrate the principles of functional fusion and institutional layering through a comparison of the English Parliament and Paris *Parlement*. I supplement this account by a sub-national analysis of France in Appendix B: provincial variation in institutional form allows additional tests of the logic proposed. Indeed, we find that the cases that survived, displayed stronger elements of institutional fusion.

1.1. Dependent Variable Defined: Polity-Wide Representative Institutions

A premise of this book is that we need to distinguish between the process that generated representative *institutions* (the subject of Part Two) from that which generated

⁸ Stasavage (2010).

⁹ Gandhi (2008), Ross (2012).

¹⁰ For instance, in Kuwait “ruler autonomy” suppressed representative institutions: the discovery of mineral resources obviated the need of “concessions” to citizens; Gandhi (2008).

¹¹ Smith ([1776] 1976), Thierry (1853). In more recent scholarship, the third estate was not an “agent,” only conditionally conducive to democracy Moore (1967), Rueschemeyer, et al. (1992); c.f. Collier (1999).

representative *practices* (the subject of Part Three); the former depend on the most powerful social actors, who were not strictly representative, whereas the latter involve broader social groups, who were. The distinction allows us to avoid the functionalism that besets many explanations.

Moreover, the term “representative” should be cautiously used regarding the Middle Ages, to avoid anachronism. Whereas today we identify the concept with elections, a body representing the whole electorate, and an executive that is accountable to the people, these restrictions did not fuse until after the early modern period. The concept of “trusteeship” that undergirds modern democratic politics cannot be projected into the past.¹² Rather, medieval conceptions of representation could either be descriptive (when similar individuals stand in for each other); symbolic (when the most prestigious part of society embodies the lesser); or could denote authorization or delegation.¹³

In practice, the most important distinction was whether representatives were sent by their communities with full powers to commit them to what the king requested (*plena potestas*) or whether they had an *imperative mandate*, i.e. strict instructions, typically to hear and report, stripping them of the authority to bind the community to a central decision.¹⁴ Although the latter format appears more “democratic,” it was least conducive to effective governance and encouraged fragmentation across the polity. Only where central decisions were uniformly binding across the polity can we conclude that parliament was the central organ of governance, rather than just a bargaining device with groups that were socially and geographically separate—a condition that does not drastically differentiate Europe from other regions.

Most literature, by contrast, classifies assemblies on the basis of criteria that proved critical for the later, modern history of effective representation: inclusion of the third estate, voting, collection and administration of taxation, veto power, frequency of meetings, even election of the executive.¹⁵ However, the pattern that emerges from the historical record is that the more advanced an institution on radical dimensions such as these, the less long-lived it was—these features therefore do not correlate with the consolidation of the institution overtime.

The question answered by this book is not how representative practice emerges in general—on which, Blockmans’ challenge to top-down theories is dispositive: he shows how even “emancipated communes of free peasants gradually developed representative systems from the bottom up.”¹⁶ Instead, the question here is how such a system can emerge and survive at the supra-local level, whilst integrating not only communes of peasants, but urban dwellers, and landholders as well, i.e. a diversified society. An

¹² Burke and O'Brien (1968, 115).

¹³ Tierney (1983). It is only after the sixteenth century that the concept of Parliament representign the whole people, especially the Commons, emerged Smith ([1581] 1982)

¹⁴ See Part 3.

¹⁵ Van Zanden, et al. (2012), Stasavage (2010), Herb (2003).

¹⁶ Blockmans (1998, 34).

underappreciated difference is how most continental assemblies only included the towns, not the broader countryside: England was different on this front.¹⁷ Explaining how this set of conditions came about—a narrative of emergence—is key to explaining the comparative advantage of the English system and why it survived periods of extreme pressure and evolved, unlike its continental counterparts. The logics of emergence and consolidation are intricately linked.

1.2. Functionalist Theories of Institutional Origins and their Limits

The explanations that rely on bargaining logic connect actor preferences, strategic constraints, and resources through the dynamic of war and taxation. But explanatory models based on bargaining are essentially functionalist: the institution emerges because contracting parties need to exchange goods (rights for resources) and rulers are not strong enough to secure them without concessions. Representative institutions are absent or weak when the ruler is powerful enough to dispense with societal resources. A direct, linear relation exists between the need and the outcome—although, critically, it is the need of the ruler that is the driving force. Where conditions were favorable, as in England, Parliament emerged; where not, absolutism prevailed.

Functionalism conceives institutions as organizations: “specific groups of individuals pursuing a mix of common and individual goals through partially coordinated behavior,” and organized around their “own internal institutional structure” shaped by a set of “rules, norms and beliefs.”¹⁸ Others call these formal institutions, as products of purposive action, and it is this definition I adopt.¹⁹

That functionalist explanations attribute a specific function to an institution (in this case, the intermittent need for taxation), however, is not in itself problematic. As the result of deliberate human action, institutions could hardly be assumed *not* to serve some function. Some institutions do form to serve intended purposes.²⁰ The problem is instead when functionalism is taken to imply that if an institution currently serves a major purpose, this was necessarily the *original* function it served.

Continuity of function is not an unreasonable assumption in advanced states with high infrastructural power.²¹ Under conditions of low institutional development, however, the assumption is problematic and discrepancies between original and later functions are not surprising. Many scholars address this problem through the concept of unintended consequences:²² an institution may develop new functions and purposes over time, not

¹⁷ McIlwain (1932, 691).

¹⁸ North, et al. (2009, 15-6).

¹⁹ Pierson (2000b).

²⁰ Pierson (2000a, 13-14).

²¹ But see Mahoney and Thelen (2010a).

²² Tilly (1990, 90), Acemoglu, et al. (2005, 425-7).

intended by its founders. But how new functions ultimately come to serve major social goals, like representation, often remains unexplained. It is both odd and inaccurate to describe representation as unintended. Some social actors *must* have intended it.

Functionalist bargaining explanations of the rise of parliament, however, cannot address two further key questions. First, for social groups to counteract central authority, they must be able to act collectively.²³ Even when distance was not inhibiting,²⁴ the question remains how typically fractious social groups solved their collective action problem and opposed the ruler in tandem. Moreover, existing models cannot explain why groups would request collective rights, rather than individual rents, as widely observed both historically and in the modern world.

Second, why should an *institution* emerge out of such bargaining dynamics? Institutions, by definition, require regularity. Bargaining happens when rulers face military pressures, but these are intermittent, as I show in this chapter. So why would resource-holders have any incentives to make such bargaining regular, when that carries the risk of regularizing tax demands (as indeed happened)?²⁵ Subjects consistently demanded that taxation remain rare. Kings were forced to use this as a bargaining commitment. When they demanded taxes, they had to claim that taxes would not be re-imposed, would not create precedent, and would only be raised in case of emergency.²⁶ We know the English king promised aid or a subsidy would not be asked again in 1237, 1242, 1298, 1332 and in 1348 and surely on other occasions too. Demands for consent were certainly made; but they are not the same as demands for an *institution* to regularize the exchange.

We often assume demand for representative institutions would be strong because we tend to assume that institutionalized bargaining allows social groups to impose harder limits on ruler extraction. However, chapter 9* shows this assumption is wrong: polities with centralized assemblies extracted higher amounts per capita not just in this period, but into the Early Modern one as well.²⁷ So, this explanation also founders.

Further, although war is often characterized as a “common good,”²⁸ this was not the case when wars were dynastic, i.e. not “national.” Collective action thus should be harder to generate. Subjects’ preferred strategy towards taxes should be avoidance and shirking, increasing the ruler’s extraction costs—not supporting an institution. Such

²³ Olson (1965).

²⁴ Stasavage (2010).

²⁵ Contamine (1976, 247).

²⁶ Harriss (1975, 427, 431), Baker (1961, 28-9), Prestwich (1990, 122), Mitchell (1951, 59), Matthew Paris (1852, 401-2). Castilian kings affirmed the same, for instance in 1277 and 1282; O’Callaghan (1989, 131). An exception is peacetime taxation, but, as we will see, this is less tied to representative outcomes in the early stages.

²⁷ The point is also strikingly demonstrated for the post-1660 period in an econometric study by Dinuccio (2011). Hoffman and Norberg (1994) argued this point for the fifteenth century.

²⁸ Besley and Persson (2011).

dynamics should appear even more strongly in states with decreased security concerns, such as some hold England to be;²⁹ yet this is where representative institutions were strongest. Shorter distances certainly made interaction easier, but they did not necessitate collective action.

Rulers certainly had strong incentives to institutionalize interaction as long as their purposes continued to be served, as they did in England, but social actors originally had contrary incentives, so no self-sustaining equilibrium could emerge. In short, a regular institution integrating two parties requires a regular demand by both parties. Yet even a regular need for an institution does not suffice to explain its emergence, as functionalist approaches assume.³⁰

1.3. Conjunctural and Path Dependent Explanations, and their Limits

Better empirically grounded are approaches based on path dependence, as they explicitly theorize temporality and sequencing. They integrate history and highlight the long-term effects of small or contingent events.³¹ Existing theories draw on factors such as historical legacies, timing, the pressures of war and geopolitics, and the extent of commercial development. Examined more closely, however, existing scholarship takes the existence of representative institutions for granted and proposes hypotheses about the interaction of pre-existing assemblies with other dynamics to explain the survival of constitutionalism under geopolitical pressures. In all these approaches, thus, parliamentary institutions are either exogenous or insufficiently explained.³²

In Downing's account, constitutional regimes survived if medieval representative institutions³³ escaped the pressures of the sixteenth century Military Revolution³⁴ and if rulers were able to raise financial support externally, through loans, rather than internally, through coercion. The classic case was England. Ertman's explanation emphasized instead historical legacies and the timing of warfare: where a tradition of local, territorial representation existed when geopolitical pressures began, as in England,

²⁹ See footnote *

³⁰ Pierson makes the same point regarding efficiency; 2000a, 264).

³¹ Pierson (2000a), Pierson (2004), Mahoney (2000).

³² This applies to distance-based approaches as well: that assemblies are likelier in small areas does not explain why they emerge there in the first place.

³³ Medieval constitutionalism refers to the "system of decentralized government that obtained in most of Western Europe in the late medieval period," and which was predicated on the representative assemblies that are found throughout Europe Downing (1992). The widespread prevalence of assemblies, estates, diets and other forms of institutions with consultative or administrative functions across Europe has long been pointed out by historians; Guizot (1861, 10), Lord (1930), Blickle (1997), Blockmans (1978, 192), Marongiu (1968).

³⁴ The "military revolution" "refers to the process whereby small, decentralized, self-equipped feudal hosts were replaced by increasingly large, centrally financed and supplied armies that equipped themselves with ever more sophisticated and expensive weaponry;" Downing (1992, 10).

Poland and Hungary, rulers could depend on this robust participatory tradition to meet military pressures.³⁵

But such approaches leave the basic, underlying question—why England had representative institutions early on—unexplained. Either the tradition of “medieval constitutionalism” is considered exogenous, as in Downing; or it is considered a function of pre-existing local organization, as in Ertman. The latter view posits that local organization was hampered where the Carolingian legacy was strong, as on the Continent: there, estate divisions between the nobility, the clergy, and the burghers (the tricursal system) were pervasive and territorial ties weak. On the periphery of such legacies, especially England, local, territorial ties were strong, leading to a stronger representative structure, through a bicameral system.

A historical legacies account, however, still needs to explain why local organization in England aggregated to central representation in the first place. Why, absent a pressing geopolitical threat and given England’s insular location, did the English nobility and clergy agree to attend a central institution regularly and, as we shall see, procure the crown with multiple times per capita the amounts in taxation that French assemblies did—*especially* if local organization, and therefore local servicing of needs, was strong? And what were the incentives for broader social classes to be consistently present in central institutions that initially gave them few powers to shape outcomes? How do strong local ties aggregate to a robust central institution? Foremost, how can we explain a regular institution emerging out of the irregular interactions regarding taxation?³⁶

Moreover, incentives were not uniform across social classes; different ones applied to broad, popular groups (the “Commons,” comprising both cities and countryside) and to the elites (the nobility or “Lords,” which included the upper clergy, and the king), though they all stemmed from tenurial ties.

1.4. Solutions: Collective Action, Incentives, and Territorial Organization

For it is written that, if we shall be divided, immediately we shall perish.

—Robert Grosseteste (bishop, theologian, philosopher, statesman) to bishops in 1244.³⁷

³⁵ Ertman (1997).

³⁶ Infrequency was a “familiar feature of the French Estates General—being summoned only in time of crisis;” Henneman (1970, 46).

³⁷ Wilkinson (1977, 374).

A theory that successfully overcomes these concerns must therefore meet three main conditions. It must explain how social actors solve their collective action problem and why they successfully organize to oppose the ruler, instead of shirking any burdens. It must explain where the incentives to regularize institutionalized exchange originate, since we can't deduce a regular institution from irregular demand. It must also explain why the greater "territorial," i.e. local, organization in England, if that is what it is, translated into more efficient action at the center.

So how is the collective action problem solved? The key, I argue, is social ties of dependence to the ruler, which endow actors with common interests. In England, social groups were able to act collectively because the tenurial system of land distribution imposed a common frame of obligations. The freeholders, especially the lay and ecclesiastical nobility, held land of the crown and were bound to the performance of certain duties. France had the same tenurial regime as England did;³⁸ but it was weakly and inconsistently enforced, because the French crown was weaker.³⁹

More specifically, institutions consolidated where the ruler could compel the nobles to contribute to taxation: no taxation of the nobility, no representative governance. If the most powerful actors had no incentives to institutionally engage the ruler, a polity-wide parliament would either not consolidate, as in France, or it would not become an inclusive organ of governance, only a sectorally-specific one, as in Castile (where only towns were summoned). Ruler capacity to compel, in turn, was predicated on controlling land, which was the critical economic resource.

How did regularity materialize? Royal preponderance of power alone cannot generate results. Incentives had to systematically motivate behavior in subjects, especially when the top-down demands from power-holders were intermittent, as were those related to financing war, and when those taxed had counter-incentives to avoid institutionalizing this exchange, since extraction was heavier where it was institutionalized, not more "limited."⁴⁰ Given contrary incentives, a potent mechanism generating institutional regularity was necessary. Such regularity in premodern Europe, I argue, came from judicial concerns, primarily about land, which applied across social orders—as remains the case in the developing world.⁴¹ Without these "bottom-up" incentives, conditions for institutional consolidation were absent.

Institutional variation between England and France thus lay in the kings' differential ability to oblige their subjects, including the nobility, to participate in the judicial functions of his courts. Judicial duty made noble presence in parliament regular, so parliament was the obvious forum for the king to also demand taxes. This generated

³⁸ Lemarignier (1970, 329-337).

³⁹ Appanages, check theory of land right. *alternative theories: distance.

⁴⁰ See Part 3.

⁴¹ Land and tenure are increasingly the focus of studies in the developing world, not only as fundamental loci of conflict, but also as structuring institutions and politics; Boone (2014), Albertus (2015).

“institutional layering,” which I explore in greater detail in the next section. In France, as nobles and broader representative groups were scarce in the judicial institution, a separate political/fiscal institution was needed, the Estates-General. This was irregular, however, being called only when taxation was required, so it never became the central institution of governance in the polity.⁴² Hence the greater judicial centralization in equivalent English institutions explains the differential path between the English Parliament and the Paris *Parlement* and Estates-General.⁴³ Although the English Parliament is typically considered a political institution, it had the same judicial origins as the Paris *Parlement*.

Judicial centralization does not explain only the solution to the collective action problem and to asymmetric incentives; it also explains how the territorial, participatory organization that authors have stressed for the English case was effectively integrated in a central political system culminating in Parliament.⁴⁴ This local organization is assumed to be predicated on the voluntary, local, consensual, and less centralized governance believed to undergird England’s constitutional tradition already in the Middle Ages—epitomized by the “amateur” official.⁴⁵ This view also sustains the assumption that the English state was “small” or “weak.”⁴⁶ However, this assumption about the English system must be qualified by the obligatory character of English offices, judicial ones in particular, which flowed from tenurial duties. The obligatory contribution of locals to royal governance was remarkable, as I show in the next chapter.

Over time, office generated rewards to its holders and thus incentives to sustain the system, but this was endogenous to original compulsion. In the meantime, however, service generated multi-layered ties to the center. These patterns explain why local governance was so well-integrated with the center.

1.5. Functional Fusion and Institutional Layering

The interaction of the above factors enabled a pattern of institutional layering and functional fusion in the English case that was central to its survival over time.⁴⁷ Institutional layering is a form of institutional emergence. In layering, change occurs when new institutions are superimposed over pre-existing structures that have achieved lock-in; the combination may lead to new institutional directions and procedurally fuse formerly distinct functions. Observed across different domains, layering accounts for path-dependent institutional change without reliance on increasing returns. Similar initial

⁴² The *Parlement* judges of course eventually became the nobility of the robe, but that was a later development.

⁴³ In both England and France, the term referred to assemblies where the king spoke (*parler*) or to courts; Harding (1973, 87), Langlois (1888, 99).

⁴⁴ Ertman (1997).

⁴⁵ White (1983, 805), Ertman (1997, 16, 172).

⁴⁶ Brewer (1989, 15).

⁴⁷ Thelen (2003, 225-8).

conditions lead to widely divergent outcomes due to variation, for instance in asymmetries of power between actors (here, rulers and ruled).⁴⁸

Most examples of layering, however, involve an antagonistic relation between the institutional layers. In such instances, the different layers work at cross-purposes and inhibit smooth, linear change. Layering is thus promoted by weaker actors seeking to subvert the status quo, as they are not strong enough to radically change it.⁴⁹ In my account, however, the logic is slightly different: an institution, combining more than one function, consolidates because one function necessitates procedures that compensate for the weaknesses of the other function, which may later become dominant.

The institutions that were regular, across cases in Europe, were the judicial ones, which responded to constant bottom-up demand. As we will see in more detail in chapter 7*, such demand was the major preoccupation even in documents like the Magna Carta. This regularity also institutionalized interaction by including the social actors most capable of constraining the ruler, the nobility. Where fiscal and political functions were later superimposed on this interaction, they too gained regularity and were thus institutionalized. The key to English institutional development thus is that Parliament combined functions under a single institutional frame, thereby securing longevity to certain practices (namely representation) which elsewhere, as in France, were consigned to an irregular institutional framework: the Estates-General were only called when taxation was needed, which was an irregular event.

Functional fusion, in other words, was key to institutional consolidation. This is surprising, however, as modern constitutional theory emphasizes the importance of separation of powers.⁵⁰ Institutional *emergence and consolidation*, on the other hand, prescribes the opposite. In conditions of low political development, institutional autonomy may impede growth, rather than secure it. This is one more case of the normative/empirical inversion I discuss in the conclusion. Norms that appear fundamental for a political order are often directly contrary to the empirical conditions of its emergence. In the following section, I present this empirical context in more detail.

⁴⁸ Pierson (2000a, 259).

⁴⁹ Schickler (2001, 15-16), Thelen (2003, 226-8), Mahoney and Thelen (2010b, 25-6, 29). For instance, layering occurs in private-sector social services that develop alongside public-sector ones and undermine middle class support for the latter, Rothstein (1998); or in transitions from communism in Eastern Europe, where old institutions survived under new formations; Stark and Bruszt (1998).

⁵⁰ Vile (1967). Its absence in the English political system until the modern period is discussed in Jay (1994).

1.6. The English and the French Parlements: Paths of Institutional Layering and Fusion

Of the three conditions required for institutional emergence—regularization, solution to the collective action problem, and territorial anchoring—regularization can be explained by showing the variation in functional fusion between the English and French institutions; the other two are closely linked to this process and examined below.

The medieval English Parliament and the Paris *Parlement* are considered different types of institutions, despite their common name. The former is the central institution of English constitutional governance, with a political and legislative function. The French institution is instead a judicial court, with an initially restricted regional jurisdiction.⁵¹ It is either considered a bastion of aristocratic reaction and instrument of the crown;⁵² or, following Montesquieu on the later period, it is taken as the French version of “intermediary powers” that counteracted the monarchy, despite lacking a popular mandate.⁵³ French political and fiscal functions devolved to representative assemblies instead, the Estates-General and other local institutions, which were also called *parlamenta* in the early period.⁵⁴ As the general Estates were infrequent and were ultimately suppressed, the French pre-modern regime is classified as “absolutist,” whilst its English counterpart became the prototypical representative regime.⁵⁵

Both institutions originated in the king’s court, the *curia regis*, and its outgrowth, the King’s Council, a small group of magnates and officials that helped the king govern.⁵⁶ The Council is where political and military decisions were taken, where “counsel and aid” were given.⁵⁷ The “parallels between the development of [the English parliament] and the growth of the French king’s *parlement* are unmistakable.”⁵⁸ Both institutions

⁵¹ Bisson (1969).

⁵² Lot and Fawtier (1958, 580). Cf. .

⁵³ Montesquieu. Ducoudray (1902, 21), Swann (1995).

⁵⁴ Rigaudière (1994, 164).

⁵⁵ The functions of the English Parliament were bitterly debated in English historiography: two historians emphasizing the judicial functions of Parliament, as here, were deeply conservative Richardson and Sayles (1981). Yet the argument originated with Frederick Maitland, who was squarely in the nineteenth century liberal tradition; Fifoot (1971). A strong reaction against the judicial interpretation prevailed; Boucoyannis (2015). However, the historical evidence in its favor was incontrovertible. For instance, “chancery clerks restricted the term *parliamentum* to royal assemblies in which justice was rendered” and records of parliament (called rolls) were “almost exclusively concerned with judicial business” up to 1316; it was the king’s summonses that prioritized politics and money; Spufford (1967, 15-6), Langmuir (1966, 52). Most historians today acknowledge the role of justice, but place it in the context of other functions, as done here. No such tensions exist in French historiography.

⁵⁶ Shennan (1998, 14), Ducoudray (1902, 22-46), Fayard (1876), Langlois (1890), Doucet (1948, 167). For the royal Council, see Lot and Fawtier (1958, 75-82), Lapsley ([1914] 1925, 8), Tout (1920, 146-9)*check Tout, Maitland, Clarke.

⁵⁷ (Harding 2002, 171)Bisson (1973).

⁵⁸ Harding (2002, 170), Fawtier (1953, 275).

originally had political, i.e. consultative, administrative, and fiscal functions, a fusion definitively described for the French case by the historian Thomas Bisson and the English one by John Maddicott.⁵⁹ The *Parlement* even issued incessant diplomatic missions to European crowns and mediated disputes between French kings and feudal vassals or foreign rulers⁶⁰—precisely because conflict was becoming judicialized.⁶¹ In the following sections, I show how legislation, justice, and petitions were key to the functioning of both institutions—but taxation was only integrated in the English one.⁶² In the next chapter, I explain this variation and how it shaped the institutional trajectory of both regimes.

i. Legislation

Being present when the law of the land is being shaped was a major incentive pushing subjects to attend the royal court, even before Parliament emerged. In England, fifty-two magnates attended the Assizes of Clarendon in 1166, discussed below, with retinues at about thirty-five, bringing the total to approximately eighteen-hundred people.⁶³ A century later, up to eight hundred nobles, heads of religious houses, and local representatives—“many earls and barons and innumerable people” in the words of a contemporary chronicler—joined the promulgation of the Statute of Westminster I and other similar events⁶⁴ and then disseminated the information locally through the county court system.⁶⁵ By contrast, the French king could not summon more than thirty magnates for his few polity-wide ordinances pushed by popular demand, such as those on Jews, despite having about four times the population.⁶⁶

The legislation announced in court shaped the English Common Law, which was mostly land law in its origins. Common Law is typically identified with case law and is presumed to be judge-made;⁶⁷ however, a series of statutes (in fact, either writs or charters) were also issued by the king in his court and eventually Parliament itself in the

⁵⁹ Bisson (1969), Maddicott (2010). A major recent statement is Hébert (2014).

⁶⁰ Ducoudray (1902, 319), Aubert ([1890] 1977, 187-226)

⁶¹ Bisson (1969), Bisson (1972, 547-8).

⁶² These similarities raise the question of diffusion. The term *parlement* appears in both countries in the 1230s; in the 1250s Henry III appealed to the *Parlement* concerning his lands in Gascony, which he held as feudal vassal of the French king, and continued to send proctors to represent him; Harding (2002, 163, 152, 170), Richardson and Sayles (1981, 170-2). Edward I had representatives in the *Parlement* to monitor his landed interests as well; Powicke (1953, 287-93, 296-8, 310-13). The practice was part of a common European tradition, stemming from Church practice, as I explain in chapter 6*. Its incidence only varied locally. Arguments about diffusion don't affect prior causal explanations, however, as key conditions need to be present if diffusion is to succeed.

⁶³ Bartlett (2000, 144).

⁶⁴ Maddicott (2010, 244, 292).

⁶⁵ Maddicott (2010, 448).

⁶⁶ Rigaudière (1994, 127), Lot and Fawtier (1958, 290-1).

⁶⁷ This was often the case; Procter (1936, 533).

thirteenth century, some of which continue to shape English Law.⁶⁸ Its origins are traced to Henry II (1154-89); even if it was not the product of deliberate action by Henry but an unintended consequence of his drive to rule,⁶⁹ for “most legal historians it is the period when it first becomes possible to recognize the existence of an English “Common Law.”⁷⁰

In social science, on the other hand, the growth of English land law has been explained by North, Wallis, and Weinstein as a process where “the dominant coalition manipulates the economy to provide the incentives for powerful individuals not to use violence.”⁷¹ But this view cannot account for some surprising aspects of the emerging law: it empowered weak tenants to act against powerful lords, a “remarkable fact;”⁷² common tenants had far more security than tenants-in-chief;⁷³ it subjected the nobility not simply to the same but often to more onerous impositions;⁷⁴ thus applying to all social orders throughout the realm.⁷⁵ Indeed, at least after the 1150s, tenure was more commonly disrupted at the top of society.⁷⁶

Royal law generated royal courts that removed judicial business from local courts and thus undercut the power of the local lords in a manner that French kings were unable to do. Royal jurisdiction was asserted over all serious crimes and most land disputes held by free tenure through the Assizes of Clarendon (1166) and Northampton (1176; an assize was a session of a court of justice).⁷⁷ Two profoundly important and popular legal forms of action, *novel disseisin* and *mort d’ancestor*, protected tenant rights and the power of the crown to control them: all such actions could only be initiated through a royal writ and be tried in a royal court, as discussed further in the next chapter.⁷⁸

The next momentous steps in the formulation of Common Law saw the most critical stage for institutional consolidation, after the 1260s.⁷⁹ Parliament gradually formed in England between the 1200s and 1295.⁸⁰ In 1275, the king passed the Statute of

⁶⁸ Baker (2002, see list of statutes, pp. xiii-xix and chapter 12), Harding (2002, 186-90).

⁶⁹ Milsom (1981), Milsom (1985). The judicious conclusion is that he was “the driving force” of reforms, even if not the direct origin of all of them; White (2000, 215), Hudson (1994), Hudson (2012), van Caenegem (1988), Brand (1997).

⁷⁰ Brand (2007), Hudson (1996a, 22-3).

⁷¹ North, et al. (2009, 77).

⁷² Milsom (1981, 139), Hudson (2012, 856).

⁷³ Hudson (1994, 280*), Hudson (1996b, 209-12, 219*), Hudson (2012, 848), Harding (2002, 132).

⁷⁴ Holdsworth escheat.

⁷⁵ Hudson (2012, 849).

⁷⁶ Holt (1972, 30-6), Holt (1982, 207-10), Holt (1983), Hudson (1994, 59).

⁷⁷ (Rigaudière 2003, 126).

⁷⁸ Cam (1962, 96).

⁷⁹ Maddicott (2010, 233ff).

⁸⁰ Maddicott (2010) sees “The First Age of Parliamentary Politics” as starting in 1227. 1295 is the conventional date at which key elements of Parliament are in full formation; hence the term, “Model Parliament.”

Westminster I in Parliament, dealing with an array of civil, criminal, and administrative matters, from debt, to slander, extortion, murder, rape, and the timing of assizes. The Statute, “promulgated in a crowded parliament, marked the growing importance of that assembly as a focal point for reform and contact between king and subjects.”⁸¹

Further ground-breaking legislation responded to magnate demands.⁸² Westminster II (1285) enabled land-holders to bequeath property across generations and to foreclose its alienation, through the legal mechanism of entails—a law that shaped English land-holding until its abolition in 1925 and that undergirded the eventual entrenchment of the landholding class.⁸³ Another major statute, *Quia Emptores* of 1290, blocked fief-holders from acquiring subtenants, i.e. ended the practice of subinfeudation that expanded the feudal hierarchy and diluted the rights of lords and the king—and is still in force.⁸⁴ But this measure that protected lords from the “uncontrolled alienations of their tenants”⁸⁵ also asserted direct royal control over all subjects. Further, the same year, a country-wide royal inquest (*Quo Warranto*) asked with what warrant lords held their lands and jurisdictional rights over subjects—an enquiry pursued by rulers across Europe, but which English kings were better equipped to implement. These were, however, interactions with the nobility: “The legislation...of the reign of Henry III, and most of that of Edward I, was the work of assemblies to which the commons were not summoned.”⁸⁶

Ironically, in France, the land identified with codified law, records of concrete legislation are scanty.⁸⁷ Customary law was mostly codified privately at the time, by practitioners who redacted collections called *coutumiers*.⁸⁸ Jurisdictional fragmentation contributed to that. Not much royal legislation survives from the 11th and 12th centuries,⁸⁹ whilst magnates had the right to also legislate in their domains.⁹⁰ Royal legislation that applied throughout the kingdom was mostly religious (as were the first Estates-General in the early 1300s), such as the ordinances on Jews; as mentioned, even these were signed by no more than 26 barons.⁹¹

When law on property was passed, as in 1209 or 1210 on the succession of fiefs, it was limited to the royal domain. The king had no monopoly on this issue; “he could not

⁸¹ Coss (1989, 47).

⁸² Miller (1960, 17).

⁸³ The Statutes of the Realm 1810, 71-95).

⁸⁴ Megarry and Wade (1975, 32).

⁸⁵ Raban (2000, 124).

⁸⁶ Stubbs (1880, 259).

⁸⁷ In fact, this is precisely why codification was later necessary, to overcome the tremendous diversity of France’s mostly customary, regional law; Dawson (1940).

⁸⁸ Cohen (1993, 28-39), Rigaudière (1994, 135-138).

⁸⁹ Ordonnances Des Roys De France De La Troisième Race 1723).

⁹⁰ Beaumanoir (1900, nos 1499, 1513).

⁹¹ Lot and Fawtier (1958, 291).

place the ban in the land of a baron without his consent,” as affirmed in the *Établissements* of Saint Louis.⁹² In England, by contrast, the Assize of Northampton in 1176 was enforced in thirty-four out of thirty-seven counties.⁹³ These restrictions also account for the legal particularism that gave the French nobility a privileged legal status compared to commoners.⁹⁴ Towns, however, also striving to contain the nobility, accepted royal legislation, for instance regulating the corruption and incompetence of town governments—though not without resistance.⁹⁵ This jurisdictional variation eventually shaped representation in the Estates: the nobility was not effectively integrated and the Third Estate only involved towns, not the countryside.

ii. *Judicial*

“The king has his court in his council in his parliaments, when prelates, earls, barons and others learned in the law are present. And doubts are determined there regarding judgment, new remedies are devised for wrongs newly brought to light, and there also justice is dispensed to everyone according to his deserts.”

Fleta, late 13th c.⁹⁶

In a period where the law was discovered, not made, legislation originally flowed from adjudication.⁹⁷ This judicial function was central to both institutions. The English institution became after all the “High Court of Parliament,”⁹⁸ a role taken up by the House of Lords until the formation of a Supreme Court in 2005, but an aspect of Parliament typically neglected. Most legal cases were already diverted to two institutional outgrowths of the king’s royal court, the King’s Bench and the Court of Common Pleas by the 1200s. The popularity of the royal court in general as an adjudication center is attested by the fact that “suitors paid money to the king to have their cases tried there,” and by “the number of fines which litigants paid for writs, for pleas, for trials, for judgment, for expedition, or for delay.”⁹⁹

But in the sessions to which the term “Parliament” was applied, kings dispensed extraordinary justice “and this on a very large scale,”¹⁰⁰ on matters as varied as land leases, fines, disputes between nobles, bishops, and laity, city franchises, reprisals against

⁹² Rigaudière (1994, 127), Lot and Fawtier (1958, 290-1).

⁹³ Maddicott (2010, 400).

⁹⁴ Rigaudière (1994, 162-3).

⁹⁵ Bisson (1969, 360).

⁹⁶ *Fleta* is a treatise on the Common Law; Fleta 1955, 109).

⁹⁷ Musson and Ormrod (1999, 147).

⁹⁸ The term is first recorded in 1399; Given-Wilson, et al. (2005, Oct. 1399 2nd Roll §9. m. 2), McIlwain (1910).

⁹⁹ Holdsworth (1923, 48).

¹⁰⁰ Maitland (1893, lxxxiii).

foreign enemies, corruption of judges and royal officials and more.¹⁰¹ The cases heard there were deemed “important,” either because they concerned magnates or the king himself, or they involved “grave questions of public law,” or they required the king’s equity.¹⁰² Hence the term “parliament:” it meant “the king talking” (*parler*). This was a process that, as William Stubbs noted, did not, in the beginning, include the Commons.¹⁰³

Nobles thus had strong incentives to be present at court. Their property disputes were decided there, but they were also personally tried there,¹⁰⁴ not least after the law of treason expanded in scope from the mid-fourteenth century.¹⁰⁵ The Parliament which tried the last native Prince of Wales, in 1283, attracted the highest number of nobles known to have been summoned, one hundred and ten.¹⁰⁶

The essential role of the French king was also that of “grand justicier,” widely attested in contemporary literature.¹⁰⁷ Louis IX (1226-70) judging under the oak tree at Vincennes, reported by chroniclers, is a classic image.¹⁰⁸ His reign was instrumental in consolidating the *Parlement* as an institution: the term was applied to the judicial sessions of the meetings of his court.¹⁰⁹

The trajectory of the French institution also devolves around feudal property, although the jurisdictional reach of the crown was far more limited than the English one. From the 1250s, matters brought to the court ranged from the mundane, like villagers complaining that the king no longer heated the banal-oven (his obligation as a feudal lord), to feudal rights of homage, hunting, and feudal justice affecting the high nobility.¹¹⁰ Conditional land-holding was a central preoccupation. Many of the *Parlement’s* judgments were “enforcements of the king’s rights to homage and jurisdiction in the fiefs of his tenants-in-chief; or the punishment of unlicensed alienations of royal fiefs, especially into the “dead hand” of the Church (churches never died, so their fiefs never escheated to the king).”¹¹¹ Ecclesiastics also complained of noble incursions, as the king had a special duty

¹⁰¹ See Sayles (1988, 21-2), for a list of such cases under Henry III (1216-72) Harriss (1981, 44-5).

¹⁰² Holdsworth (1923, 172).

¹⁰³ Stubbs (1896, 261).

¹⁰⁴ Holdsworth (1923, 40), Powell and Wallis (1968, 406).

¹⁰⁵ For the two central royal courts, see Turner (1977), Hastings (1947). Treason law allowed members of parliament to prosecute ministers of the crown and to exercise some control over the crown’s actions (Bellamy 1970).

¹⁰⁶ Maddicott (2010, 287).

¹⁰⁷ Lot and Fawtier (1958, 289), Rigaudière (1994, 188).

¹⁰⁸ Joinville (1821-7, 184-5).

¹⁰⁹ Ducoudray (1902, 22-45), Fayard (1876, 4-10), Langlois (1890, esp. p. 78), Shennan (1998, 10ff), Lemarignier (1970, 347), Lot, et al. (1957, 296-300).

¹¹⁰ Ducoudray (1902, 302), McIlwain (1932, 686).

¹¹¹ Harding (2002, 110-2, 160-64, 208), Le Mené (2000).

to protect the lands held of him. When royal judgments affected broad groups of tenants, decisions amounted to legislation.¹¹²

Traffic was so high, eligibility had to be regulated: for instance, actions to recover land seized (the same act of *novel disseisin* that helped spread the Common Law in English royal courts) were sent to the local tribunals of the *baillis* and *sénéchaux* instead (the bailiffs of north and south, respectively).¹¹³

The communes especially sought justice at the royal court, as they did with legislation.¹¹⁴ They needed royal assistance to stake out their own growing jurisdiction vis-à-vis the local lords with whom they competed for power, not least in the creation and patronage of markets and fairs. The *Parlement* was called in to adjudicate in conflicts, often splitting jurisdiction across litigants.¹¹⁵ The alliance that Hendrik Spruyt focused on in his analysis of the emergence of the state was forged through the courts.¹¹⁶

The nobility was thus affected by the growth in jurisdiction of the *Parlement*. Resistance was strong, also regarding serious crime and as the crown sought to abolish the privilege of judicial duel.¹¹⁷ Yet nobles sometimes brought their own disputes to court. In 1312, the count of Namur submitted his dispute with Charles of Valois, brother of king Philip IV, to the *Parlement*; in 1342, the duke of Lorraine and his brother-in-law did the same. The *Parlement* was also where the peers (*Pairs de France*) were judged by the king.¹¹⁸ But local seignorial conflict remained rampant, suggesting the limits of royal jurisdiction.¹¹⁹

The increasing demand even under “weak kings,” from Louis VII (1137-80)¹²⁰ to Charles VI (1380-1422), demonstrates that justice is a genuine bottom-up demand, not one predicated on the organizational powers of the crown. But this justice was delivered from a condition of relative weakness. Initially the king’s jurisdiction effectively applied only in the royal domain, around the Île-de-France, though in theory all his direct subjects could be tried in his Court, including the dukes of Normandy, Burgundy, Aquitaine, as well as the counts of Flanders, Champagne, Anjou etc. Even the English king was due in his court. But these were vassals who competed with him in strength and holdings—a power balance English kings were never forced to face.

¹¹² Harding (2002, 123).

¹¹³ Lot and Fawtier (1958, 333).

¹¹⁴ This went back to the 1140s; Lot and Fawtier (1958, 298), Harding (2002, 157).

¹¹⁵ Hilaire (2011, 287-324).

¹¹⁶ Spruyt (1994).

¹¹⁷ Harding (2002, 124), Lot and Fawtier (1958, 421-30, 296, 299).

¹¹⁸ Ducoudray (1902, 307-12), Langlois (1890, 84-5).

¹¹⁹ Firnhaber-Baker (2012).

¹²⁰ Lot and Fawtier (1958, 298).

iii. Petitions

One specific form of adjudication, however, was to prove a “momentous innovation,” in the words of John Maddicott:¹²¹ petitions flowing from subjects around the realm to the center. Petitions were the vehicle that tied local grievances to central deliberative action: “for the first time the voice of the aggrieved and of the socially insignificant could be heard at the centre of government.”¹²² It is petitions that allowed the people to contribute to government; as Stubbs noted, “Counsel and consent are ascribed to the magnates.”¹²³

Eventually petitions formed the basis for bills of legislation and statutes. This is, after all, what became the definitional function of parliament: popularly-based legislation. No account of origins can be complete if it does not account for how this link was forged. Taxation was secondary and war cannot account for the variation between the two cases, because it afflicted England, if anything, worse, as we will see.

Petitions were extra-judicial, i.e. they were used where regular law offered no remedy or where court decisions conflicted.¹²⁴ A slow trickle in the twelfth century became an unstoppable flood in the thirteenth, of requests submitted to kings to respond to grievances that could not be addressed through normal judicial channels. Addressing petitions was part of the core responsibility of rulers, a practice that was far from exclusive to western Europe and the Middle Ages, but was, instead, prevalent since antiquity from East to West and continues to this day.¹²⁵ Petitions to the Pope were a critical precedent—tens of thousands survive from this period.¹²⁶ The king dispensing justice through petitions was a central feature of medieval kingship and it is perhaps no accident that petitions are a re-emerging part of modern governance in a period of democratic crisis.¹²⁷

Petitioning was, moreover, pervasive: in England, “in the late Middle Ages assiduous petitioners sought out the king in all manner of locations and occasions, and by the seventeenth century it was necessary to provide the monarch with a special bodyguard on state days specifically to prevent unwanted (and unwashed) supplicants from thrusting petitions into his hand.”¹²⁸ French kings had clerks (*juges de la porte*) following them around the country to handle petitions submitted to them personally.¹²⁹ Parliaments transformed kings from roving to stationary judges, but itineration never ceased to be part of royal activity.

¹²¹ Maddicott (1981, 62).

¹²² Harding (2002, 147-86).

¹²³ Stubbs (1896, 260).

¹²⁴ As I explain below, Parliament did not serve as a court of appeal.

¹²⁵ For different types across Europe, see the sweeping review in Hébert (2014, 476-502).

¹²⁶ Millet (2003).

¹²⁷ Weiler (2009).

¹²⁸ Ormrod (2009a, 7).

¹²⁹ Rigaudière (1994, 150-1).

The English Parliament became the “focal point” for petitions, which were presented to the king and his Council, not Parliament per se, starting in the 1270s,¹³⁰ the same period Parliament is considered to become fully formed (Figure 1).¹³¹ This followed a process the historian Alan Harding has called “the bill revolution,”¹³² which occurred not only in France and England, but throughout Europe, from Spain, to Germany, to Poland and elsewhere; it is the level of organization that varied.¹³³ Kings would seek information about the state of their realm and the behavior of their agents through formal inquests or informal requests for information.¹³⁴ Formal, written complaints were submitted by a broad spectrum of subjects to the royal court for resolution by the king or his officers.

¹³⁰ Dodd (2007, 52), Harding (2002, 178-86), Plucknett (1940, 113-4). It was not the exclusive route, however; subjects could also appeal to queens; Musson (2009).

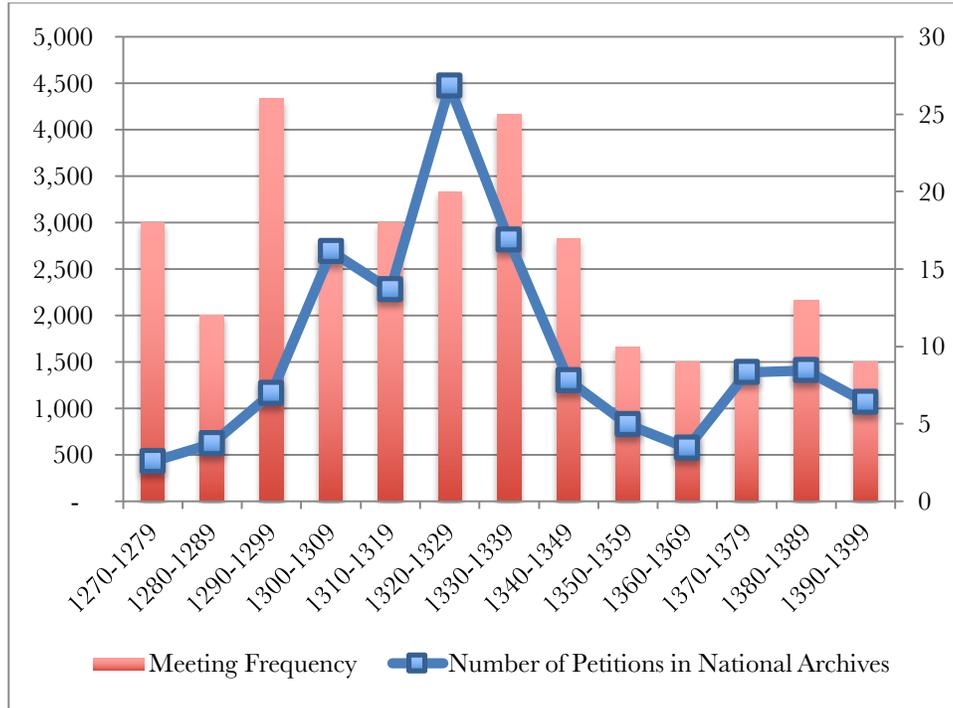
¹³¹ Maddicott (2010)*.

¹³² The *OED* defines a bill as the “draft of an Act of Parliament submitted to the legislature for discussion and adoption as an ‘Act,’” passed through a petition.

¹³³ Harding (2002, 160-190). See Dumolyn (2015), Hébert (2014, 465-496).

¹³⁴ Harding (2002, 109-28).

Figure 1: Number of Petitions and Parliamentary Frequency, England, 1270-1399



Sources: Ancient Petitions (SC8), National Archives and *. Note that the number of petitions is only the surviving records in the special collection that aggregated existing petitions.¹³⁵

Originally in England, complaining required purchasing a writ from Chancery, which authorized a legal action from a fixed number of available templates.¹³⁶ This was expensive and cumbersome. However, from the 1270s, oral complaints were accepted locally (“in eyre”) and transcribed into written “bills” that were sent to the center, thus opening the petition process to broader sections of the population and “poor people” and establishing an institutional connection between local grievance and government response.¹³⁷ This was a major step in enabling popularly-supplied legislation in Parliament, in response to vibrant bottom-up demand.

Petitions originated from all social strata, from the lay and ecclesiastical nobility to knights and burgesses and religious houses. Members of the higher nobility would press claims to lands, franchises, and money. Land disputes were brought to the king directly, since all land was held of him; major spikes came after internal war, such as the Baron’s

¹³⁵ Ormrod (2009a, 5). A major project under the direction of Mark Ormrod and Gwilym Dodd has digitized and processed the massive corpus from the period; Ormrod, et al. (2009).

¹³⁶ Baker (2002, 53-69).

¹³⁷ .

War of 1263-5.¹³⁸ But shire and borough communities would also petition, for instance, to challenge the exchequer's fiscal claims upon them or to make "requests for keeping roads and bridges in repair and complaints of the abuse of tolls, the privileges of the stannaries, or the inconvenient situation of a county gaol."¹³⁹ The gentry would seek redress from intimidation or other miscarriage of justice. Even free tenants and villains would petition against the exercise of lordship and "communities of places or estates of men, for instance, the tin-miners in Cornwall or the king's clerks in chancery" would submit.¹⁴⁰

Communities could be "formally constituted," such as the villeins on a manor in the king's demesne or the company of the Hanse, or "pragmatically imagined," such as the "poor commons of various cities and boroughs."¹⁴¹ They presented grievances about universal problems: abuses and corruption of royal officials (about a third of the total in the early period),¹⁴² but also rampant crime and wrongdoing.¹⁴³ Fundamentally petitions appealed to royal grace.

Petitions and the king's presence were soon considered central to parliament.¹⁴⁴ "It was widely accepted that the king had a responsibility to provide answers to all petitions before a parliament closed."¹⁴⁵ Edward I thus had to request, in 1280 and 1293, that the "flood" of petitions reaching hundreds per session be regulated because they distracted him from the "*grosses busoignes de sun reaume*."¹⁴⁶ When fewer were admitted in the 1280s, social reaction was sharp. The anonymous author of the *Mirror of Justices*, from the early 1300s, protested that "it is an abuse that whereas parliaments ought to be held for the salvation of the souls of trespassers, twice a year and in London, they are now held but rarely and at the king's will for the purpose of obtaining aids and collection of treasure."¹⁴⁷ Whatever the *crown's* purposes for convening Parliament, bottom-up demand viewed it through the prism of justice and the imposition of fiscal demands as a perversion.

¹³⁸ Harding (2002, 174).

¹³⁹ Lapsley (1951, 141).

¹⁴⁰ Haskins (1938, 7), Harriss (1981, 49), Brand (2009).

¹⁴¹ Ormrod (2009b, 137). The article is a fascinating analysis of the usage of sound words like murmur and clamour to denote public dissent to official policy.

¹⁴² Maddicott (1981, 65).

¹⁴³ Inquests on corruption *were used extensively by previous kings, such as Henry II; Harding (2002, 128-46). Whether fluctuations in judicial measures reflect variation in the levels of violence or administrative capacity remains topic, as evidence is poor; Bellamy (1973), Clanchy (1974), Kaeuper (1988).

¹⁴⁴ They were simply delivered, however, not heard in parliament Maddicott (2010, 295-6).

¹⁴⁵ Ormrod (2009a, 7), Harding (2002, 180).

¹⁴⁶ Maddicott (2010, 442), Dodd (2007, 50-1).

¹⁴⁷ The *Mirror of Justices* 1895, 155), Dodd (2007, 72).

The impact of these petitions was profound: they were increasingly the conduit for legislation. Even individual petitions could lead to legislation through statutes.¹⁴⁸ The first known “bills” to parliament date from 1278.¹⁴⁹ But the process accelerated when petitions started being submitted in “common,” aggregating local demands into generalizable requests after the 1330s.¹⁵⁰ Originally, such petitions invoked the ‘community of England’, whereby “it is clearly the lords who are meant.”¹⁵¹ But by 1315, “the public and frequent complaint of middling people” could secure legislation in response to demands, for instance appointing sufficient people to juries.¹⁵²

The Commons had an “agenda for legislation” by the 1320s.¹⁵³ By the 1340s, only “common petitions” were enrolled,¹⁵⁴ making the Commons the conduit for popularly-supplied legislation in Parliament.¹⁵⁵ By the 1370s, various actors would seek to have their petitions presented through the Commons, because this route ensured they were heard by the king in Parliament, rather than by committees of nobles.¹⁵⁶ By 1377, all statutes required the assent of the full parliament.¹⁵⁷ By 1450, the Commons were not only presenting the issues via petitions; they were proposing the remedy that became legislation.¹⁵⁸

In France, royal justice also spread in response to petitions (*supplicatio, requesta*), especially by the church.¹⁵⁹ Supplications appealed to the king’s grace, on issues that transcended ordinary justice.¹⁶⁰ However, originally, “only aggrieved churches and substantial landowners” could access the king.¹⁶¹ But with the great inquest (*enquête*) of 1247, the crown ushered its own “bill revolution,” as in England.¹⁶² Oral complaints against the king and his officers could now be accepted from broad sections of the population and submission to the local clergy meant they were written down and submitted to the *curia regis*. Complaints targeted the local representatives of the crown

¹⁴⁸ Hébert (2014, 503-6, 487-490), Harding (2002, 187-8).

¹⁴⁹ Harding (2002, 179), Brand (2004).

¹⁵⁰ Dodd (2001, 133), Ormrod (1995, 35), Harriss (1963), Myers (1937), Rayner (1941a), Rayner (1941b).

¹⁵¹ Harding (2002, 188), Haskins (1938)(Sayles 1974, 102)(Dodd 2007, 128).

¹⁵² Dodd (2007, 130), Rotuli Parliamentorum 1783, 117). See the discussion in Ormrod (1995, 30-7).

¹⁵³ Ormrod (1990).

¹⁵⁴ Rayner (1941a), Rayner (1941b), Richardson and Sayles (1961, 15). But individual petitions continued Dodd (2001).

¹⁵⁵ Ormrod (1995, 33), Musson and Ormrod (1999, 146-57), Harding (2002), Dodd (2007).

¹⁵⁶ Cam (1970, 181), Ormrod (2009b, 137).

¹⁵⁷ Holt (1981, 45).

¹⁵⁸ Ormrod (1995, 37).

¹⁵⁹ In France, the term *petitio* was connected to ordinary, not extra-ordinary, justice, contrary to English practice; Hilaire (2011, 225).

¹⁶⁰ Hilaire (2011, 152-60, 217-230).

¹⁶¹ Harding (2002, 161).

¹⁶² Harding (2002, 122).

with judicial, military, fiscal, and administrative powers, the *baillis* and the *sénéchaux* (bailiffs of the south). They could range from a *bailli* favoring the cases of the rich over the poor to extorting money from a prisoner. Crime was also pervasive and complaints could now be directed against other subjects. This role of the *Parlement*, specifically of the *Chambre de Requetes*, was to handle cases from customary law and issue “letters of justice” that referred the case to a different authority, whether to the Grand Chambre or to local authorities.¹⁶³

Grievances often led to legislation, as with the “*établissement général*” of Louis the Pious in 1254.¹⁶⁴ All the reforming ordinances of the fourteenth and fifteenth centuries were responding to public petitions or requests, for instance the one from 1303 on royal officials or the provincial charters of 1315.¹⁶⁵ More well-known from later history are the related *doléances*, associated with the Estates-General.¹⁶⁶ But they were effectively petitions. The French trajectory splintered their submission process, weakening the institutional mechanisms of centralization.

A critical condition for this interdependent set of practices was whether the king was present in Parliament, which incentivized other groups to attend. In France, the increasing absence of the king after 1290 occurred at the same time as the nobility was sidelined in court activities.¹⁶⁷ Louis IX had a personal investment in justice, but his successor only appeared in court to bestow favor on a plaintiff or due to the importance of the case.¹⁶⁸ The English king remained present in the formative period; his presence is sometimes considered the difference between parliaments and other assemblies.¹⁶⁹ This did not mean that in a later period he could not go rowing whilst appointing nobles to hear petitions;¹⁷⁰ but by that time, Parliament was regular and nobles and all subjects had incentives to be present as well.

Demand for institutional regularity therefore came from the constant and polity-wide demand for royal justice or grace. This was common to the two cases, as it was throughout Europe and beyond (later chapters will support this). Demand for rights or law across cases cannot be assumed to have varied in obvious ways. Neither, however, can we say did the demand for taxation differ across cases, which many Whiggish accounts place at the center of the rise of English constitutionalism.¹⁷¹ All European rulers were asking for taxation and subjects were uniformly asking for redress of wrongs. Yet

¹⁶³ Lot and Fawtier (1958, 341), Lot and Fawtier (1958, 82-4).

¹⁶⁴ Harding (2002, 152, 151, 149).

¹⁶⁵ Rigaudière (1994, 183).

¹⁶⁶ Rigaudière (1994, 176), Langlois (1909), Contamine (1976)

¹⁶⁷ Shennan (1998, 24), Hilaire (2011, 158).

¹⁶⁸ Shennan (1998, 24).

¹⁶⁹ Prestwich (1988, 442).

¹⁷⁰ Prestwich (2003, 103).

¹⁷¹ Even Maddicott, who pioneered the revival of the study of justice and petitions, ultimately focuses on taxation to explain the growth of representation in England; Maddicott (2010).

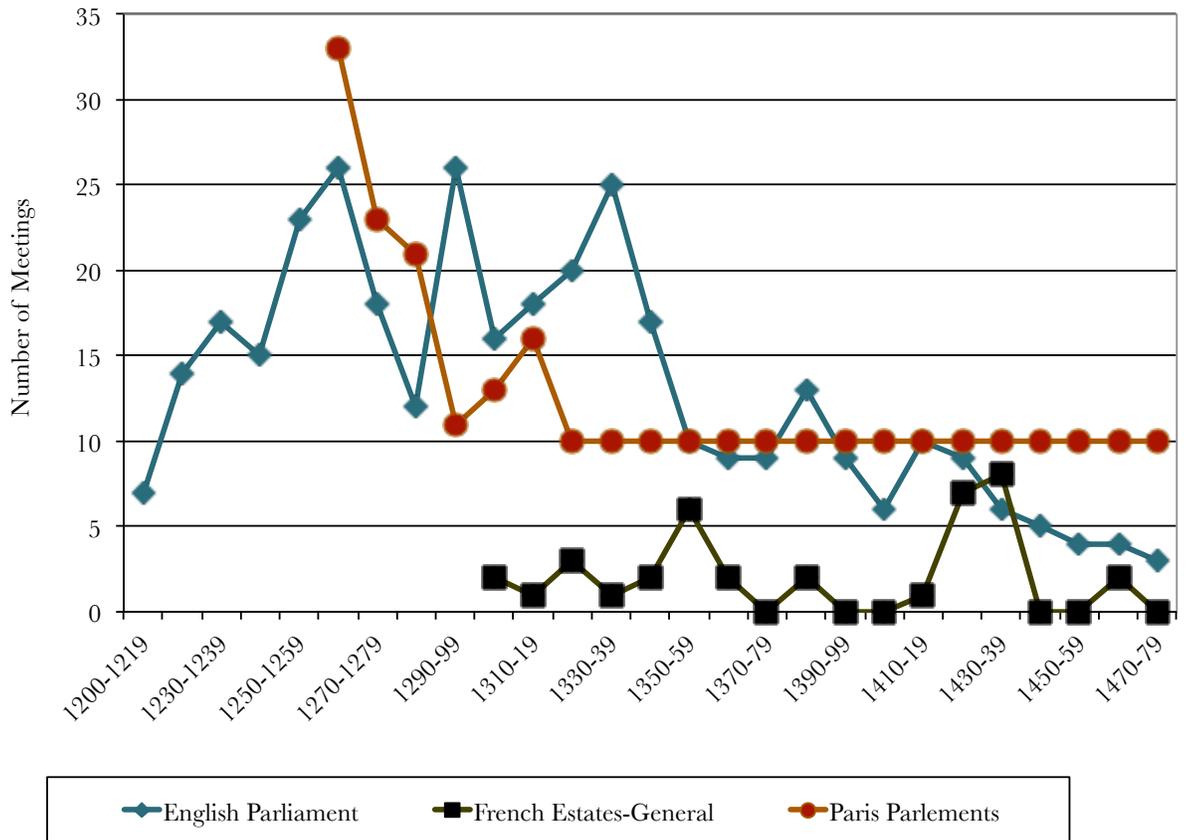
Parliament only consolidated as a polity-wide institution in England. Why? What follows probes the comparison with France.

iv. Regularity and Taxation?

If regularity, and therefore institutionalization, was provided by the constant demand for justice, what was the role of taxation in the process of parliamentary emergence? Although this role will only become fully clear in Part three, here I demonstrate that taxation was so irregular that, had it been relied on for institutional emergence in England, outcomes would have followed the French trajectory to absolutism. To see this, we need to note that judicial functions endowed both Parliament and *Parlement* with an almost identical regularity. By contrast, the main French representative institution, the Estates-General, met only rarely (Figure 2).¹⁷² It was suppressed between 1484 and 1560 and also from 1614 until the French Revolution. This irregularity accounts for the French regime being labeled “absolutist.” It derives in key ways, I argue, from institutionally divorcing fiscal functions from the regular judicial ones.

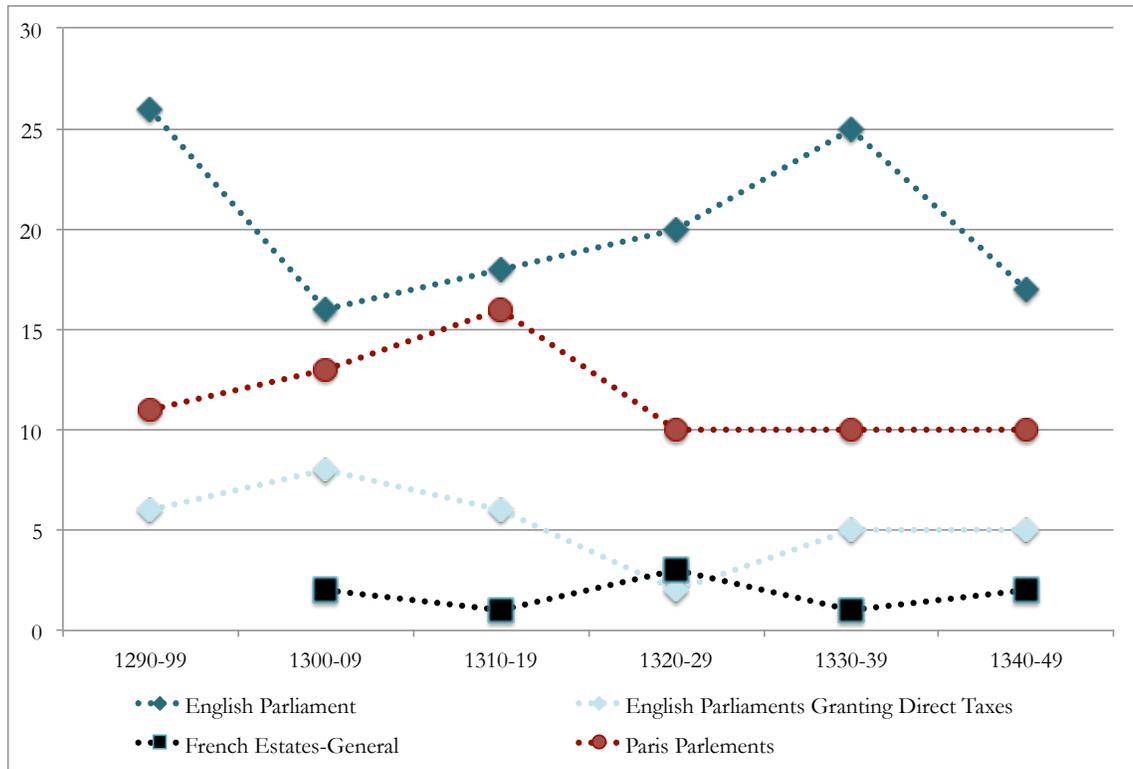
¹⁷² Bisson (1972), Strayer and Taylor (1939).

Figure 2: Comparison of Meeting Frequency of English Parliament, French Estates-General, and Paris *Parlement* Per Decade



Sources: (Fryde 1996; *Actes Du Parlement De Paris* 1863; Furgeot 1920; Soule 1968). The English Parliament has fewer sessions over time, although they lasted longer. The English list in Fryde includes both councils and meetings designated as “parliaments,” but I include both as most likely “contemporaries were far less concerned than modern scholarship” about these distinctions; (Dodd 2007, 70, n.58). The Paris Parlement changed location during the Hundred Years' War but continued its functions; see chapter 3.

Figure 3: Comparison of Frequency of Meetings Per Decade of the English Parliament, English Parliament Sessions Granting Taxation, French Estates-General, and Paris *Parlement*



Sources: (Fryde 1996; *Actes Du Parlement De Paris* 1863; Furgeot 1920; Soule 1968; Bradford 2007).

That the judicial function accounts for regularity is shown by disaggregating the English meetings into those that involved taxation and those that did not. On average, only about 25% of the sessions of the English Parliament dealt with taxation in the critical period of emergence, around the turn of the thirteenth century (Figure 3). Later we will see that tax sessions broadly coincide with the representation of the non-noble classes, from the towns and counties. But if the English Parliament had had an exclusively fiscal purpose, its frequency would have been similar to that of the Estates-General. Such low frequency inhibited institutionalization and in the long term affected the nature of the regime. Institutional layering and functional fusion was key. The next chapter will examine why that occurred in England but not France.

References

- Acemoglu, Daron, Simon Johnson, and James A. Robinson. 2005. "Institutions as the Fundamental Cause of Long-Run Growth." In *Handbook of Economic Growth*. Amsterdam: Elsevier.
- Actes Du Parlement De Paris*. 1863. Edited by E. Boutaric. 2 vols. Vol. 1: 1254-1299. Paris: H. Plon.
- Albertus, Michael. 2015. "Autocracy and Redistribution: The Politics of Land Reform." Cambridge: Cambridge University Press.
- Aubert, Félix. [1890] 1977. *Le Parlement De Paris, De Philippe Le Bel À Charles VII, 1314-1422: Sa Compétence, Ses Attributions*. Genève: Slatkine-Megariotis Reprints.
- Baker, John H. 2002. *An Introduction to English Legal History*. 4th ed. London: Butterworths LexisNexis.
- Baker, Robert L. 1961. "The English Customs Service, 1307-1343: A Study of Medieval Administration." *Transactions of the American Philosophical Society* 51 (6):3-76.
- Bartlett, Robert. 2000. *England under the Norman and Angevin Kings, 1075-1225*. Oxford: Oxford University Press.
- Barzel, Yoram, and Edgar Kiser. 2002. "Taxation and Voting Rights in Medieval England and France." *Rationality and Society* 14 (4):473-507.
- Bates, Robert H., and Da-Hsiang Donald Lien. 1985. "A Note on Taxation, Development, and Representative Government." *Politics and Society* 14 (1):53-70.
- Beaumanoir, Philippe de. 1900. *Coutumes De Beauvaisis*. 2 vols. Vol. 2. Paris: A. Picard et fils.
- Bellamy, John G. 1973. *Crime and Public Order in England in the Later Middle Ages*. London: Routledge and Kegan Paul.
- Besley, Timothy, and Torsten Persson. 2011. *Pillars of Prosperity: The Political Economics of Development Clusters*. Princeton: Princeton University Press.
- Bisson, Thomas N. 1969. "Consultative Functions in the King's Parlements (1250-1314)." *Speculum: A Journal of Mediaeval Studies* 44 (3):353-373.
- . 1972. "The General Assemblies of Philip the Fair: Their Character Reconsidered." *Studia Gratiana* 15:538-564.

- . 1973. *Medieval Representative Institutions, Their Origins and Nature*. Hinsdale, Ill.: Dryden Press.
- . 2009. *The Crisis of the Twelfth Century: Power, Lordship, and the Origins of European Government*. Princeton, N.J.: Princeton University Press.
- Blickle, Peter. 1997. *Resistance, Representation, and Community*. Oxford: Oxford University Press.
- Bloch, Marc Léopold Benjamin. 1953. *The Historian's Craft*. 1st American ed. New York: Knopf.
- Blockmans, Willem Pieter. 1978. "A Typology of Representative Institutions in Late Medieval Europe." *Journal of Medieval History* 4:189-215.
- . 1998. "Representation (since the Thirteenth Century)." In *The New Cambridge Medieval History*, ed. C. T. Allmand. Cambridge: Cambridge University Press.
- Boone, Catherine. 2014. *Property and Political Order in Africa: Land Rights and the Structure of Politics*. New York: Cambridge University Press.
- Boucoyannis, Deborah. 2015. "The Historiography of the Medieval English Parliament " Unpublished Manuscript, Charlottesville, University of Virginia.
- Bradford, Phil. 2007. *Parliament and Political Culture in Early Fourteenth Century England*, History Department, University of York, York, U.K.
- Brand, Paul. 1997. "The Formation of the English Legal System." In *Legislation and Justice*, ed. A. Padoa Schioppa. Oxford: Clarendon Press.
- . 2004. "Petitions and Parliament in the Reign of Edward I." *Parliamentary history* 23 (1):14-38.
- . 2007. "Henry II and the Creation of the English Common Law." In *Henry II: New Interpretations*, ed. C. Harper-Bill and N. Vincent. Woodbridge: Boydell Press.
- . 2009. "Understanding Early Petitions: An Analysis of the Content of Petitions to Parliament in the Reign of Edward I." In *Medieval Petitions: Grace and Grievance*, ed. W. M. Ormrod, G. Dodd and A. Musson. Woodbridge: York Medieval Press.
- Brewer, John. 1989. *The Sinews of Power: War, Money, and the English State, 1688-1783*. 1st Am. ed. New York: Alfred A. Knopf.
- Burke, Edmund, and Conor Cruise O'Brien. 1968. *Reflections on the Revolution in France*. Harmondsworth: Penguin.

- Cam, Helen Maud. 1962. "The Law-Courts of Medieval London." In *Law-Finders and Law-Makers in Medieval England; Collected Studies in Legal and Constitutional History*. London: Merlin Press.
- . 1970. "The Legislators of Medieval England." In *Historical Studies of the English Parliament*, ed. E. B. Fryde and E. Miller. Cambridge: Cambridge University Press.
- Capoccia, Giovanni, and Daniel Ziblatt. 2010. "The Historical Turn in Democratization Studies: A New Research Agenda for Europe and Beyond." *Comparative Political Studies* 43 (8-9):931-968.
- Clanchy, M. T. 1974. "Law, Government, and Society in Medieval England." *History* 59 (195):73-78.
- Cohen, Esther. 1993. *The Crossroads of Justice: Law and Culture in Late Medieval France*. Leiden: E.J. Brill.
- Collier, Ruth Berins. 1999. *Paths toward Democracy: The Working Class and Elites in Western Europe and South America*. Cambridge: Cambridge University Press.
- Contamine, Philippe. 1976. "De La Puissance Aux Privilèges: Doléances De La Nobless Française Envers La Monarchie Aux Xive and Xve Siècles." In *La Noblesse Au Moyen Age Xie-Xve SièCles: Essais à La MéMoire De Robert Boutruche*. Paris: Presses universitaires de France.
- Coss, Peter R. 1989. "Bastard Feudalism Revised." *Past & Present* (125):27-64.
- Dawson, John Philip. 1940. "The Codification of the French Customs." *Michigan Law Review* 38 (6):765-800.
- De Long, J. Bradford. 2000. "Overstrong against Thyself: War, the State, and Growth in Europe on the Eve of the Industrial Revolution." In *A Not-So-Dismal Science: A Broader View of Economies and Societies*, ed. M. Olson and S. Kähkönen. Oxford: Oxford University Press.
- Dincecco, Mark. 2011. *Political Transformations and Public Finances: Europe, 1650-1913*. Cambridge: Cambridge University Press.
- Dodd, Gwilym. 2001. "The Hidden Presence: Parliament and the Private Petition in the Fourteenth Century." In *Expectations of the Law in the Middle Ages*, ed. A. Musson. Rochester, NY: Boydell Press.
- . 2007. *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages*. Oxford: Oxford University Press.
- Doucet, Roger. 1948. *Les Institutions De La France Au Xvie Siècle*. Paris: A. et J. Picard.

- Downing, Brian M. 1992. *The Military Revolution and Political Change: Origins of Democracy and Autocracy in Early Modern Europe*. Princeton, N.J.: Princeton University Press.
- Ducoudray, Gustave. 1902. *Les Origines Du Parlement De Paris Et La Justice Aux XIIIe Et Xive Siècles*. Paris: Hachette et cie.
- Dumolyn, Jan. 2015. "Les « Plaintes » Des Villes Flamandes à La Fin Du XIIIe Siècle Et Les Discours Et Pratiques Politiques De La Commune." *Le Moyen Age: Revue d'histoire et de philologie* CXXI (2):383-407.
- Ertman, Thomas. 1997. *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe*. Cambridge: Cambridge University Press.
- Fawtier, Robert. 1953. "Parlement D'angleterre Et États-Généraux De France Au Moyen Âge." *Comptes-rendus des séances de l'Académie des Inscriptions et Belles-Lettres*:275-284.
- Fayard, E. 1876. *Aperçu Historique Sur Le Parlement De Paris*. Vol. 1. Lyon: Scheuring.
- Fifoot, C. H. S. 1971. *Frederic William Maitland: A Life*. Cambridge, Mass.: Harvard University Press.
- Firnhaber-Baker, Justine. 2012. "Jura in Medio: The Settlement of Seigneurial Disputes in Later Medieval Languedoc." *French History*.
- Fleta*. 1955. Edited by and translated by H. G. Richardson and G. O. Sayles. London: B. Quaritch.
- Fryde, E. B. 1996. *Handbook of British Chronology*. 3d ed. Cambridge: Cambridge University Press.
- Furgeot, Henri. 1920. *Actes Du Parlement De Paris. 2. Série, De L'an 1328 à L'an 1350. Jugés*. Edited by M. Dillay. Paris: Impr. nationale.
- Gandhi, Jennifer. 2008. *Political Institutions under Dictatorship*. New York: Cambridge University Press.
- Given-Wilson, Chris, Paul Brand, A. Curry, and W. M. Ormrod. 2005. "Parliament Rolls of Medieval England, 1275 – 1504." London: University of London & History of Parliament Trust.
- Greif, Avner, and David D. Laitin. 2004. "A Theory of Endogenous Institutional Change." *The American Political Science Review* 98 (4):633-652.
- Guizot, François. 1861. *History of the Origin of Representative Government in Europe*. Translated by A. R. Scoble. London: H.G. Bohn.

- Hall, Peter A., and David W. Soskice. 2001. *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press.
- Hall, Peter A., and Rosemary C. R. Taylor. 1996. "Political Science and the Three New Institutionalisms." *Political Studies* 44 (5):936-957.
- Harding, Alan. 1973. *The Law Courts of Medieval England*. London: Allen & Unwin.
- . 2002. *Medieval Law and the Foundations of the State*. Oxford: Oxford University Press.
- Harriss, Gerald L. 1963. "The Commons' Petitions of 1340." *The English Historical Review* 78 (309):625-654.
- . 1975. *King, Parliament, and Public Finance in Medieval England to 1369*. Oxford: Clarendon Press.
- . 1981. "The Formation of Parliament, 1272-1377." In *The English Parliament in the Middle Ages*, ed. R. G. Davies and J. H. Denton. Philadelphia: University of Pennsylvania Press.
- Haskins, George L. 1938. "The Petitions of Representatives in the Parliaments of Edward I." *The English Historical Review* 53 (209):1-20.
- Hastings, Margaret. 1947. *The Court of Common Pleas in Fifteenth Century England; a Study of Legal Administration and Procedure*. Ithaca: Cornell University Press.
- Hébert, Michel. 2014. *Parlementer: Assemblées Représentatives Et Échange Politique En Europe Occidentale Á La Fin Du Moyen Age*. Paris: Éditions de Boccard.
- Henneman, John Bell. 1970. "The French Estates General and Reference Back to Local Constituents, 1343-1355." In *Representative Institutions in Theory and Practice*. Brussels: Les Éditions de la Librairie Encyclopédique.
- Herb, Michael. 2003. "Taxation and Representation." *Studies in Comparative International Development* 38 (3):3-31.
- Hilaire, Jean. 2011. *La Construction De L'état De Droit Dans Les Archives Judiciaires De La Cour De France Au Xiiiè Siècle*. Paris: Dalloz.
- Hoffman, Philip T., and Kathryn Norberg, eds. 1994. *Fiscal Crises, Liberty, and Representative Government, 1450-1789*. Stanford: Stanford University Press.
- Hoffman, Philip T., and Jean-Laurent Rosenthal. 1997. "The Political Economy of Warfare and Taxation in Early Modern Europe: Historical Lessons for Economic Development." In *The Frontiers of the New Institutional Economics*, ed. J. N. Drobak and J. V. C. Nye. San Diego: Academic Press.

- Holdsworth, William Searle. 1923. *A History of English Law*. 3rd ed. 16 vols. Vol. I. London: Methuen & Co.
- Holt, James Clarke. 1972. "Politics and Property in Early Medieval England." *Past & Present* 57:3-52.
- . 1981. "The Prehistory of Parliament." In *The English Parliament in the Middle Ages*, ed. R. G. Davies and J. H. Denton. Philadelphia: University of Pennsylvania Press.
- . 1982. "Feudal Society and the Family in Early Medieval England: I. The Revolution of 1066." *Transactions of the Royal Historical Society, 5th ser.* 32.
- . 1983. "The Introduction of Knight Service into England." *Anglo-Norman Studies* 6:89-106.
- Hudson, John. 1994. *Land, Law, and Lordship in Anglo-Norman England*. Oxford: Oxford University Press.
- . 1996a. *The Formation of the English Common Law: Law and Society in England from the Norman Conquest to Magna Carta*. New York: Longman.
- . 2012. *The Oxford History of the Laws of England Volume 2: 900-1216*. Edited by R. H. Helmholz and J. H. Baker. Oxford: Oxford University Press.
- , ed. 1996b. *The History of English Law: Centenary Essays on "Pollock and Maitland"*. Oxford: Oxford University Press.
- Jay, Stewart. 1994. "Servants of Monarchs and Lords: The Advisory Role of Early English Judges." *The American Journal of Legal History* 38 (2):117-196.
- Joinville, Jean. 1821-7. "Histoire De Saint-Louis." In *Collection Complete Des Mémoires Relatifs À L'histoire De France Depuis Le Règne De Philippe Auguste, Jusqu'au Commencement Du Dix-Septième Siècle*, ed. C. B. Petitot. Paris.
- Kaeuper, Richard W. 1988. *War, Justice, and Public Order: England and France in the Later Middle Ages*. Oxford: Clarendon Press.
- Kiser, Edgar, and Yoram Barzel. 1991. "The Origins of Democracy in England." *Rationality and Society* 3 (4):396-422.
- Knight, Jack. 1992. *Institutions and Social Conflict*. Cambridge: Cambridge University Press.
- . 1995. "Models, Interpretations and Theories: Constructing Explanations of Institutional Emergence and Change." In *Explaining Social Institutions*, ed. J. Knight and I. Sened. Ann Arbor: University of Michigan Press.

- Langlois, Charles Victor. 1888. *Textes Relatifs à L'histoire Du Parlement Depuis Les Origines Jusqu'en 1314*. Paris: A. Picard.
- . 1890. "Les Origines Du Parlement De Paris." *Revue Historique* 42:74-114.
- . 1909. "Doléances Recueillies Par Les Enquêteurs De Saint Louis Et Des Derniers Capétiens Directs." *Revue Historique* 100 (1):63-95.
- Langmuir, Gavin I. 1966. "Politics and Parliaments in the Early Thirteenth Century." *Études sur l'histoire des assemblées d'états*:47-62.
- Lapsley, Gaillard Thomas. 1951. "Knights of the Shire in the Parliaments of Edward II." In *Crown, Community, and Parliament in the Later Middle Ages*. Oxford: B. Blackwell.
- Lapsley, Gaillard Thomas*. [1914] 1925. "Introduction." In *An Essay on the Origins of the House of Commons*, by Désiré Pasquet. Cambridge: Cambridge University Press.
- Le Mené, Michel. 2000. "'Tenir En Fief" À La Fin Du Moyen Âge." In *Guerre, Pouvoir Et Noblesse Au Moyen Age : Mélanges En L'honneur De Philippe Contamine*, ed. P. Contamine, J. Paviot and J. Verger. Paris: Presses de l'Université de Paris-Sorbonne.
- Lemarignier, Jean François. 1970. *La France Médiévale: Institutions & Société*. Paris: A. Colin.
- Levi, Margaret. 1988. *Of Rule and Revenue*. Berkeley: Berkeley University Press.
- Lord, R. H. 1930. "The Parliaments of the Middle Ages and the Early Modern Period." *Catholic Historical Review* 16 (2).
- Lot, Ferdinand, and Robert Fawtier. 1958. *Histoire Des Institutions Françaises Au Moyen Age*. Vol. 2: Institutions Royales. Paris: Presses universitaires de France.
- Lot, Ferdinand, Robert Fawtier, and Michel de Bouïard. 1957. *Histoire Des Institutions Françaises Au Moyen Age*. 3 vols. Paris: Presses universitaires de France.
- Maddicott, John Robert. 1981. "Parliament and the Constituencies, 1272-1377." In *The English Parliament in the Middle Ages*, ed. R. G. Davies and J. H. Denton. Manchester: Manchester University Press.
- . 2010. *The Origins of the English Parliament, 924-1327*. Oxford: Oxford University Press.
- Mahoney, James. 2000. "Path Dependence in Historical Sociology." *Theory and Society* 29 (4):507-548.

- Mahoney, James, and Kathleen Ann Thelen. 2010a. *Explaining Institutional Change: Ambiguity, Agency, and Power*. Cambridge: Cambridge University Press.
- . 2010b. "A Theory of Gradual Institutional Change." In *Explaining Institutional Change: Ambiguity, Agency, and Power*, ed. J. Mahoney and K. A. Thelen. Cambridge: Cambridge University Press.
- Maitland, Frederic W. 1893. *Records of the Parliament Holden at Westminster on the Twenty-Eighth Day of February, in the Thirty-Third Year of the Reign of King Edward the First (A. D. 1305)*. London: Rolls Series.
- Marongiu, Antonio. 1968. *Medieval Parliaments: A Comparative Study*. Translated by S. J. Woolf. London: Eyre & Spottiswoode.
- Matthew Paris. 1852. *English History from the Year 1235 to 1273*. Vol. 1. London: Henry G. Bohn.
- McIlwain, Charles Howard. 1910. *The High Court of Parliament and Its Supremacy; an Historical Essay on the Boundaries between Legislation and Adjudication in England*. New Haven: Yale University Press.
- . 1932. "Medieval Estates." In *The Cambridge Medieval History*, ed. J. B. Bury. New York: Macmillan.
- Megarry, Robert, and William Wade. 1975. *The Law of Real Property*. 4th ed. London: Stevens.
- Miller, Edward. 1960. *The Origins of Parliament*. London: Routledge & Keegan Paul.
- Millet, H el ene. 2003. *Suppliques Et Requ etes : Le Gouvernement Par La Gr ace En Occident (Xiii-Xve Si ecle)*. Rome:  cole fran aise de Rome.
- Milsom, S. F. C. 1981. *Historical Foundations of the Common Law*. 2d ed. London: Butterworths.
- . 1985. *Studies in the History of the Common Law*. London: Hambledon Press.
- The Mirror of Justices*. 1895. Edited by W. J. Whittaker and F. W. Maitland. London: B. Quaritch.
- Mitchell, Sydney Knox. 1951. *Taxation in Medieval England*. New Haven: Yale University Press.
- Moore, Barrington. 1967. *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*. Boston: Beacon Press.

- Musson, Anthony. 2009. "Queenship, Lordship and Petitioning in Late Medieval England." In *Medieval Petitions: Grace and Grievance*, ed. W. M. Ormrod, G. Dodd and A. Musson. Woodbridge: York Medieval Press.
- Musson, Anthony, and W. M. Ormrod. 1999. *The Evolution of English Justice: Law, Politics, and Society in the Fourteenth Century*. Houndmills: Macmillan Press.
- Myers, A. R. 1937. "Parliamentary Petitions in the Fifteenth Century: Part II: Petitions of the Commons and Common Petitions (Continued)." *The English Historical Review* 52 (208):590-613.
- North, Douglass C. 1990. *Institutions, Institutional Change, and Economic Performance*. Cambridge: Cambridge University Press.
- North, Douglass C., John J. Wallis, and Barry R. Weingast. 2009. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Cambridge: Cambridge University Press.
- North, Douglass C., and Barry R. Weingast. 1989. "Constitutions and Commitment: The Evolution of Institutional Governing Public Choice in Seventeenth-Century England." *The Journal of Economic History* 49 (4):803-832.
- O'Callaghan, Joseph F. 1989. *The Cortes of Castile-León, 1188-1350*. Philadelphia: University of Pennsylvania Press.
- Olson, Mancur. 1965. *The Logic of Collective Action; Public Goods and the Theory of Groups*. Cambridge: Harvard University Press.
- Ordonnances Des Roys De France De La Troisième Race*. 1723. 21 vols. Vol. 1. Paris: Imprimerie royale.
- Ormrod, W. M. 1990. "Agenda for Legislation, 1322-C.1340." *The English Historical Review* 105 (414):1-33.
- . 1995. *Political Life in Medieval England, 1300-1450*. New York: St. Martin's Press.
- . 2009a. "Introduction: Medieval Petitions in Context." In *Medieval Petitions: Grace and Grievance*, ed. W. M. Ormrod, G. Dodd and A. Musson. Woodbridge: York Medieval Press.
- . 2009b. "Murmur, Clamour and Noise: Voicing Complaint and Remedy in Petitions to the English Crown, C. 1300-C. 1460." In *Medieval Petitions: Grace and Grievance*, ed. W. M. Ormrod, G. Dodd and A. Musson. Woodbridge: York Medieval Press.

- Ormrod, W. M., Gwilym Dodd, and Anthony Musson, eds. 2009. *Medieval Petitions: Grace and Grievance*. Woodbridge: York Medieval Press.
- Pierson, Paul. 2000a. "Increasing Returns, Path Dependence, and the Study of Politics." *The American Political Science Review* 94 (2):251-267.
- . 2000b. "The Limits of Design: Explaining Institutional Origins and Change." *Governance* 13 (4):475-499.
- . 2004. *Politics in Time: History, Institutions, and Social Analysis*. Princeton, N.J.: Princeton University Press.
- Plucknett, T. F. T. 1940. "Parliament." In *The English Government at Work, 1327-1336* ed. J. F. Willard and W. A. Morris. Cambridge: The Medieval Academy of America.
- Powell, J. Enoch, and Keith Wallis. 1968. *The House of Lords in the Middle Ages: A History of the English House of Lords to 1540*. London: Weidenfeld & Nicolson.
- Powicke, F. M. 1953. *The Thirteenth Century*. Oxford: Clarendon Press.
- Prestwich, Michael. 1988. *Edward I*. Berkeley: University of California Press.
- . 1990. *English Politics in the Thirteenth Century*. New York: St. Martin's Press.
- . 2003. *The Three Edwards: War and State in England, 1272-1377*. 2nd ed. New York: Routledge.
- Procter, Evelyn S. 1936. "The Development of the Catalan *Corts* in the Thirteenth Century." In *Homenatge a Antoni Rubió I Lluch*. Barcelona.
- Raban, Sandra. 2000. *England under Edward I and Edward II, 1259-1327*. Oxford: Blackwell.
- Rayner, Doris. 1941a. "The Forms and Machinery of the 'Commune Petition' in the Fourteenth Century. Part I." *The English Historical Review* 56 (222):198-233.
- . 1941b. "The Forms and Machinery of the 'Commune Petition' in the Fourteenth Century. Part II (Continued)." *The English Historical Review* 56 (224):549-570.
- Richardson, H. G., and G. O. Sayles. 1961. *Parliaments and Great Councils in Medieval England*. London: Stevens.
- . 1981. *The English Parliament in the Middle Ages*. London: Hambledon.
- Rigaudière, Albert. 1994. *Pouvoirs Et Institutions Dans La France MéDiéVale*. 2 vols. Vol. 2. Paris: A. Colin.

- Rodrik, Dani, Arvind Subramanian, and Francesco Trebbi. 2004. "Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development." *Journal of Economic Growth* 9 (2):131-165.
- Ross, Michael L. 2012. *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations*. Princeton: Princeton University Press.
- Rothstein, Bo. 1998. *Just Institutions Matter: The Moral and Political Logic of the Universal Welfare State*. Cambridge: Cambridge University Press.
- Rotuli Parliamentorum*. 1783. Vol. I. London.
- Rueschemeyer, Dietrich, Evelyne Huber Stephens, and John D. Stephens. 1992. *Capitalist Development and Democracy*. Chicago: University of Chicago Press.
- Sayles, G. O. 1988. *The Functions of the Medieval Parliament of England*. London: Hambledon Press.
- Schickler, Eric. 2001. *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress*. Princeton: Princeton University Press.
- Schumpeter, Joseph Alois. [1918] 1991. "The Crisis of the Tax State." In *The Economics and Sociology of Capitalism*, ed. R. Swedberg. Princeton, N.J.: Princeton University Press.
- Shennan, J. H. 1998. *The Parlement of Paris*. 2d ed. Phoenix Mill: Sutton.
- Smith, Adam. [1776] 1976. *An Inquiry into the Nature and Causes of the Wealth of Nations*. Edited by R. H. Campbell, A. S. Skinner and W. B. Todd. Oxford: Oxford University Press.
- Smith, Thomas. [1581] 1982. *De Republica Anglorum*. Edited by M. Dewar. Cambridge: Cambridge University Press.
- Soule, Claude. 1968. *Les États Généraux De France (1302-1789): Étude Historique, Comparative Et Doctrinale*. Heule.
- Spruyt, Hendrik. 1994. *The Sovereign State and Its Competitors: An Analysis of Systems Change*. Princeton: Princeton University Press.
- Spufford, Peter. 1967. *Origins of the English Parliament*. London: Longmans.
- Stark, David Charles, and Laszlo Bruszt. 1998. *Postsocialist Pathways: Transforming Politics and Property in East Central Europe*. Cambridge: Cambridge University Press.

- Stasavage, David. 2010. "When Distance Mattered: Geographic Scale and the Development of European Representative Assemblies." *American Political Science Review* 104 (4):625-643.
- The Statutes of the Realm*. 1810. Vol. I. London: Record Commission.
- Steinmo, Sven. 1989. "Political Institutions and Tax Policy in the United States, Sweden, and Britain." *World Politics* 41 (4):500-535.
- Strayer, Joseph Reese, and Charles Holt Taylor. 1939. *Studies in Early French Taxation*. Cambridge: Harvard University Press.
- Stubbs, William. 1880. *The Constitutional History of England in Its Origin and Development*. 3d ed. 3 vols. Vol. II. Oxford: Clarendon Press.
- . 1896. *The Constitutional History of England in Its Origin and Development*. 4th ed. Vol. II. Oxford: Clarendon Press.
- Swann, Julian. 1995. *Politics and the Parlement of Paris under Louis XV, 1754-1774*. Cambridge: Cambridge University Press.
- Thelen, Kathleen. 1999. "Historical Institutionalism in Comparative Politics." *Annual Review of Political Science* 2 (1):369-404.
- . 2003. "How Institutions Evolve: Insights from Comparative-Historical Analysis." In *Comparative Historical Analysis in the Social Sciences*, ed. J. Mahoney and D. Rueschemeyer. Cambridge: Cambridge University Press.
- Thierry, Augustin. 1853. *Essai Sur L'histoire De La Formation Et Des Progrès Du Tiers État*. Paris: Furne.
- Tierney, Brian. 1983. "The Idea of Representation in the Medieval Councils of the West." *Concilium* 19:25–30.
- Tilly, Charles. 1990. *Coercion, Capital, and European States, Ad 990-1990*. Cambridge, Mass.: B. Blackwell.
- Tout, T. F. 1920. *Chapters in the Administrative History of Medieval England*. 6 vols. Vol. 2. Manchester: Manchester University Press.
- Turner, Ralph V. 1977. "The Origins of Common Pleas and King's Bench." *The American Journal of Legal History* 21 (3):238-254.
- van Caenegem, R. C. 1988. *The Birth of the English Common Law*. 2d ed. Cambridge: Cambridge University Press.

- Van Zanden, Jan Luiten, Eltjo Buringh, and Maarten Bosker. 2012. "The Rise and Decline of European Parliaments, 1188–1789." *The Economic History Review* 65 (3):835-861.
- Vile, M. J. C. 1967. *Constitutionalism and the Separation of Powers*. Oxford: Clarendon Press.
- Waldner, David. 2003. "On the Non-Institutional Origins of the Institutional Foundations of Capitalism." Unpublished Manuscript, Charlottesville, University of Virginia.
- Weiler, Björn. 2009. "The King as Judge: Henry II and Frederick Barbarossa as Seen by Their Contemporaries." In *Challenging the Boundaries of Medieval History: The Legacy of Timothy Reuter*, ed. P. Skinner. Turnhout: Brepols.
- Weingast, Barry R. 1995. "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development." *Journal of Law, Economics, & Organization* 11 (1):1-31.
- White, G. J. 2000. *Restoration and Reform, 1153-1165: Recovery from Civil War in England*. Cambridge: Cambridge University Press.
- White, Stephen D. 1983. "The English Parliament in the Middle Ages." *Speculum* 58 (3):803-809.
- Wilkinson, Bertie. 1977. *The Later Middle Ages in England, 1216-1485*. London: Longman.
- Williamson, Oliver E. 1985. *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*. New York: Free Press.